UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Stuart Krohnengold, Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez, as representatives of a class of similarly situated persons, and on behalf of the New York Life Insurance Employee Progress Sharing Investment Plan, and the New York Life Insurance Company Agents Progress Sharing Plan, Plaintiffs, v. New York Life Insurance Company; the Fiduciary Investment Committee; the Board of Trustees; Katherine O'Brien; Anthony R. Malloy; Yie-Hsin Hung; Arthur A. Seter; Scott L. Lenz; Robert J. Hynes; and John and Jane Does 1-20, Defendants.	Case No. 1:21-cv-01778 - JMF

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE SERVICE AWARDS

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INTRODUCTION

In light of the Parties' Class Action Settlement Agreement[1] and the successful outcome it represents for the participants and beneficiaries of the New York Life Insurance Employee Progress Sharing Investment Plan and the New York Life Insurance Company Agents Progress Sharing Plan (the "Plans"), Plaintiffs and Class Counsel respectfully request the Court to award: (1) attorneys' fees to Class Counsel in the amount of $6,270,000 (33% of the Gross Settlement Amount of $19 million); (2) litigation expenses in the amount of $465,573.76 and settlement administration expenses in the amount of $121,762; and (3) class representative service awards in the amount of $10,000 to each of the Class Representatives.

As discussed below, Plaintiffs and Class Counsel have diligently pursued this complicated ERISA class action involving the Plans. Prior to reaching a settlement, they engaged in (1) extensive motion practice (including two motions to dismiss, a class certification motion, and discovery briefing), (2) fulsome fact discovery (involving review of over a quarter million pages of documents and completion of 21 fact witness depositions, including the depositions of all ten Plaintiffs), and (3) expert discovery involving four separate expert witnesses (two for each side). As a result of their efforts, they achieved a Settlement that provides $19 million in monetary relief, representing approximately 20% to 25% of the total estimated losses to the Plans. And they did so where similar actions in this District have yielded a lower recovery,[2] or no recovery at all, *see Falberg v. Goldman Sachs Grp., Inc.*, 2024 WL 619297 (2d Cir. Feb. 14, 2024) (affirming summary judgment for defendants in ERISA case involving proprietary funds in 401(k) plan).

[1] A copy of the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") is docketed at ECF 176-1. Unless otherwise indicated, all capitalized terms referenced herein have the meaning ascribed to them in Section 1 of the Settlement Agreement.

[2] *See, e.g., Beach v. JPMorgan Chase Bank*, No. 1:17-cv-00563, ECF 211 at 21 (S.D.N.Y. May 22, 2020) (seeking approval of ERISA 401(k) settlement involving 16% recovery rate in suit involving proprietary funds affiliated with plan sponsor), *approved* 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020) (Furman, J.).

To date, Class Counsel have received no payment for their services, nor have they been reimbursed for the out-of-pocket expenses that they have advanced. All compensation to Class Counsel is contingent upon the Court's award of fees and expenses as provided in the Settlement. Likewise, the named Class Representatives have not received compensation for the time they have invested in the litigation, the benefits they have provided to the Settlement Class, or the risks they assumed in bringing this action.

The requested distributions are authorized under both the Settlement and applicable law, and reasonable compared to awards in similar cases. With respect to the requested fee award, "[c]ourts in this District routinely approve fee awards of one-third of the common fund" in ERISA cases such as this. *Cates v. Trs. of Columbia Univ. in City of New York*, 2021 WL 4847890, at *7 (S.D.N.Y. Oct. 18, 2021); *see also, e.g., Beach*, No. 1:17-cv-00563, ECF 232 (approving 33% attorneys' fee in ERISA case); *Jacobs v. Verizon Commc'ns. Inc.*, No. 1:16-cv-01082, ECF 247 (S.D.N.Y. Nov. 21, 2023) (approving one-third fee in ERISA case); *In re J.P.Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4 (S.D.N.Y. Sept. 23, 2019) (same); *Carver v. Bank of New York Mellon*, No. 17-10231, ECF 11, at 1 (S.D.N.Y. May 23, 2019) (same); *Leber v. The Citigroup 401(k) Pension Plan Inv. Comm.*, No. 07-9329, ECF 294 (S.D.N.Y. Jan. 3, 2019) (same); *Osberg v. Foot Locker, Inc.*, No. 07-1358, ECF 423, at 3 (S.D.N.Y. June 8, 2018) (same); *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698, ECF 83, at 1 (S.D.N.Y. June 15, 2017) (same); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) (same).[3] Likewise, the requested litigation and settlement-administration expenses are reasonable and typical for a complex case such as this. Finally, the proposed service awards are the same or less

[3] *See also Kruger v. Novant Health, Inc. ("Novant Health")*, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) ("courts have found that '[a] one-third fee is consistent with the market rate' in a complex ERISA 401(k) fee case such as this") (collecting cases); *Tussey v. ABB, Inc.*, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019) ("Class Counsel's requested one-third fee is common in these cases.").

than the amounts approved in other ERISA cases. *See e.g.*, *Jacobs,* No. 1:16-cv-01082, ECF 247 (approving $30,000 service award); *Cates*, 2021 WL 4847890, at *9 (finding $25,000 service awards "reasonable and appropriate"); *In re Marsh ERISA Litig.*, 265 F.R.D. at 150 (approving $15,000 service awards); *Beach*, No. 1:17-cv-00563, ECF 232 (approving $10,000 awards); *Andrus*, No. 1:16-cv-05698, ECF 83 (same).

As of the date of this motion, no class member has objected to either the Settlement or the proposed distributions (which were disclosed in the Notice of Settlement), and Defendants also do not oppose this motion. Moreover, an Independent Fiduciary has reviewed both the Settlement and the amount of the proposed attorneys' fees award and other sums to be paid from the recovery, and determined that they are reasonable. *See* Declaration of Kai Richter in Support of Plaintiffs' Motion for Approval of Attorneys' Fees, Expenses, and Class Representative Service Awards ("Second Richter Decl."), Ex. 2, at 3. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court grant the present motion and approve the requested distributions.

BACKGROUND

I. Procedural History

A. Pleadings and Motion Practice

Plaintiff Stuart Krohnengold filed this Action as a putative class action on March 2, 2021, *see* ECF 1, and an Amended Complaint was subsequently filed on June 15, 2021 adding several additional Plaintiffs, *see* ECF 38. In summary, Plaintiffs alleged that (1) the fiduciary Committee for each of the Plans (and its predecessor Board of Trustees)[4] breached its fiduciary duties by retaining certain MainStay mutual funds affiliated with New York Life as investment options in the Plans; (2) the Committee also breached its fiduciary duties by retaining a Fixed Dollar Account

[4] The Committee for each of the Plans and its predecessor Board of Trustees (and the individual members of the same) are collectively referred to herein as the "Committee."

("FDA"), affiliated with New York Life, as the Plans' default investment; (3) Defendants committed prohibited transactions with respect to the Plans' investment in these proprietary funds; (4) New York Life was liable as a monitoring co-fiduciary for the alleged fiduciary breaches of the Committee; and (5) Defendants violated ERISA's anti-inurement rule with respect to the at-issue proprietary investments. *Id.*, Counts I-V.

Defendants moved to dismiss the Amended Complaint on July 16, 2021. *See* ECF 41. On August 10, 2022, the Court granted in part and denied in part Defendants' motion to dismiss. ECF 58. The Court (1) dismissed the claims of four Plaintiffs regarding the FDA on standing grounds; (2) dismissed the breach of fiduciary duty claims (but not prohibited transaction claims) of the other Plaintiffs regarding the FDA on statute of limitations grounds; (3) dismissed all Plaintiffs' breach of fiduciary duty claims based on the MainStay MacKay International Equity Fund; and (4) dismissed Plaintiffs' anti-inurement claim. *Id.* at 26. The Court otherwise denied the motion to dismiss, and granted Plaintiffs leave to re-plead the claims that were dismissed. *Id.* at 26-27.

Plaintiffs then re-pleaded their FDA claim in the operative Second Amended Complaint on September 8, 2022, and added three new Plaintiffs from the Agent Plan who were defaulted into the FDA. *See* ECF 63. Defendants brought another (partial) motion to dismiss, ECF 66, and the Court denied that motion in full on March 28, 2023. *See* ECF 93.

On June 26, 2023, Plaintiffs moved for class certification. ECF 115. When this case settled, Plaintiffs' motion for class certification was pending.

B. Settlement and Preliminary Approval

Following exhaustive fact and expert discovery, *see infra* at 5-6, the Parties engaged in private mediation with Robert Meyer of JAMS on January 18, 2024. *See* Second Richter Decl. ¶ 33. At the conclusion of the mediation (which lasted approximately ten hours), the Parties reached a settlement-in-principle, and Class Counsel then drafted a comprehensive Settlement Agreement.

Id. ¶¶ 33-34. Under the Settlement, $19,000,000 will be paid into a common settlement fund (the "Qualified Settlement Fund"). Settlement § 1.46. Following any Court-approved deductions for (a) attorneys' fees and expenses, (b) class representative service awards, and (c) administrative expenses, the Net Settlement Amount will be distributed to the Settlement Class. *Id.* §§ 1.36, 5.1-5.4, 6.1-6.3.

Plaintiffs filed a motion seeking preliminary approval of the Settlement on February 26, 2024. ECF 174. The Court granted that motion on March 5, 2024. ECF 188. Specifically, the Court's Order (1) granted provisional class certification for settlement purposes; (2) preliminarily approved the Settlement; (3) approved the form and method of class notice; (4) approved Analytics Consulting LLC ("Analytics") as the Settlement Administrator and Eagle Bank as the Escrow Agent; and (5) scheduled a Fairness Hearing for July 18, 2024. *Id.* Plaintiffs are filing the present motion at least 14 days in advance of the deadline for objections, pursuant to Section 6.1 of the Settlement Agreement and the Court's Preliminary Approval Order. *See* ECF 188 at ¶ 10.

C. Work of Class Counsel

1. Work Conducted to Date

Prior to filing this action, Class Counsel conducted an in-depth investigation of the Plans, their investments, and potential claims. *See* Second Richter Decl. ¶ 27. As a result of those efforts, Class Counsel were able to prepare a lengthy 47-page complaint and subsequent amended complaints with detailed factual allegations and charts that proceeded past Defendants' motions to dismiss. *See* ECFs 1, 38, 63.

Class Counsel then developed a substantial record during discovery. In total, Defendants produced over 179,000 pages of documents in response to Plaintiffs' discovery requests, and various third parties produced over 100,000 additional pages in response to subpoenas. Second Richter Decl. ¶ 30. Deposition discovery was also extensive. Class Counsel took the depositions

of eight defense witnesses, deposed three third-party witnesses, and defended ten named Plaintiff depositions. *Id.* In connection with this discovery, Class Counsel also initiated two discovery motions and completed two rounds of letter briefing before the Court. *See* ECFs 106, 109, 147-148.

Class Counsel also engaged two highly-qualified experts, worked closely with those experts, and proceeded through multiple rounds of expert reports. *See* Second Richter Decl. ¶ 31. Plaintiffs served two initial expert reports, Defendants served two expert rebuttal reports, and Plaintiffs served two expert reply reports. *Id.* The parties then completed expert depositions of both Plaintiffs' and Defendants' experts (four total). *Id.*

As noted above, Class Counsel also engaged in multiple rounds of motion to dismiss briefing, prepared and filed a motion for class certification, skillfully negotiated the present settlement, drafted the Settlement Agreement, and prepared Plaintiffs' motion for preliminary approval of the Settlement that was granted by the Court. *See supra* at 3-5. In addition, Class Counsel have worked closely with the Settlement Administrator and Escrow Agent to facilitate the distribution of the Notice of Settlement, review the Settlement Website and scripts for the telephone support line, and ensure receipt of the initial deposit into the Qualified Settlement Fund and the processing of invoices for settlement administration as appropriate pending final approval.[5] Second Richter Decl. ¶ 34.

To date, Class Counsel have expended over 5,600 hours in connection with this action. Second Richter Decl. ¶ 35. The lodestar value of this time (exclusive of time spent on this motion and other write-offs, and without accounting for the risks that Class Counsel assumed by taking the case on a contingency) is approximately $4,193,574.50. *Id.*

[5] The Settlement Agreement provides that "All expenses of Notice and other Administrative Expenses necessary to effectuate the Settlement prior to the date of the entry of the Final Approval Order shall be paid out of the Qualified Settlement Fund without prior Court approval." Settlement § 4.2(d).

2. Remaining Work to be Performed

Class Counsel's work on this matter remains ongoing. Prior to the Fairness Hearing, Class Counsel will draft Plaintiffs' motion for final approval of the Settlement and respond to any objections or questions. Second Richter Decl. ¶ 39. Class Counsel will then attend the Fairness Hearing, and if final approval is granted, supervise the distribution of payments to Class Members. *Id.* Additionally, Class Counsel will continue to communicate with the Settlement Administrator and Escrow Agent, and take any other actions necessary to support the Settlement until the conclusion of the Settlement Period. *Id.*

D. The Class Representatives

The Class Representatives[6] also have worked to advance the interests of the Class. Specifically, the Class Representatives: (1) reviewed the allegations in the complaints bearing their names; (2) communicated with Class Counsel and provided documents and information to them; (3) provided information in response to Defendants' Interrogatories; (4) produced documents in response to Defendants' document requests; (5) testified under oath during their depositions and prepared in advance of their depositions with Class Counsel; and (6) discussed the proposed Settlement with counsel and reviewed the terms of the Settlement Agreement. Second Richter Decl. ¶ 54; *see also* ECFs 177-186 (Plaintiff declarations), ¶ 4.

E. Settlement Administration Functions Performed by Third Parties

Finally, several third parties are needed to assist in the administration and/or effectuation of the Settlement. Analytics, as the Court-approved Settlement Administrator, disseminated the Notice of Settlement to Class Members following preliminary approval of the Settlement, and also

[6] The Class Representatives are Amy Laurence, Wayne Antoine, Lee Webber, Anthony Medici, Joseph Bendrihem, Larry Gilbert, Rafael Musni, Thomas Lantz, Sandra Scanni, and Claudia Gonzalez. Ms. Laurence was substituted for her late husband Stuart Krohnengold following his passing. *See* ECF 173. All references to the contributions of the Class Representatives herein include the efforts of Mr. Krohnengold on behalf of the Class.

established the Settlement Website and telephone support line. Settlement §§ 3.2-3.3; Second Richter Decl. ¶ 46. Upon final approval of the Settlement, Analytics also will calculate each Class Member's share of the Settlement based on the settlement allocation formula, coordinate distribution of payments to Class Members, and review and process any Former Participant Rollover Forms to ensure that Former Participants (and their Beneficiaries and Alternate Payees) receive their payment in the form of a rollover if they so elect. Settlement §§ 3.4, 5.1-5.4; Second Richter Decl. ¶ 47. Eagle Bank, as the approved Escrow Agent, established the Qualified Settlement Fund, and is responsible for investing the assets of the Qualified Settlement Fund and processing deposits and withdrawals as specified in the Settlement Agreement. *See* Settlement §§ 4.1-4.2; Second Richter Decl. ¶ 49. In addition, Eagle Bank (or the Settlement Administrator on its behalf) will adhere to all tax reporting and payment requirements in connection with the Qualified Settlement Fund. Settlement § 4.5; Second Richter Decl. ¶ 50. Finally, an Independent Fiduciary, Newport Trust Company, LLC ("Newport"), has reviewed the Settlement as required under Section 2.2 of the Settlement Agreement and Department of Labor regulations. *See* Second Richter Decl. ¶ 51; Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (Dec. 31, 2003), *as amended,* 75 Fed. Reg. 33830 (June 15, 2010). Based on its review, the Independent Fiduciary has determined that "the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery .... are reasonable[.]" Second Richter Decl., Ex. 2, at 3.

F. Requested Attorneys' Fees, Expenses, and Service Awards

In consideration of the work summarized above and the expenses associated therewith, the Settlement Agreement provides for payment of Attorneys' Fees and Expenses, Administrative Expenses, and Class Representative Service Awards, subject to Court approval. *See* Settlement §§ 6.1-6.2. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the following distributions from the Settlement Fund:

- Attorneys' fees: $6,270,000 (33% of the Gross Settlement Amount)
- Litigation expenses: $465,573.76
- Administrative Expenses: $121,762
    - Settlement Administrator: $108,762
    - Escrow Agent: $500
    - Independent Fiduciary: $12,500
- Service awards: $10,000 each ($100,000 total)

ARGUMENT

I. Standard of Review

When counsel obtain a settlement for a class, courts "may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Here, the requested distributions are authorized by Section 6 of the Settlement Agreement, *see* ECF 176-1, and also by applicable law. The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1200 (S.D. Fla. 2006) ("It is axiomatic that attorneys in a class action in which a common fund is created are entitled to compensation for their services from the common fund[.]") (quotation marks and citations omitted). Likewise, "reasonable expenses of litigation" may be recovered from a common fund, *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970), as well as administrative expenses of settlement, *see Henry v. Little Mint, Inc.*, 2014 WL 2199427, at *17 (S.D.N.Y. May 23, 2014) (ordering settlement administration expenses to be paid "from the Settlement Fund"). Finally, "[c]ase law in this and other circuits fully supports compensating class representatives for their work on behalf of the class," and the risks they assumed in pursuing the action. *In re Marsh ERISA Litig.*, 265 F.R.D. at 151 (awarding case contribution awards in the amount of $15,000 to each of the three named plaintiffs); *see also Jacobs,* No. 1:16-cv-01082,

ECF 247, at ¶ 21; *Cates*, 2021 WL 4847890, at *9; *Beach*, No. 1:17-cv-00563, ECF 232, at ¶ 5; *Andrus*, No. 1:16-cv-05698, ECF 83, at ¶ 4 (approving service awards ranging from $10,000 to $30,000 in ERISA class action cases). In summary, the requested distributions are customary in a class action such as this, and should be approved for the reasons set forth below.

II. The Court Should Approve the Requested Attorneys' Fees

Courts typically employ either the "percentage of the fund" method or the "lodestar" method to compute attorneys' fees. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). However, "the trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of the litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (quotations marks and citations omitted).

Use of the percentage method dispenses with the "cumbersome, enervating, and often surrealistic process of lodestar computation." *Goldberger*, 209 F.3d at 49-50 (quotation marks and citations omitted). However, the Second Circuit recommends considering the hours submitted by counsel as a "cross-check" on the reasonableness of the requested percentage. *Id.* at 50. The key consideration in awarding fees is what is reasonable under the circumstances. *Id.* at 47; *see also* Fed. R. Civ. P. 23(h) ("In a certified class action, the court may award reasonable attorney's fees . . . ."); *County of Suffolk v. Long Island Lighting Co.*, 907 F.2d 1295, 1326 (2d Cir. 1990).

For purposes of evaluating the reasonableness of attorneys' fees, courts in the Second Circuit consider the following factors: (1) the time and labor expended by counsel; (2) the magnitude and complexity of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *Goldberger*, 209 F.3d at 50. Of these, "[g]enerally, the factor given the greatest emphasis is the size of the fund created, because 'a common fund is itself the measure of

success . . . [and] represents the benchmark from which a reasonable fee will be awarded.'" Ann. Manual Complex Litigation (Fourth) § 14.121 (4th ed. 2002) (quoting 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 14:6, at 547, 550 (4th ed. 2002)); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (the "critical factor is the degree of success obtained").

A. The Requested Fee Is Reasonable in Relation to the Settlement

The requested fee of 33% of the settlement amount is consistent with the amounts approved by this Court in *Beach* and in similar cases in this District and other federal districts in New York. *See, e.g., Beach*, No. 1:17-cv-00563, ECF 232 (approving 33% attorneys' fee award); *Jacobs*, No. 1:16-cv-01082, ECF 247, at 7 (approving one-third fee); *Cates*, 2021 WL 4847890, at *7 (same); *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4 (same); *Carver*, No. 17-10231, ECF 11 (same); *Osberg*, No. 07-1358, ECF 426 (same); *In re Marsh ERISA Litig.*, 265 F.R.D. at 149 (same); *Leber*, No. 07-9329, ECF 294 (same in suit involving proprietary funds in 401(k) plan); *In re M&T Bank Corporation ERISA Litig.*, No. 1:16-00375, ECF 190 (W.D.N.Y. Sept. 3, 2020) (same in suit involving proprietary funds in 401(k) plan); *Andrus*, No. 1:16-cv-05698, ECF 83 (same in suit involving New York Life and proprietary index fund). Indeed, it has been expressly noted that "[c]ourts in this District routinely approve fee awards of one-third of the common fund" in ERISA cases such as this. *Cates*, 2021 WL 4847890, at *7.[7]

As a general rule, courts have followed the same approach in ERISA cases nationwide. As the court stated in connection with a similar suit against Ameriprise (that also involved proprietary funds in its 401(k) plan):

> [I]n comparing the requested fee with fee awards in similar cases, the relevant comparators are ERISA class actions asserting breaches of fiduciary duties in the

[7] The size of the settlement here also falls squarely within the sizes of the above settlements where one-third fees have been approved (e.g., $3 million in *Andrus*, $9 million in *Beach*, $13 million in *Cates*, $20.85 million in *M&T*, $30 million in *Jacobs*, $35 million in *Marsh*, and $75 million in *J.P.Morgan*.). This is not a mega-fund case where counsel are reaping a windfall. *See infra* at § II.E.

> selection and retention of plan investment options and the reasonableness of defined contribution plan fees. **In such cases, courts have consistently awarded one-third contingent fees.**

Krueger v. Ameriprise Fin., Inc. ("Ameriprise"), 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (emphasis added) (citing numerous cases); *see also Novant Health*, 2016 WL 6769066, at *2 ("[C]ourts have found that '[a] one-third fee is consistent with the market rate' in a complex ERISA 401(k) fee case such as this matter") (citing cases); *Tussey*, 2019 WL 3859763, at *4 ("Class Counsel's requested one-third fee is common in these cases."). Thus, "[t]he fee requested by Class Counsel is well within the range of fees that courts in the Second Circuit [and elsewhere] have awarded in comparable cases." *Cates*, 2021 WL 4847890, at *7.[8]

B. The Magnitude and Complexity of the Litigation Support the Requested Fee

"The size and difficulty of the issues in a case are [also] significant factors to be considered in making a fee award." *Viafara v. MCIZ Corp.*, 2014 WL 1777438, at *11 (S.D.N.Y. May 1, 2014) (citing *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 912 F. Supp. 97 (S.D.N.Y. 1996)). Here, the size of class was substantial, and involved more than 46,000 current and former Plan participants. *See* Second Richter Decl. ¶ 46. Moreover, it is well-known that "ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation." *Ameriprise*, 2015 WL 4246879, at *1; *see also Cates*, 2021 WL 4847890, at *4 (noting that "ERISA claims are 'complex.'") (citation omitted); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.,* 504 F. Supp. 3d 265, 269 (S.D.N.Y. 2020) ("ERISA 401(k) fiduciary breach class actions are extremely complex and require a willingness to risk significant resources in time and

[8] The requested one-third fee is also consistent with the amount that Class Counsel and the Class Representatives agreed upon at the outset of the representation. *See* Second Richter Decl. ¶ 53 n.6. This further supports approval of the fee request. *See Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *9 (E.D. Pa. Dec. 9, 2016) ("Class Counsel … seeks approval of the contingent fee agreed to when this matter was initiated. This factor supports approval."); *accord Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *12 (E.D. Pa. Feb. 28, 2020) (ERISA case involving proprietary funds in 401(k) plan) ("Were this case brought on behalf of an individual, the customary contingency fee would likely range between thirty and forty percent of the recovery. . . . Here, Class Counsel's requested percentage is commensurate with customary percentages in private contingency fee agreements.").

money ….”); *In re Marsh ERISA Litig.*, 265 F.R.D. at 138 (“Many courts have recognized the complexity of ERISA breach of fiduciary duty” cases).

Handling a large and complex case such as this requires counsel with specialized skills. *See Savani v. URS Prof. Solutions LLC*, 121 F. Supp. 3d 564, 573 (D.S.C. 2015) (“Very few plaintiffs’ firms possess the skill set or requisite knowledge base to litigate ... class-wide, statutorily-based claims for pension benefits”). In addition to legal expertise, counsel must possess “specialized knowledge of [] industry practices.” *Cates*, 2021 WL 4847890, at *4; *see also Novant Health*, 2016 WL 6769066, at *3. Based on their deep experience litigating similar ERISA cases (*see infra* at § II.D; Second Richter Decl. ¶¶ 6-24), Class Counsel were uniquely able to navigate the size and complexity of the case, and achieve a successful result for the class.

C. The Risks of the Litigation Support the Requested Fee

“The Second Circuit [in *Goldberger*] has identified the risk of success as perhaps the foremost factor to be considered in determining a reasonable award of attorneys’ fees.” *In re Global Crossing Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (internal quotations omitted). Here, Class Counsel assumed significant risks by taking this case on a contingent fee basis. *See* Richter Decl. ¶ 38. “Class Counsel’s assumption of this risk strongly supports the reasonableness of the requested fee.” *Cates*, 2021 WL 4847890, at *5.

These risks were especially significant in this case. Less than a month after Class Counsel negotiated the present Settlement, the Second Circuit affirmed summary judgment in favor of the defendants in another ERISA proprietary funds case in the Southern District of New York. *See Falberg*, 2024 WL 619297. Although Class Counsel would have argued that this case is distinguishable, there was a risk that this Court might have reached the same result. If the case had proceeded to trial, success was by no means assured. In other recent ERISA trials in this Circuit involving defined contribution plans, the defendants have prevailed. *See, e.g., Sacerdote v. New*

York Univ., 328 F. Supp. 3d 273 (S.D.N.Y. 2018), *aff'd in part, vacated in part*, 9 F.4th 95 (2d Cir. 2021); *Vellali v. Yale Univ.*, No. 3:16-cv-1345, ECF 622 (D. Conn. July 13, 2023) (jury verdict in favor of defendants).[9] And even if Plaintiffs prevailed on liability, issues regarding proof of loss would have remained. *See* Restatement (Third) of Trusts § 100 cmt. b(1) (2012) (determination of losses in breach of fiduciary duty cases is "difficult"); *Sacerdote*, 328 F. Supp. 3d at 280 (finding that "while there were deficiencies in the Committee's [fiduciary] processes—including that several members displayed a concerning lack of knowledge relevant to the Committee's mandate— plaintiffs have not proven that … the Plans suffered losses as a result"). For these and other reasons,[10] "[t]here was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk." *In re Marsh ERISA Litig.*, 265 F.R.D. at 148.

D. Class Counsel Provided High Quality Representation

The quality of the representation also supports the requested fee. Counsel from Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") are seasoned class action practitioners who have successfully litigated numerous ERISA class actions involving similar claims, including recent cases against Wells Fargo, T. Rowe Price, and BlackRock arising from use of proprietary funds in their 401(k) plans. *See* Second Richter Decl. ¶ 16. Undersigned counsel Kai Richter also previously served as counsel of record (at his former law firm) in four ERISA class action cases in this District, including the *Andrus* case involving New York Life and the *Beach* case before this Court. *Id.* ¶ 22. In recognition of its work, Cohen Milstein's Employee Benefits/ERISA Group was named Practice Group of the Year in 2022 by Law360, and three out of four years combined. *Id.* ¶ 31.

[9] ERISA cases in other districts involving proprietary funds in 401(k) plans have also resulted in favorable rulings for the defendants at trial. *See Wildman v. Am. Century Servs., LLC*, 362 F. Supp. 3d 685 (W.D. Mo. 2019); *Brotherston v. Putnam Invs., LLC*, 2017 WL 2634361 (D. Mass. June 19, 2017), *aff'd in part and vacated in part*, *remanded*, 907 F.3d 17 (1st Cir. 2018).

[10] At the time of Settlement, Plaintiffs' class certification motion was still pending.

Class Counsel's experience and reputation, together with their diligent prosecution of the current action, served the class well in the litigation and also at the negotiating table.

E. The Fee is Reasonable in Light of the Time and Labor Expended

The requested fee is also reasonable considering the efforts expended by counsel. As noted above, the litigation involved multiple rounds of pleadings (ECFs 1, 38, 63), two motions to dismiss (ECFs 41, 66), a contested motion for class certification (ECF 115), two discovery motions (ECFs 106, 147), and an in-person hearing on the latter motion (*see* ECF 149), prior to Plaintiffs' preliminary approval motion (ECF 174) and the present motion. During the course of fact discovery, Class Counsel took eleven depositions, defended all ten Plaintiff depositions, reviewed over a quarter million pages of documents and spreadsheets, responded to both interrogatories and document requests that were separately served on each of the named Plaintiffs, and extensively met and conferred with defense counsel regarding discovery. *See supra* at 5-6; Second Richter Decl. ¶ 30. Class Counsel also worked closely with experts, reviewed and produced a total of four expert reports (an initial report and reply report from each of Plaintiffs' experts), took two depositions of Defendants' experts, and defended the depositions of both of Plaintiffs' experts. *See supra* at 6. Additionally, in connection with settlement, Class Counsel participated in an in-person settlement conference with defense counsel in New York in September 2023 pursuant to the Court's Scheduling Order (ECF 133), later participated in a full-day mediation in January 2024, prepared a mediation statement in advance of the mediation, drafted the Settlement Agreement and exhibits (including the class notice and rollover form) following the mediation, prepared Plaintiffs' preliminary approval motion, coordinated with the Settlement Administrator and Escrow Agent with respect to settlement administration, and made themselves available for an interview with the Independent Fiduciary. *See* Second Richter Decl. ¶¶ 32-34.

In connection with this and other work on the case (e.g., Rule 26(f) conference and case management report, Rule 16 hearing, client communications, responding to class member inquiries, etc.), Class Counsel have expended over 5,600 hours on the action to date (4,271.90 attorney hours and 1,379.85 non-attorney hours), with a lodestar value of $4,193,574.50 at their customary billing rates (exclusive of time spent on this motion and other write-offs). *Id.* ¶ 35.[11] Moreover, it is anticipated that Class Counsel will expend additional time preparing Plaintiffs' final approval motion, attending the final approval hearing, attending to settlement administration following final approval, and communicating with class members. *Id.* ¶ 39.

Based on the existing lodestar, the requested fee represents a modest multiplier of under 1.5, which will be even lower once all work is complete. This is reasonable in light of the contingent nature of the representation and the risks that Class Counsel assumed. *See Cates*, 2021 WL 4847890, at *5 ("No one expects a lawyer whose compensation is contingent upon his success

[11] **The hourly rates used to calculate Class Counsel's lodestar are reasonable** and comparable to the rates that have been recently approved in other ERISA class actions. Class Counsel's billing rates for ERISA actions range from $785 to $1,060 per hour for senior attorneys with more than 10 years of experience, $550 to $755 per hour for attorneys with 10 years or less experience, and $325 to $380 per hour for paralegals. *See* Second Richter Decl. ¶ 35. These rates are very similar to the rates approved three years ago in *Cates*, 2021 WL 4847890, at *3 ("The approved hourly rates are as follows: for attorneys with at least 25 years of experience, $1,060 per hour; for attorneys with 15–24 years of experience, $900 per hour; for attorneys with 5–14 years of experience, $650 per hour; for attorneys with 2–4 years of experience, $490 per hour; and, for paralegals and law clerks, $330 per hour."). Moreover, "[s]ince 2020 . . . national attorney billing rates have greatly increased." *Ford v. Takeda Pharms. U.S.A., Inc.*, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023). The court in *Ford* therefore approved an increase over the rates previously approved in *Cates*. *See id.* (citing *Cates*, 2021 WL 4847890, at *2). As updated for 2023, the court in *Ford* approved class counsel's rates ranging from $635 to $1,370 for attorneys based on experience, and $425 for paralegals. *Ford*, 2023 WL 3679031, at *2. Similarly, a comparison to the rates currently charged by the defense bar also shows that Class Counsel's rates fall within the rates charged by other ERISA practitioners. *See* Affidavit of Theodore M. Becker, *Bolton v. Inland Fresh Seafood Corp. of Am., Inc.,* No. 1:22-cv-04602, ECF 65-1 (N.D. Ga. Jan. 18, 2024) (noting that defense counsel's rates ranged from $633 to $1,251 for attorneys, and noting these "rates are discounted from our standard billing rates."). **Moreover, the hours expended were reasonable** given the difficult and complex nature of the action. Other ERISA cases that were resolved at a similar stage in the litigation involved a far greater number of hours for purposes of the lodestar calculation. *See, e.g., Beach*, No. 1:17-cv-00563, ECF 223 at 18 (memorandum of class counsel reporting "over 11,900 total hours" devoted to action that also settled after expert discovery, prior to a ruling on summary judgment); *Ameriprise*, 2015 WL 4246879, at *3 ("Class Counsel spent approximately 27,991 attorney hours and 2,716 hours of non-attorney professional time" in case that settled while motion for summary judgment [ECF 509] was pending); *see also Cates*, 2021 WL 4847890, at *3 ("Class Counsel has spent over 13,188 hours of attorney time and 2,288 hours of non-attorney time on this matter", which was resolved before trial following a ruling on summary judgment). Class Counsel's experience and good judgment allowed them to resolve this case both efficiently and effectively.

to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success.") (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974), *abrogated on other grounds by Goldberger*, 209 F.3d at 43). In recognition of the risks faced by plaintiffs' counsel in class action cases, "[c]ourts award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers." *Viafara*, 2014 WL 1777438, at *14. The multiplier in this case falls well within the reasonable range. *See id.*; *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014) ("Lodestar multipliers of nearly 5 have been deemed 'common' by courts in this District."); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 353 (S.D.N.Y. 2014) (approving a fee award with a multiplier of five and finding in a review of 96 ERISA cases that "the implied multiplier ranged from less than one to eight times the lodestar"); *Sewell v. Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) ("Courts commonly award lodestar multipliers between two and six."). In other ERISA cases in this District, similar or higher multipliers have been approved. *See, e.g., In re J.P.Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4 ("Based on Class Counsel's reported lodestar, … the requested one-third award of the common fund equates to an implied multiplier of 1.4, which is in line with implied multipliers approved in other comparable cases in this Circuit and elsewhere."); *Jacobs*, 1:16-cv-01082, ECF 243 at 15 (filed Oct. 19, 2023) (requested one-third fee represented a "multiplier of 1.499"), *approved* ECF 247 (S.D.N.Y. Nov. 21, 2023); *Bekker*, 504 F. Supp. 3d at 271 (approving multiplier of 5.85); *Andrus*, No. 1:16-05698, ECF 74 at 12 (filed April 14, 2017) (requested one-third fee represented a multiplier of 5), *approved* ECF 83 (S.D.N.Y. June 15, 2017).[12]

[12] *See also In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375, ECF 175 at 18 (June 24, 2020) ("The requested fee in this case represents a multiplier of approximately 2.70"), *approved* ECF 190 (W.D.N.Y. Sept. 3, 2020).

F. Public Policy Supports the Requested Fee

Public policy considerations also support the requested fee. "When 'awarding attorneys' fees in common fund cases 'the Second Circuit and courts in this district ... have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.'" *Cates*, 2021 WL 4847890, at *7 (quoting *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *3). "To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding." *Hicks v. Morgan Stanley Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005); *see also In re Visa Check/Mastermoney Antitrust Litig.*, 2008 WL 1787674, at *8 (E.D.N.Y. Apr. 14, 2008) (finding that there is "'commendable sentiment in favor of providing lawyers with sufficient incentive' to undertake the complex task of competently representing the financial interests of class members once settlement has resulted in the creation of a significant common fund."). This is especially important in the ERISA context because "Congress passed ERISA to promote the important goals of protecting and preserving the retirement savings of American workers. The ERISA statute itself specifically encourages private enforcement." *In re Marsh ERISA Litig.*, 265 F.R.D. at 149-50.

III. The Court Should Approve the Requested Expenses

In addition to awarding the requested fees, the Court also should approve the requested expenses.

A. Litigation Expenses

"It is well-established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses." *Id.* at 150. Thus, "[c]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) (citation omitted).

"The expenses that may be reimbursed from the common fund encompass 'all reasonable' litigation-related expenses." *In re Marsh ERISA Litig.*, 265 F.R.D. at 150. Here, the requested litigation expenses set forth in Class Counsel's declaration (Second Richter Decl. ¶ 42) are of a type normally incurred in complex class actions such as this. *See, e.g., In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 ("The principal expenses for which Class Counsel seeks reimbursement are expert witness costs, deposition reporters and transcripts, copying, travel, research, and court-filings—all of which are appropriate for reimbursement.").[13] Moreover, the total expense amount of $465,573.76 is also reasonable in light of the stage of the case and the amounts awarded in similar cases. *See e.g., Beach*, No. 1:17-cv-00563, ECF 232 (approving $735,657.63 in litigation expenses in ERISA case that settled after expert discovery, prior to a ruling on summary judgment); *Cates*, 2021 WL 4847890, at *9 (approving $638,367.96 in litigation expenses); *Jacobs*, No. 1:16-cv-01082, ECF 247 (approving $550,361.80 in expenses); *Ameriprise*, 2015 WL 4246879, at *3 (approving $782,209.69 in litigation expenses in ERISA proprietary funds case that settled while motion for summary judgment was pending). Accordingly, these litigation expenses should be reimbursed.

B. Administrative Expenses

The requested administrative expenses are also reasonable and appropriate. The class notice and other settlement administration services provided by Analytics are essential to carry out the Settlement. The cost of providing those services ($108,762) is reasonable in light of the bids that were received, *see* Second Richter Decl. ¶ 44 (noting that Analytics had the lowest bid among all candidates), and comes to less than $2.35 per class member inclusive of postage and printing

[13] By far the largest expense item, representing approximately 80% of the expense request, is for experts, which are deemed "critically important" and recoverable expenses. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353-54.

charges. The Escrow Agent expense of $500 is also reasonable in light of the responsibility of handling a $19 million settlement fund. This is only a fraction of the amount that other financial institutions have charged for this service in connection with other settlements. *See* Second Richter Decl. ¶ 48. Finally, review of the Settlement by the Independent Fiduciary is required by Department of Labor regulations, *see supra* at 8, and is deemed to be a "critically important" benefit to plan participants. *See In re Marsh ERISA Litig.*, 265 F.R.D. at 139. Once again, Newport's $12,500 fee is reasonable in comparison to what other firms charge. *See, e.g., In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375, ECF 190 at ¶ 3 (Sept. 3, 2020) (approving $15,000 expense for independent fiduciary). Accordingly, the requested settlement administration expenses in the amount of $121,762 should be approved. Both the total amount of these expenses and the underlying components are reasonable and customary in ERISA cases such as this. *See, e.g., Clark v. Oasis Outsourcing Holdings Inc.*, No. 9:18-cv-81101, ECF 23 ¶ 2 (S.D. Fla. Dec. 19, 2018) (approving $157,050 in administrative expenses for same services related to ERISA settlement); *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375, ECF 190 at ¶ 3 (approving administrative expenses for same types of services).[14]

IV. The Court Should Approve the Requested Service Awards

The Court also should approve the requested service awards in the amount of $10,000 per class representative. "Case law in this and other circuits fully supports compensating class representatives for their work on behalf of the class, which has benefited from their representation." *In re Marsh ERISA Litig.*, 265 F.R.D. at 150; *see also Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997) ("[T]he courts have, with some frequency, held that a successful Class action plaintiff, may, in addition to his or her allocable share of the ultimate

[14] The total administrative expenses in this case are slightly higher than in *M&T* due to the larger class size (46,593 vs. 39,492, *see* Second Richter Decl. ¶ 46; *M&T*, ECF 183 at ¶ 8 (Aug. 20, 2020) and also due to inflation since 2020.

recovery, apply for and, in the discretion of the Court, receive an additional award, termed a service award."). Courts reason that such awards are compensatory in nature, reimbursing class representatives who "take on a variety of risks and tasks when they commence representative actions." *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 264 (S.D.N.Y. 2003).

The requested awards in this case are fully consistent with these recognized rationales. First, the Class Representatives invested significant time reviewing case materials (pleadings, interrogatory responses, settlement agreement, etc.), producing documents, appearing for their depositions, and communicating with Class Counsel. Second, they assumed significant reputational risks by suing their former employer,[15] and also financial risks in the event that they did not prevail. *See* 29 U.S.C. § 1132(g)(1) (authorizing court to award attorneys' fees and costs to "either party"); *Bolton,* No. 1:22-cv-04602, ECF 65-1 (affidavit of defense counsel for ERISA fiduciaries seeking $436,702.40 in attorneys' fees pursuant to 29 U.S.C. § 1132(g)(1) after defendants prevailed on motion to dismiss). Finally, "the protection of retirement funds is a great public interest" and "private attorneys general have a major role to play in ERISA litigation." *Fastener Dimensions, Inc. v. Mass. Mut. Life Ins. Co.*, 2014 WL 5455473, at *9 (S.D.N.Y. Oct. 28, 2014); *see also Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 597 n.8 (8th Cir. 2009) (noting that Secretary of Labor "depends in part on private litigation to ensure compliance with the statute"). Indeed, suits like this are one of the reasons why investment choices in 401(k) plans have improved and fees have dropped for participants over time. *See* Ashlea Ebeling, *401(k) Fees Continue To Drop*, Forbes (Aug. 20, 2015) ("In part in response to 401(k) fee litigation, employers

[15] Courts have noted that bringing a lawsuit against an employer relating to management of a 401(k) plan entails risk that the plaintiff will be viewed unfavorably by the employer or future employers. *See Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015).

have been aggressively negotiating fees and changing investment fund line-ups to include low-cost funds.").[16]

The amount of the requested service awards is also reasonable and in line with the amounts awarded in similar cases. *See, e.g., Beach*, No. 1:17-cv-00563, ECF 232 (approving $10,000 service awards); *Andrus*, No. 1:16-cv-05698, ECF 83 ¶ 4 (same). Indeed, courts in this District have approved significantly greater awards in other ERISA cases. *See Jacobs,* No. 1:16-cv-01082, ECF 247 (approving $30,000 service award); *Cates*, 2021 WL 4847890, at *9 (finding $25,000 service awards "reasonable and appropriate"); *Bekker*, 504 F. Supp. 3d at 271 (approving $20,000 service award); *In re Marsh ERISA Litig.*, 265 F.R.D. at 150 (approving $15,000 service awards). In total, the requested service awards represent just one half of one percent of the value of the Settlement, which Plaintiffs were instrumental in obtaining on behalf of the Class, and should be approved consistent with other similar cases.

V. There Have Been No Objections to the Proposed Distributions

Finally, it is worth noting that there have been no objections to the Settlement or to the requested distributions allowed under the Settlement as of the date of this motion. The Notices of Settlement that the Court approved (which Analytics mailed on April 19, 2024) explicitly disclosed that Class Counsel and the Class Representatives would seek these distributions:

> Subject to approval by the Court, up to $10,000 may be paid to each of the Plaintiffs as the Class Representatives in recognition of time and effort they expended on behalf of the Class. The Court will determine the proper amount of any award to the Plaintiffs. The Court may award less than that amount.
>
> ….
>
> Class Counsel will apply to the Court for an award of attorneys' fees not to exceed 33% of the $19,000,000.00 settlement amount plus their litigation expenses incurred in the prosecution of the case. The Court will determine the proper amount of any attorneys' fees and expenses to award Class Counsel.

[16] Available at https://www.forbes.com/sites/ashleaebeling/2015/08/20/401k-fees-continue-to-drop/?sh=1748cef8164f (last visited June 2, 2024).

> Any attorneys' fees and expenses awarded by the Court will be paid to Class Counsel from the settlement fund.

ECF 176-1 at 36. In response, no class member out of more than 46,000 has lodged an objection. This further supports the fairness of the Settlement and the reasonableness of the requested distributions. *See Wal-Mart Stores, Inc.*, 396 F.3d at 118 (finding that "the absence of substantial opposition is indicative of class approval"); *Tussey*, 2019 WL 3859763, at *4 (approving one-third fee, noting that "no class member filed an objection to any portion of the Settlement or Class Counsel's request for attorneys' fees, the reimbursement of expenses, and compensation awards to the Class Representatives."); *Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *5 (C.D. Cal. Oct. 24, 2017) ("the Court concludes that the lack of significant objections to the requested fees justifies an award of one-third of the settlement fund").

CONCLUSION

For the reasons set forth above, Plaintiffs and Class Counsel respectfully request that the Court approve the requested distributions from the Settlement Fund.

Respectfully Submitted,

Dated: June 5, 2024

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