UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REBECCA M. MCCUTCHEON, *et al*. **On behalf of themselves and on behalf of all others similarly situated,** **Plaintiffs,** **- v-** **COLGATE-PALMOLIVE CO., *et al*.** **Defendants.**	**No. 16-cv-4170 (LGS)**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES AND EXPENSES, SETTLEMENT ADMINISTRATION COSTS, AND A SERVICE AWARD FOR THE CLASS REPRESENTATIVE

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Counsel for Plaintiff and the Class ("Class Counsel" or "Counsel") respectfully submit this memorandum of law in support of their motion under Fed. R. Civ. P. 23(h) for:

- Attorneys' fees of 29% of the $332 million common fund ($96.28 million);
- Reimbursement of $2.9 million in out-of-pocket litigation expenses and $150,000 in settlement administration costs; and
- A service award for Plaintiff McCutcheon in the amount of $10,000.

PRELIMINARY STATEMENT

As detailed previously in the Class' motion for preliminary approval, the proposed $332 million non-reversionary settlement before the Court represents nearly 98% (97.72%) of the total residual annuities that the Class claimed they are owed, calculated exactly as the Class alleged they should be calculated, brought forward with interest until today. Dkt. 339 at 2. Even after accounting for requested fees and expenses, this will yield the 1,177 member Class, on average, a net settlement benefit of almost $**200,000**, without Class members having to prove, file or do anything. *Id.* at 4-5. This near-total victory is all the more remarkable, as detailed in ¶¶ 14-29 of the motion for preliminary approval, Dkt. 339 at 11-17, considering the extremely long odds that the Class faced of winning anything, much less of winning nearly the entire amount sought.

Although Counsel believe that under the *Goldberger* factors, *see Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000) and this Court's three-step approach to applying *Goldberger* first set forth in *In re Colgate-Palmolive Co. ERISA Litigation*, 36 F.Supp.3d 344, 348 (S.D.N.Y. 2014), Counsel are entitled to fully one-third (33.3%) of the common fund that their efforts have created, Counsel are conservatively limiting their request to 29% of the fund.

As the Court knows, this case was an outlier in two completely different respects. First, it is the rare class action that lasts more than a decade and is litigated to judgment and then

defended on appeal—here, not only once (including in response to petition for certiorari) but twice, with significant risk in each appeal. Second, it is the rare class action in which class counsel not only turn down earlier substantial offers and decide to push ahead to achieve maximum recovery for the class, but ultimately settle for nearly 100% of the damages claimed (with a small discount here only to speed payment for elderly class members). Indeed, settlements with large dollar values tend to recover a small fraction of claimants' losses, and settlements that recover high percentages of claimants' losses tend to involve total dollars that are fairly small. Here, by winning a nearly complete recovery for Class members in a case that generated a large common fund, Class Counsel have achieved something seldom seen**.**

Under *In re Colgate*, as shown below (at pages 6-16), the fees awarded in ERISA cases of comparable size, complexity, magnitude and duration point to a 29% reasonable baseline fee. The remaining *Goldberger* factors (risk, quality of representation and public policy) confirm a 29% award is reasonable. Indeed, as shown below (at pages 16-20), those factors could easily support an upward adjustment to 33.3%, based on (1) the unusually high risk of non-recovery in this totally novel case; (2) the extraordinarily high percentage of damages recovery achieved; and (3) the public policy of showing counsel in future meritorious cases that it pays for them to assume the added risk, delay, and difficulties of litigating the case to judgment to secure complete relief for the class, as Counsel did here. Finally, as shown below (at pages 21-23), this case cross-checks well under the lodestar method, as the requested fee corresponds to a 4.92 multiplier, lower than the multiplier this Court approved in the less risky, original *In re Colgate* litigation. *See In re Colgate*, 36 F.Supp.3d at 347, 353 (approving a 5.2 multiplier).

Counsel recognize that $96.28 million is a lot of money. But a 29% fee in this case is appropriate based on the awards in comparable ERISA cases and is important for incentivizing

counsel to run comparable risks and achieve comparable results in future cases. For precisely those reasons, judges in two ERISA pension class actions recently decided in this District with close parallels to this case awarded undersigned counsel 33.3% of the large common funds generated in those cases. Order Awarding Attorneys' Fees & Expenses & Service Awards for Plaintiff & Testifying Class Members, *Osberg v. Foot Locker, Inc.*, No. 07 Civ. 1358 (KBF), Dkt. 423 (S.D.N.Y. June 8, 2018); Final Order & Judgment, *Laurent v. PricewaterhouseCoopers LLC*, No. 06 Civ. 2280 (JPO), Dkt. 310 (S.D.N.Y. Jan. 27, 2023).

In *Osberg*, a case that lasted 11 years, Judge Forrest presided over a two-week bench trial and awarded the class additional benefits of approximately $290 million (100% of the damages sought) and then granted counsel a $95.2 million fee (one-third of the common fund, representing a 4.8 multiplier), after counsel successfully defended the judgment on appeal, *see Osberg v. Foot Locker, Inc.*, 862 F.3d 198 (2d Cir. 2017), including in opposition to a petition for certiorari. Judge Forrest did so having "specifically considered the fact that . . . 33 percent means a particular dollar amount in the context of an award this size" because she was "nonetheless persuaded under the *Goldberger* factors that it is appropriate to approve the award in that amount" due to the "very high risks of non-recovery," the fact the case was litigated to judgment and defended on appeal, the quality of representation, the "exceptional" recovery percentage achieved, the fact that the case was "exceedingly difficult and complex" and of "extraordinarily long duration" and because "[a]s a matter of public policy, the requested 33% common fund is necessary to ensure that counsel in future meritorious cases will not hesitate to be equally persistent and press forward as Class Counsel did here to achieve maximum recovery for their clients despite the complications, difficulties, and risk." *See* Order Awarding Attorneys' Fees at 3-4, *Osberg*, No. 07 Civ. 1358 (KBF), Dkt. 423; Transcript of 6/8/2018 Hearing at 5, 11,

id., Dkt. 426 (adding that "[t]his is a case where, in my view, the lawyering was particularly critical to the outcome because it was the clarity, the preparation, the depths, the smartness of the lawyering that resulted in the recovery for the class and the recovery for the class in terms of the totality of the recovery for the class, in terms of what was ultimately achieved"). All these factors are equally present in this case.

For basically the same reasons, Judge Oetken awarded counsel 33.3% ($89 million, representing a 4.65 multiplier) of a $267 million common fund in *Laurent*, a case that lasted 16 years and included an interlocutory appeal affirming a favorable district court ruling, *see Laurent v. PricewaterhouseCoopers LLP*, 794 F.3d 272 (2d Cir. 2015), and an appeal reinstating the case after a grant of a motion to dismiss, *see Laurent v. PricewaterhouseCoopers LLP*, 945 F.3d 739 (2d Cir. 2019). The settlement represented approximately 90% of the class's estimated damages after the class obtained a summary judgment of liability. Judge Oetken recognized that "sometimes it's appropriate to lower" the percentage as the size of the fund increases and "this obviously is a very large amount of attorneys' fees. But in this unusual case, I find that it's warranted" because of the "very high risks of non-recovery," the fact the case was litigated to judgment and defended on appeal, the quality of representation, the "exceptional" recovery percentage achieved, the fact that the case was "exceedingly difficult and complex" and of "extraordinarily long duration," and to signal to the bar that exceptional persistence and dedication to "maximiz[ing] recovery for their clients," as shown here, will be appropriately recognized and compensated in future cases. *See* Final Order at 4-5, *Laurent*, No. 06 Civ. 2280 (JPO), Dkt. 310; Transcript of 1/27/2023 Hearing at 8, *id.*, Dkt. 311. Again, all these factors are equally present in this case.

Courts sometimes find it appropriate to scale down attorneys' fees in garden variety

"megafund" cases under the "sliding scale" approach. But this case does not present any of the windfall dangers identified by courts that have applied a "megafund" reduction. "Windfall" is not a synonym for unusually large. It is fruit blown down from a tree that one happens to be sitting under, *Windfall*, Etymonline, etymonline.com/word/windfall (last visited Nov. 18, 2025), a fortuitous gain "resulting from lucky circumstances," *Windfall Profits: What it is, How it Works, Examples*, Investopedia (Dec. 19, 2022), investopedia.com/terms/w/windfall-profits.asp. "A windfall [occurs] where the lawyer takes on a contingency-fee representation that succeeds immediately and with minimal effort, suggesting very little risk of nonrecovery. That kind of unearned advantage is what the windfall concern really is about." *Fields v. Kijakazi*, 24 F.4th 845, 856 (2d Cir. 2022) (reversing disallowance of a requested award of fees in a Social Security case agreed to by the client; holding that before a court can characterize a fee as a "windfall" "it must first be truly clear that the fee is unearned by counsel"). In the context of a class action, a typical example of an unearned windfall is an easy win aided by a helpful ruling in a parallel proceeding that class counsel had nothing to do with. *See Goldberger*, 209 F.3d at 56.

By contrast, here, the only reason why the Class won, through settlement, nearly 100% of the residual annuities they are due is because of Counsel's skill and tenacity in overcoming each and every one of the multiple defenses Colgate interposed to defeat or reduce the Class' recovery and because Counsel were willing to bear the risks of a long and difficult litigation—including years of contentious and intensive discovery, two rounds of summary judgment, two appeals and Supreme Court certiorari briefing—in which there was no script or playbook to follow, no other firm willing to join the litigation and share the risk, and no case law precedent serving as a basis. Residual annuities were completely unchartered legal territory. On everything, Class Counsel started from scratch, and ended by securing nearly $200,000 per class member (net of requested

fees and expenses) that they otherwise never would have recovered.

The time, effort, and resources required to prosecute the action was immense: more than 27,000 hours of attorney time, millions more in out-of-pocket costs, and a delay of more than 11 years with no guarantee of breaking even let alone ever seeing any return on this investment. Counsel respectfully submit that to award less than the percentage requested here, in this near 100%-recovery, litigated-to-judgment, defended-on-appeal case could make counsel in future cases doubt that going for broke to achieve the maximum recovery for the class is worth the extra risk and trouble: settling may seem more safe, predictable, and profitable. *See In re Auction Houses Antitrust Litig.*, 197 F.R.D. 71, 80 (S.D.N.Y. 2000) (reducing counsel's percentage as size of fund increases "can create an incentive to settle quickly and cheaply when the returns to effort are highest" and discourage counsel from "investing additional time and maximizing plaintiffs' recovery").

ARGUMENT

I. A 29% Fee Is Fair and Reasonable Given the Extreme Risks, the Exceptional Success, and the Complexity, Magnitude, and Long Duration of this Case

In evaluating a proposed fee, a court must heed the factors set forth in *Goldberger*: "(1) the time and labor expended by counsel; (2) the magnitude and complexities 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 (citation modified).

To calculate attorneys' fees, courts use either the "lodestar" method or the "percentage of the fund" method. *Id.* at 47-48. The percentage of the fund method is the trend in this Circuit. *In re Colgate,* 36 F.Supp.3d at 348. Under that method, to determine the appropriate percentage fee, this Court applies the *Goldberger* factors in a three-step approach first set forth in *In re*

Colgate: (1) determine the baseline reasonable percentage fee; (2) make any necessary adjustments based on risk, quality of representation, and public policy concerns; and (3) perform a lodestar cross-check to ensure the resultant fee is not a windfall. *Id.*

A. The Baseline Reasonable Fee Should Be Set at 29%

This Court begins its analysis of the baseline reasonable fee by looking to other common fund settlements of a similar size, complexity and subject matter. *Id.* In this analysis, the Court "considers three of the *Goldberger* factors: (1) the requested fee in relation to the settlement, (2) whether to award a lower percentage of a higher settlement amount under a 'sliding scale' approach in order to avoid a windfall to Lead Counsel and (3) the magnitude and complexity of the case." *City of Birmingham Ret. & Relief Sys. v. Credit Suisse Grp. AG*, No. 17 Civ. 10014 (LGS), 2020 WL 7413926, at *2 (S.D.N.Y. Dec. 17, 2020) (Schofield, J.)

As shown below, these considerations point to a baseline reasonable fee in this case of 29% of the common fund.

Here, the proper basis for comparison is other ERISA cases that generated very large common funds (in the $200-$350 million range) and that were litigated to judgment and defended on appeal or were otherwise of comparable magnitude, duration and complexity. *See In re Foreign Exch. Benchmark Rates Antitrust Litig.* ("*Forex*"), No. 13 Civ. 7789 (LGS), 2018 WL 5839691, at *3 (S.D.N.Y. Nov. 8, 2018) (Schofield, J.) (concluding that, in very large common fund antitrust case, the relevant comparator group was the six antitrust cases generating common funds of $1 billion or more because "these six settlements provide a more relevant basis for comparison on account of their similarities with this case in terms of size, complexity and subject matter"). As this Court has previously observed, ERISA cases are distinct from other types of cases that commonly generate large funds. *See In re Colgate*, 36 F.Supp.3d at 347, 350,

352 ("[A] higher fee is warranted in ERISA cases," which "require[] a command of ERISA, the Internal Revenue Code, and related regulations and regulatory guidance"; "as a case requires more expertise—and, consequently, as fewer lawyers could competently bring the case—a larger percentage of the fund should be awarded to those lawyers"); *see also* Dkt. 75 at 10 (order granting class certification, describing this litigation as "implicat[ing] highly technical Plan language, legal rules and actuarial calculations").

Osberg v. Foot Locker ($290 million at 33.3%) and *Laurent v. PwC* ($267 million at 33.3%) are the two ERISA cases most obviously comparable to this one and have been discussed *supra* at 3-4. Extensive research reveals that, together with *Osberg* and *Laurent*, there are a total of eight cases that fill that bill (*i.e.,* ERISA cases successfully litigated to judgment, yielding common funds in the approximately $200-$350 million range):

- *Berger v. Xerox Corp. Ret. Income Guar. Plan*, No. 00-584-DRH, 2004 WL 287902 (S.D. Ill. Jan. 22, 2004) (awarding 29% of a $239 million common fund; case settled after 4 years pending Xerox's anticipated petition for certiorari after summary judgment and partial affirmance on appeal had reduced class damages from $300 million to $255 million);

- *The American Medical Association v. United Healthcare Corp.*, No. 00 Civ. 2800 (LMM), Dkt. 528 (S.D.N.Y. Oct. 5, 2010) (awarding 25% of a $350 million fund; case settled after 10 years of litigation);

- *Cooper v. IBM Personal Pension Plan*, 99-cv-0829-GPM-PMF, Dkt. 358 (S.D. Ill. Aug. 16, 2005) (awarding a blended rate amounting to 28.2% of a $314.3 million common fund, representing 13.5% of damages sought; case settled 6 years into the case after the class established liability on summary judgment);

- *McCoy v. Health Net, Inc.*, 569 F.Supp.2d 448 (D.N.J. 2008) (awarding 32% of the $215 million common fund or 28% of the $249 million value of the common fund plus injunctive relief; case settled after seven years of intensive litigation, including many hundreds of filings and multiple appeals to the Third Circuit);

- *Williams v. Rohm and Haas Pension Plan*, No. 04-CV-0078-SEB-WGH, 2010 WL 4723725 (S.D. Ind. Nov. 12, 2010), *aff'd,* 658 F.3d 629 (7th Cir. 2011) (awarding 24.17% of a $180 million common fund after 6 years of litigation including summary judgment and one appeal, prior to proceedings as to damages);

- *Malloy v. Ameritech*, No. 98-cv-488-GPM, Dkt. No. 88 (S.D. Ill. July 21, 2000) (awarding 29% of $170 million common fund; case settled after 2 years after class obtained summary judgment as to liability).

These eight cases—using the more conservative 28% instead of 32% for *McCoy*—yield a mean fee percentage of 28.87% with a standard deviation of 3.3% and a median of 28.6%.

That mean percentage would increase slightly were the Court to include two additional ERISA cases below $200 million and that were not litigated to judgment but are arguably comparable in terms of complexity, magnitude and settlement size: *Haddock v. Nationwide Fin. Servs., Inc.*, No. 01-cv-1552 (SRU), Dkt. 601 (D. Conn. Apr. 9, 2015) (awarding 35% of $140 million fund after 13 years of litigation; settled before summary judgment ruling); *Bd. of Trs. of the AFTRA Ret. Fund v. J.P. Morgan Chase Bank, N.A.*, No. 09 Civ. 686 (SAS), 2012 WL 2064907, at *2 (S.D.N.Y. June 7, 2012) (awarding 25% of $150 million fund after 3 years of litigation). If these cases are added (bringing the total number of cases to 10), the result is a mean fee percentage of 29.1% with a standard deviation of 3.79%. The median would remain 28.2%.

Given these figures from the most comparable cases, the Court should set the baseline reasonable fee at 29%.

In other cases, this Court has reviewed empirical studies of attorneys' fee awards in hundreds of class action settlements—in particular, the Eisenberg and Miller studies[1] and the

[1] Theodore Eisenberg and Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. Empirical Legal Stud. 27 (2004) ("Eisenberg I"); Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees and Expenses in Class Action Settlements: 1993–2008*, 7 J. Empirical Legal Stud. 248 (2010) ("Eisenberg II"); Theodore Eisenberg et al., *Attorneys' Fees in Class Actions: 2009-2013*, 92 N.Y.U. L. Rev. 937 (2017) ("Eisenberg III") (analyzing awards in 458 class actions between 2009 and 2013).

Fitzpatrick study[2]—which provide "an unbiased and useful reference for comparing fees in cases of similar type" in setting a baseline reasonable fee. *See, e.g.*, *City of Birmingham*, 2020 WL 7413926, at *2. Here, these studies are of limited value because they do not separately report means and medians for ERISA cases, or cases that lasted over a decade,[3] or cases that were settled only after successful litigation through appeal, or cases that achieved a spectacular recovery for the class. *See Forex*, 2018 WL 5839691, at *2 (concluding that Miller's broader data set was "not entirely germane" to the fee request in *Forex* given that case's size, magnitude and subject matter).

Even so, those studies support the baseline 29% figure here in at least two ways. First, the Fitzpatrick study shows that in 1993-2008 time period the median fee percentage for all ERISA cases of any size was 25% to 28%—and there is no question that this case was far longer and more complicated than even the average ERISA case. *See In re Colgate,* 36 F.Supp.3d at 350-51 (also noting that "Fitzpatrick's [28%] results are consistent with almost 100 ERISA settlements between 1997 and 2013 reported by Class Counsel here at the Court's request").

Second, Fitzpatrick's study found that the mean and median percentages awarded for *all* settlements between $250 million and $500 million were 17.8% and 19.5%, respectively, with a standard deviation of 7.9%. *See* Fitzpatrick, *An Empirical Study*, *supra*, at 839. Miller & Eisenberg say their data show that if a fee request falls within one standard deviation above the mean, it is presumptively reasonable; if within two standard deviations, it is reasonable if affirmatively justified. *See* Eisenberg I at 74. A 29% baseline percentage fee would be only

[2] Brian T. Fitzpatrick, *An Empirical Study of Class Action Settlements and Their Fee Awards*, 7 J. Empirical Legal Stud. 811, 837-39 (2010) (analyzing all 688 settlements approved in 2006 and 2007).

[3] In fact, Fitzpatrick explained that the median time to settlement of the 688 cases he examined was approximately three years, *see* Fitzpatrick, *An Empirical Study*, *supra*, at 820-21 (also discussing roughly similar findings of Eisenberg I)).

1.42 standard deviations above the mean, and as such, easily justifiable given the magnitude (*i.e.*, litigated to judgment and defended on appeal), duration (*i.e.*, more than a decade) and complexity (*i.e.*, ERISA) of the case, as compared to the average settled case in Fitzpatrick's study of lesser magnitude, duration and complexity.

Additional survey data confirming that 29% is a reasonable baseline fee in this litigated-to-judgment-and-defended-on-appeal case comes from Harvard Law Professor William Rubenstein, author of the *Newberg on Class Actions* treatise, who reports that in the class actions in his database that went to trial, the average fee award (among cases with available data) was 36%, and the median fees and costs was 45%. *See* Declaration of William B. Rubenstein ¶ 19, *Krakauer v. Dish Network*, No. 14-cv-333-CCE-JEP, Dkt. 461-1 (M.D.N.C. May 7, 2018).[4]

These high percentage awards for cases litigated to judgment are consistent with considerable data now available showing the percentages that sophisticated corporate plaintiffs in contingent class actions and other high-stakes litigation agree *ex ante* to pay counsel in arm's length negotiations: typically, "fixed one-third percentages or even higher escalating percentages based on litigation maturity," with no lodestar or multiplier cap. Brian Fitzpatrick, *A Fiduciary Judge's Guide to Awarding Fees in Class Actions*, 89 Fordham L. Rev. 1151, 1170 (2021); *see Allapattah Servs., Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185, 1212 (S.D. Fla. 2006) (similarly finding that corporate plaintiffs normally pay 33.3% with "[t]hat benchmark . . . then often adjusted upward to 40% or higher in the event of an appeal").[5] Although such data was not

[4] Here, the fact that this case was successfully litigated to judgment on summary judgment rather than after a trial—because Class Counsel convinced the Court that trial was not necessary—should be viewed as a plus, not a minus.

[5] *Accord* Trey Cox, *Alternative Fee Arrangements: Partnering with Clients through Legal Risk Sharing*, 56 The Advoc. (Tex.) 20, 21 (2011) (reporting contingent fees in business cases in the 33% to 40% range); David L. Schwartz, *The Rise of Contingent Fee Representation in Patent Litigation*, 64 Ala. L. Rev. 335, 360 (2012) (showing that in contingent patent cases, going-rate is generally one-third).

available to the *Goldberger* panel in 2000, *see* 209 F.3d at 52 (finding, as of 2000, little "hard data" on the fees that sophisticated corporate clients typically agree to pay their attorneys), it is obviously relevant to evaluating what constitutes a reasonable baseline fee. As this Court has recognized, "[w]hen awarding attorneys' fees, the 'ideal proxy' for the award should reflect the fees upon which common fund plaintiffs negotiating in an efficient market for legal services would agree." *In re Colgate*, 36 F.Supp.3d at 352 (quoting *Goldberger*, 209 F.3d at 52).[6]

Further supporting a 29% baseline reasonable fee for this complex ERISA case is a 2024 study of antitrust class actions between 2009-2023 conducted by the University of California College of the Law, San Francisco and The Huntington Bank. The referenced study found that the median attorneys' fee award was 30% for settlements valued up to $249 million, and 25%-28% for settlements valued between $250 million and $1 billion. *See* Ctr. For Litig. & Courts, Univ. of Cal. L. S.F. & The Huntington Bank, *2023 Antitrust Annual Report* 31-32, fig. 14 (2024). This implies that the likely median for settlements in the $325-$350 million range was close to 29% because that range lies near the lower end of the broader $250 million-$1 billion band, where fee percentages tend to be higher, and linear interpolation from the reported medians supports a figure just below 30%. *See also* Eisenberg III at 952 (finding that in 19 antitrust settlements between 2009 and 2013 with a mean recovery of $501.09 million and a median recovery of $37.3 million, the mean and median fee percentages were 27% and 30%).

[6] Although one might assume that a fully informed, sophisticated class with bargaining power would negotiate a lower percentage when the potential or actual recovery is very large "simply because the recovery is so large," Fitzpatrick, *A Fiduciary Judge's Guide*, *supra* at 1169, the truth is that "varying a fixed percentage on recovery size like this is unheard of in the marketplace." *Id*. That makes sense. Informed plaintiff-purchasers of contingent legal services are not penny-wise and pound-foolish: they do not want to blunt their attorneys' incentives to fight for the greatest recovery possible or incentivize them to settle earlier for smaller sums. *See Third Circuit Task Force Report*, 208 F.R.D. 340, 373 (Jan. 15, 2002) ("The goal of appointment [of class counsel] should be to maximize the net recovery to the class and to provide fair compensation to the lawyer, not to obtain the lowest attorney fee. The lawyer who charges a higher fee may earn a proportionately higher recovery for the class than the lawyer who charges a lesser fee").

Similarly, the most recent NERA study of securities class action settlements reported that over the 2015-2024 time period, the median percentage of attorneys' fees for settlements between $100 and $500 million was 25%. *See* Edward Flores & Svetlana Starykh, Nat'l Econ. Research Assocs., *Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review* 30, fig. 27 (2025). This also supports a 29% baseline reasonable fee for this complex ERISA case because (1) the 25% figure is only a median, not a cap, and courts award fees above that figure in cases involving exceptional risk, complexity, or effort; (2) few if any of the reported cases were litigated to judgment and defended on appeal or lasted nearly as long as this case did; and (3) ERISA cases in general are, and this case in particular was, procedurally and substantively more challenging than most securities cases. *See Moreno v. Deutsche Bank Americas Holding Corp.*, No. 15 Civ. 9936 (LGS), 2019 WL 13525007, at *2 (S.D.N.Y. Mar. 7, 2019) (Schofield, J.) (2% baseline increase because ERISA cases "concern[] a highly specialized area of law") (alteration in original) (quoting *In re Colgate*, 36 F.Supp.3d at 350)).

As the data from comparable cases makes clear, no "sliding scale" or "megafund" reduction is appropriate in the circumstances of this case. As this Court has recognized, *see City of Birmingham*, 2020 WL 7413926, at *2, *3, there is no rule that requires use of a "sliding scale" approach simply because counsel did an excellent job and maximized the class's recovery. *See also In re Colgate,* 36 F.Supp.3d at 349 (recognizing that "it is important . . . [that] [a]ttorneys [do] not fear that, at any point, by securing a larger award for the class, they will receive a smaller award"). Doing so can have the perverse effect of disincentivizing class counsel from pursuing higher recoveries or even making class counsel better off by resolving a case for less rather than more. *See, e.g.*, *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001), a case this Court cited with approval in *In re Colgate,* 36 F.Supp.3d at 349; 5 William B.

Rubenstein, *Newberg on Class Actions* § 15:80 (6th ed. June 2025 update) (lowering fee percentages may "encourag[e] [counsel to seek] settlements at sub-optimal levels").

Reducing the fee percentage as the size of the fund increases can be appropriate if (i) a case settles very quickly, (ii) was aided by a prior government investigation, (iii) required comparatively little work, (iv) exposed counsel to comparatively little risk, (v) yielded a large amount but a disappointingly small percentage of individual class members' damages, and/or (vi) where the large size of the recovery is simply the mathematical result of the class's size, not anything plaintiffs' lawyers can legitimately claim credit for bringing about. *See generally Newberg* § 15:80.

By contrast, while "[v]ery few class actions are ever litigated to judgment as in this case," *Montague v. Dixie Nat'l Life Ins. Co.*, No. 09-00687-JFA, 2011 WL 3626541, at *2 (D.S.C. Aug. 17, 2011) (awarding one-third of the common fund after granting the class summary judgment on liability and damages), and fewer still then defended on appeal, in such cases counsel is typically awarded one-third of the fund regardless of size, as in *Osberg* and *Laurent*. Outside the ERISA context, probably the leading example of this is *Allapattah Services, Inc. v. Exxon Corp.*, 454 F.Supp.2d 1185 (S.D. Fla. 2006), which also lasted more than a decade, went to trial, was appealed to the Supreme Court, and delivered a billion-dollar mega-fund recovery. *Id.* at 1193-97. The court would have awarded 33.3% but for counsel's voluntary 2% reduced fee request (to 31.33%) in recognition of the fact that they ultimately settled the case, lowering the class's recovery to 92% of claimed damages. *Id.* at 1203-06. The *Allapattah* court explained "while [the megafund] approach may have validity when there is a large settlement short of a full trial . . . the rationale has no reasonable application" in the subset of risky cases litigated to judgment and defended on appeal that result in the class "receiv[ing] their full compensatory damages and

nearly all of their prejudgment interest." *Id.* at 1189, 1212-13. *See also id.* at 1189, 1211 ("[a]ttorneys' fees should be structured as an incentive for lawyers to risk achieving the highest possible benefits for the greatest number of Class Members," "to ensure that Class Counsel has the proper incentives to press forward for maximum recovery").[7]

Here, none of the factors that support a megafund or sliding scale reduction are present. This case took more than a decade and did not settle until after it was litigated to judgment and twice defended on appeal, including in opposition to a petition for certiorari. Not only was Counsel unaided by any prior or subsequent government investigation, but the IRS gave Colgate a favorable determination letter for the design and operation of the Plan, and the case concerned wrongdoing that would have forever remained hidden had Counsel not detected it. Prosecuting the case was tremendously risky given the number of substantial defenses it was clear Colgate could and would interpose, and doing so took an enormous amount of work and investment of Counsel's time and money. The Class could not have asked for a better result; and the only reason the fund is a megafund is because Counsel recovered nearly 100% of the Class' damages. The requested 29% fee award is thus fully justified. *See In re Linerboard Antitrust Litig.*, Civ.A. 98-5055, 2004 WL 1221350, at *16 (E.D. Pa. June 2, 2004) (because highly favorable settlement was attributable to counsel's skill, it would "penalize them for their success" to apply the megafund increase-decrease approach in that $200 million case); *In re Vitamins Antitrust Litig.*, No. MISC. 99-197 (TFH), 2001 WL 34312839, at *12 (D.D.C. July 16, 2001) (awarding 34.6%

[7] *Accord In re Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *6-7 (D. Kan. July 29, 2016) (awarding 33.3% fee in a case that settled for $835 million after a trial that produced a $1.06 billion judgment due to trebling, explaining "the circumstances of this case justify the highest award, and in light of the great risk assumed by counsel, the requested one-third award would not provide an excessive or improper windfall to counsel in this case"); *In re Apollo Group Sec. Litig.*, No. CV 04–2147–PHX–JAT, 2012 WL 1378677, at *7 (D. Ariz. Apr. 20, 2012) (awarding 33.3% following $145 million post-judgment settlement, noting that this "exceptional result" "could not have been achieved without Class Counsel's willingness to pursue this risky case throughout trial and beyond").

of $365 million, saying "it is not fair to penalize counsel for obtaining fine results for their clients").

B. A 29% Fee Is Reasonable in Light of Enormous Risks Borne, the Exceptional Results Achieved, and the Need to Show Other Counsel That Comparable Risk-Taking, Effort, and Success Will Be Appropriately Rewarded

The reasonable baseline fee may be increased or decreased based on a consideration of three additional *Goldberger* factors—the risk of the litigation, the quality of representation and any remaining policy considerations. *See In re Colgate*, 36 F.Supp.3d at 351. Each of these factors would support an increase to 33.3% and confirms the reasonableness of the requested 29% fee.

1. The Contingency Risk Here Was Enormous

The "foremost factor" in the required "searching assessment" of a case's characteristics is the contingency risk measured as of when the case was filed, *Goldberger*, 209 F.3d at 52-55, with "greater risks undertaken by counsel . . . support[ing] a higher [fee]," *City of Birmingham*, 2020 WL 7413926, at *3.

Here, the risk faced by Class Counsel when this case was filed was extraordinarily high. In *Goldberger*, the Court noted that many securities fraud cases are, in truth, really not that complex or risky. 209 F.3d at 52 ("there is some contingency risk but recovery remains virtually certain"). "The same argument can be made with respect to certain antitrust class actions filed in the wake of a Department of Justice consent decree, or products-liability cases filed shortly after a government-ordered recall. These cases all have risk, the argument goes, but the risk is limited." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 147 (S.D.N.Y. 2010).

"That argument does not apply to ERISA class actions like this one." *Id.* "ERISA is a comprehensive and reticulated statute and is enormously complex and detailed," *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (citation modified) and "[f]ederal pension law is a

highly specialized field," *Chi. Truck Drivers, Helpers & Warehouse Workers Union (Indep.) Pension Fund v. CPC Logistics, Inc.*, 698 F.3d 346, 350 (7th Cir. 2012) (Posner, J.), making ERISA pension class actions notoriously risky.[8] "The greater the risk of walking away empty-handed, the higher the award must be to attract competent and energetic counsel." *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013). And as this Court has noted, "as a case requires more expertise—and, consequently, as fewer lawyers could competently bring the case—a larger percentage of the fund should be awarded to those lawyers." *In re Colgate*, 36 F.Supp.3d at 352.

The clearest evidence of how risky this case was is the fact that not only did no other lawyers approach undersigned Counsel to join the case or try to compete for control of it, but each of the three other ERISA law firms that had co-counseled the predecessor *Colgate I* lawsuit declined undersigned counsel's invitation to share in the risk and expense of this case by continuing on as co-counsel. *See Silverman*, 739 F.3d at 958 (when the plaintiffs' class action bar steers clear of a potentially lucrative case, it means they "saw th[e] litigation as too risky for their practices."). Given their participation in *Colgate I*, the other firms were clearly comfortable with both ERISA class-action litigation and contingency cases as a general rule, yet they did not regard this case as a worthwhile bet.

That was an understandable view at the outset of this case, the point when risk is properly

[8] Moreover, unlike securities and antitrust defendants, ERISA plans and plan sponsors typically have very little incentive to settle even highly meritorious cases because they do not face the risk of jury trials, or of paying consequential or punitive damages, or liquidated double or treble damages. ERISA defendants know that if they lose, they will merely have to pay what they should have paid initially, with interest that is probably less than what the defendant is earning on the withheld funds.

measured.[9] This action not only involved the usual complexities and structural risks typically inherent in ERISA litigation, but, as detailed in the motion for preliminary approval, Dkt. 339 ¶¶ 14-29, it involved an entirely novel area of law and presented a daunting array of total or partial defenses that made the odds of success low. Litigating this case required more than 27,000 hours of attorney time and millions of dollars in out-of-pocket expenses, *see infra* at 21-24, with a very real chance of recovering nothing at all.

What is more, not only was it clear that Counsel would have to run a gauntlet of risk to achieve any recovery but Defendants' awareness that a loss could cost them upwards of $340 million in and of itself made embarking on this case more risky. If the claim had been worth "only" $34 million, the expectation would have been that Defendants would have likely settled after their motion to dismiss had been denied or class certification had been granted. But $340 million is fight-to-the-death money, as confirmed by the 11-year battle that ensued after Ms. McCutcheon filed a claim for a residual annuity and later filed suit. Had the claim been worth only $34 million, Counsel's odds of winning a fair settlement might have been around 30%. With $340 million at stake, the case was at least twice as risky because it was foreseeable that Colgate would use its deep resources to fight Plaintiffs' claims scorched-earth and resist a fair settlement (as indeed occurred).

In sum, the immense risk that Counsel faced in undertaking a case of this magnitude, complexity and uncertainty would support an increase to 33.3% and confirms the reasonableness of the requested 29% fee. *See, e.g.*, *Behzadi v. Int'l Creative Mgmt. Partners, LLC*, No. 14-cv-4382 (LGS), 2015 WL 4210906, at *3 (S.D.N.Y. July 9, 2015) (Schofield, J.) (upward

[9] Counsel respectfully asks the Court to remember that hindsight is 20/20, *i.e.*, in this context, once a case is over and the plaintiff has won, "hindsight alters the perception of the suit's riskiness" at outset. *In re Synthroid*, 264 F.3d at 718. *See also* Daniel Kahneman, *Thinking, Fast and Slow* 202–03 (2011) (hindsight bias "turns unpredictable events into inevitable ones" and creates "an illusion that the world is more predictable than it actually is").

adjustment warranted due to "significant risk from the uncertainty in the law"); *Verardo v. Progressive Casualty Ins. Co.*, No. 22 Civ. 1714 (LGS), 2025 WL 1558336, at *2 (S.D.N.Y. June 2, 2025) (Schofield, J.) (finding 3% upward variance warranted because, among other things, "[c]ounsel . . . pursu[ed] a novel liability theory" "for which counsel had no prior model or assurance of how a court would react"). If undersigned counsel had not elected to take the case despite these risks, the Class members would never have recovered the nearly $200,000 (net of fees and expenses) they will now receive, without Class members having to prove, file, or do anything.

2. The Quality of Representation Was Exceptional.

Quality of representation is "best measured by results." *See Goldberger*, 209 F.3d at 55. The results here are stellar and virtually unparalleled: only by pitching the legal equivalent of the perfect game in the face of some of the best and most well-resourced defense lawyers in the country did Counsel win for the Class nearly 100% of the residual annuities Plaintiffs claimed they are owed, calculated exactly as they alleged they should be calculated, brought forward with interest until today. These exceptional results would support an increase to 33.3% and confirm the reasonableness of the requested 29% fee. *See City of Birmingham*, 2020 WL 7413926, at *4 (increasing fee in a securities case where class percentage recovery was significantly higher than the typical recovery); *Verardo,* 2025 WL 1558336, at *2 (3% increase warranted because, among other things, counsel achieved a 69% recovery, payable pro rata, without any claims process).

3. Public Policy Will Be Furthered By Awarding the Requested Fee

While "courts must scrutinize the unique circumstances of each case with 'a jealous regard to the rights of those who are interested in the fund,'" they also must avoid "setting fees

too low" and "creat[ing] poor incentives" for counsel bringing such cases in the future. *In re Colgate*, 36 F.Supp.3d at 352-53 (quoting *Goldberger*, 209 F.3d at 53).

"[L]itigated judgments are few, cheap settlements are common." *Allapattah*, 454 F.Supp.2d at 1217. This outlier case—of exceptional difficulty, risk and success—presents the policy imperative of demonstrating to other class counsel that if they act as Counsel did here and litigate to judgment and defend on appeal and achieve a complete percentage recovery for the class, they need not fear that they will be rewarded at a rate lower than if they had played it safe and settled earlier for a lower recovery. Thus, the 29% award requested here is not merely appropriate compensation in light of the risks borne, time and effort expended, and outstanding results achieved but also on public policy grounds. *See In re AOL Time Warner, Inc. Sec. & "ERISA" Litig.*, No. 02 Civ. 5575(SWK), 2006 WL 3057232, at *15 (S.D.N.Y. Oct. 25, 2006) ("[T]he Court's major focus in fashioning a fee award is encouraging the bar to undertake future risks for the public good in tomorrow's cases."). As the *Allapattah* court said:

> Absent an award of fees that adequately compensates Class Counsel [for having litigated the case to judgment], the entire purpose and function of class litigation . . . will be undermined and subverted to the interests of those lawyers who would prefer to take minor sums to serve their own self-interest rather than obtaining real justice on behalf of their injured clients.

454 F.Supp.2d at 1217. Similarly, unless the fees awarded are commensurate with the risks borne; the skill, expertise and perseverance required; and the time and effort expended, the most competent professional talent will employ their skills in other ways. Thus, public policy would support an increase to 33.3% and confirms the reasonableness of the requested 29% fee. *See Verardo,* 2025 WL 1558336, at *2 (finding a significant upward variable was warranted partially on public policy grounds in comparable circumstances).

C. 29% is Reasonable Under the Lodestar Cross-Check

"The lodestar cross-check works best as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *In re Colgate*, 36 F. Supp.3d at 353.

In this case, Class Counsel—together with appellate and Supreme Court specialists Bredhoff & Kaiser, P.L.L.C. who assisted in defending against Defendants' two Second Circuit appeals and opposing Defendants' petition for certiorari in the Supreme Court—have spent more than 27,000 hours litigating this case. Dkt. 349, Declaration of Eli Gottesdiener ("11/28/25 Gottesdiener Decl.") ¶ 2 & Ex. 1 (summary compilation of detailed time entries).[10] This hour total does not include time related to the present motion for attorneys' fees. 11/28/25 Gottesdiener Decl. ¶ 6. It also excludes the time of individuals who billed less than 100 total hours over the life of the case and the time Counsel will spend assisting and overseeing the implementation of the settlement. *Id.* This is a reasonable amount of time given the stakes, the length of the litigation, the complexity of the claims and defenses, the level of resistance from Defendants, the prowess of their attorneys, the burden of proof that Plaintiffs bore, and the $332 million common fund achieved.

The hourly billing rates used to calculate the lodestar are also reasonable. They range from $900 to $1,150 per hour for partners; $700 to $800 per hour for senior associates; and $250 per hour for senior paralegals. 11/28/25 Gottesdiener Decl. ¶ 3. Adjusted for inflation, these are virtually identical to rates that Judge Oetken approved in the *Laurent* matter in January 2023 and Judge Forrest approved in the *Osberg* matter in 2018. *Id.* These rates are generally below current market rates for lawyers of similar quality litigating matters of similar magnitude in New York legal market, and generally below rates that have previously been approved, including by

[10] By separate letter motion, Counsel are requesting leave to send their detailed billing entries to Chambers for the Court's *in camera* review. *See* Dkt. 351.

this Court, as reasonable.[11] *See, e.g., Forex*, 2018 WL 5839691, at *5 (accepting, via lodestar cross-check, up to $1,375 per hour for partners and up to $700 for associates, *see* Joint Declaration of Christopher M. Burke & Michael D. Hausfield, *Forex*, 13 Civ. 7789 (LGS), Dkt. 939 (and exhibits)); *MSC Mediterranean Shipping Co. Holding S.A. v. Forsyth Kownacki, LLC*, 16 Civ. 8103 (LGS), 2017 WL 1194372, at *3 (S.D.N.Y. Mar. 30, 2017) (Schofield, J.) (finding reasonable, in commercial case, $1,048 for partners and up to $753 for associates; citing with approval case accepting $270 for paralegals).[12]

This results in an overall lodestar of approximately $19.5 million and an effective lodestar multiplier of 4.92.[13] This multiplier is reasonable given the level of risk involved: the odds of success at the outset of this case, taking into account the multiple obstacles that had to be overcome, were surely not more than 20%. Moreover, a 4.92 multiplier is less than the 5.2 multiplier that this Court approved in *In re Colgate*—a case considerably less risky than this one involving completely novel residual annuity claims. It is also within the range of awards approved in other comparably risky cases. *See, e.g.*, Order Awarding Attorneys' Fees, *Osberg*,

[11] Courts use current rates to calculate the lodestar figure to account for the delayed payment and inflation. *See, e.g.*, *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998).

[12] *Accord Stonex Grp., Inc. v. Shipman*, No. 23-CV-00613 (JGK) (VF), 2025 WL 1212165, at *3-4 (S.D.N.Y. April 25, 2025) (commercial case finding reasonable partner rate of $1,285 and senior associate rates of $784.90 and $800); *Adstra, LLC v. Kinesso, LLC*, No. 24-cv-2639 (LJL), 2025 WL 1070034, at *7 (S.D.N.Y. April 9, 2025) (commercial case finding partner rate of $1,421 and associate rates of up to $883 reasonable); *Cerco Bridge Loans 6 LLC v. Schenker*, 768 F.Supp.3d 559, 588-90 (S.D.N.Y. 2025) (commercial case awarding fees at concededly reasonable rates ranging from $845 for a junior associate to $2,035 for a partner with more than 30 years' experience); *ATX Debt Fund 1, LLC v. Paul*, No. 19-CV-8540 (JPO), 2024 WL 2093387, at *5 (S.D.N.Y. May 9, 2024) (commercial case finding reasonable rates ranging from $1,380 to $1,775 for partners, $695 to $1,135 for associates, and $535 to $615 for senior paralegals); *Tao An v. Despins*, No. 22-cv-10062 (VEC) (JW), 2024 WL 1157281, at *2, 4 (S.D.N.Y. Mar. 18, 2024) (commercial case finding reasonable rates of $1,760 for partner, $1,440 for counsel, and $895 for associates).

[13] In reality, the multiplier will be lower because after final approval Counsel will do additional work assisting and overseeing the implementation of the settlement. *See Clem v. KeyBank, N.A.*, 2014 WL 2895918, *10 (S.D.N.Y. June 20, 2014) (recognizing same).

supra p. 3 (approving a $95 million fee award reflecting a 4.8 multiplier); Final Order & Judgment, *Laurent*, *supra* p. 3 (approving a $89 million fee award reflecting a 4.65 multiplier); *In re Credit Default Swaps Antitrust Litig.*, No. 13md2476 (DLC), 2016 WL 2731524, at *17 (S.D.N.Y. April 26, 2016) (approving a $253 million fee award reflecting a 6.2 multiplier).[14]

II. THE REQUESTED EXPENSE REIMBURSEMENT AND SETTLEMENT ADMINISTRATION COST REIMBURSEMENT SHOULD BE GRANTED

The expense reimbursement request here of $2.9 million should be granted. These expenses were necessary for the prosecution of the case, commensurate with the stakes involved and complexity of the case, and are appropriately documented in Class Counsel's accompanying declaration. *See* 11/28/25 Gottesdiener Decl. ¶ 9; Ex. 2. The vast majority of these charges were for the Class's actuarial expert, Mr. Deutsch, who provided invaluable assistance throughout the

[14] Counsel's proposal with respect to the timing of the dispersal of the fee awarded—which, in a nutshell (and explained below), requests half of the award now, and the second half once the vast majority of Class members will have been paid the bulk of their benefit—seeks to balance (1) Defendants' request that they be permitted, for internal administrative reasons, to make one single payment with (2) this Court's typical practice of ordering dispersal of attorneys' fees in two installments, with the second installment payable when a sufficient amount of the net settlement benefits will have been paid to class members. This can be accomplished by the Court ordering Defendants to pay the entirety of the fee in accordance with Agreement § 11A, *i.e.*, within 10 days of the Effective Date (approximately late February assuming final approval is granted on or soon after the January 12 final approval hearing and no appeal is filed) with half paid directly to Counsel but the other half held in an interest-bearing account by Citibank, N.A. as escrow agent that will not be dispersed to Counsel until the "Payment Date" and the Parties have filed the Payment Spreadsheet with the Court in accordance with Agreement § 12C. *See* Proposed Order at 11 and the attached 11/24/25 fully completed, execution version of the Escrow Agreement which would effectuate such deferred payment only after the Payment Date. The Payment Date, defined in Agreement § 14A, is ninety (90) days after the Approval Date and is the date by which the Plan is committed to making reasonable best efforts to make all payments to all Class members. The Payment Date is "th[e] Agreement's payment deadline" under Agreement § 14C and, as such, is the date after which, absent special circumstances, the Plan will be charged interest for late payments. *See* Agreement § 14A, 14E. It is expected that by the Payment Date, payments will have been made to the virtually all living participant Class members—namely, 920 of the 1,177 Class members, who represent approximately 80% of the Net Settlement Benefit. *See* Dkt. 350, 11/28/25 Declaration of Lawrence Deutsch, E.A. ¶ 2. Unlike living Class members, for deceased Class members additional steps are required to identify the Class member's successor and work out the details regarding the Class member's estate, a process that the Notice Administrator, with the active assistance of Class Counsel, has already begun.

past 11 years. *Id.* *See In re Colgate*, 36 F.Supp.3d at 353 ("Courts routinely award [expert] costs"). The balance was for mediators, transcripts, computerized research, database management, duplication of documents, and other incidental expenses typical of complex litigation that customarily would be charged to clients in non-contingency cases. *See* Ex. 2 to the 11/28/25 Gottesdiener Decl.

Similarly, the reimbursement sought for settlement administration costs of $150,000 to pay the Notice Administrator and the Enrolled Actuary for implementing the notice plan and calculating the estimated and final benefits is also reasonable and appropriately documented, *see* 11/28/25 Gottesdiener Decl. ¶ 10, and should be granted.

III. THE REQUESTED SERVICE AWARD SHOULD BE APPROVED

The Court should also approve the requested $10,000 service award for Ms. McCutcheon. The requested amount is reasonable and will promote equity between Ms. McCutcheon and the absent Class members she served.

To determine whether a requested service award is reasonable and promotes equity, courts consider factors such as the class representative's contributions to the litigation; any special circumstances, such as personal or professional risks to the class representative; and the size of the service award relative to individual class members' recovery. *See Mateer v. Peloton Interactive, Inc.*, No. 22-cv-00740, 2024 WL 1054983, at *1 (S.D.N.Y. March 4, 2024).

Here, while she cannot claim any special circumstances or out-of-pocket expenses not already reimbursed by Class Counsel, Ms. McCutcheon nevertheless contributed significantly to the litigation (and the claim and appeal process that preceded it) by spending many hours assisting in Counsel's investigation of the case and answering Counsel's questions concerning her 1994 distribution and distribution paperwork; reviewing and commenting on pleadings and

motions; responding to Defendants' interrogatories and identifying and collecting materials in response to document requests; authenticating documents; preparing for and sitting for a day-long deposition (which required her to travel from Indiana to New York); discussing litigation strategy and making herself available for regularly communicating with Counsel regarding the case; and actively participating in settlement negotiations including traveling to New York for the in-person mediation in July 2019, and participating by Zoom for the November 2020 mediation and the June 2025 mediation. Dkt. 338, McCutcheon Decl. ¶ 2; Dkt. 337, 9/2/25 Gottesdiener Decl. ¶ 15.

Finally, the size of the requested $10,000 award is modest compared to the average nearly $200,000 net recovery per individual Class member, and the overall excellent results her service helped achieved.

CONCLUSION

WHEREFORE, for the reasons stated herein and for such other reasons as may appear to the Court, Plaintiffs respectfully request that the Court grant this motion.

Dated: November 28, 2025

Respectfully submitted,

/s *Eli Gottesdiener*

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CERTIFICATE OF COMPLIANCE

I hereby certify in accordance with Local Rule 7.1(c) that the foregoing memorandum of law does not exceed 8,750 words. The document contains 8,724 words.

/s *Eli Gottesdiener*
Eli Gottesdiener