

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

JOSEPH ZIMMERMAN, ANTHONY
DEVITO, and SEAN DONNELLY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

PARAMOUNT GLOBAL, COMEDY
PARTNERS and DOES 1-10,

Defendants.

MICHAEL KAPLAN, an individual on
behalf of himself and all others similarly
situated,

Plaintiff,

v.

COMEDY PARTNERS, a New York general
partnership,

Defendant.

Case No. 1:23-cv-2409 (VSB)

Hon. Vernon S. Broderick

**MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT OF
MOTION FOR APPROVAL OF
ATTORNEYS' FEES, COSTS AND
SERVICE AWARDS**

Consolidated with:

Case No. 1:22-cv-09355 (VSB)

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I. INTRODUCTION

After years of efforts both before and after the filing of the initial complaint in the Fall of 2022, the Parties have agreed to an exceptional settlement that calls for the creation of an \$11 million common fund—*representing more than 68% of the total damages* Class Plaintiffs¹ assert are owed to Class members. The consolidated class actions of Class Plaintiffs sought damages and injunctive relief for Defendants Paramount Global and Comedy Partners (collectively, “Defendants”) alleged failure to pay royalties owed to artists, whose works have been distributed by Defendants via digital audio transmission on SiriusXM Radio (“SiriusXM”) pursuant to licensing agreements or recording contracts (the “Recording Contracts”).

On March 11, 2024, this Court granted preliminary approval of the Settlement Agreement. *Kaplan* ECF No. 51. The Settlement Agreement ensures retrospective relief for all Class Members on a pro rata share basis—with each Class Member receiving a percentage of the common fund equal to the ratio of their total number of digitally transmitted performances compared to the total number of performances of all Class Member recordings on SiriusXM during the settlement period. Importantly, there is no claim form or opt-in requirement—rather, all Class Members who do not affirmatively opt-out of the agreement will receive their pro rata share.

The settlement reflects the skill, expertise, and hard work of Class Counsel. Class Counsel devoted substantial efforts, resources, and money to the prosecution of this case despite the risks. The risks that Class Counsel faced were significant and consisted of the legal uncertainty, as well as the financial risk in continuing to litigate this case against Defendants, who have unlimited

¹ Capitalized terms and phrases shall have the same meaning as in the Court’s Order Re Preliminary Approval (*Kaplan* ECF No. 51) and in the Court-approved Notice, unless otherwise noted. Citations to “Zimmerman ECF No.” and “Kaplan ECF No.” shall reference the *Zimmerman* and *Kaplan* matters, respectively.

resources to litigate. Through this motion, Plaintiffs request the Court approve the requested fee of one-third of the common fund (\$3,666,666.66), and \$68,073.50 in unreimbursed out-of-pocket litigation costs. The requested attorneys' fees represent 33.33% of the Settlement Fund, which is well within the range routinely approved as reasonable by courts within the Second Circuit—and confirmed by a lodestar cross-check. *See, e.g., In re Keurig Green Mt. Single-Serve Coffee Antitrust Litig.*, No. 14-MD-02542 (VSB), 2021 WL 2328431, at *1 (S.D.N.Y. June 7, 2021) (approving attorneys' fees of 33.33% of the settlement fund, plus expenses). Further, Plaintiffs request that the Court approve modest service awards of \$5,000 to each of the Class Plaintiffs.

Ultimately, the extraordinary results achieved by Class Counsel on behalf of the Class, as reflected in the Settlement Agreement, warrant a reasonable award of fees and the recoupment of Class Counsel's out-of-pocket costs. Accordingly, Plaintiffs respectfully request that their motion for fees and costs be granted in its entirety.

II. RELEVANT FACTUAL AND PROCEDURAL BACKGROUND

A. Background and Summary of Settlement Negotiations²

Beginning in May of 2021, Plaintiff Joseph Zimmerman first engaged in written communications and a document exchange with ViacomCBS's ("Viacom") Business & Legal Affairs Department. Through these discussions, Zimmerman learned that Comedy Partners was collecting his share of the public performance royalties from Sirius XM via a direct licensing agreement with Sirius XM. The direct license limited Zimmerman's ability to collect his royalty share through SoundExchange, the statutorily created collection agency that would have otherwise collected and paid Zimmerman for his share of the public performance royalties. 17 U.S.C. §§ 112,

² The Court "adopt[ed] the factual and procedural background set out in the "Factual and Procedural Background" section of the memorandum of law in support of the motion for preliminary settlement approval" for the purposes of the Settlement.

114. Despite Zimmerman’s assertions that Comedy Partners’ actions violated his rights—because they had not previously disclosed the direct license to Zimmerman—Comedy Partners failed to provide Zimmerman with his royalty payments. On August 26, 2022, Zimmerman and fellow comedians, Plaintiffs Anthony DeVito and Sean Donnelly, who similarly did not receive royalties during this time period, filed their copyright applications with the Library of Congress in order to perfect and pursue their rights.

On November 1, 2022, Plaintiff Michael Kaplan (“Kaplan”) filed a putative class action (the “*Kaplan* action”) against Defendant Comedy Partners, asserting claims for breach of contract, breach of the covenant of good faith and fair dealing, money had and received, and unjust enrichment based on Comedy Partners’ alleged failure to pay royalties owed to artists with whom it had Recording Contracts and whose works have been distributed via digital transmission on SiriusXM pursuant to such Recording Contracts.

Leading up to the filing of these claims, *Kaplan* Counsel³ performed extensive work on behalf of Kaplan and the putative class to evaluate the merits and likelihood of success on the class claims. Specifically, beginning in or about June 2021, *Kaplan* Counsel initiated an investigation into Comedy Central’s launch of its SiriusXM radio station and the royalties received by Comedy Central Records’ (“CCR”) artists prior to and following the launch. Warshaw Decl. ¶ 4; Johnson Decl. ¶¶ 4-6. As part of the investigation, *Kaplan* Counsel received and analyzed recording contracts, royalty statements, and SiriusXM digital performance data for several artists on CCR’s roster for the period from 2013 through early 2022. *Id.* This investigation confirmed that the sampled artists had been receiving royalties at per-performance rates consistent with the statutory

³ “*Kaplan* Counsel” consists of Pearson Warshaw, LLP, Johnson & Johnson LLP and Miller Shah LLP. “*Zimmerman* Counsel” consists of Nye, Stirling, Hale, Miller & Sweet, LLP and KamberLaw, LLC.

rates provided for under the Digital Performance in Sound Recordings Act of 1995 (“DPSRA”) (17 U.S.C. § 114(f), (g)) prior to the launch of the Comedy Central SiriusXM radio station in May 2013 and up to the end of 2017; however, starting in the first quarter of 2018, the sampled artists’ per-performance royalty rates dwindled to roughly 2-4% of what they previously had received and would have received on a per-performance basis if paid in accordance with DPSRA’s statutory licensing rates. Declaration of Daniel L. Warshaw (“Warshaw Decl.”) ¶ 5; Declaration of Douglas L. Johnson (“Johnson Decl.”) ¶ 7. Additional pre-filing efforts were directed toward the review, analysis, and drafting of a class action complaint. Time was expended in reviewing draft complaints, conducting legal research pertinent to the underlying claims, and revising the complaint in collaboration with Mr. Kaplan. Warshaw Decl. ¶ 6; Johnson Decl. ¶ 9.

Following the filing of the *Kaplan* action, *Kaplan* Counsel engaged in further research, analysis, and drafting responsive to a Pre-Motion Letter Brief filed by Comedy Partners indicating its intention to file a motion to dismiss. This included preparation for and participation in telephonic conferences with Comedy Partner’s counsel and the Court, and the drafting of correspondence to the Court concerning pre-motion conferences. Efforts also included analysis of the defense’s anticipated arguments and the formulation of a response strategy. Warshaw Decl. ¶ 7; Johnson Decl. ¶ 10. Additionally, in early 2023, substantial attention was devoted to case management, including conferences regarding Rule 26 obligations and communications with co-counsel and defense counsel regarding deadlines and procedural matters. Warshaw Decl. ¶ 7.

In early January 2023, *Kaplan* Counsel and Comedy Partner’s counsel opened a dialog regarding the strength and weakness of the claims in the *Kaplan* action and potential early resolution. Warshaw Decl. ¶ 7; Johnson Decl. ¶¶ 11, 12. The first of many discussions occurred on January 12, 2023. Warshaw Decl. ¶ 8. In order to continue working on early resolution, Kaplan

and Comedy Partners agreed to postpone the January 18, 2023 pre-motion conference related to its motion to dismiss. Warshaw Decl. ¶ 8 and *see Kaplan* ECF No. 17.

By February 2023, significant time was allocated to discussions surrounding potential settlement of the *Kaplan* action, including numerous discussions regarding the scope of informal discovery exchanges to be made by the parties and negotiations over a Non-Disclosure and Confidentiality Agreement requested by Defendant to engage in informal discovery. Johnson Decl. ¶ 12. On February 21, 2023, Defendant produced documents to Kaplan under the settlement privilege in furtherance of the parties' settlement efforts. Warshaw Decl. ¶ 9; Johnson Decl. ¶ 13. *Kaplan* Counsel reviewed and analyzed the data in conjunction with public information regarding DPSRA's statutory licensing rates and SiriusXM spin data to further assess the merits of the class claims and damages. Warshaw Decl., ¶ 9; Johnson Decl. ¶ 13. As this analysis was complex, *Kaplan* Counsel retained the services of consultants Darla Crain and Wayne Coleman of Armanino LLP, who specialize in music licensing and auditing of public performance royalties. Warshaw Decl., ¶ 9; Johnson Decl. ¶ 13.

Following the exchange of initial data, *Kaplan* Counsel and counsel for Comedy Partners engaged in extensive meet-and-confers to discuss expanding the scope of data exchanged. Warshaw Decl. ¶ 10; Johnson Decl. ¶¶ 14, 15. These discussions spanned several weeks and ultimately resulted in the parties seeking several further requests for adjournment of Defendant's pre-motion conference, which were granted by the Court, to enable continued focused settlement discussions. *Kaplan* ECF Nos. 28, 30, 32 & 34.

Throughout 2021 and 2022, *Zimmerman* counsel continued to pursue its clients' legal rights. Pre-filing efforts were directed toward the review, analysis, and drafting of a class action complaint. Time was expended in reviewing draft complaints, conducting legal research pertinent

to the underlying claims, and revising the complaint in collaboration with Messrs. Zimmerman, Devito and Donnelly. Declaration of Benjamin J. Sweet (“Sweet Decl.”) ¶¶ 13. Specifically, *Zimmerman* counsel conducted extensive research into the four unique claims it ultimately brought on behalf of the Class, (1) declaratory judgment re violation of 17 U.S.C.A. §§ 114(g)(2)(D); 17 U.S.C.A. § 106(6); (2) direct violation of 17 U.S.C.A. §§ 114(g)(2)(D); 17 U.S.C.A. § 106(6); (3) breach of fiduciary duty; and (4) accounting. Sweet Decl. ¶¶ 13, 15. *Zimmerman* Counsel’s extensive pre-litigation efforts on behalf of the putative Class are set forth in detail in the accompanying Sweet Declaration. Sweet Decl. ¶¶ 6-13.

Ultimately, on March 21, 2023, Plaintiffs Zimmerman, DeVito, and Donnelly filed a separate putative class action (the “*Zimmerman* action”) against Paramount Global and Comedy Partners, related to the unpaid royalties. Sweet Decl. ¶ 13; *Zimmerman* ECF No. 1. Plaintiffs in the *Zimmerman* action asserted the same four claims as the *Kaplan* action, but also asserted additional causes of action for: (1) declaratory judgment regarding violations of the Copyright Act, 17 U.S.C. §§ 106(6), 114(g)(2)(D); (2) direct violation of the Copyright Act, 17 U.S.C. §§ 106(6), 114(g)(2)(D); (3) breach of fiduciary duty; and (4) accounting of damages.

Then, on April 25, 2023, *Zimmerman* Counsel sent a letter to Defendants demanding that all parties participate in a formal joint mediation so that the interests of all Class members could be negotiated simultaneously. *See* Sweet Decl. ¶ 15. After significant email correspondence and numerous teleconferences, the parties agreed to attend a joint mediation session. *See* Sweet Decl. ¶ 16; Warshaw Decl. ¶ 12; Johnson Decl. ¶ 17. On May 18, 2023, Defendants submitted a letter in the *Zimmerman* and *Kaplan* actions informing the Court that the parties to each proceeding “believe that joint mediation proceedings may facilitate early resolution of both actions.” *Zimmerman* ECF No. 20; *Kaplan* ECF No. 31.

The joint mediation was ultimately scheduled for September 19, 2023, before the Honorable Louis Meisinger—an experienced mediator with an extensive background in the entertainment industry. *See* Sweet Decl. ¶ 16; Warshaw Decl. ¶ 12; Johnson Decl. ¶ 17. Leading up to the mediation, from June 2023 through late August 2023, the parties continued with the informal discovery exchange. During this time, Class Counsel engaged in frequent conferences and correspondence with Defendants’ counsel regarding the scope of information provided. Johnson Decl. ¶ 18; Sweet Decl. ¶ 16, 17. Class Counsel spent significant hours carefully reviewing and analyzing the information provided by Defendants over the course of these months to ensure that the information was sufficient to enable the parties to engage in a productive mediation. Johnson Decl. ¶ 18; Sweet Decl. ¶ 17, 21. Further, as the information provided was technically sophisticated and complex, Class Counsel worked closely with their consultants to evaluate and analyze the data. Johnson Decl. ¶ 18; Sweet Decl. ¶ 17, 19. The analyses performed by Class Counsel proved critical to the parties’ mediation efforts and to enabling Class Counsel to obtain the settlement that ultimately was achieved. Sweet Decl. ¶ 22; Johnson Decl. ¶ 19.

The in-person mediation took place on September 19, 2023, and resulted in a settlement in principle on several key terms, including the settlement fund amount. However, significant additional work was necessary to reach agreement on the legal and technical aspects of the settlement. The parties continued to negotiate the specific language of a written settlement agreement over the next several months. On May 21, 2024, the Court granted Plaintiffs’ Joint Motion to Consolidate the *Kaplan* and *Zimmerman* actions for purposes of settlement. The written Settlement Agreement was subsequently finalized and fully-executed on July 23, 2024. *See* Sweet Decl. at ¶ 23; Warshaw Decl. at ¶ 14; Johnson Decl. ¶ 24.

B. Settlement Terms

After consideration of the risks, possible delays, and expense likely to result from prolonged litigation (including appeals), the Parties reached a negotiated agreement. Pursuant to the Settlement Agreement, Defendants will pay a total of \$11,000,000 into a settlement fund, which covers: (1) the Class Settlement Payments; and (2) any amounts needed to satisfy (a) any award of Attorneys' Fees and Expenses, (b) any Incentive Award, and (c) all Notice and Administration Costs. Settlement Agreement ¶ 4. Each Class Member who does not opt out of the Settlement Class will receive a pro rata share of the Net Settlement Sum, as described above.

The Settlement Agreement instructs Class Counsel to make an application to the Court for an award of certain fees and costs payable from the common fund. Under the terms of the Settlement Agreement, Class Counsel may seek an award of attorneys' fees not to exceed 33.33% of the Settlement Amount, in addition to reimbursement for costs not to exceed \$100,000.00. *Zimmerman* ECF No. 52-4 at 8.

III. PRELIMINARY SETTLEMENT APPROVAL, NOTICE AND CLASS REACTION TO DATE

On August 29, 2024, Plaintiffs moved for preliminary approval of the class action settlement. *Zimmerman* ECF No. 48. On March 11, 2024, this Court granted preliminary approval of the Settlement Agreement and conditionally certified the settlement class as defined in the Parties' Settlement Agreement, appointed Plaintiffs as class representatives, and Nye, Stirling, Hale, Miller & Sweet LLP, Johnson & Johnson LLP, and Pearson Warshaw, LLP, as Class Counsel. *See Zimmerman* ECF No. 60, Preliminary Approval Order. Finally, the Court set the final fairness hearing on July 22, 2025, and ordered the Class Notice be disseminated by April 10, 2025, as contemplated by the Settlement Agreement. *Id.*

In advance of the fairness hearing, class notice was disseminated in accordance with notice procedures approved by this Court. *See Zimmerman* ECF Nos. 49-1, Ex. 1, Ex. C and 60. The class

notice included the full amount of the fees and costs award requested here. *See Zimmerman* ECF No. 52-4 at 8. Specifically, the email notice campaign began on March 31, 2025. *See Sweet Decl.* ¶ 28. As of April 9, 2025, Epiq Class Action & Claims Solutions, Inc. (the “Settlement Administrator”) sent emails to all 163 Class Members, with 128 emails successfully delivered. *See Sweet Decl.* ¶ 28, 29. The remaining 35—individuals who were unreachable by email—were sent first-class mail notice. *See Sweet Decl.* ¶ 28. The website had a total of 193 hits, and the toll-free line received two calls as of April 9, 2025. *See Sweet Decl.* ¶ 29. In addition, four (4) items of correspondence were received by the Settlement Administrator—all of which have been responded to and resolved. *See Sweet Decl.* ¶ 29. To date, there have been no objections⁴ to the settlement—and relevant here, no Class Members have objected to Class Counsel’s requested fee award. *See infra* Section III.C.iv-v.

IV. LEGAL STANDARD

“Attorneys whose work created a common fund for the benefit of a group of plaintiffs ‘may receive reasonable attorneys’ fees from the fund.” *See In re Credit Default Swaps Antitrust Litig.*, No. 13MD2476 (DLC), 2016 WL 2731524, at *16 (S.D.N.Y. Apr. 26, 2016) (“*CDS*”). “The party seeking fees bears the burden of demonstrating that its requested fees are reasonable.” *Abel v. Town Sports Int’l, LLC*, No. 09 CIV. 10388 DF, 2012 WL 6720919, at *26 (S.D.N.Y. Dec. 18, 2012) (citing *Blum v. Stenson*, 465 U.S. 886, 897 (1984)). Courts “may award attorneys’ fees in common fund cases under either the ‘lodestar’ method or the ‘percentage of the fund’ method” although “‘the trend in this Circuit is toward the percentage method.’” *McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010); *see also Blum*, 465 U.S. at 900 n.16 (noting that

⁴ The objection deadline is June 9, 2025. *Zimmerman* ECF No. 51 at ¶ 12. Any objections from the remailed notices will be 14 days from said mailing date. *Id.*

in common fund cases, “a reasonable fee is based on a percentage of the fund bestowed on the class”); *Wal-Mart Stores Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (noting that “[t]he trend in this Circuit is toward the percentage method, which ‘directly aligns the interest of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.’”) (citations omitted).

The percentage method provides “appropriate financial incentives” necessary “to attract well-qualified plaintiffs’ counsel who are able to take a case to trial,” while also “directly align[ing] interests of the class and its counsel” by providing “a powerful incentive for the efficient prosecution and early resolution of litigation.” *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 355, 359 (S.D.N.Y. 2005). “Although district courts may use both methods when approving an award of attorneys’ fees, the Second Circuit encourages using the lodestar method only as a cross-check for the percentage method.” *In re Marsh & McLennan Companies, Inc. Sec. Litig.*, No. 04 CIV. 8144 (CM), 2009 WL 5178546, at *14 (S.D.N.Y. Dec. 23, 2009) (citing *Goldberger v. Integrated Res.*, 209 F.3d 43, 50 (2d Cir. 2000)).

V. ARGUMENT

A. Class Counsel are Entitled to a Reasonable Fee of One Third of the Settlement Fund

This Court’s Preliminary Approval Order held that the “anticipated attorneys’ fee request appears reasonable” as “an application for a fee award of an amount not to exceed one-third of the Settlement Fund, ‘plus reasonable out-of-pocket costs . . . is consistent with what other courts in this District have approved.’” *Zimmerman*, ECF No. 50, quoting *Grissom v. Sterling Infosystems, Inc.*, No. 20-CV-7948, 2024 WL 4627567, at *5 (S.D.N.Y. Oct. 30, 2024) (citing *Suarez v. Rosa Mexicano Brands Inc.*, No. 16-CV-5464, 2018 WL 1801319, at *1 (S.D.N.Y. Apr. 13, 2018); *Zorrilla v. Carlson Rests., Inc.*, No. 14-CV-2740, 2018 WL 1737139, at *2 (S.D.N.Y.

Apr. 9, 2018)).

As noted by this Court, Class Counsel are requesting a reasonable fee of “up to 33.3% of the \$11 million Settlement Fund, and up to \$100,000.00 in costs and expenses.” *See Zimmerman* ECF No. 52-2 at 3. Class Members were notified in the court approved Notice that Class Counsel would apply for attorneys’ fees and costs and no Class Member has objected to any part of the settlement, including this request. Sweet Decl. ¶¶ 26, 28. The lack of any objection from Class Members has been noted as a strong factor in support of approval of an attorneys’ fee application. *See Sewell v. Bovis Lend Lease, Inc.*, No. 09 Civ. 6548, 2012 WL 1320124, at *10 (S.D.N.Y. Apr. 16, 2012); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 183 (W.D.N.Y. 2011); *Johnson v. Brennan*, No. 10 Civ. 4712, 2011 WL 4357376, at *9 (S.D.N.Y. Sept. 16, 2011). The request for 33.3% of the Settlement Fund is reasonable and well within the typical range approved by this Court. *See In re Keurig Green Mt. Single-Serve Coffee Antitrust Litig.*, No. 14-MD-02542 (VSB), 2021 WL 2328431, at *1 (S.D.N.Y. June 7, 2021) (approving attorneys’ fees of 33.33% of the settlement fund, plus expenses); *Baten v. Mr. Kabob Rest. Inc.*, No. 16-CV-9559 (VSB), 2019 WL 11274597, at *2 (S.D.N.Y. Oct. 18, 2019) (same); *Salazar v. Spectrum of Creations, Inc.*, No. 16-CV-653 (VSB), 2019 WL 11343126, at *2 (S.D.N.Y. Jan. 11, 2019) (same).⁵

Consistent with this Circuit’s precedent, and for the reasons explained below, the \$3,666,666.66 attorney fee award to Class Counsel is reasonable—particularly in light of the

⁵ *See also Puglisi v. TD Bank, N.A.*, No. 13 CIV. 637, 2015 WL 4608655, at *1 (E.D.N.Y. July 30, 2015) (approving attorneys’ fees award of one-third of the \$9,900,000 settlement fund); *Behzadi v. Int’l Creative Mgmt. Partners, LLC*, No. 14 Civ. 4382, 2015 WL 4210906, at *2-3 (S.D.N.Y. July 9, 2015) (approving attorneys’ fees award of one-third of the \$725,000 settlement fund); *Aboud v. Charles Schwab & Co.*, No. 14 CIV. 2712 PAC, 2014 WL 5794655, at *6 (S.D.N.Y. Nov. 4, 2014) (approving attorneys’ fees award of one-third of the \$3,700,000 settlement fund); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 186-87 (W.D.N.Y. 2011) (approving attorneys’ fees award of one-third of the \$42,000,000 settlement fund).

substantial and thorough investigation conducted prior to filing this action, Class Counsel's vigorous litigation efforts on behalf of Class Plaintiffs and the Settlement Class, and the significant result achieved.

B. The Percentage Method is the Preferred Method for Awarding Attorneys' Fees in Common Fund Cases in the Second Circuit

Courts in this Circuit favor the "percentage of the fund" method of determining attorneys' fees. *See WalMart Stores*, 396 F.3d at 121. As the Second Circuit has explained, the "rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). In fact, "the vast majority of courts of appeals now permit or direct district courts to use the percentage-fee method in common-fund cases." Manual for Complex Litigation (Fourth) § 14.121 (2004) (footnotes omitted) (citing *e.g.*, *Goldberger*, 209 F.3d at 50). Courts have highlighted several reasons for this.

First, the percentage method "directly aligns the interests of the class and its counsel" as it provides an incentive to attorneys to not only resolve the case efficiently, but to create the largest common fund out for the class. *Wal-Mart Stores*, 396 F.3d at 121 (internal quotation marks omitted); *In re Ramp Corp. Sec. Litig.*, No. 05 Civ. 6521, 2008 WL 58938, at *2 n.2 (S.D.N.Y. Jan. 3, 2008); *In re Polaroid ERISA Litig.*, No. 03 Civ. 8335, 2007 WL 2116398, at *2 (S.D.N.Y. July 19, 2007). The method "mimics the compensation system actually used by individual clients to compensate their attorneys," thus aligning it with general market practice. *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 397 (S.D.N.Y. 1999); *see also Sewell*, 2012 WL1320124, at *10 ("[The percentage] method is similar to private practice where counsel operates on a contingency fee, negotiating a reasonable percentage of any fee ultimately awarded.").

Second, and similarly, the percentage of the fund method "provides a powerful incentive

for the efficient prosecution and early resolution of litigation.” *Wal-Mart Stores*, 396 F.3d at 121 (internal quotation marks omitted). This “encourage[s] early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.” Manual § 14.121 (*citing Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 338–39 (1980) (recognizing the importance of a financial incentive to entice qualified attorneys to devote their time to complex, time-consuming cases in which they risk nonpayment)). As opposed to the lodestar method, the percentage method discourages plaintiffs’ lawyers from running up their billable hours. *See Savoie v. Merchants Bank*, 166 F.3d 456, 460–61 (2d Cir. 1999) (“It has been noted that once the fee is set as a percentage of the fund, the plaintiffs’ lawyers have no incentive to run up the number of billable hours for which they would be compensated under the lodestar method.”)

Third, the percentage method preserves *judicial* resources. The “primary source of dissatisfaction [with the lodestar method] was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits.” *Goldberger*, 209 F.3d at 48–49. Instead, the percentage method “relieves the court of the cumbersome, enervating, and often surrealistic process of evaluating fee petitions.” *Savoie*, 166 F.3d at 461 n.4. Accordingly, the lodestar method is used as a “cross check” when applying the percentage of the fund method, though the Court is not required to scrutinize the fee records as rigorously. *Goldberger*, 209 F.3d at 50; *see In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004) (using an “implied lodestar” for the lodestar cross check)

C. The *Goldberger* Factors Support Class Counsel’s Request

Of course, however the fee is calculated, it must be reasonable. In considering whether a request for attorney’s fees is reasonable, courts rely on the six factors articulated by the Second

Circuit 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. The agreed-upon fee is reasonable under each of these factors.

i. Class Counsel's Time and Labor Expended

Class Counsel spent significant effort to achieve the \$11 million settlement. Sweet Decl. ¶ 54-58; Warshaw Decl. ¶¶ 27-28; and Johnson Decl. ¶¶ 31, 32. The declarations of Class Counsel detail the amount of work that was necessary to secure a successful result on behalf of the Class Members. *See* Sweet Decl. ¶ 54-55; Warshaw Decl. ¶¶ 27-28; and Johnson Decl. ¶¶ 34-35. This work began in 2021 and continued up to the present. *See* Sweet Decl. ¶¶ 6-32; Johnson Decl. ¶¶ 4-27, 31.

Prior to the filing of the Lawsuit, Class Counsel vigorously investigated the merits of the claims, obtained the documents regarding Plaintiffs' copyrights, and performed other pre-litigation research and investigation. Sweet Decl. ¶ 6-13; Warshaw Decl. ¶¶ 3-6; Johnson Decl. ¶¶ 4-9. Class Counsel then performed extensive settlement related activities, including preparing for and attending the mediation, drafting the mediation brief, negotiating, and finalizing the terms of the Settlement Agreement. Sweet Decl. ¶ 14-23; Warshaw Decl. ¶¶ 8-12; Johnson Decl. at ¶¶ 10-24. Class Counsel also engaged in ongoing communications with the named Plaintiffs throughout the litigation, obtaining information to substantiate the claims, and providing regular updates. Sweet Decl. ¶ 58, 62; Warshaw Decl. ¶ 36; Johnson Decl. ¶¶ 4, 6, 22, 25.

In addition to the substantial time and effort spent negotiating the settlement of this action, Class Counsel participated in drafting and filed all of the documents pertinent to the settlement, including the settlement agreement and subsequent drafts, the motion for preliminary approval,

and this motion for attorneys' fees and costs. Sweet Decl. ¶¶ 22-23, 24, 32; Warshaw Decl. ¶¶ 14, 15 & 18; Johnson Decl. ¶¶ 24-27. Since the Court granted preliminary approval, Class Counsel has ensured that the notice plan was properly disseminated to the Class Members, and further communicated with the Class Members about the Settlement. Sweet Decl. ¶ 27; Warshaw Decl. ¶ 18; Johnson Decl. at ¶ 27.

As described in detail below, Section III.D., in litigating and successfully reaching a resolution of this matter, Class Counsel worked a total of approximately 1,500.9 hours of attorney and paralegal time. Sweet Decl. ¶ 55. This labor amounts to a total of \$1,627,315 in attorneys' fees. These hours are reasonable for a case like this one and were compiled from contemporaneous time records maintained by each attorney participating in the case. *Id.* at ¶ 61.

ii. The Magnitude and Complexity of the Litigation

"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.*, No. 12 CIV. 7452 RLE, 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, this case involved many intricate legal issues relating to copyright infringement and intricate licensing agreements across multiple corporate entities. As noted below, the risks associated with litigating through the class certification stage and ultimately to a verdict were significant, and such an effort would have required extensive time and resources. The case would require Plaintiffs to withstand motion(s) to dismiss and summary judgment, obtain class certification, and prevail at trial before obtaining a favorable judgment, as this Court has noted. *See Zimmerman* ECF No. 51 at 10-11 (noting "[t]he risks in this action including the procedural complexity of two parallel actions, the intricacies of interpreting each Plaintiff's Recording

Contract, and the substantial time it would take for Plaintiffs to litigate this case through any motions to dismiss, class certification, summary judgment, and trial.”)

Accordingly, the percentage requested here is reasonable and reflects the extensive work and risk Class Counsel undertook, and weighs in favor of approval.

iii. The Risk of Litigation

The risk of litigation is also an important factor in determining a fee award. Uncertainty that an ultimate recovery will be obtained is highly relevant in determining the reasonableness of an award. *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974), abrogated by *Goldberger*, 209 F.3d 43 (2d Cir. 2000). “[D]espite the most vigorous and competent of efforts, success is never guaranteed.” *Id.* at 471.

While Class Counsel believe that Plaintiffs’ claims here are legally meritorious, there were undoubtedly substantial risks to proceeding with the litigation process. Indeed, because “[i]t is well-established that litigation risk must be measured as of when the case is filed,” at the outset, Class Counsel undertook to prosecute this action without any assurance of payment for their services, litigating this case on a wholly contingent basis in the face of significant risk. *See Goldberger*, 209 F.3d at 55.

Moreover, while Class Counsel believe that a class would have ultimately been certified even over Defendants’ objections, the risk of non-certification remained. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (noting that “[w]hile plaintiffs might indeed prevail [on a motion for class certification], the risk that the case might be not certified is not illusory”). And even if class was certified, “the class would face the risk of decertification.” *Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 214 (S.D.N.Y. 1992).

The proposed settlement alleviates these uncertainties, and Class Counsel were able to

achieve the significant results for the Class despite these risks—speaking to the level of skill Class Counsel brought to bear in this case.

iv. The Quality of Representation

“To determine the ‘quality of the representation,’ courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit.” *Taft v. Ackermans*, No. 02 Civ. 7951, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007) (citing *In re Global Crossing*, 225 F.R.D. at 467). Indeed, the “critical factor is the degree of success obtained.” *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). In considering this factor, “the greatest emphasis is [given to] 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.’” Manual § 14.121 (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 14:6, at 547, 550 (4th ed. 2002)).

In this case, and as this Court noted, Class Counsel has “demonstrated the necessary qualifications and skill in this matter through their prior results and experience” and “has also demonstrated their skill through their work on this case, which involved substantial negotiation and discovery and resulted in a successful mediated settlement.” *Zimmerman* ECF No. 61 at 9; *see also Zimmerman* ECF No. 49, Warshaw Decl., ¶¶ 9-15, Ex. A, Firm Resume; *Zimmerman* ECF No. 50, Johnson Decl., ¶¶ 5-6, Ex. A, Firm Resume; *Zimmerman* ECF No. 54, Sweet Decl., ¶¶ 8-12.

In addition to being well-informed via the informal discovery undertaken in this case, Class Counsel are, and have also been, counsel of record in several other large putative class actions—including some that involve royalties due. *See id.*

Here, Class Counsel achieved a common fund of \$11 million, representing more than 68%

of the Class’s retrospective total recoverable damages. Recoveries of less than *one-fifth* of recoverable damages have routinely held to be sufficient for final approval by courts of this Circuit. *See, e.g., In re Giant Interactive Grp., Inc.*, 279 F.R.D. 151, 162 (S.D.N.Y. 2011) (recovery of 16.5% of recoverable damages was “comfortably within the range of reasonableness”); *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 191 (S.D.N.Y. 2012) (approving recovery of approximately 13%).

v. *The Fee in Relation to the Settlement*

Class Counsel’s 33.3% fee request is consistent with the percentage routinely awarded in this Circuit. *See Gilliam v. Addicts Rehab. Ctr. Fund*, No. 05 Civ. 3452, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (a fee request of 33% is “consistent with the norms of class litigation in this circuit.”); *In re Deutsche Bank Sec. Litig.*, No. 1:09-01714-RWL (S.D.N.Y.), ECF No. 330 (June 11, 2020) (awarding 33% of \$18.5 million recovery plus \$1.2 million in expenses); *City of Providence v. Aeropostale, Inc.*, No. 11 CIV. 7132 CM GWG, 2014 WL 1883494 (S.D.N.Y. May 9, 2014) (awarding 33% of \$15 million settlement); *In re Giant Interactive Grp.*, 279 F.R.D. at 165 (awarding 33% of \$13 million settlement); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 368 (S.D.N.Y. 2002) (awarding one-third of \$11.5 million settlement). This Court has similarly approved 33.3% fee requests in numerous prior cases. *See supra* at III.A.

When assessing the percentage requested, the Court should not only account for the litigation uncertainties detailed above, but also the certainty of delay as Plaintiffs prepared for trial and inevitable appeals. In other words, “[a] very large bird in the hand of this litigation is surely worth more than whatever birds are lurking in the bushes.” *See In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995); *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 459 (S.D.N.Y. 2004) (stating that the certainty of the settlement amount in that case had to be judged in the context of the substantial legal and factual obstacles to plaintiffs eventually

prevailing in the case). Indeed, Class Counsel’s efficiency in succeeding with an early settlement should not be penalized. Manual §14.121.

Finally, the high quality of the lawyers opposing Class Counsel’s efforts “further proves the caliber of representation that was necessary to achieve the Settlement.” *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010). Here, Defendants’ counsel were experienced defense counsel with ample experience who were able to draw on Defendants’ vast resources. This factor further weighs in favor of the reasonableness of the requested fee relative to the Settlement.

vi. Public Policy Considerations

Public policy considerations weigh in favor of granting Class Counsel’s requested fees. Attorneys’ fees should “reflect the important public policy goal of providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.” *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999). As this Court noted, “[t]he compromise of complex litigation is encouraged by the courts and favored by public policy.” *Zimmerman* ECF No. 60 at II(A) citing *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005) (quoting 4 Alba Conte & Herbert B. Newberg, *Newberg on Class Actions* § 11:41, at 87 (4th ed. 2002)), *superseded by* Fed. R. Civ. P. 23(e)(2), *as recognized in* *Moses v. New York Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023).

Indeed, “[p]ublic policy considerations strongly favor incentivizing skilled private attorneys to undertake this type of litigation, especially since the action is on behalf of small claimants who lack the financial incentive to obtain a recovery on their own behalf.” *Fleisher*, 2015 WL 10847814, at *22 (discussing settlement of complex insurance class action). Further, the requested fee would compensate Class Counsel at a level that is consistent with the benefits conferred to the Class, the substantial investment of time and money devoted to this case, as well

as the fact that representation was brought wholly contingent on a successful outcome.

D. Class Counsel’s Request is Reasonable Under a Lodestar Cross Check

While Courts approve fees based upon the percentage method, courts also “loosely use the lodestar method as a baseline or as a cross check,” *Sanchez v. Kambousi Rest. Partners, LLC*, No. 15-CV-5880, 2016 WL 11717104, at *7 (S.D.N.Y. Sept. 14, 2016) (internal quotation marks omitted). A common-fund-percentage fee must still be evaluated for reasonableness but may exceed the lodestar—i.e., it may be less than, equal to, or greater than the lodestar.” *Fresno Cty. Employees*, 925 F.3d at 68. The “resulting product is *presumed* to be the reasonable fee to which counsel is entitled.” *Pennsylvania v. Delaware Valley Citizens’ Council for Clean Air*, 478 U.S. 546, 564 (1986) (emphasis in original). “Once the court has calculated . . . the lodestar, ‘there remain other considerations that may lead the district court to adjust the fee upward or downward, including the important factor of the ‘results obtained.’” *Id.* (quoting *Hensley*, 461 U.S. at 434). Where, as here, the “plaintiff has obtained excellent results, [his] attorney should recover a fully compensatory fee... encompass[ing] all hours reasonably expended on the litigation...” *Hensley*, 461 U.S. at 435. For purposes of determining a reasonable attorneys’ fee, the hourly rate must be calculated in accordance with the prevailing market rate in the relevant community. *Blum v. Stenson*, 465 U.S. 896, 895 (1984).

This presumptively reasonable lodestar total is reflective of the reasonable number of hours expended by Class Counsel multiplied by the reasonable hourly rate that resulted in excellent results and achieved a judgment providing complete relief for the Class members. Each hour expended by Class Counsel on this case has ultimately benefitted the Class Members, and Class Counsel’s lodestar amount is reasonable and compensable.

Compensable activities under the lodestar method include both pre-litigation activities

(e.g., interviewing the client, investigating the facts, researching the law, and preparing the initial pleading) and litigation activities (e.g., conducting discovery, conferring with clients, drafting pleadings, making court appearances, travel time, and settlement negotiations). *See, e.g., Hensley*, 461 U.S. at 434 (noting that district courts should exclude fees not “reasonably expended” on the litigation); *Webb v. Cty. Bd. of Educ.*, 471 U.S. 234, 243 (1985) (“drafting of the initial pleadings and the work associated with the development of the theory of the case” is compensable work).

In this case, the attorney declarations and supporting exhibits establish the basis and calculation for the hourly rates of the attorneys at each firm who worked on the case. *See* Sweet Decl. ¶ 35-55, Warshaw Decl. ¶ 27-31; Johnson Decl. ¶¶ 34-38. The firms comprising Class Counsel have ample experience handling class actions and complex litigation. *See* Sweet Decl. ¶ 35-51 and Exhibit B; Warshaw Decl. ¶ 19-26 and Ex. A; Johnson Decl. ¶¶ 28-30 and Ex. A. These rates are well within the “prevailing [rates] in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984).⁶

⁶ *See Farbotko v. Clinton Cnty.*, 433 F.3d 204, 208 (2d Cir. 2005) (relevant community is “the district in which the court sits”); *see also id.* at 209 (determination of reasonable rate entails “a case-specific inquiry into the prevailing market rates for counsel of similar experience and skill to the fee applicant’s counsel,” which may include “judicial notice of the rates awarded in prior cases and the court’s own familiarity with the rates prevailing in the district”). Class Counsel’s hourly rates range from \$215.00 to \$1,500.00. These rates are consistent with the rates approved by this Court, and for other experienced litigators. *See In re Keurig Green Mountain Single-Serve Coffee Antitrust Litig.*, Case No. 1:14-cv-04391-VSB (S.D.N.Y. June 7, 2021) (issuing an attorneys’ fees award finding that the following Pearson Warshaw rates were reasonable: \$1,190 for Clifford H. Pearson and Daniel L. Warshaw, and \$560 for Matthew A. Pearson.) Indeed, rates “in excess of \$1,000 an hour[] are by now no uncommon,” in complex cases in the Southern District. *U.S. Bank Nat’l Ass’n v. Dexia Real Estate Capital Mkts.*, 12 Civ. 9412 (PAE), 2016 WL 6996176, at *8 (S.D.N.Y. Nov. 30, 2016) (awarding partner rate of \$1,055 per hour); *see also Vista Outdoor, Inc. v. Reeves Family Trust*, 16 Civ. 5766 (JSR), 2018 WL 3104631, at *6 (S.D.N.Y. May 24, 2018) (awarding partner rates of up to \$1,260 per hour); *MSC Mediterranean Shipping Co. Holding SA v. Forsyth Kownacki LLC*, 16 Civ. 8103 (LGS), 2017 WL 1194372, at *3 (S.D.N.Y. Mar. 30, 2017) (awarding hourly rates of \$1,048.47 per hour for partners).

Considering the lodestar referenced above relative to the requested one-third fee, results in a 2.25 fee multiplier. This is well within the range of approved multipliers in this Circuit. Indeed, “Courts regularly award lodestar multipliers of up to eight times lodestar, and in some cases, even higher multipliers.” *Hernandez v. Merrill Lynch & Co.*, No. 11 CIV. 8472 KBF DCF, 2013 WL 1209563, at *9 (S.D.N.Y. Mar. 21, 2013); *see also, In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 590 (awarding multiple of 1.6x while noting “[i]n contingent litigation, lodestar multiples of over 4 are routinely awarded by courts”); *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, No. 05 CIV 10240 CM, 2007 WL 2230177, at *17, n.7 (S.D.N.Y. July 27, 2007) (awarding multiplier while collecting cases awarding multiples ranging from 4.7 to 6.96 and noting “[l]odestar multipliers of nearly 5 have been deemed ‘common’ by courts in this District.”); *Fleisher v. Phx. Life Ins. Co.*, No. 11-CV-8405 (CM), 2015 WL 10847814, at *19 (S.D.N.Y. Sep. 9, 2015) (awarding multiple of 4.87 while noting that “[t]his is well within the range of crosscheck multipliers awarded in this circuit”).

Accordingly, the lodestar cross-check supports the reasonableness of the fee requested.

E. Class Counsel’s Requested Expenses Are Reasonable

“Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they were ‘incidental and necessary to the representation’ of those clients.” *In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (internal citation and quotation marks omitted). This is “[t]o allow the others to obtain full benefit from the plaintiff’s efforts without contributing equally to the litigation expenses would be to enrich the others unjustly at the plaintiff’s expense.” *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970). Where, as here, the settlement is a common fund, “[c]ourts routinely note that counsel is entitled to reimbursement from the common fund for

reasonable litigation expenses.” *Fleisher*, No. 11-CV-8405 (CM), 2015 WL 10847814, at *23 (noting as typical expenses in complex cases “fees paid to experts, mediation fees, notice costs, computerized research, document production and storage, court fees, reporting services, and travel in connection with th[e] litigation”); *see also In re Marsh ERISA Litig.*, 265 F.R.D. at 150 (“It is well-established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses.”).

Here, Class Counsel have incurred \$68,073.50 in costs and expenses to date. *See Sweet Decl.* ¶ 66; *Warshaw Decl.* ¶¶ 32 & 34; *Johnson Decl.* ¶¶ 39-41.⁷ These expenses include all filings, general litigation, mediation-related and travel expenses that were all incurred in the normal course of business and were essential to the successful prosecution of this lawsuit. Indeed, “[t]he fact that Class Counsel was willing to expend their own money, where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary.” *Fleisher*, 2015 WL 10847814, at *19.

Because these expenses were reasonably incurred, they should be awarded from the settlement fund. *Beckman*, 293 F.R.D. at 482 (S.D.N.Y. 2013) (“Courts typically allow counsel to recover their reasonable out-of-pocket expenses”).

F. The Requested Service Award is Reasonable and Should Be Approved

The service award requested by Plaintiffs—\$5,000 per Plaintiff—is reasonable given the significant contributions that Plaintiffs have made to the prosecution and resolution of the lawsuit. “Case law in this and other circuits fully supports compensating class representatives for their

⁷ Class Counsel also request that an additional \$10,000 in expense allocation be awarded to Class Counsel to cover the estimated cost of travel to and from the Final Approval Hearing on July 22, 2025 in New York. Class Counsel will provide the Court with a nearly-final sum of additional expenses at the Final Approval Hearing.

work on behalf of the class, which has benefited from their representation.” *In re Marsh ERISA Litig.*, 265 F.R.D. at 150. Here, this Court found the awards to be “within the range of service awards approved by courts in this District given counsel’s representation regarding the contributions of the named Plaintiffs to this case.” Preliminary Approval Order at 13, citing *Hart v. BHH, LLC*, No. 15-CV-4804, 2020 WL 5645984, at *5 (S.D.N.Y. Sept. 22, 2020).⁸

Through this litigation and, indeed, well before, Plaintiffs have demonstrated that they are willing and suitable class representatives through their active participation in the litigation—(1) searching for documents related to this lawsuit; (2) reviewing and approving court-filings, including the operative complaints and Settlement Agreement; (3) staying informed and communicating with Class Counsel regarding the status and progress of this lawsuit; (4) attending the mediation in this case; and (5) participating in lengthy conversations about the terms of the agreement. *See Zimmerman* ECF No. 51, Declaration of Plaintiff Michael Kaplan, ¶¶ 2, 4 & 5; *Zimmerman* ECF No. 57, Declaration of Plaintiff Joseph Zimmerman, ¶¶ 3, 5 & 6; ECF No. 55, Declaration of Plaintiff Anthony DeVito, ¶¶ 3, 5 & 6; *Zimmerman* ECF No. 56, Declaration of Plaintiff Sean Donnelly, ¶¶ 3, 5 & 6. Further, the Plaintiffs understood that by participating in this action, they may be or “black-listed” by companies and distributors previously interested in their product. Despite this risk, the Plaintiffs agreed to serve as class representatives, and proceeded in the best interests of the class at every step of the litigation.

⁸ Other Courts in this Circuit have found much higher service awards to be reasonable. *See Hernandez v. Merrill Lynch & Co.*, No. 11 CIV. 8472 KBF DCF, 2013 WL 1209563, at *10 (S.D.N.Y. Mar. 21, 2013) (awarding \$15,000 to five plaintiffs and \$12,500 to another plaintiff); *Duchene v. Michael Cetta, Inc.*, 2009 U.S. Dist. LEXIS 85955, at *9 (S.D.N.Y. Sept. 10, 2009) (approving service payments of \$25,000 and \$10,000 in wage and hour action); *Flores v. Anjost Corp.*, 2014 U.S. Dist. LEXIS 11026, at *27 (S.D.N.Y. Jan. 29, 2014) (granting service award of \$25,000 to each of five named plaintiffs); *Khait v. Whirlpool Corp.*, No. 06-6381 (ALC), 2010 WL 2025106, at *9 (E.D.N.Y. Jan. 20, 2010) (awarding \$15,000 to five plaintiffs and \$10,000 to ten plaintiffs).

VI. CONCLUSION

For the reasons set forth above, Class Counsel respectfully request the Court grant Class Counsel's request for attorneys' fees and expenses, and grant the \$5,000 Service Awards to each Plaintiff.

Dated: May 5, 2025

Respectfully submitted,

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