

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

JEWEL RANKINS and DARREN WONG,
individually and on behalf of all others
similarly situated,

Plaintiffs,

-against-

OLD LYME GOURMET COMPANY
(d/b/a DEEP RIVER SNACKS),

Defendant.

Case No.: 1:20-cv-1756-ENV-TAM

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
PAYMENT OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION
EXPENSES TO CLASS COUNSEL
AND PAYMENT OF SERVICE AWARDS TO THE CLASS REPRESENTATIVES**

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Plaintiffs¹ Jewel Rankins (“Rankins”) and Darren Wong (“Wong”) (collectively “Plaintiffs”), individually and on behalf of all others similarly situated, respectfully submit this memorandum of law in support of their motion for payment of attorneys’ fees and reimbursement of litigation expenses to Class Counsel and payment of service awards to the class representatives.

I. INTRODUCTION

Only as a result of their assiduous and hard work on this matter, Class Counsel have achieved an extremely favorable Settlement on behalf of the Settlement Class Members. This work included, but was not limited to, Class Counsel’s substantial investigation, significant motion practice in no less than two class actions (the above-captioned case and a similar action that was pending in the Northern District of California), extensive discovery, and arm’s-length negotiations led by a highly esteemed mediator. (*See* Declaration of Court Appointed Class Counsel in Support of Plaintiffs’ Motion for Final Approval filed simultaneously with this brief (hereafter, “Class Counsel Fee Decl.” or “Class Counsel Fee Declaration”)) at ¶¶ 5-10.

The Settlement requires Defendants to pay four million dollars (\$4,000,000) into a common fund, from which settlement class members can claim full reimbursement of the price premium they paid for the alleged misrepresentations. Class Counsel Fee Decl. at ¶¶11-12. Each Settlement Class Member will receive a minimum of \$5 per valid claim made, increased by \$0.50 for each additional product claimed, with a limit of up to ten (10) products without proof of purchase (for a total of \$10.00), and an unlimited amount with proof of purchase. *Id.* Additionally, Settlement Class Members can make claims with and without proof of purchase, and will be paid for both.

¹ Unless otherwise indicated, capitalized terms shall have the meaning that the Settlement Agreement ascribes to them. *See* ECF No. 55 (“Settlement Agreement”).

Defendant charges a premium over its competitors of 46 cents for its 2 ounce Products. Class Counsel Fee Decl. at ¶ 12. Thus Settlement Class Members will receive full compensation for their injury. *Id.* This substantial recovery is as much as, if not more than, what consumers would likely receive if the case proceeded to, and succeeded at, trial. In addition to the substantial monetary compensation for the Settlement Class Members, the four million dollar common fund will be used to pay: (1) costs of notice and claims administration; (2) Attorneys' Fees and Expenses (contingent upon court approval), and, (3) Service Awards of \$5,000 to each of the Class Representatives for a total of \$10,000 (also contingent upon court approval).

Finally, the Settlement Agreement also requires corporate reform in that Defendant shall not use the challenged representations that are alleged to have misled consumers. *See Settlement Agreement* at § 3.16.

The Parties only reached the Settlement after significant investigation, research, motion practice, and discovery. They engaged in extensive arm's-length negotiations including two mediation sessions with Jill Sperber, a highly respected mediator. *See Class Counsel Fee Decl.* at ¶9. The Settlement is an excellent result of these efforts because it provides the Settlement Class Members with meaningful monetary relief.

Class Counsel now hereby move for one-third of the common fund (or \$1,333,333.33) as payment for their attorneys' fees and \$22,847.61 for reimbursement of their litigation expenses. Class Counsel also hereby requests payments to Plaintiffs of \$5,000 each (for a total of \$10,000) for their contributions to, and active participation in, the Actions as the class representatives.

As the record before the Court demonstrates,² the favorable outcome in this case is the result of Class Counsel’s hard work and diligent efforts. The amount requested in attorneys’ fees and expenses for Class Counsel fairly and reasonably compensates them for their diligent efforts in litigating this matter. Moreover, the requested amount is in line with prior decisions of courts in the Second Circuit. *See, e.g., Mendez v. MCSS Rest. Corp.*, No. 16-CV-2746 (RLM), 2022 WL 3704591, at *9 (E.D.N.Y. Aug. 26, 2022)(“Class Counsel’s fee request of one-third (33.33%) of the Settlement Fund is reasonable and consistent with the norms of class litigation in this circuit and should be awarded on the basis of the total funds made available”).

Based on Plaintiffs’ contributions to the Actions and service awards in other cases, the Service Awards for Plaintiffs are also fair and reasonable. For all of the reasons given herein, the Court should grant Plaintiffs’ Fee Motion in its entirety.

II. THE COURT SHOULD GRANT THE REQUEST FOR PAYMENT OF ATTORNEYS’ FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND SERVICE AWARDS FOR THE CLASS REPRESENTATIVES

Under Rule 23(h), the district court must make findings of facts and conclusions of law to support an award of “reasonable attorney’s fees and nontaxable costs” to the class counsel. Here, Class Counsel have spent almost five years prosecuting this matter. Class Counsel Fee Decl. at ¶5. They should now be compensated for their work and expenses. Class Counsel seeks payment of \$1,333,333.33 for fees (which is one-third of the settlement fund) and \$22,847.61 for their costs and expenses. As show below, this fee request is well within the range of fee awards in similar cases in the Second Circuit and should now granted. Likewise, Class Counsel’s request for reimbursement of \$22,847.61 for their expenses should also be granted.

² Class Counsel’s Fee Declaration is an integral part of this submission. Plaintiffs respectfully refer the Court to this Declaration for a detailed description of the factual and procedural history and the work Class Counsel performed in the litigation of these Actions.

A. Class Counsel Negotiated Attorneys’ Fees with Defendant Only after Agreeing upon the Settlement Terms for the Class

As an initial matter, Class Counsel did not negotiate attorneys’ fees and expenses with Defendant until after the Parties had reached agreement as to the settlement terms benefiting the Settlement Class Members. Class Counsel Fee Decl. at ¶9. *Shapiro v. JPMorgan Chase & Co.*, Nos. 11-CV-8331(CM)(MHD), 11-CV-7961(CM), 2014 WL 1224666, at *25 (S.D.N.Y. Mar. 24, 2014) (“That the Attorneys’ Fee Payment was later separately negotiated weighs in favor of its reasonableness.”).

Furthermore, the U.S. Supreme Court has held that negotiated, agreed-upon attorneys’ fee provisions are the ideal toward which the parties should strive. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983). “A request for attorney’s fees should not result in a second major litigation.” *Id.* “Ideally, of course, litigants will settle the amount of a fee.” *Id.*

B. The Attorneys’ Fees Are Reasonable and Warrant Approval

1. Class Counsel’s Request for One-Third of The Settlement Amount for Their Fees is Reasonable and Typical Within the Second Circuit

The fee request here is reasonable and worthy of the Court’s approval.

The strong preference by courts within the Second Circuit is that courts award fees based upon a percentage of the fund. *See e.g. Schutter v. Tarena International, Inc.*, No. 21-CV-3502-(PKC)(RML), 2024 WL 4118465, at *13 (E.D.N.Y. Sept. 2024) (“The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation”). Moreover, the typical amount paid to class counsel is one-third of the settlement fund. *Kochilas v. Nat’l Merch. Servs.*, No. 14-CV-311, 2015 WL 5821631, at *9 (E.D.N.Y. Oct. 2, 2015) (“Class Counsel’s request for one-third of the Settlement Fund...is reasonable and consistent with the norms of class litigation in this circuit.”); *Sarit v. Westside Tomato, Inc.*, No. 18-CV-11524 (RA),

2021 WL 2000328, at *12 (S.D.N.Y. May 19, 2021)(“District courts in the Second Circuit...routinely approve fees to counsel totaling one third of the recovery amount”) citing *Calle v. Elite Specialty Coatings Plus, Inc.*, No. 13–CV–6126 (NGG)(VMS), 2014 WL 6621081, at *3 (E.D.N.Y. Nov. 21, 2014)(“one-third contingency fee is a commonly accepted fee in this Circuit.”).

Here, the Settlement achieved through Class Counsel’s hard work is \$4 million. One third of this amount is \$1,333,333.33, which is the amount requested here for payment of attorneys’ fees to Class Counsel. As stated above, payment of one-third of the Settlement Fund is well within the range that courts in this Circuit, including this Court, have awarded. *See e.g. In re Northern Dynasty Minerals Ltd. Securities Litig.*, No. 20-CV-5917 (TAM), 2024 WL 308242, at *14 (E.D.N.Y. Jan. 26, 2024)(Merkl, J.)(“the Court finds that fees totaling 33.33% of the settlement amount...to be reasonable, and therefore approves the requested fees”); *Mendez*, 2022 WL 3704591, at *9 (“Class Counsel’s fee request of one-third (33.33%) of the Settlement Fund is reasonable and consistent with the norms of class litigation in this circuit”); *Sarit*, 2021 WL 200328, at *1 (“[D]istrict courts in the Second Circuit...routinely approve fees to counsel totaling one third of the recovery amount.”).

Accordingly, the request for one third of the recovery amount as payment for attorney fees to Class Counsel is reasonable and should now be granted.

2. A Lodestar Cross-Check Supports the Requested Fee

Courts within the Second Circuit often look at class counsel’s lodestar “[a]s a ‘cross-check’ to a percentage award.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005). However, the Second Circuit has also noted that “trial courts evaluating fee requests need not, and indeed should not, become green-eyeshade accountants.” *Torres v. Gristede’s Operating Corp.*, 519 Fed. Appx. 1, 4 (2d Cir. 2013).

Here, the requested fee is also reasonable based upon Class Counsel’s lodestar. *See* Class Counsel Fee Decl. at ¶¶ 21-26. Indeed, Class Counsel’s lodestar to date is \$1,261,037.50, which is slightly less the requested fee. *Id.* However, it should also be noted that work remains to be done on this matter – including, but not limited to, drafting and filing the final approval motion and supporting documents (which is due April 1, 2025); appear for and present at the Final Approval Hearing (currently scheduled for May 15, 2025); and, continue to work with the Claims Administrator. The additional time that must be spent on this matter means that at the end of the day, Class Counsel’s lodestar likely will be greater than the amount requested here for Class Counsel’s fees. Accordingly, a lodestar cross-check gives further support to granting the motion for payment of fees to Class Counsel for their litigation of the Actions.

It should be noted that Class Counsel’s hourly rates are well in-line with the hourly rates charged by other class counsel attorneys who litigate nationwide class actions (such as is the case here, where two class actions – the above-captioned action and the *Wong Action* pending in the Northern District of California – were litigated and are being resolved here). Here, the hourly rates used by Class Counsel are comparable to rates charged by attorneys with similar experience, skill, and reputation, for similar services in the New York legal market and have previously been approved as reasonable. *See* Class Counsel Fee Decl. at ¶ 25; *An, et al. v. Despins & Paul Hastings LLP*, No. 22-CV-10062 (VEC)(JW), 2024 WL 1157281, at *4 (S.D.N.Y. Mar. 18, 2024) (finding

defense counsel’s hourly rates of \$1,990 to be reasonable and in line with prevailing market); *Themis Cap. v. Democratic Republic of Congo*, No. 09-CV-1652, 2014 WL 4379100, at *7 (S.D.N.Y. Sept. 4, 2014)(“partner billing rates in excess of \$1,000 an hour are by now not uncommon in the context of complex commercial litigation”).

Indeed, the Honorable Brian M. Cogan of the Eastern District of New York approved in 2023 rates of \$1,500 per hour for Mr. Reese, \$1,350 for Ms. Nam and \$950 for Mr. Sheehan, noting that those rates were in line for excellent work performed in the context of complex class action litigation in the Eastern District of New York. *See Sharpe v. A&W Concentrate Co.*, No. 1:19-cv-00768 (BMC)(E.D.N.Y. Nov. 15, 2023)(“*Sharpe v. A&W*”).³ As Judge Cogan held:

I’ve also checked the putative rates that would be charged. ***They are commensurate with the highest quality of practice in this District*** and I don’t have any problem with the rates as well.

Class Counsel Fee Decl. at Ex. F. (Transcript of October 19, 2023 final approval hearing in *Sharpe v. A&W* at 17:25-18:3 (emphasis added). And as held by Judge Cogan in his final approval order:

Class Counsel [comprised of Reese LLP and Sheehan & Associates, P.C.] have done excellent work in this matter and have achieved a substantial benefit for the Class. Class Counsel are very experienced, both in class actions and in this kind of consumer litigation. ***Moreover, their hourly rates are commensurate with the highest quality of practice in this District and are hereby approved.***

Class Counsel Fee Decl. at Ex. I (final approval order in *Sharpe v. A&W*)(emphasis added) at ¶11.

It also should be noted that the rates charged by Class Counsel are comparable (if not less) than other attorneys who worked on this matter. For example, the mediator in this matter was Jill Sperber, who has been an attorney since 2000. Class Counsel Fee Decl, Ex. C (bio of Jill Sperber).

³ The Supreme Court has held that the use of current rates is proper because such rates compensate for the loss of use of funds. *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989) (“an appropriate adjustment for delay in payment— [is] by the application of current rather than historic hourly rates”); *LeBlanc-Sternberg v. Fletcher*, 143 F. 3d 748, 764 (2d Cir. 1998) (“The lodestar should be based on...current rates, rather than historical rates...in order to compensate for the delay in payment.”).

Ms. Sperber's hourly rate in 2024 was \$2,400 per hour. See Class Counsel Fee Decl. at ¶ 9, Ex. E. In comparison, Mr. Reese (class of 1996) and Ms. Nam (class of 1994) bill at a lower hourly rate. See *Id.*, Ex. A (Reese LLP firm resume with bios of Michael R. Reese and Sue J. Nam).

Likewise, the hourly rates charged by class counsel here are similar (if not lower) than those charged by law firms that traditionally have done defense work and were paid by their clients on a monthly basis. For example, the law firm of Winston & Strawn LLP billed partners at hourly rates of up to \$1,980 per hour as of 2024. See Class Counsel Fee Decl. ¶ 24, Ex. G; see also Ex. H (Partners at Cooley LLP charging up to \$2,290 per hour); see also *Top Big Law Partners Are Earning More than \$2,400 Per Hour as Rates Continue to Climb*, The American Lawyer (Jan. 10, 2024), available at <https://www.law.com/americanlawyer/2024/01/10/top-restructuring-partners-are-earning-more-than-2400-per-hour-as-rates-continue-to-climb/> (Partners at Dechert LLP charging \$2,400 per hour while partners at McDermott, Will & Emery charge \$2,590 per hour); *Largest Law Firms Charge Nearly \$1,000 an Hour, Report Finds*, LEGAL DIVE (Dec. 11, 2023), available at <https://www.legaldive.com/news/am-law-100-hourly-rates-largest-law-firms-brightflag-analysis/702164/> (“Partners in New York lead the way by a significant margin, with those attorneys charging an average of \$1,562 an hour”).

In sum, based on their prior court-approved hourly rates, the multiplier here is only 1.05. This is well within the range of multipliers routinely granted by courts within the Second Circuit. See, e.g. *Carlson v. Xerox Corp.*, 355 Fed.Appx. 523, 526 (2d Cir. 2009) (affirming order granting class counsel's fees and holding that “the resulting multiplier would be 3.59, still below the 3.6 average and in line with the 3.1 median for similar cases”); *Viafara v. MCIZ Corp.*, No. 12-CV-7452 (RLE), 2014 WL 1777438, at *14 (S.D.N.Y. May 1, 2014) (“Courts award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”).

3. Class Counsel’s Fee Request is Supported by the *Goldberger* Factors

In determining whether to grant a fee request to class counsel, courts within the Second Circuit are “guided by the traditional criteria in determining a reasonable common fund fee, including: ‘(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 v. Integrated Res., Inc.*, 209 F.3d 43, 47, 50 (2d Cir. 2000) (citation omitted) (hereafter, “*Goldberger* factors”). Here, the *Goldberger* factors underscore why Class Counsel’s motion for fees should be granted.

a. Time and Labor Expended by Counsel

Class Counsel have devoted considerable time and effort to the investigation, prosecution, and settlement of this complex action. Over the course of almost five years, Class Counsel have spent in excess of 866 hours in performance of their services, which has resulted in the Settlement. *See* Class Counsel Fee Decl. at ¶ 21. This hard work included litigating two separate class actions (both the above-captioned action pending before Your Honor in the Eastern District of New York as well as a similar case pending in the Northern District of California); opposing (and defeating) two motions to dismiss; extensive discovery; and, protracted settlement negotiations with the assistance of a professional mediator. Class Counsel also took this matter completely on a contingency basis and took on tremendous risk to vindicate the class members’ rights.

Accordingly, this *Goldberger* factor provides further reason to grant the motion for the requested fee to be paid to Class Counsel.

b. The Complexity and Magnitude of the Litigation

The complexity and magnitude of the matter support the requested fee. This matter is a class action that involved the particularly complex (and ever evolving) area of bioengineered foods. As a result, both federal regulations and industry standards regarding genetically modified organisms were at issue, including, but not limited to, the Bioengineered Foods Standards Act, (7 U.S.C. § 1621 *et seq.*); and the Non-GMO Verification Project rules and requirements for the labeling of food as Non-GMO. These Actions also involved the reasonable consumer standard, which was the subject of hotly contested litigation here including, but not limited to, Defendant's motion to dismiss that was ultimately denied, in part, by this Court.

With respect to the magnitude of this action, that factor also supports Class Counsel's fee. The scope of this litigation is national in scope, and includes a class action in New York (the above-captioned action) and a similar action in San Francisco, California (in the Northern District of California). Likewise, the settlement in this matter is nationwide in scope, and covers a class period of no less than seven (7) years. *See* Preliminary Approval Order at p. 4 (ECF No. 64) (certifying class with a class period of February 2, 2017 to December 6, 2024).

Accordingly, this *Goldberger* factor provides further reason to grant the motion for the requested fee to be paid to Class Counsel.

c. The Risks of the Action and the Contingent Nature of the Fee

The risk of litigation that Class Counsel undertook was significant in light of the considerable time and resources they devoted to this case completely upon a contingency basis. From the commencement of this litigation, Class Counsel have been paid nothing for their substantial efforts. The significant outlay of cash and personnel resources that Class Counsel has made has been completely at risk. Indeed, there was a significant possibility that Class Counsel would recover nothing for their substantial efforts. *See In re Lloyd's Am. Trust Fund Litig.*, No.

96-CV-1262 (RWS), 2002 WL 31663577, at *28 (S.D.N.Y. Nov. 26, 2002) (“[C]ontingent fee risk is the single most important factor in awarding a multiplier[.]”).

Courts have recognized that the risk of non-payment in complex cases, such as the case at bar, is very real. There are numerous class actions in which plaintiffs’ counsel expended thousands of hours and yet received no remuneration whatsoever despite their diligence and expertise. *See, e.g., Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (after class counsel won a substantial jury verdict the judgment was reversed and the case dismissed after 11 years of litigation).

Finally, the complexity of this matter highlights the tremendous risk taken by Class Counsel. As discussed above, this matter involved both a relatively novel area of the law (bioengineered food) and the rules surrounding such food, including both federal regulations and industry standards. It also involved the complex area of law regarding the reasonable consumer standard. In similar situations, cases have been thrown out on a motion to dismiss. Here, in stark contrast, Class Counsel were not only able to defeat a motion to dismiss, but also secure a \$4 million settlement on behalf of the class – all in the face of tremendous risk and always on a completely contingent basis.

Accordingly, this *Goldberger* factor provides further reason to grant the motion for the requested fee to be paid to Class Counsel.

d. The Result Achieved and the Quality of Representation

The result achieved and the quality of the services provided are also important factors to consider in determining the amount of reasonable attorneys' fees. *Fleisher v. Phoenix Life Ins.*, No. 11-cv-8405 (CM), 2015 WL 10847814, at *21 (S.D.N.Y. Sept. 9, 2015) ("Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award and in assessing the quality of the representation.").

Here, the goals of the litigation were to provide monetary compensation for the Settlement Class Members for their purchases of the Products on account of the allegedly false and misleading labeling. Class Counsel's work in the litigation achieved this significant goal. Indeed, claimants to the Settlement will receive 100% return of the amount they over-paid for the Products based upon the misleading marketing. Likewise, the Settlement also provides for corporate reform, namely that Defendant will no longer use the labels challenged as being misleading. *See* Settlement at §3.16.

The substantial experience of Class Counsel in prosecuting consumer protection class action cases was an important factor in achieving these significant objectives. Indeed, Class Counsel are at the forefront of litigating food-related class actions on behalf of misled consumers and have repeatedly been commended for their skill and hard-work in representing classes. As stated by the Honorable Brian M. Cogan of the Eastern District of New York in a case involving the alleged mislabeling a food product:

I have lived with this case as have counsel for quite a while. I have no doubt in the quality of representation. I remember my first conversation with Mr. Reese about the nature of this case. I learned a lot about these kind of cases. Counsel are very experienced, both in class actions and in this kind of consumer litigation.

Class Counsel Fee Decl., Ex. F (Transcript of 2023 final approval hearing in the matter of *Sharpe v. A&W*) at 14:22-15:2; *see also Berkson v. Gogo LLC*, No. 14-cv-1199, 2016 WL 1376544, at *4

(E.D.N.Y. April 5, 2016)(Weinstein, J.) (“*The attorneys at Reese LLP who prosecuted this case are skilled and experienced class action consumer protection lawyers.*”).

Finally, the quality of representation is not just limited to Class Counsel’s experience as litigators, but also reflected in their efforts to give back to the legal community. For example, Mr. Reese served for several years as an adjunct professor at Brooklyn Law School where he taught both “The Law of Class Actions and Other Aggregate Litigation” as well as “Food Law.” Class Counsel Fee Decl., Ex. A at p. 2. Mr. Reese also is a member of the advisory board of UCLA’s Food Law and Policy Center, a member of the advisory board to Wellness in the Schools (WITS), and the vice president of the Agri-Food Law Commission of the Union Internationale des Advocats, where he makes presentations on human rights issues on a regular basis. *Id.*

Accordingly, this *Goldberger* factor provides further reason to grant the motion for the requested fee to be paid to Class Counsel.

e. The Requested Fee in Relationship to the Settlement

As discussed in detail above, for compensation for their work done in this matter, Class Counsel are seeking one-third of the settlement fund – which is the standard percentage that courts – including this Court - within the Second Circuit grant to class counsel in common fund settlements. *In re Northern Dynasty Minerals Ltd. Securities Litig.*, 2024 WL 308242, at *14 (Merkl, J.) (“the Court finds that fees totaling 33.33% of the settlement amount...to be reasonable, and therefore approves the requested fees... the requested one-third fee in relation to the settlement...constitutes a proportion routinely approved as reasonable.”) *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) (“[I]t is very common to see 33% contingency fees in cases with funds of less than \$10 million”). Accordingly, this *Goldberger* factor provides further reason to grant the motion for the requested fee to be paid to Class Counsel.

f. Public Policy Considerations

The courts have repeatedly recognized that in class actions involving low dollar amounts (such as is the case here), misled consumers may never have received anything were it not for class counsel's efforts, and that, as a result, class counsel deserve to be paid their fees. *See e.g. In re Parking Heaters, Antitrust Litig.*, No. 15-MC-940, 2019 WL 8137325, at *7 (DLI) (JO), at *25 (E.D.N.Y. Aug. 15, 2019)(public policy favors an award of attorney's fees when "the class members' small individual claims would not justify the expense of separate litigation"). And as noted by this Court: "[c]ourts in this Circuit have recognized the importance of private enforcement actions and the corresponding need to incentivize attorneys to pursue such actions on a contingency fee basis." *In re 3D Systems Securities Litig.*, No. 21-CV-1920 (NGG) (TAM), 2024 WL 50909, at *15 (E.D.N.Y. Jan. 3, 2024)(Merkl, J.).

Accordingly, this *Goldberger* factor provides further reason to grant the motion for the requested fee to be paid to Class Counsel.

g. Timing of Payment of Attorney Fees

Federal Rule of Civil Procedure 23(e)(2)(C)(iii) also requires courts to consider the "timing of payment" for "any proposed award of attorney's fees." Fed. R. Civ. P. 23(e)(2)(C)(iii). Here, there is no quick-pay provision. Rather, Class Counsel will only be paid after the Effective Date, which is not until after Final Approval and the time to file any appeals has expired.

Accordingly, this factor also provides further reason why the motion for the requested fee should now be granted.

C. The Court Should Approve the Reimbursement of Class Counsel’s Expenses

Class Counsel have also expended \$22,847.61 in costs, for which they should now be reimbursed. Class Counsel Fee Decl. at ¶ 27. These costs, which included costs for filing fees and mediation were integral to the prosecution and settlement of the Actions. *Id.* “It is well-settled that attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients.” *Raniere v. Citigroup, Inc.*, 310 F.R.D. 211, 222 (S.D.N.Y. 2015); *see also In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12–CV–8557 (CM), 2014 WL 7323417, at *19 (S.D.N.Y. Dec. 19, 2014) (“Because the expenses here were incurred with no guarantee of recovery, Lead Counsel had a strong incentive to keep them at a reasonable level, and did so.”).

D. The Court Should Approve the Proposed Service Awards for the Class Representatives

Plaintiffs also have moved the Court to approve service awards to the class representatives. “Incentive awards are common in class action cases and are important to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by plaintiffs.” *In re Northern Dynasty Minerals Ltd. Securities Litig.*, 2024 WL 308242, at *17 (Merkl, J.) (granting motion for \$20,000 as an incentive award to the lead plaintiff).

Defendant has agreed to pay Service Awards of \$5,000 to each Plaintiff (for a total of \$10,000) as compensation for their time and effort spent in the litigation. Settlement Agreement at §5.2. Each Plaintiff performed important and valuable services for the benefit of the Settlement Class. Each met, conferred, and corresponded with Plaintiffs’ Counsel as needed for the efficient process of this litigation. (Class Counsel Fee Decl. at ¶ 20).

Accordingly, Plaintiffs respectfully request that the Court approve the Service Awards of \$5,000 each (for \$10,000 in total).

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant their Motion for Payment of Attorneys' Fees and Reimbursement of Expenses to Class Counsel and Payment of Service Awards to the Class Representatives.

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Respectfully submitted,

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