

STATE OF CONNECTICUT

DOCKET NO. UWY-CV22-6069344-S : SUPERIOR COURT
PAUL O’NEAL, on behalf of himself and all :
others similarly situated, : JUDICIAL DISTRICT OF
 : WATERBURY AT WATERBURY
Plaintiff, :
 :
v. :
 :
CHELSEA GROTON BANK, :
 :
Defendant. : December 8, 2023
 :

**PLAINTIFF’S UNOPPOSED MOTION
FOR ATTORNEYS’ FEES, COSTS, AND SERVICE AWARD**

I. INTRODUCTION

Plaintiff respectfully requests that this Court approve an award of \$55,439.33 in attorneys’ fees for Class Counsel, \$5,345 in Class Counsel’s costs and expenses, and a \$2,500 service award for Plaintiff. These awards are to be paid from the Settlement Fund established by Defendant Chelsea Groton Bank (“Defendant”) in connection with the Settlement Agreement and Release (“Settlement” or “Agreement”) reached between the Parties¹, which was preliminarily approved by the Court on October 27, 2023 (Docket Entry #120.10). Defendant does not oppose this request. This Motion will be posted on the Settlement Website upon filing, to ensure Class Members may review it prior to the deadline for them to opt-out or object to the proposed Settlement.

Class Counsel is entitled to reasonable compensation for the work performed and the costs incurred in prosecuting this case. The Settlement—which is the result of the hard work of experienced Class Counsel—is an excellent result, as detailed in the Motion for Preliminary

¹ All capitalized terms bear the same meaning of the terms defined in the Agreement.

Approval. Specifically, Defendant agreed to automatically return to Class Members their share of the \$166,318 Settlement, which represents approximately 75% of their total damages incurred during the class period as a result of the practices alleged in the Complaint. Thus, this Settlement is an excellent result for class members.

Based on the work that Class Counsel did in order to obtain these benefits for the Class, the requested attorney fee represents one-third of the common fund. This award is reasonable when considered under both the percentage of the fund or lodestar analysis because Connecticut courts routinely grant fee awards that amount to one-third of the common fund in class action cases.

Moreover, Named Plaintiff seeks a service award to compensate him for his work in bringing the case and facing the attendant risks associated with serving as a class representative, as well as for the results achieved for the Class Members. In prosecuting this action, he expended his time and effort and took significant financial and reputational risks for the benefit of the Class as a whole, thus, imposing a financial burden on Plaintiff out of proportion to his individual stake in the matter.

Accordingly, Plaintiffs' unopposed request for attorneys' fees, costs, and service award should be granted.

II. BACKGROUND

A. The Litigation

On November 30, 2022, Plaintiff filed a putative class action complaint in Connecticut Superior Court constituting the captioned case. The complaint alleged claims for breach of contract, including breach of the covenant of good faith and fair dealing, arising from Defendant's practice of charging Multiple Fees, including NSF Fees and Overdraft Fees ("OD Fees"), on a single item in contravention of Defendant's account agreement. Plaintiff sought monetary

damages, restitution, and injunctive and declaratory relief from Defendant on behalf of himself and all similarly situated individuals.

The Parties engaged in extensive informal discovery, including the exchange of certain aggregate and transactional data regarding potential classwide damages. (Declaration of Sophia G. Gold filed concurrently herewith, hereafter referred to as “Gold Decl.,” ¶ 3.) Plaintiff used an expert consultant to review the data and analyze estimated damages. *Id.* After arms-length settlement discussions over the course of several months, the Parties agreed to settle this action. *Id.* The Parties have since worked to draft and finalize a full Settlement Agreement and Release, as well as Class Notices. *Id.*

B. The Settlement

The Settlement includes the following key terms:

- The Parties agree to certification of the Settlement Class, which is defined as follows: “[A]ll consumer deposit account customers of Chelsea Groton Bank to whom Chelsea Groton Bank, during the Class Period, assessed Multiple Fees which were not refunded”;²
- Defendant will pay \$166,318 into a Settlement Fund (from which the following will be paid: reasonable attorneys’ fees and costs; any approved Service Award to Plaintiff; the Settlement Administrator’s fees and costs; and payments to Class Members);
- The Settlement Fund will be distributed directly to Class Members by account credit or check, with no need to submit a claim or take any action;
- Any Settlement Funds constituting uncashed checks or residual amounts will not revert to Defendant but will instead be either distributed to Class Members in a second distribution or paid to an appropriate *cy pres* recipient proposed by the

² Pursuant to the Agreement, the “‘Class Period’ means the time period from November 20, 2016 until March 1, 2022.” Settlement § II(11).

Excluded from the Settlement Class are Chelsea Groton Bank, its parents, subsidiaries, affiliates, officers and directors, all Settlement Class Members who make a timely election to be excluded, and all judges assigned to this litigation and their immediate family members. *Id.* § II (43).

Parties and approved by the Court; and

- If ultimately approved, the Settlement will resolve this litigation.

Review of the specific details of the proposed Settlement indicates that it treats all Class Members fairly and equally.

1. Settlement Class

For settlement purposes only, the Parties have agreed to certify the Settlement Class as defined above, which satisfies Connecticut Practice Book § 9. Defendant has agreed not to oppose Plaintiff's request to certify the Settlement Class. Settlement § III(48).

2. Funding of the Settlement

The Settlement calls for Plaintiff to submit the instant motion for preliminary approval to the Court. *Id.* § VI(51). If the Court grants the motion, then Defendant will pay \$166,318 into the Settlement Fund within seven days after the Court enters its Order preliminarily approving the Settlement. *Id.* § VI(52). This amount will be held in an Escrow Account by the Settlement Administrator until appropriate distribution as discussed below. *Id.* § VI(55).

3. Notice Program

In consultation with Defendant, Class Counsel has selected KCC as the Settlement Administrator. The Settlement Administrator will administer the Notice Program, which will include providing Notice of the Settlement to the Class Members. *Id.* § IX.

Defendant will provide the Settlement Administrator the name and address information for Class Members. *Id.* § IX(58)(a). Within 30 days after Preliminary Approval of the Settlement, the Settlement Administrator will attempt to provide Notice to Class Members in three ways, with the type of notice varying according to the circumstances: (1) Account holders for whom Defendant has an email address will receive an Email Notice; (2) Account Holders for whom

Defendant does not have valid email addresses or for whom Email Notice is returned as undeliverable will receive Postcard Notice; and (3) Long Form Notice will be available to all Class Members on the Settlement Website and via mail upon a Class Member's request. *Id.* § X(64). For any emails returned undeliverable, the Settlement Administrator will mail the Postcard Notice to the Class Member to the best available mailing address. *Id.* § X(66). For mailed Postcard Notices returned as undeliverable, the Settlement Administrator will use reasonable tracing procedures to obtain better address information. *Id.*

All forms of the Notice shall explain the litigation and the Class Members' rights, including: a description of the material terms of the Settlement; a date by which Settlement Class members may exclude themselves from, or "opt-out" of, the Settlement Class; a date by which Settlement Class Members may object to the Settlement; the date on which the Final Approval Hearing is scheduled to occur; and the address of the Settlement Website at which Settlement Class members may access this Agreement and other related documents and information. *Id.* § X(59). The Notice will advise Class Members of Class Counsel's intent to seek attorney's fees of up to 33.33% of the Settlement, as well as the requested \$2,500 Service Award for the Class Representative. *Id.* § XVI. The Notice also provides instructions for obtaining a copy of the Long Form Notice and the date and location of the Final Approval Hearing.

The Long Form Notice will be posted on the settlement website and be available on request from the Settlement Administrator. The Long Form Notice includes a summary of the case; a summary of Class Members' legal rights and options; answers to frequently asked questions; a description of the Agreement and the settlement benefits; contact information for Counsel for Plaintiff and Counsel for Defendant; instructions on how to opt out of the Agreement; information about how to object to the settlement; a description of the attorneys' fees that Class Counsel intend

to apply for and the service award to be sought for the Class Representative; information about the Final Approval Hearing; and instructions on how to obtain a copy of the Agreement.

This Notice Program will be completed no later than 60 days before the Final Approval Hearing. *Id.* § X(67). Prior to that hearing, the Settlement Administrator will provide the Parties with an affidavit regarding the results of the Notice program. *Id.* at § IX(58)(h).

4. Attorneys' Fees and Costs and Service Award

No later than 80 days before the Final Approval Hearing, Plaintiff must file an application for attorneys' fees and costs and for a Service Award to the Class Representative, and no later than 45 days before the Final Approval Hearing, Plaintiff will file the Motion for Final Approval of the Settlement. *Id.* § XI(70). The Settlement provides that Class Counsel will request a Service Award to Plaintiff of \$2,500 and attorneys' fees of 33.33% of the Settlement, as well as reimbursement of reasonable costs and expenses in this litigation. *Id.* § XVI. Defendant does not oppose these requests. *Id.*

5. Effective Date

At or following the Final Approval Hearing, the Court will determine whether to enter the Final Approval Order granting Final Approval of the Settlement and enter Final Judgment, whether to approve Class Counsel's request for attorneys' fees and costs, and whether to approve a Service Award. *Id.* § XI(71). If the Court enters a Final Approval Order and Final Judgment, then the Effective Date of the Settlement will be 5 days after all appeal time has run. *Id.* § XI(13).

6. Release

As of the Effective Date, the Settlement's General Release provision will automatically take effect. *Id.* § XV. The provision releases and discharges Defendant (and entities designated as "Released Parties") the claims that arise out of and/or relate to the facts and claims alleged in

the Complaint, and any other claims relating to the assessment of Multiple Fees. *Id.* § XV(82). The release also includes a waiver of unknown claims with respect to all the matters described in or subsumed by the Settlement on behalf of the Class Representative and Class Members. *Id.* § XV(84).

7. Distribution

After the Effective Date, the Settlement Administrator will distribute payments from the Net Settlement Fund to Class Members in accordance with the timing set forth in § XII of the Settlement. The Net Settlement Fund will be timely distributed on a pro rata basis to Class Members based on the total amount of the Net Settlement Fund divided by the total number of Multiple Fees, with each Class Member receiving an adjusted amount for each Multiple Fee that member incurred. *Id.* § XIII(73)-(76).

8. Residual Funds

The Settlement Administrator will hold any uncashed or returned checks for up to six months from the date of first distribution and will make reasonable efforts to locate the intended recipients. *Id.* § XIII(80). Following one unsuccessful attempt at delivery of the re-mailed or re-issued payment, the uncashed or returned checks will constitute residual funds. *Id.* Any residual funds held by the Settlement Administrator will not revert to Defendant but will instead be paid either to the Class Members in a secondary distribution if economically feasible or to a *cy pres* organization that would be jointly agreed upon by the Parties and approved by the Court. *Id.* § XIV(81).

III. ARGUMENT AND AUTHORITY

A. The Court Should Grant the Requested Attorneys' Fees

1. Legal Standard

The Connecticut Supreme Court has held that because Connecticut's class action law is relatively undeveloped, and in light of the similarity between Connecticut's and federal class action rules, it is appropriate to look to federal case law “for guidance in construing our law governing class actions.” *Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 33, 836 A.2d 1124 (2003). In particular, decisions by the United States Court of Appeals for the Second Circuit, although not binding on Connecticut's courts, “are particularly persuasive” on class action issues. *Id.* at 52 n. 22, 836 A.2d 1124, citing *Turner v. Frowein*, 253 Conn. 312, 341, 752 A.2d 955 (2000).

“[A]...lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney’s fee from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The Second Circuit recognizes that a lawyer whose efforts create a common fund should recover a reasonable fee. *Central States Southeast & Southwest Areas v. Merck-Medco Managed Care, LLC*, 504 F.3d 229 (2d Cir. 2007).

In common fund settlements, courts in Connecticut and the Second Circuit typically look at the percentage-of-the-fund method, with an optional lodestar crosscheck. *Towns of New Hartford & Barkhamsted v. Connecticut Res. Recovery Auth.*, No. CV040185580S(X02), 2007 WL 4634074, at *11 (Conn. Super. Ct. Dec. 7, 2007); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). The “‘percentage of the fund’ method, [] is the trend in th[e] Second] Circuit.” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. 2014) (citing *Wal-Mart Stores*, 396 F.3d at 121). Class Counsel is entitled to “a reasonable fee – set by the court – to be taken from the fund.” *Goldberger*, 209 F.3d 50; *see also* Fed. R. Civ. P. 23(h). *See also Fresno Cty. Emps.’s Ret. Ass’n v. Isaacson/Weaver Family Tr.*, 925 F.3d 63, 68 (2d Cir. 2019) (“The common-fund doctrine is . . . rooted in the courts’ ‘historic power of equity to permit’ a person who secures a fund for the benefit of others to collect a fee directly from the

fund.” (citation omitted)).

In addition to being far simpler, awarding a percentage of the fund is preferred and “directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation.” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 348 (quoting *Wal-Mart Stores, Inc.*, 396 F.3d at 121). This method further incentivizes class counsel to obtain the largest possible recovery in the most efficient manner possible. *Id.* “The lodestar method, on the other hand, disincentivizes early settlements, tempts lawyers to run up their hours, and ‘compels district courts to engage in a gimlet-eyed review of line-item fee audits.’” *Raniere v. Citigroup Inc.*, 310 F.R.D. 211, 220 (S.D.N.Y. 2015) (citing *Wal-Mart Stores, Inc.*, 396 F.3d at 121). *See also Torres v. Gristede’s Operating Corp.*, 519 F. App’x 1, 3 (2d Cir. 2013) (trial courts evaluating fee requests “need not, and indeed should not, become green-eyeshade accountants”).

The percentage method is an appropriate method of fee recovery here because, among other things, it aligns Class Counsel’s interest in being paid a fair fee with the Settlement Class’s interests. It achieves the maximum recovery in the shortest amount of time required under the circumstances, is supported by public policy, has been recognized as appropriate by the Supreme Court for cases of this nature, and represents the current trend in the Second Circuit.

The 33.33% of the Settlement Fund requested fee is within the range of reason when considering the foregoing and when analyzing the following guidelines set forth by the Second Circuit in *Goldberger*: (1) the time and labor expended by counsel, (2) the magnitude of the litigation, (3) the risk of the litigation, (4) the quality of the representation, (5) the requested fee in relation to the settlement, and (6) public policy considerations. 209 F.3d at 50.³ Gold Decl. ¶ 4.

³ *See, e.g., Capsolas v. Pasta Res. Inc.*, 2012 WL 4760910, at *8 (S.D.N.Y. Oct. 5, 2012) (“Class

2. Goldberger Factors

a. The Magnitude and Complexities of Litigation

The magnitude and complexity of the litigation weighs in favor of approval. *Raniere*, 310 F.R.D. at 221. This Action is complex presenting novel factual and legal issues, which have yet to be tried in this Court or others. *Id.*; *see also* Gold Decl. ¶ 5. Legally, the case involved complex issues which required guidance from the Second Circuit in a similar case, *Roberts v. Capital One, N.A.*, 719 F. App'x 33 (2d Cir. 2017). The fundamental contract construction issue remained unresolved when the Parties agreed to settle. *Id.* ¶ 6. That issue, along with other merits issues and the yet to be filed and decided motion for class certification, would have been litigated aggressively. *Id.* If Defendant was successful in opposing class certification or at trial, that would have prevented recovering anything at all. *Id.*

b. Risks of Litigation

The Second Circuit has historically labeled the risk of success as “perhaps the foremost factor to be considered in determining whether to award an enhancement.” *Goldberger*, 209 F.3d at 54). Courts recognize that regardless of the perceived strength of a plaintiff’s case, liability is no sure thing. *Wal-Mart Stores, Inc.*, 396 F.3d at 118.

Plaintiff’s Counsel took on considerable risk in filing and prosecuting this case. Gold

counsel’s request for one third of the Fund is reasonable and consistent with the norms of class litigation in this circuit”); *Mohney v. Shelly’s Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) (noting “request for 33% of the Settlement Fund is typical”); *Gilliam v. Addicts Rehab. Ctr. Fund*, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (same); *In re Med. X-Ray Film Antitrust Litig.*, No. CV-93-5904, 1998 WL 661515, *7 (E.D.N.Y. Aug. 7, 1998) (same); *Klein v. PDG Remediation, Inc.*, No. 95-cv-4954- DAB, 1999 WL 38179, at *4 (S.D.N.Y. Jan. 28, 1999) (same). The one-third award is also common in the Second Circuit in much larger cases as well. *See, e.g., Landmen Partners, Inc. v. Blackstone Grp., L.P.*, No. 08-cv-03601-HB-FM, 2013 WL 11330936, at *3 (S.D.N.Y. Dec. 18, 2013) (awarding 33.33% of \$85 million recovery, plus expenses); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467 (S.D.N.Y. 2009) (awarding 33.33% of \$586 million).

Decl., *Id.*, ¶ 7. Nevertheless, Class Counsel proceeded with the litigation. Still, the risk remains that without settlement the trier of fact would determine that Defendant was permitted to assess the challenged bank fees. *Id.* Thus, Class Counsel certainly invested extensive time and costs with no guarantee of success.

c. Quality of Representation

Class Counsel are experienced in class action litigation, serving as Lead or Co-Lead Counsel in dozens of consumer class actions in federal and state courts throughout the country. Gold Decl. ¶ 8. Counsel used their experience to obtain a great result for the Settlement Class. *Id.* “[T]he quality of representation is best measured by results, and such results may be calculated by comparing ‘the extent of possible recovery with the amount of actual verdict or settlement.’” *Goldberger*, 209 F.3d at 55 (citation omitted). Here the Settlement Fund, representing a 75% recovery of the most probable damages, is an excellent result. Gold Decl. ¶ 9. Thus, the Court should easily find counsel achieved success. *Id.*

d. Requested Fee in Relation to the Settlement

The \$55,439 requested fee – which is, again, 33.33% of the Settlement Fund—is reasonable in light of the work performed, the results obtained, and falls within the range of common fund awards in the Second Circuit. In considering the results, courts examine the value of both monetary and injunctive relief. *See Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 U.S. Dist. LEXIS 34909, at *25 (N.D.N.Y. Feb. 25, 2021) (holding that the overall value of the settlement, from which attorneys’ fees are calculated, comprises monetary as well as non-monetary relief.); *Baudin v. Res. Mktg. Corp., LLC*, No. 1:19-cv-386 (MAD/CFH), 2020 U.S. Dist. LEXIS 146280, at *7 (N.D.N.Y. Aug. 13, 2020) (awarding class counsels a 33% of the Settlement Fund). The results

achieved here, including recovery of 75% of the disputed amounts plus other relief demonstrates the excellent results achieved through the Settlement.

As discussed herein, courts in the Second Circuit have found an award of 33.33% of a class settlement as the benchmark to be fair, reasonable, and within the range of what is normally awarded for a class settlement. *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *15 (S.D.N.Y. Dec. 18, 2019) (compiling cases awarding 33% for settlements between \$6,750,000 and \$21,000,000, and noting reasonable paying clients typically pay one-third pursuant to contingent fee agreements); *see also Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, No. 06 CIV.4270 (PAC), 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) (“Class Counsel’s request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.”). Here, the requested fee, 33.33% of the Value of the Settlement, is clearly within the range of acceptable attorneys’ fees in Second Circuit cases and is common in overdraft fee litigation. Courts regularly award fees in excess of 30% when awarding attorneys’ fees in similar financial services class action settlements. The following depicts these settlements nationwide, all of which resulted in fee awards at or above the 33.33% that Class Counsel requests here:

<u>Bank Fee Case Name</u>	<u>Percentage of the Fund Awarded</u>
<i>Jacobs v. Huntington Bancshares Inc.</i> No. 11-cv-000090 (Lake County Ohio)	40% of value of settlement, which includes 40% of \$8.975 million and 40% of \$7 Million in debt forgiveness
<i>Farrell v. Bank of Am., N.A.</i> , 327 F.R.D. 422 (S.D. Cal. 2018), <i>aff'd sub nom. Farrell v. Bank of Am. Corp., N.A.</i> , 827 F. App'x 628 (9th Cir. 2020)	40% of 37.5 million common fund
<i>Wolfgeher v. Commerce Bank, N.A.</i> , No. 1:09-MD-02036-JLK (S.D. Fla.) (Dkt. 3574),	38% of \$18.3 million common fund

<i>Nelson v. Rabobank, N.A.</i> , No. RIC 1101391 (Cal. Supr.)	35.2% (\$750k fee includes % of practice changes)
<i>In re Checking Account Overdraft Litig.</i> , No. 1:09-MD-02036-JLK, 2020 U.S. Dist. LEXIS 142012 (S.D. Fla. Aug. 10, 2020)	35% of \$7.5 million
<i>Molina v. Intrust Bank, N.A.</i> , No. 10-CV-3686 (Dist. Ct. Ks.)	33% of \$2.7 million
<i>Hawkins et al v. First Tenn. Bank, N.A.</i> (Cir. Ct. Tenn.)	35% of \$16.75 million
<i>Swift v BancorpSouth</i> , No. 1:10-cv-00090-GRJ (N.D. Fla.)	35% of \$24 million
<i>Casto v. City National Bank, N.A.</i> , No. 10-C-1089 (Cir. Ct. W.Va.)	33.33% of \$3 million
<i>Schulte v. Fifth Third Bank</i> , No. 09-cv-6655 (N.D. Ill.)	33.33% of \$9.5 million
<i>Johnson v. Defendant, N.A.</i> , No. 12-cv-01405-RDM (M.D. Pa.)	33.33% of \$2.5 million
<i>Bodnar v. Bank of America</i> , No. 5:14-cv-03224-EGS (E.D. Pa.)	33.33% of \$27 million
<i>Holt v. Community America Credit Union</i> , No. 4:19-CV-00629-FJG (W.D. Mo.)	33.33% of 3.078 million
<i>White v. Members 1st Federal Credit Union</i> , Case No. 1:19-cv-00556-JEJ (W.D. Pa.)	33.33% of \$910,000
<i>Figueroa v. Capital One</i> , Case No. 3:18-cv-00692-JM-BGS (S.D. Cal.)	33.33% of \$13 million
<i>Liggio v. Apple Federal Credit Union</i> , No. 1:18-cv-01059-LO-MSN (E.D. Va.)	33.33% of \$2.7 million
<i>Lambert v. Navy Fed. Credit Union</i> , No. 1:19-cv-103-LO-MSN, 2019 U.S. Dist. LEXIS 138592, at *3 (E.D. Va.)	33.33% of \$16 million

As the requested fee is clearly in line with other similar overdraft litigation around the nation that settled for a similar amount, the fee requested is reasonable.

e. Public Policy Considerations

Where relatively small claims can only be prosecuted through aggregate litigation, “private attorneys general” play an important role. *Deposit Guar. Nat’l Bank v. Roper*, 445 U.S. 326, 338-39 (1980). Attorneys who fill the private attorney general role must be adequately compensated for their efforts. *Id.*; *see also Wal-Mart Stores*, 396 F.3d 96 (policy issue in evaluating a fee request is that fees “must . . . serve as an inducement for lawyers to make similar efforts in the future”). Counsel’s fees should reflect the important public policy goal of “providing lawyers with sufficient incentive to bring common fund cases that serve the public interest.” *Goldberger*, 209 F.3d at 51. This and the other *Goldberger* factors support approval of the attorneys’ fees requested by Class Counsel

f. The Time and Labor Expended by Counsel and Lodestar Cross Check

“The last *Goldberger* factor to consider is the time and labor expended by counsel, which is essentially what the lodestar method does by assessing the value of attorney hours worked times a reasonable billing rate.” *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353. Under the lodestar method, the court “scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies that figure by an appropriate hourly rate” to calculate the “lodestar.” *Goldberger*, 209 F.3d at 47. “Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court.” *Goldberger*, 209 F.3d at 50. In considering the lodestar in common fund settlements, it is appropriate to enhance the lodestar by a multiplier accounting for “(1) the contingent nature of the expected compensation for services rendered; (2) the consequent risk of non-payment viewed as of the time of filing the suit; (3) the quality of representation; and (4) the results achieved.” *Goodwin v. Boesky (In re Ivan F. Boesky Sec. Litig.)*, 888 F. Supp. 551, 562 (S.D.N.Y. 1995).

As is detailed above, this Action was contested and litigated efficiently and intelligently,

including drafting the complaint, informal discovery, evaluation of complex data, negotiating and documenting the Settlement, and the Settlement approval process. Gold Decl. ¶ 10.

To date, Class Counsel have expended a total of 140.1 hours in the prosecution of this case, including anticipated time preparing for the Final Approval Hearing, responding to objections, if any, and preparing for and attending the Final Approval Hearing. Gold Decl., ¶ 11. Further, there will be significant post-Final Approval work ensuring that the Settlement proceeds are properly distributed to Settlement Class Members, responding to Settlement Class Members' inquiries, and effectuating a secondary or *cy pres* distribution, as needed. *Id.* ¶ 12.

Summaries of the time expended by all counsel and paralegals on the Action appear in Class Counsel's Gold Declaration in support of this Motion. *Id.* ¶¶ 13-15. Hourly rates of attorneys and paralegals are commensurate with the rates charged by class action practitioners in this state with similar experience. *Id.* ¶ 16. *See, e.g., United States ex rel. Fox Rx, Inc. v. Omnicare, Inc.*, No. 12cv275 (DLC), 2015 U.S. Dist. LEXIS 49477, at *5 (S.D.N.Y. Apr. 15, 2015) (approving as reasonable in this district \$836/hour for a litigation partner; \$631.75/hour for an eighth-year associate; and \$541.50/hour for a fourth-year associate); *In re Platinum & Palladium Commodities Litig.*, No. 10cv3617, 2015 U.S. Dist. LEXIS 98691, at *13 (S.D.N.Y. July 7, 2015) (approving rates up to \$950/hour and citing National Law Journal survey indicating that the average partner billing rate at the largest New York-based law firms is \$982 per hour); *City of Providence v. Aéropostale, Inc.*, 2014 U.S. Dist. LEXIS 64517, at *38 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73, 73 (2d Cir. 2015) (approving rates ranging from \$640 to \$875 for partners, \$550 to \$725 for of counsels, and \$335 to \$665 for other attorneys).⁴

⁴ Timesheets supporting the hours set forth in Class Counsel's Gold Declaration can also be brought to the hearing.

Finally, a lodestar analysis also supports the requested fee. The Court need not exhaustively scrutinize the hours documented. *Goldberger*, 209 F.3d at 50. Fees representing multiples of lodestar are regularly awarded in a case like this to reflect the contingency-fee risk and other relevant factors. *See, e.g., In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *26 (S.D.N.Y. Nov. 8, 2010) (“Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors.”).

Here, the aggregate lodestar is \$100,844. Class Counsel seek fees of \$55,439, which is less than the lodestar, and well below the range of what courts in this circuit typically award. *Gold Decl.*, ¶ 17. *Hanifin*, 2014 U.S. Dist. LEXIS 115710 at *19 (“Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.”); *see also* *Wal-Mart*, 396 F.3d at 123 (upholding multiplier of 3.5); *NECA-IBEW Health & Welfare Fund v. Goldman, Sachs & Co.*, No. 1:08-cv-10783-LAP, 2016 WL 3369534, at *1 (S.D.N.Y. May 2, 2016) (3.9 multiplier on \$272 million settlement); *Davis v. J.P. Morgan Chase & Co.*, 827 F. Supp. 2d 172, 185 (W.D.N.Y. 2011) (multiplier of 5.3 was “not atypical” in similar cases); *Woburn Ret. Sys. v. Salix Pharm., Ltd.*, No. 14-CV-8925 (KMW), 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (3.14 multiplier was “within the range of reasonable . . . multipliers approved in this Circuit”); *Cornwell v. Credit Suisse Grp.*, No. 08-cv-03758 (VM), 2011 WL 13263367, at *2 (S.D.N.Y. July 20, 2011) (4.7 multiplier); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 590 (S.D.N.Y. 2008) (“In contingent litigation, lodestar multiples of over 4 are routinely awarded by courts, including this Court.”); *Johnson v. Brennan*, No. No. 10-cv- 4712, 2011 U.S. Dist. LEXIS 105775, at *58 (S.D.N.Y. Sep. 16, 2011) (“Courts regularly award lodestar multipliers from two to six times lodestar.”).

As detailed above, Class Counsel assumed significant risks in representing Plaintiff on a contingent fee basis. Those risks should be rewarded. Given that this has historically applied the percentage of the fund method with a lodestar crosscheck, this negative multiplier is reasonable. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353 (finding that a multiplier of five “was large, but not unreasonable”); *James v. China Grill Mgmt.*, 2019 U.S. Dist. LEXIS 72759, at *8 (S.D.N.Y. Apr. 30, 2019) (approving “a fee award equivalent to 30% of the settlement fund [that] represents a lodestar multiplier of approximately 3.53.”). Class Counsel expended resources to achieve a prompt fair, adequate and reasonable settlement.

For the reasons set forth above, the requested fee is appropriate, fair, and reasonable, and should therefore be approved.

B. The Court Should Grant the Requested Service Award

As noted above, a \$2,500.00 Service Award is sought for the Plaintiff as Class Representative. “Courts regularly grant requests for service awards in class actions ‘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 the plaintiffs.’” *Story v. SEFCU*, No. 1:18-CV-764 (MAD/DJS), 2021 U.S. Dist. LEXIS 34909, at *28-29 (N.D.N.Y. Feb. 25, 2021). Plaintiff invested significant time in this case and risked his reputation in doing so, by publicly disclosing his personal financial difficulties, creating notoriety regardless of his success on the claims. Had he failed, it would have created risk to his reputation. He should be commended for taking action to protect the interests of Defendant’s accountholders who were affected by Defendant’s practices, on top of their individual claims. It is undisputed that the Plaintiff’s efforts have created extraordinary financial benefits for the Settlement Class, compensating them for past harm and protecting them from future harm. Plaintiff expended hours

in advancing this litigation against a large and powerful adversary. Gold Decl. ¶ 18. He conferred with Class Counsel on a number of occasions. *Id.* Specifically, Plaintiff provided assistance that enabled Class Counsel to successfully prosecute the Action and reach the Settlement, including: (1) submitting to interviews with Class Counsel; (2) locating and forwarding responsive documents and information; and (3) participating in conferences with Class Counsel. *Id.*, ¶ 19.

The award sought is well within the range awarded in this District and should be awarded here.

C. The Court Should Reimburse Plaintiff's Counsels' Costs

“It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.” *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *15 (citation omitted). Second Circuit courts grant such requests as a matter of course. *Id.* Class Counsel requests reimbursement of \$5,345 for actual costs advanced and necessarily incurred in connection with the prosecution and settlement of the Action. Gold Decl. ¶ 20. Specifically, those costs and expenses consist of filing fees and service of process costs, advertising costs, filing fees, pro hac vice motion filing fees and service of process fees. *Id.* ¶ 21. Class Counsel is not seeking costs related to legal research, copying, and other overhead expenses, which were advanced and are commonly reimbursed. All of these out of pocket costs were reasonably and necessarily incurred to pursue this Action. *Id.*

IV. CONCLUSION

Based on the foregoing, Plaintiff respectfully request that the Court: (1) award a Class Representative Service Award in the amount of \$2,500; (2) award attorneys' fees to Class Counsel in an amount of \$55,439.33 which is 33.33% of the Settlement Fund; and (3) award Class Counsel reimbursement of litigation costs and expenses in the amount of \$5,345.

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Respectfully submitted,

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CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered on **December 8, 2023** to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served:

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