UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

JAMI KANDEL, MOCHA GUNARATNA, and RENEE CAMENFORTE, individually and on behalf of all others similarly situated, Plaintiffs, vs. DR. DENNIS GROSS SKINCARE, LLC, a New York Limited Liability Company, Defendant.	Case No. 1:23-cv-01967-ER Honorable Edgardo Ramos

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS AND SERVICE AWARDS

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Court-appointed Class Representatives, Jami Kandel, Mocha Gunaratna, and Renee Camenforte (collectively, "**Plaintiffs**" or "**Class Representatives**") submit this memorandum of law in support of their motion for Award of Attorneys' Fees and Costs and Service Awards.[1]

INTRODUCTION

On behalf of the Settlement Class, Court-appointed Class Counsel, Clarkson Law Firm, P.C. ("Class Counsel") achieved an outstanding nationwide settlement, securing a traditional, non-reversionary common fund of $9.2 million in cash, and injunctive relief which ceases Defendant's use of the challenged "C + Collagen" label attribute on Dr. Dennis Gross skincare products. This Court preliminarily approved the Settlement on June 28, 2024 (Dkt. 71) following over four years of arduous litigation on both coasts, including extensive fact and expert discovery, class certification briefing, motions to disqualify experts, summary judgment, class and merits discovery, formal mediation, and many months of settlement negotiations, and with trial quickly approaching in the Central District of California related case.

The Settlement reflects the skill, expertise, and diligent work of Class Counsel and an excellent result for the Class. As detailed in the preliminary approval motion and supporting documents (Dkts. 63-70), each class member who submits an approved claim will receive $50 per unit of Product purchased, nearly full restitution based on the average retail price of the Products ($52 per unit), up to 10 units with proof of purchase and 2 without.

To achieve this extraordinary monetary result for participating class members, together with permanent injunctive relief ensuring greater marketplace transparency for all, Class Counsel devoted considerable time, effort, and resources in prosecuting this complex and science-intensive matter, both in this Court ("*Kandel*") and especially for over four years in *Gunaratna v. Dennis*

[1] All capitalized terms which are not defined in this memorandum have the meanings set forth and defined in the Settlement Agreement (the "**Settlement**") dated June 24, 2024, and attached as Exhibit ("Ex.") A to the Declaration of Ryan J. Clarkson ("**RC Decl.**"), filed concurrently herewith. The attachments to Ex. A have been updated to include the short form and long form notices and paper claim form as found on the Settlement Website, https://www.ddgskincarelawsuit.com/.

Gross Cosmetology LLC & Dennis Gross Dermatology LLC, No. 20-cv-02311-MFW-GJS ("Gunaratna") (*Kandel* and *Gunaratna* are the "Actions."). Class Counsel did this without any guarantee of recovery and in the face of sizable litigation risks against highly skilled opposing counsel. Litigation risks included whether the Court would follow suit in *Kandel* and certify it as a class action, a determination that would have required extensive additional briefing and discovery. RC Decl. ¶¶ 5, 9, 82-83. The certified action in California, too, involved ongoing risks, including a threat of decertification based on late-revealed evidence with trial fast approaching, not to mention the inherently subjective and risky proposition of presenting the claims, based on complex science, to a jury.

Given the complexity of the matter and approaching trial in California after four years of scorched-earth litigation tactics from a well-capitalized and well-represented corporate interest like Defendant, Class Counsel reasonably dedicated over 8,500 hours to the prosecution of the California and New York federal lawsuits, with a total lodestar of over $5 million in fees, and nearly half a million in litigation costs *Id*. ¶ 11. By this Motion, Class Counsel seeks considerably less than the total amount of attorney fees incurred, respectfully requesting the Court award one-third of the common fund, in the amount of **$3,066,700**, for their efforts. The requested fee is consistent with comparable awards in this District, supported by all of the applicable *Goldberger* factors, and otherwise presumptively reasonable under a lodestar cross-check given the 52 percent negative multiplier, not including hundreds of additional hours that will be required of Class Counsel to continue overseeing the notice program, prepare the final approval papers, attend the final approval hearing, address any concerns of class members that may arise, and supervise the accurate and timely administration of the settlement even post-final approval. *Id.*

Likewise consistent with the law and comparable class settlements in this District, Class Counsel also seeks reimbursement of reasonable litigation expenses, advanced without any guarantee of recovery, in the amount of $457,416.66, and incentive awards to the three Class Representatives totaling $15,000 in recognition of their active, in some cases years-long assistance

to Class Counsel and the Class in prosecuting the Actions. Five thousand ($5,000) would be distributed to each.

The Court-approved Notice (Dkt. 35) informs all Settlement Class Members of: (a) their opportunity to be heard on this motion, (b) their opportunity to object to or opt out from the Settlement; (c) Class Counsel's intent to seek their reasonable fees and costs (greater than what this Motion seeks); (d) the Settlement Website, on which all information about this class action can be found. *Id.* Prior to the Court's fairness hearing on October 31, 2024, Class Counsel will file a response regarding any objections received, including any directed at this motion. *Id.* Class Counsel respectfully requests that the Court approve the requested fees, costs, and service awards.

FACTUAL AND PROCEDURAL HISTORY

Basis of claims. Defendant manufactures, markets, and sells skincare products labeled "C + Collagen" at stores across the United States. According to Plaintiffs, reasonable consumers interpret the label to mean the Products contain Vitamin C and Collagen, and yet, none contain any collagen. Dkt. 50, First Amended Complaint, ¶¶ 3-7, 30. Plaintiffs alleged that they were financially harmed by paying a price premium for the Products attributable to the false and deceptive "collagen" representations. *Id.,* ¶¶ 10-11, 38-39, 42, 53. Plaintiffs sued Defendant in both California and New York courts.

The California Action. Plaintiff Gunaratna filed a class action complaint in the Central District of California on March 10, 2020, alleging violations of (1) California's Consumers Legal Remedies Act, (2) California's False Advertising Law, (3) California's Unfair Competition Law, (4) breach of express warranty, and (5) unjust enrichment. *See Gunaratna v. Dennis Gross Cosmetology LLC & Dennis Gross Dermatology LLC*, No. 20-cv-02311-MFW-GJS (ECF No. 1) ("*Gunaratna*."); RC Decl. ¶ 21. Plaintiff Gunaratna thereafter amended her complaint, adding Magnuson Moss Warranty Act and Unjust Enrichment claims, and Plaintiff Camenforte joined the action in late 2021. *See Gunaratna* (ECF No. 27, 95); RC Decl. ¶ 22-23.

In April 2023, after extensive fact and expert discovery and multiple rounds of motion practice, the Central District of California certified a class of California purchasers, denied

Defendant's motion for summary judgment, and noted that summary judgment in favor of Plaintiffs on the issue of the label's falsity seemed "likely" in the future based on the factual record at that time (*Gunaratna*, 2023 U.S. Dist. LEXIS 60796, at *79). Heavy supplemental discovery and additional motion practice followed, with trial set for 2025.

The New York Action. Under the same core theory, Plaintiff Kandel filed a class action complaint in this Court in March 2023, alleging violations of Sections 349 and 350 of the New York GBL, breaches of express and implied warranties, and unjust enrichment. RC Decl. ¶ 28. Earlier this year, this Court largely denied Defendant's motion to dismiss. *Kandel v. Dr. Dennis Gross Skincare, LLC*, 2024 U.S. Dist. LEXIS 38295, at *11 (S.D.N.Y. Mar. 5, 2024) ("[E]ven considering the supposedly clarifying statements . . ., the Court finds that the packaging as a whole would still be misleading to a reasonable consumer."); RC Decl. ¶ 29.

The Parties' Arms-Length Settlement Negotiations. In over four years of protracted litigation, Class Counsel made reasonable attempts to settle at every turn. In 2019 and 2020, prior to filing the California action; then again in 2021 after obtaining a favorable order on a motion to dismiss in California; then in 2023 after obtaining a favorable class certification order, and an order on Defendant's motion for summary judgment. RC Decl. ¶ 31. Defendant did not respond to the settlement efforts and continued to zealously defend this case. *Id.*

This approach persisted through and after certification, with Defendant raising a new theory of defense that had not been tested by the courts in either action. *Id.* ¶ 32. Plaintiffs responded with focused discovery and motion practice aimed to test this new defense. *Id.*

On February 8, 2024, after a hard-fought four-plus years of litigation in *Gunaratna* and approximately one year in *Kandel*, the Parties reached an agreement during a full-day private mediation with the highly respected former judge of the Superior Court of Los Angeles County, Hon. Judge Peter Lichtman (Ret.) of Signature Resolution. *Id.* ¶ 32. Following the settlement in principle, for the next four months, each side continued to negotiate various terms at arm's length to ensure Class Members' rights are protected. *Id*.

LEGAL STANDARD

Plaintiffs' attorneys in a successful class action lawsuit may petition the Court for compensation relating to any benefits to the class resulting from the attorneys' efforts. *See, e.g., Boeing Co. v. Van Gemert,* 444 U.S. 472, 478 (1980) ("a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole."). Assessing fee requests, courts are driven by strong policy considerations: "[I]n addition to providing just compensation, awards of fair attorneys' fees . . . serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature." *City of Providence v. Aeropostale, Inc.*, 2014 U.S. Dist. LEXIS 64517, at *30-31 (S.D.N.Y. May 9, 2014), *aff'd*, *Arbuthnot v. Pierson*, 607 F. App'x. 73 (2d Cir. 2015).

"Both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys' fees . . ." *Goldberger v. Integrated Res., Inc.,* 209 F.3d 43, 50 (2d Cir. 2000). The preference in the Second Circuit, however, is the percentage of fund method in part because "the lodestar method proved vexing" and often results in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 49; *Savoie v. Merchs. Bank*, 166 F.3d 456, 460 (2d Cir. 1999) ("the percentage-of-the-fund method has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases."). A significant factor in determining a fair fee award is "the relief actually delivered to the class [.]" *Moses v. N.Y. Times Co.*, 79 F.4th 235, 244 (2d Cir. 2023) (quoting Fed. R. Civ. P. 23(e)(3) advisory committee's note to 2018 amendment).

ARGUMENT

I. A Fee of One-Third of the Common Fund is Supported by Exceptional Results.

The $9.2 million common fund, together with full injunctive relief, represents an extraordinary result. The average retail price of the Products is $52, which means participating class members stand to receive nearly full restitution under the Settlement ($50) per product, and up to 10 times with proof of purchase, even after the distribution of attorneys' fees and costs

requested herein. *See Alaska Elec. Pension Fund v. Bank of Am. Corp.,* 2018 U.S. Dist. LEXIS 202526, at *10 (S.D.N.Y. Nov. 29, 2018) (explaining that when a settlement yields "between 33% to 73% of their expected trial demand," the results are considered "exceptional") The U.S. Supreme Court holds that where "a plaintiff has obtained excellent results, his attorney should recover a fully compensatory fee." *Hensley v. Eckerhart*, 461 U.S. 424, 435 (1983). The district courts in the Second Circuit are in accord. *See e.g. Levy v. Powell,* 2005 U.S. Dist. LEXIS 42180, at *30 (E.D.N.Y. July 7, 2005) (holding where plaintiff's attorneys obtain "exceptional" recovery, they "should recover the full 'lodestar' amount."); *Shuford v. Cardoza,* 2024 U.S. Dist. LEXIS 34763, at *10 (E.D.N.Y. Feb. 28, 2024) (similar, quoting *Hensley*). These exceptional results for the class therefore support Class Counsel's requested fee of one-third of the total settlement as fair and reasonable.

II. A Fee of One-Third Is Consistent with Comparable Cases in this District.

"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." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *see also In re Imax Sec. Litig.*, 2012 U.S. Dist. LEXIS 108516, at *17 (S.D.N.Y. Aug. 1, 2012) ("the percentage method continues to be the trend of district courts in the [Second] Circuit"). Lodestar multipliers, apart from difficulties in application, also fail to recognize risks assumed by attorneys with contingent fee agreements. *See, e.g.*, *City of Burlington v. Dague*, 112 S. Ct. 2638 (1992).

District courts in the Second Circuit routinely award one-third of the total settlement fund in similar complex class actions. *See*, *e.g.*, *Celsius Holdings, Inc.,* 2023 U.S. Dist. LEXIS 60249, *14-15 (S.D.N.Y. Apr. 5, 2023) (awarding Clarkson one-third of total settlement in a false advertising action); *Battaglia v. Bre Select Hotels Corp.,* 2019 U.S. Dist. LEXIS 252506, at *10 (E.D.N.Y. Nov. 30, 2019) (awarding attorneys' fees of "36 to 37 [%] of the settlement fund, which is consistent with awards in this District and Circuit for cases yielding seven figure settlements"); *Swetz v. Gsk Consumer Health*, 2021 U.S. Dist. LEXIS 227209, at *3 (S.D.N.Y. Nov. 22, 2021)

(awarding Clarkson 1/3 of the total settlement fund in attorneys' fees where the case settled shortly after an order on a motion to dismiss); *Mendez v. QL Wholesome Food, Inc.,* 2018 U.S. Dist. LEXIS 58570, at *4 (Hon. Ramos) (S.D.N.Y. Apr. 4, 2018) (awarding one-third of the overall settlement and recognizing that one-third contingency fees are commonly accepted in the Second Circuit albeit in FLSA actions).[2]

The one-third fee award is reasonable given the complexities and risks of litigating the Actions for four-plus years across both coasts, and as further supported by the lodestar cross-check with the applied negative multiplier as discussed below. *See also Seijas v. Republic of Arg.*, 2017 U.S. Dist. LEXIS 64398, at *36 (S.D.N.Y. Apr. 27, 2017) (even "[w]here a percentage fee is on the higher end of the range of reasonable fee, but still represents 'a negative multiplier to the total lodestar, there is 'no real danger of overcompensation.'")

III. The Fees Request Is Reasonable Under the *Goldberger* Factors

When reviewing a request for attorneys' fees in a common fund cases, courts within the Second Circuit consider the *Goldberger* factors: "(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. Each supports the request award here.

[2]*See also In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) ("Traditionally, courts in this Circuit . . . have awarded fees in the 20%–50% range in class actions."); *Rivera v. Wichcraft Operating LLC*, 2017 U.S. Dist. LEXIS 233168, at * 11-12 (S.D.N.Y. Jan. 27, 2017) (awarding 40% of the Settlement Fund in attorneys' fees, finding it to be "fair and reasonable based on: the number of hours worked by Class Counsel during this litigation; the results achieved on behalf of the Class; the contingent nature of Class Counsel's representation; the complexity of the issues raised by this litigation; a lodestar cross-check; and Class Counsel's recognized experience and expertise in the market."); *Birch v. Office Depot, Inc.,* 2007 U.S. Dist. LEXIS 102747 (S.D. Cal. Sept. 28, 2007) (awarding a 40% fee on a $16 million class action settlement); *Rippee v. Boston Mkt. Corp*., 2006 U.S. Dist. LEXIS 101136 (S.D. Cal. Oct. 10, 2006) (awarding a 40% fee on a $3.75 million class action settlement); *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 189 (W.D.N.Y. 2005) (awarding attorneys' fees of 38.26% of settlement fund); *In re U.S. Bancorp Litig.,* 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming fee award of 36% in a class settlement).

A. Class Counsel Have Devoted Substantial Time and Labor to Prosecuting the Actions.

Class counsel has devoted substantial time and labor to prosecuting these actions for over four years, diligently investigating the claims, defenses, and underlying events and transactions that are the subject of the Actions, and investing substantial time and resources into the prosecution of the Actions, including, among other things: (1) relentlessly pursuing and reviewing thousands of business records; (2) deposing over a dozen of fact and expert witnesses including Defendant's corporate designees and third-party witnesses; (3) subpoenaing third parties for evidence related to ingredients, products, sales, and class data; (4) retaining and working with experts in multiple disciplines, all of whom conducted in-depth studies and produced thorough expert reports on food science, marketing, and conjoint analysis/damages; (5) concurrently litigating *Gunaratna* action for four-plus years, and the *Kandel* action for a year; (6) obtaining class certification of the California consumer class in *Gunaratna*; (7) successfully defending against Defendant's motion for summary judgment in *Gunaratna*; (8) overcoming Defendant's *Daubert* challenges against four of Plaintiffs' experts; (9) obtaining a favorable order on Plaintiffs' *Daubert* challenges to three of Defendant's experts, limiting each of their opinions/permitted uses for their opinions; (10) attending a full-day mediation; and (11) engaging in months of settlement negotiations. RC Decl. ¶ 70. In connection with this work, Class Counsel expended over 8,500 hours with a lodestar value of over $5 million. *Id*. ¶ 11. At all times, Class Counsel took care to staff the matter efficiently and avoided unnecessary duplication of effort. *Id*. ¶¶ 52, 61. For all of these reasons, the time and labor Class Counsel dedicated to the Actions throughout the four-plus years of litigation supports the fee request.

B. The Actions Involved Complex Legal Issues.

The magnitude and complexity of the Actions also support the requested fee. *See, e.g.*, *Swetz v. Gsk Consumer Health*, 2021 U.S. Dist. LEXIS 227209 (S.D.N.Y. Nov. 22, 2021) (describing a false advertising class action litigated on two coasts and challenging "100% Natural" representations as "complex [in] nature and scope" and "involve[ing] complex factual and legal

issues" justifying fee of one-third). In cases that require more expertise, a larger percentage of the fund should be awarded to the lawyers who can competently prosecute the case. *See In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013) ("The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award.") This case is no exception.

This Action involved difficult, complex, and highly disputed expert-driven issues regarding damages methodologies, scientific findings, consumer behavior analysis, analysis of market-related factors, cosmetic/skincare dermatology issues, sales/product analysis, consumer survey analysis, and advertising-related factors and statements. RC Decl. ¶ 72. Each party had retained four experts across different disciplines to explain the complex issues involved in these two cases (*Gunaratna* and *Kandel*). Given the complexities of this case, Plaintiffs had to take nearly a dozen depositions of fact witnesses, and an additional three depositions of Defendant's experts. Multiple factual issues, extensive expert testimony and challenges, class certification, summary judgment, subpoenas and testimony of third-party witnesses weigh in favor of an award of Class Counsel's requested fees given the complexity and high risk of this litigation. *See, e.g.*, *Fleisher v. Phx. Life Ins. Co.*, 2015 U.S. Dist. LEXIS 121574, at *22 (S.D.N.Y. Sep. 9, 2015) (litigation was "indisputably complex" where it involved conflicting expert testimony and the defendants had "developed defenses to liability, damages, and class certification."); *Knox v. John Varvatos Enters.*, 520 F. Supp. 3d 331, 347 (S.D.N.Y. 2021) ("what typically makes class action discovery and trials complex are the multiple factual issues and damages calculations presented . . . resulting in dozens of depositions, multiple expert reports, and complex discovery."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 372 (S.D.N.Y. 2002) (citing *Chatelain v. Prudential-Bache Sec.*, 805 F. Supp. 209, 213 (S.D.N.Y. 1992)) (case qualified as "complex" where issues of establishing liability and damages would require a battle of the experts).

Relative to other lawsuits, there are additional burdens in prosecuting the Actions that Class Counsel faced, including the need for a complex biochemical analysis of comparative nature of vegan and animal amino acids, requiring experts to parse the differences in chemical composition of collagen and vegan amino acids. RC Decl. ¶¶ 16, 26. Additionally, class certification process

became entangled in expert debates over consumer perception, rigorous statistical methods to calculate damages, and scientific findings. These challenges continued even after class-certification when Defendant presented Class Counsel with new evidence, necessitating additional rounds of discovery. The contentious and complex issues involved in the two lawsuits underscore the intricate layered nature of the litigation. *See e.g. In re Signet Jewelers Ltd. Sec. Litig.*, 2020 U.S. Dist. LEXIS 128998, at *58 (S.D.N.Y. July 21, 2020) (where litigation raised questions concerning class certification, liability, and damages requiring extensive expert analysis, "the magnitude and complexity of the Action support[ed] the conclusion that the requested fee [was] fair and reasonable"). As such, prosecuting the claims of the Settlement Class required substantial skill and dedication which support the fee request.

C. The Risks of Prosecuting the Actions Support the Requested Fee.

"Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Teachers' Ret. Sys. v. A.C.L.N., Ltd.*, 2004 U.S. Dist. LEXIS 8608, at *11 (S.D.N.Y. May 14, 2004). "Courts have repeatedly recognized that 'the risk of litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award plaintiffs' counsel in class actions." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008). For this reason, the Second Circuit has said "[t]he level of risk associated with litigation . . . is 'perhaps the foremost factor' to be considered in assessing the propriety of the multiplier." *McDaniel v. County of Schenectady*, 595 F.3d 411, 424 (2d Cir. 2010).

"It is well-established that litigation risk must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55. At the time *Gunaranta* and *Kandel* were filed, complex issues of fact and law existed on the issues of damages, liability, and class certification, which presented significant risks of litigation. Defendant's liability also involved subjective determinations of fact. RC Decl. ¶¶ 72, 83. To establish liability at trial, Plaintiffs were poised to convince a jury that reasonable consumers would be misled by Defendant's "C + Collagen" representation and that Products did not actually contain any collagen. Defendant presented evidence in support of its defenses – establishing that some of the products contained effective animal based amino acids,

and produced a consumer survey purportedly establishing that "C + Collagen" could be interpreted by some consumers as "boosting" collagen. *Id.* To establish liability under New York and California consumer protection laws, Plaintiffs would need to convince a jury that the reasonable consumer would be misled by Defendant's misrepresentation. *Id.* Such a determination is inherently subjective and introduces uncertainty and risk into the litigation. *Id.*

Class Counsel believes the claims are meritorious, tempered by the risks associated with continuing to prosecute the Actions. The Court has not yet certified *Kandel* as a class action, and such a determination would be reached only after exhaustive briefing and discovery. *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.") Defendant also intended to move to decertify *Gunaratna* based on late disclosed evidence. RC Decl. ¶¶ 9, 83. Defendant likely would have re-argued that individual questions predominate over questions common to the class, that a class action is not a superior method to resolve Plaintiffs' claims, and that a class trial would not be manageable in light of the new evidence. *Id.* Both motions would require extensive briefing, thereby increasing risk, expense, and delay. *Id.* The Settlement eliminates these concerns. *See, e.g.*, *Swetz*, 2021 U.S. Dist. LEXIS 227209, at *5 ("Had the Settlement Agreement not been achieved, a significant risk existed that Plaintiffs and the Class Members may have recovered significantly less or nothing.")

Lastly, Class Counsel undertook and litigated this case on a fully contingent basis, including advancing costs of nearly half a million dollars, and ultimately delivering certain and final resolution that is expected to provide each participating class member with about $50 per a product. *Id.* ¶¶ 11, 39. Therefore, as other courts have explained, "[c]ounsel should be rewarded for undertaking [those risks] and for achieving substantial value for the class." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 441 (E.D.N.Y. 2014); *see also Jermyn v. Best Buy Stores, L.P.*, 2012 U.S. Dist. LEXIS 90289, at *28 (S.D.N.Y. June 27, 2012) ("[T]he risk of non-payment in cases prosecuted on a contingency basis. . . can justify higher fees."); *In re Am. Bank Note Holographics, Inc. Sec. Litig.*, 127 F. Supp. 2d 418, 433 (S.D.N.Y.

2001) (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award.")

Unlike counsel for defendants, who are paid hourly rates and reimbursed for their costs, from the outset, Class Counsel embarked on a complex, expensive, and lengthy endeavor with no guarantee of ever being compensated for their hours and expenses. *Id*. ¶ 86. In undertaking that responsibility, Class Counsel was obligated to ensure that sufficient attorney and professional resources were dedicated to the prosecution of the Actions and that funds were available to compensate staff and to pay for the significant costs entailed. *Id*. ¶ 54. Accordingly, the contingency risk in this case supports the requested fee award.

D. Class Counsel Provided (and Continues to Provide) Quality Representation.

When evaluating *Goldberger*'s "quality of representation" factor, courts in the Second Circuit "review the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Rsch. Sec. Litig.*, 249 F.R.D. 124, 141 (S.D.N.Y. 2008). Class Counsel's practice extensively in complex federal civil litigation, particularly the litigation of consumer protection and false advertising class actions and have successfully litigated these types of actions in courts throughout the country. *See* RC Decl., Ex. C (Clarkson Law Firm Resume). Here, Class Counsel brought to bear decades of collective experience prosecuting class actions into over 8,500 hours devoted to this litigation. *Id.* ¶ 11, 50.

"[T]he quality of representation . . . may be measured in large part by the results that counsel achieved for the classes." *Payment Card*, 991 F. Supp. 2d at 441. Beyond general qualifications, this factor is satisfied by the fact that Class Counsel obtained a settlement in which Defendant agreed to cease the alleged deceptive advertising and create a $9.2 million common fund to provide restitution to Settlement Class Members. Class counsel's ability to put about $50/per product back in the hands of the affected consumers demonstrates the exceptional quality of representation. *See e.g. Alaska Elec. Pension Fund*, 2018 U.S. Dist. LEXIS 202526, at *1 ("[T]he quality of representation . . . was exceptional, as counsel obtained . . . between 35% and 73% of their expected trial demand."); *In re Citigroup Inc. Bond Litig., 988 F. Supp. 2d at 379*

("Though the recovery here — $730 million — represents only a fraction of the possible recovery estimated by plaintiffs' damages experts — $3 billion — that fraction is still an impressive result"); *In re Nigeria Charter Flights Litig.*, 2011 U.S. Dist. LEXIS 155180, at *8 (E.D.N.Y. Aug. 25, 2011) ("[I]mportantly, the amount of the settlement of up to $1,700 per passenger is a substantial recovery compared to the actual damages sustained and is significantly more than the amounts netted by non-class members who separately settled… the $1,700 payment amounts to 48% of her losses, a percentage which is higher than a typical consumer class action"), *report and recommendation adopted*, 2012 U.S. Dist. LEXIS 72154, (E.D.N.Y. May 23, 2012).

Class Counsel's ability to obtain this substantial recovery from an aggressive, well-funded defendant like Dr. Dennis Gross, LLC, represented by well-reputed counsel including one of the nation's leading defense firms Morrison & Foerster LLP, is further testament to the skill with which Class Counsel have prosecuted this case. *See Fleisher v. Phx. Life Ins. Co.*, 2015 U.S. Dist. LEXIS 121574, at *71 (S.D.N.Y. Sep. 9, 2015) ("The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work."); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 357-58 (S.D.N.Y. 2005) (finding that counsel "obtained remarkable settlements for the Class while facing formidable opposing counsel from some of the best defense firms in the country.")

The Settlement represents a highly favorable result for the Settlement Class, attributable to the diligence, determination, and hard work by Class Counsel, who developed, litigated, and successfully negotiated the Settlement against a highly skilled and determined defense team, backed by a client with substantial resources. The quality-of-representation factor therefore weighs in favor of approving Class Counsel's request for fees.

E. The Fee Request Is Reasonable in Relation to the Settlement.

A fee application is reasonable in relation to a settlement where the amount requested is consistent with fees awarded in similar class-action settlements of "comparable value." *See In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 U.S. Dist. LEXIS 120953, at *56 (S.D.N.Y. Dec. 23, 2009); *In re Veeco Instruments Sec. Litig.*, 2007 U.S. Dist. LEXIS 85554, at *12 (S.D.N.Y.

Nov. 7, 2007) (noting that the fee awarded is "consistent with fees awarded in similar class action settlements of comparable value.") Courts in this Circuit recognize that large, complex class actions present considerable risk and require extensive work by counsel. As noted, the Settlement provides the Settlement Class with a cash benefit that was achieved despite the substantial obstacles and risks faced by Class Counsel in prosecuting the Actions. Fees amounting to one-third of the common fund are within the range that are regularly awarded by courts in the Second Circuit, particularly where, as here, the requested fee is substantially *less* than the total lodestar amount. *Cf. Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (awarding one-third of the settlement, and applying a 6.3 multiplier to the lodestar amount); *In re IPO Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding fees of one-third of the settlement fund with an adjusted lodestar negative multiplier of .84); *Mendes-Garcia v. 77 Deerhurst Corp.*, 2014 U.S. Dist. LEXIS 188290, at *14-16 (S.D.N.Y. Aug. 18, 2014) (awarding fees equal to one-third of the settlement fund and approximately 75% of the lodestar amount); *In re Marsh ERISA Litig.*, 265 F.R.D. at 149 (finding fees equal to one-third of the total settlement fund and 87.6% of the lodestar "fair and reasonable in relation to the recovery"); *Fogarazzo v. Lehman Bros.*, 2011 U.S. Dist. LEXIS 17747, at *12 (S.D.N.Y. Feb. 23, 2011) (awarding fees equal to one-third of the settlement fund and approximately 52% of the lodestar amount); *Zai You Zhu v. Meo Japanese Grill & Sushi, Inc.*, 2021 U.S. Dist. LEXIS 193605, at *16 (E.D.N.Y. Oct. 6, 2021) (awarding a 35% fee representing 76% of the lodestar amount). The attorneys' fees requested here fall squarely within the range of percentage fee awards in comparable, similarly complex class action cases within this District.

F. Public Policy Considerations Support the Requested Fee.

Public policy also strongly supports the requested fees and costs award. New York and California false advertising laws are remedial in nature and, to effectuate their purpose of protecting consumers, Class Counsel respectfully submits that courts should encourage meritorious private lawsuits such as this one. *See Hesse v Godiva Chocolatier*, 2022 US Dist. LEXIS 72641, at *40 (S.D.N.Y. Apr. 20, 2022) ("the Second Circuit 'take[s] into account the

social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.'") Class Counsel took on the significant risk of prosecuting the Actions, and demonstrated the necessary skill, committed extensive resources to pursue the claims vigorously, allowing the Settlement Class to recover up to $100/per class member. Without Class Counsel's commitment, important public interests would have remained unaddressed.

In addition to the substantial monetary recovery obtained for consumers as part of the Settlement, Class Counsel secured meaningful injunctive relief in the form of Defendant's agreement not to relaunch cosmetics using the "C+Collagen" name and without actual collagen. RC Decl. ¶ 37. Transparency and truth in advertising increases consumer choice, innovation from competitors, and drives down consumer prices, all substantial benefits to the Class and general public.

Awarding a reasonable percentage of the common fund properly motivates zealous enforcement of consumer protection laws and incentivizes skilled counsel to bring meritorious cases even where, at the outset, the prospect of any recovery is uncertain, and the costs are daunting. *See WorldCom*, 388 F. Supp. 2d at 359 ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives.") Absent Class Counsel's diligent efforts, the Settlement Class would not receive any relief. Plaintiffs' counsel in such cases are typically retained on a contingent basis due to the huge commitment of time and expense required relative to the losses suffered by an individual representative plaintiff. Furthermore, the significant expense, combined with the high degree of uncertainty of success, means that contingency fees are virtually the only means of recovery in such cases. Class Counsel assumed substantial risk by prosecuting the Actions and achieved a significant benefit to the Class. Awarding attorneys' fees equal to one-third of the settlement fund would adequately compensate counsel while serving an important public policy interest of incentivizing skilled counsel in bringing meritorious cases without whom, consumers could not pursue these actions on an individual basis. Further, Class Counsel here only seeks to recover the fee of one-third customarily awarded in this district, which

is well under Class Counsel's actual lodestar, and *less* than the total fees and costs disclosed in the notice to the Class. Accordingly, public policy supports Class Counsel's requested fee.

IV. The Requested Attorneys' Fees are Reasonable Under the Lodestar Cross-Check.

The lodestar fee calculation method has "fallen out of favor particularly because it encourages bill-padding and discourages early settlements." *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). Accordingly, the lodestar method is used in this Circuit primarily "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Id.* "[W]here 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. Under the lodestar method, a court must engage in a two-step analysis: (1) to determine the lodestar, the court multiplies the number of hours each timekeeper spent on the case by each person's reasonable hourly rate; and (2) the court adjusts that lodestar figure (by applying a multiplier) to reflect such factors as the risk and contingent nature of the litigation, the result obtained, and the quality of the attorney's work. *See, e.g.*, *In re Flag Telecom Holdings*, 2010 U.S. Dist. LEXIS 119702, at *76 (S.D.N.Y. Nov. 5, 2010), at *26 ("Under the lodestar method, a positive multiplier is typically applied to the lodestar in recognition of the risk of litigation, the complexity of the issues, the contingent nature of the engagements, the skill of the attorneys, and other factors.") The lodestar cross-check confirms that Class Counsel's request is reasonable.

Class Counsel collectively billed over 8,500 hours in prosecuting the Actions. RC Decl. ¶ 11. At their usual and customary rates, and applying current rates,[3] these hours translate into over $5 million in total lodestar as of August 12, 2024.[4] *Id*. As such, Class Counsel's request to recover

[3] "[T]he use of current rates to calculate the lodestar figure has been endorsed repeatedly by the Supreme Court, the Second Circuit and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation." *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 U.S. Dist. LEXIS 177175, at *39 (citing *Missouri v. Jenkins*, 491 U.S. 274, 283-84 (1989)); *see also Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (similar); *Telik*, 576 F. Supp. 2d at 589 n.10 (similar).

[4] *See Cassese v. Williams,* 503 F. App'x 55, 59 (2d Cir. 2012) (holding that the exact records were not necessary where courts employe a "percentage of the recovery" approach even when they use

one third of the total fund (only $3,066,700) in attorneys' fees represents a negative lodestar multiplier of .52. *Id*. Courts in this District find that a negative lodestar multiplier supports an inference that the fee request is reasonable. *See In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 271 (S.D.N.Y. 2012) (noting that a negative lodestar multiplier is a "strong indication of the reasonableness of the proposed fee."); *Jermyn v. Best Buy Stores, L. P.*, 2012 U.S. Dist. LEXIS 90289, at *26-27 (S.D.N.Y. June 27, 2012) ("Here the lodestar multiplier is negative, and this is further indication of the reasonableness of the negotiated fee.")

The presumptive reasonableness where a *negative* lodestar multiplier exists is further demonstrated by the fact that attorneys' fees are often approved when there exists a positive multiplier in the range of up to 6 times (or more) the lodestar. *See, e.g.*, *In re Credit Default Swaps Antitrust Litig.*, 2016 U.S. Dist. LEXIS 54587, at *53-54 (S.D.N.Y. Apr. 25, 2016) (approving attorneys' fees constituting a multiple of more than 6 times the lodestar); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481 (S.D.N.Y. 2013) ("Courts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers."); *Asare v. Change Grp. N.Y., Inc.*, 2013 U.S. Dist. LEXIS 165935, at *51 (S.D.N.Y. Nov. 15, 2013) ("Typically, courts use multipliers of 2 to 6 times the lodestar."); *City of Providence*, 2014 U.S. Dist. LEXIS 64517, at *38-39 (noting "lodestar multiples of over 4 are awarded by this Court"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 371 (S.D.N.Y. 2002) (describing a 4.65 lodestar multiple as "modest" and "fair and reasonable"); *In re RJR Nabisco Sec. Litig.*, 1992 U.S. Dist. LEXIS 12702, at *22 (S.D.N.Y. Aug. 24, 1992) (awarding a lodestar multiplier of 6).

Class Counsel will also continue to incur fees throughout the remaining final approval process, which Class Counsel estimates will be approximately an additional $100,000. RC Decl. ¶ 59. For example, Class Counsel will prepare and finalize Class Representatives' final approval

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lodestar calculation as a cross-check); *Alcon Vision, LLC v. Lens.Com, Inc*, 2023 WL 8072507, at *5 (E.D.N.Y. Nov. 21, 2023) ("In lieu of submitting contemporaneous time records themselves, the Second Circuit explained, in *Cruz* . . . that an attorney declaration summarizing time records may suffice[.]" (*citing Cruz v. Loc. Union No. 3 of Int'l Bhd. of Elec. Workers,* 34 F.3d 1148, 1160 (2d Cir. 1994)).

motion, correspond with the Notice Administrator, respond to any objections that may be filed, and prepare for and travel to the final approval hearing. *Id*. The hourly rates of Class Counsel here range from $700 to $1,200 for partners, $440 to $669 for associates, and $330 to $360 for litigation support staff, which are reasonable and customary within the consumer protection class action bar. *See, e.g.*, *Celsius Holdings, Inc.,* 2023 U.S. Dist. LEXIS 60249 (S.D.N.Y. Apr. 5, 2023), at *14-15 (approving Clarkson's Motion for Award of Attorneys' Fees and Costs, with hourly rates ranging between $850 to $1,100 for partners, $425 to $775 for associates, and $300 to $365 for litigation support staff); *Swetz v. GSK Consumer Health*, No. 7:20-cv-04731-NSR, 2021 U.S. Dist. LEXIS 227209, at *3 (S.D.N.Y. Nov. 22, 2021) (false advertising class action in which the court, in 2021, found reasonable billing rates ranging from $775-$875 for partners, $450 for associates, and $175-$275 for litigation support); *Meyer v. United Microelectronics Corp.*, 2021 U.S. Dist. LEXIS 84216 (S.D.N.Y. Apr. 30, 2021) (consumer class action in which this Court, in 2021, found reasonable hourly billing rates ranging from $975 to $1,050 for partners, $450 to $650 for associates, and $300 to $375 for litigation support); *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 U.S. Dist. LEXIS 102805 (S.D.N.Y. June 8, 2022) (consumer class action in which the court found hourly rates reasonable within the ranges of $600 to $1,000 for partners, $350 to $700 for associates, and $150 to $400 for paralegals); *Pearlstein v. Blackberry Ltd.*, 2022 U.S. Dist. LEXIS 177786 (S.D.N.Y. Sep. 29, 2022) (consumer class action in which the court found hourly billing rates ranging from $500 (associates) to $1,200 (senior partners) reasonable); *City of Providence v. Aéropostale, Inc.*, 2014 U.S. Dist. LEXIS 64517 (S.D.N.Y. May 9, 2014) (consumer class action in which the court found reasonable hourly billing rates for plaintiffs' counsel within the range of $640 to $875 for partners, $550 to $725 for of counsel attorneys, and $335 to $665 for other attorneys); *see also* RC Decl. ¶¶ 64-66, Exs. D-K. Thus, the lodestar cross-check supports the reasonableness of the requested fees.

V. Class Counsel's Costs Are Reasonable and Were Necessarily Incurred to Reach the Settlement.

Under the common fund doctrine, Class Counsel is customarily entitled to reimbursement of reasonable costs incurred in the litigation. Fed. R. Civ. P. 23(h); *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of costs where a common fund has been produced or preserved for the benefit of a class); Alba Conte, *Attorney Fee Awards* § 2.08, at 50-51 (3d ed. 2004); *In re Vitamin C Antitrust Litig.*, 2012 U.S. Dist. LEXIS 152275, at *33 (E.D.N.Y. Oct. 22, 2012) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."); *Fleisher*, 2015 U.S. Dist. LEXIS 121574, at *76-77 (noting as typical costs 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.")

Class Counsel's fee application includes a request for payment of litigation costs, which were reasonably incurred and necessary to prosecute the Actions. Class Counsel incurred $457,416.66 in reasonable and necessary litigation costs. RC Decl. ¶¶ 60-62 (providing detailed breakdown of costs). These costs include $316,055.95 in expert costs for marketing/consumer analysis and surveys, scientific reports and analysis of scientific data and studies, and expert rebuttals, necessary to prevail at class certification and prepare the case for impeding trial. Class Counsel also incurred $56,031.05 of court reporting services, transcripts, and videographer costs associated with over a dozen of depositions taken by Class Counsel necessary to gather evidence to prevail on the merits. Other customary expenses include third party subpoena costs, filing fees, mediation expenses, notice costs post-certification of the California action, which were incurred in the normal course of litigation and were essential to the successful prosecution of this lawsuit. *Id*. Class Counsel is entitled to be reimbursed for these costs. *See In re China Sunergy Sec. Litig*, 2011 U.S. Dist. LEXIS 53007, at *17-18 (S.D.N.Y. May 13, 2011) (in a class action, attorneys should 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 . . .'") None of

Class Counsel's expenditures have yet been reimbursed. RC Decl. ¶ 54. 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 U.S. Dist. LEXIS 121574, at *77. Class Counsel have reviewed these costs and find them to be reasonable. RC Decl. ¶ 61. In sum, there is "no reason to depart from the common practice in this circuit of granting expense requests." *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 525 (E.D.N.Y. 2003), *aff'd sub nom*., *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). Class Counsel therefore respectfully requests that litigation costs in the amount of $457,416.66 be reimbursed.

VI. The Reaction of the Settlement Class to Date Supports the Requested Fee.

The positive reaction of Class members to the Settlement and Class Counsel's fee and litigation expense request, which was disclosed in the Notice disseminated on December 14, 2022, confirms the reasonableness of Class Counsel's request. *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 U.S. Dist. LEXIS 177175, at *47 (S.D.N.Y. Dec. 19, 2014) ("In addition to the criteria set forth in *Goldberger*, courts in the Second Circuit consider the reaction of the class to the fee request in deciding how large a fee to award."); *Tiro v. Pub. House Invs., LLC*, 2013 U.S. Dist. LEXIS 129258, at *22 (S.D.N.Y. Sep. 10, 2013) ("Where relatively few class members opt-out of or object to the settlement, the lack of opposition supports court approval of the settlement.") The Notice informed members of the Settlement Class that Class Counsel intended to seek a fees and costs Award of up to $3.9 million. (Dkt. 34-001, Ex. 1.) Counsel's actual request for fees and costs is much lower than $3.9 million and is consistent with the Notice provided.

Even at the current claims rate of 17%,[5] which far exceeds usual rate, is a testament to the strength of the positive reaction to the settlement. RC Decl. ¶ 43. Based on this rate, class member

[5] The parties estimated the class size to be around 287,000 based on the number of units sold, and other factors. To date, the Class Administrator has received over 41,000 claims. RC Decl. ¶43. Based on the discussions with the class administrator, Class Counsel understands that a large number of class representatives have submitted a claim for two products, resulting in an estimation of the average recovery of $100 per a class member.

would receive on average about $100 (i.e. $50/per product), which equals to nearly full restitution of the average purchase price of approximately $52.00. *Cf. Sullivan v. DB Invs, Inc*. 667 F.3d 273, 329, fn. 60 (3d Cir. 2011) (claims rates in consumer class settlements "rarely" exceed 7%); *Schneider v. Chipotle Mexican Grill Inc.,* 336 F.R.D. 588, 599 (N.D. Cal. 2020) (in a false advertising class action noting a typical claims rate between 1-2%); *Ferrington v. McAfee, Inc.*, 2012 U.S. Dist. LEXIS 49160, at *13 (N.D. Cal. Apr. 6, 2012) ("[T]he prevailing rule of thumb with respect to consumer class actions is [a claims rate of] 3-5 percent."). There have also been zero objections, zero opt-outs, and zero exclusions received to date. RC Decl. ¶ 80. Class Counsel will submit an updated report from the Notice Administrator regarding the number of valid claims submitted, units claimed, average class member payout, and any objections/opt-outs before the final approval hearing. *Id*. ¶ 44.

VII. Application for Service Awards to Class Representatives.

Class Counsel moves for an aggregate of $15,000 in Service Awards to Class Representatives for their active participation and dedication to this litigation. Of this amount, $5,000 each will be distributed to Kandel, Gunaratna and Camenforte. RC Decl. ¶¶ 11, 89. In the Second Circuit, plaintiff service 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." *DeLeon v. Wells Fargo Bank, N.A.*, 2015 U.S. Dist. LEXIS 65261, at *15 (S.D.N.Y. May 7, 2015); *see also Sheppard v. Consol. Edison Co. of N.Y., Inc.*, 2002 U.S. Dist. LEXIS 16314, at *16 (E.D.N.Y. Aug. 1, 2002) ("Such awards are not uncommon and can serve an important function in promoting class action settlements. "An incentive award is meant to compensate the named plaintiff for . . . any additional effort expended by the individual for the benefit of the lawsuit." *Dornberger v. Metro Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001); *see also Roberts v. Texaco*, 979 F. Supp. 185, 187-188 (S.D.N.Y. 1997) (approving service award for Class Representative who provided valuable assistance to counsel in prosecuting the litigation); *Denney*

v. Jenkins & Gilchrist, 230 F.R.D. 317, 355 (S.D.N.Y. 2005) (service awards serve a particularly important function where the named plaintiff participated actively in the litigation).

An aggregate of $15,000 in Service Awards for the three Class Representatives in this case represents ***less than 1%*** of the Settlement Fund, a request that is fair to the Settlement Class and below the percentage range commonly approved in this District *See, e.g.*, *Mills v. Capital One*, 2015 U.S. Dist. LEXIS 133530, at *48 (S.D.N.Y. Sep. 30, 2015) (finding service awards representing approximately 0.52% of the settlement fund within the range commonly approved in this district and collecting cases where service awards totaled between 1.7% and 9.1% of the settlement.) The dollar amount to each, $5,000, is also squarely within the range typically awarded to individual named plaintiffs in comparable cases. *See Hart v. BHH, LLC*, 2020 U.S. Dist. LEXIS 173634, at *13 (S.D.N.Y. Sep. 22, 2020) ("[Service] [a]wards on an individualized basis have generally ranged from $2,500 to $85,000."); *Butt v. Megabus Ne. LLC*, 2012 U.S. Dist. LEXIS 137683, at *24 (S.D.N.Y. Sep. 25, 2012) (finding reasonable a service award of $15,000 to named plaintiff); *Torres v. Gristede's Operating Corp.*, 2010 U.S. Dist. LEXIS 139144, at *22 (S.D.N.Y. Dec. 21, 2010) (finding reasonable service awards of $15,000 to each of 15 named plaintiffs); *Clark v. Ecolab Inc.*, 2010 U.S. Dist. LEXIS 47036, at *30 (S.D.N.Y. May 11, 2010) (granting service awards of $10,000.00 to each of 7 named plaintiffs); *Knox v. John Varvatos Enters.*, 520 F. Supp. 3d 331, 350 (S.D.N.Y. 2021) (granting service award of $20,000 to named plaintiff and collecting cases awarding between $1,500 and $30,000 to named plaintiffs.)

Each Class Representative – Gunaratna, Camenforte, and Kandel – contributed significantly to the prosecution of the actions and were instrumental in reaching settlement. *See generally* Gunaratna Decl.; Camenforte Decl., Kandel Decl. Since each Class Representative was added to the action, they have remained heavily and personally involved in this litigation, competently representing the interests of the Class. Each of them has invested their time, effort, and resources into the prosecution of the Actions. In discharging their duties to the Class, Gunaratna, Camenforte, and Kandel routinely communicated with Class Counsel concerning the

actions; remained fully informed about case developments; routinely reviewed the various pleadings and motions filed in this action; reviewed discovery and documents related to the case; closely monitored and actively participated in providing their authority in making settlement offers; actively involved in settlement discussions during the mediation; and carefully reviewed the settlement documents in order to understand and approve the terms of the settlement and the benefits to the class. Gunaratna, Camenforte, & Kandel Decls. ¶ 7. Gunaratna and Camenforte also responded to Defendant's discovery requests; and prepared for and attended their separate depositions. Gunaratna & Camenforte Decls. ¶ 7

Class Counsel therefore respectfully submits that service awards of $5,000 for each of the Class Representatives are reasonable and should be awarded.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court approve the request for: (i) the payment of attorneys' fees in the amount of one-third of the Settlement Fund, in the amount of $3,066,700; (ii) reimbursement of reasonable and necessary litigation costs in the amount of $457,416.66; and (iii) a $5,000 service award for each of the Class Representatives, totaling $15,000.

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