UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: CHANTIX (VARENICLINE) MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION (NO. II) *This Document Relates to All Actions*	22-MD-3050 (KPF) 22-MC-3050 (KPF)

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS

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Class Counsel[1] for (i) Consumer Plaintiffs Juan Abreu, Teresa Baptiste, Timothy Bleeker, Harold Bradley, Sharon Carroll, Karen Duff, Albert Edwards, Tara Evans, Lillian Forrest, Kimberly Hill, Valerie Hogue, Douglas Houghton, James Jacobson, Tammy LaMotte, Kathleen Lima, Debra Seeley, Daniel Spence, Hazel Taylor, Carita Thompson, Daphne Walter, Shannon Webb a/k/a Shannon Alicea (the "Consumer Plaintiffs"); and (ii) Third-Party Payor Plaintiffs County of Monmouth, MSP Recovery Claims Series 44, LLC, MSP Recovery Claims, Series LLC, and Ohio Carpenters' Health Fund (the "TPP Plaintiffs," and collectively with the Consumer Plaintiffs, the "Plaintiffs") respectfully submit this Memorandum of Law in support of their Motion for Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards ("Motion").

I. INTRODUCTION

After over five years litigating this complex class action, Plaintiffs reached a settlement (the "Settlement") with Pfizer for $44 million, which will fully resolve the Action if it is approved. This excellent result reflects the skill, expertise, and hard work of Class Counsel, and the benefit to the Settlement Class is substantial and concrete, compared to the significant risks of continued litigation. Consistent with fees and expenses awarded in this District and elsewhere, Class Counsel respectfully requests that the Court award attorneys' fees of 33.33% of the gross Settlement Fund ($14,666,666.67), payment of litigation expenses of $144,340.20 from the Settlement Fund, plus interest on the awards at the same rate as earned by the Settlement Fund.

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[1] "Class Counsel" are Honik LLC, Levin Sedran & Berman LLP, and Scott+Scott Attorneys at Law LLP. Unless otherwise defined herein, all capitalized terms have the meanings ascribed to them in the Class Action Settlement Agreement with Defendant Pfizer, Inc. ("Pfizer" or "Defendant"). ECF No. 131-1 ("Stipulation"). Citations to the "Joint Declaration" or "Joint Decl." are to Joint Declaration of Joseph P. Guglielmo, David J. Stanoch, and Charles E. Schaffer, in Support of Class Counsel's Motion for an Award of Attorneys' Fees, Litigation Expenses, and Service Awards ("Joint Declaration" or "Joint Decl."), filed herewith.

As explained below, based on Class Counsel's overall investment of time and resources, the complexity of the litigation, the risks Class Counsel assumed, and the quality of the representation, the requested 33.33% fee award is fair and reasonable. The fee request is reasonable compared to awards granted in similarly complex litigation in this District and elsewhere. Should the Court elect to perform the optional lodestar cross-check, it further confirms that the fee request is reasonable. Based on a fee award of $14,666,666.67, the lodestar cross check results in a 1.93 multiplier, which is consistent with (if not lower than) fee awards in other cases of similar complexity and magnitude.

In addition, Class Counsel requests payment of unreimbursed litigation expenses, as set forth in the declarations from each of the Class Counsel firms.[2] These litigation expenses are of the type that attorneys normally bill to paying clients, were reasonably incurred to advance the Action, and should be reimbursed.

Finally, Class Counsel seek service awards of $15,000 each for the TPP Plaintiffs and $5,000 each for Consumer Plaintiffs to compensate them for the significant time and efforts they devoted to this case and in recognition of the results they were crucial to obtaining. Each Plaintiff invested significant time, resources, and effort towards this Action, which helped advance this case to Settlement.

For the reasons stated herein, as well as in the Joint Declaration, Class Counsel respectfully requests that the Motion be granted.

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[2] In addition to the Joint Declaration describing the efforts of Class Counsel in prosecuting the case over the course of the Action, each Class Counsel firm has submitted a declaration that details each firm's respective hours, billing rates, and litigation expenses. *See* Exhibits 1 through 5 to the Joint Decl., filed herewith.

II. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE

In common fund cases, attorneys that secure a recovery for the class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Grice v. Pepsi Beverages Co.*, 363 F. Supp. 3d 401, 406 (S.D.N.Y. 2019); *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y. 2011). This principle traces its origins back to collective actions and its application to class action settlements is well recognized. *See, e.g., Boeing, supra; In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *9 (E.D.N.Y. Oct. 23, 2012) ("Where a class action settlement creates a common fund the plaintiffs' attorneys are entitled to a reasonable fee—set by the court—to be taken from the fund.").

Courts "may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method," although "[t]he trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005). The percentage method is preferred as it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Grice*, 363 F. Supp. 3d at 406 (quoting *Wal-Mart Stores*, 396 F.3d at 121); MANUAL FOR COMPLEX LITIGATION (FOURTH) §14.121 (2004) ("Indeed, one purpose of the percentage method is to encourage early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation.").

Courts evaluating whether a fee is "reasonable" must consider: "(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, 50 (2d Cir. 2000); *see also Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 723 (2d Cir. 2023) (citing the *Goldberger* factors).

Class Counsel seek a fee award of 33.33% of the $44 million Settlement Fund ($14,666,666.67) and payment of litigation expenses totaling $144,340.20. The application of the *Goldberger* factors as well as recent opinions in this District confirms reasonableness of this request and is well within reason using the optional lodestar cross-check given a 1.93 multiplier. Joint Decl. ¶32. Notably, Class Counsel will continue to devote significant attorney time to the case if the Settlement is approved, including supervision of notice and claims administration, monitoring and investment of the Settlement Fund, submission of final approval and reply briefs, appearances at the Final Approval Hearing, communications with claimants, and oversight of the distribution of settlement proceeds to Settlement Class Members (including Court filings).

A. Application of the *Goldberger* Factors Support Awarding 33.33% of the Settlement Fund as Attorneys' Fees.

1. Class Counsel Invested Substantial Time, Labor, and Resources in Prosecuting this Action.

Class Counsel devoted over 9,109.4 hours of attorney and other legal professional time to prosecute this Action from inception of the case through August 1, 2026. *See* Joint Decl. ¶18.

To summarize briefly, Class Counsel:

- Investigated and initiated this case in 2021 by preparing initial class action complaints. Prior to centralization by the Judicial Panel on Multidistrict Litigation, Class Counsel engaged in extensive early motions in practice in multiple individual class actions filed in district courts throughout the country, including motions to dismiss and motions to transfer venue. They attended hearings or conferences before multiple courts concerning the foregoing as well. Joint Decl. ¶2(a).
- Following centralization, Class Counsel prepared and filed the consolidated amended complaint. *Id.*, ¶2(b).

- Opposed (and ultimately prevailed on) Pfizer's motion to dismiss the case, and subsequent briefing ordered by the Court on economic loss and Plaintiffs' breach of warranty and negligence-based claims. *Id.*, ¶2(c).
- Sought reconsideration of the Court's dismissal of breach of warranty claims in light of *Berk v. Choy*, 607 U.S. 187 (2026). *Id.*, ¶2(d).
- Engaged in extensive discovery, including non-party discovery (identified below), including serving 118 requests for production of documents, 7 interrogatories, and 95 requests for admission on Pfizer. *Id.*, ¶2(e).
- Negotiated search terms, custodial and non-custodial sources of production of documents from Pfizer and TPP Plaintiffs. *Id.*, ¶2(h).
- Reviewed over 250,000 documents totaling approximately 2.11 million pages produced by Pfizer and third parties, as well as sales data produced by Pfizer and multiple third parties. *Id.*, ¶¶2(i).
- Responded to 71 requests for production of documents on each Consumer Plaintiff and between 73 to 86 requests for production of documents on each TPP Plaintiff, 16 interrogatories on each Consumer Plaintiff and between 17 to 21 interrogatories on each TPP Plaintiff, and 41 requests for admission on each Consumer Plaintiff and 143 requests for admission on each TPP Plaintiff. *Id.*, ¶2(g).
- Plaintiffs also subpoenaed eleven non-parties (SQA, Express Scripts, Apotex, MedImpact, Walgreens, Roquette, OptumRx, Walmart, CVS Pharmacy, and Caremark) and served a FOIA request on the FDA. *Id.*, ¶2(f).
- Deposed, pursuant to Rule 30(b)(1), Pfizer's Global Solids Quality Leader, in Dublin, Ireland. *Id.*, ¶2(j).

- Defended depositions of several Consumer Plaintiffs and were in the midst of preparing for additional depositions of Consumer Plaintiffs and 30(b)(6) of TPP Plaintiffs. *Id.*
- Identified and developed multiple experts across multiple disciplines to assist with investigation and discovery. *Id.*, ¶2(k).

Following the entry of preliminary approval, Class Counsel oversaw the commencement of the notice program. *Id.*, ¶2(n). Class Counsel devised a reasonable notice program to ensure direct mailings to potential Settlement Class Members. *Id.* Class Counsel oversaw the efficient issuance of notice to the Settlement Class, addressing issues arising from time to time in the notice and claims administration process. *Id.*

In December 2025, with fact and non-party discovery well underway, Class Counsel began exploring the possibility of a negotiated resolution of the Action, with the Parties' counsel agreeing to retain experienced mediator Fouad Kurdi, Esq. *Id.*, ¶22. In connection with the mediation, Class Counsel requested significant mediation-related discovery to evaluate the claims and position themselves to negotiate a settlement that would be fair and reasonable on behalf of the Settlement Class.

The Parties and their counsel conducted a full-day in-person mediation on March 11, 2026, before mediator Mr. Kurdi, resulting in an agreement in principle by the Parties to settle the Action for $44,000,000. *Id.*, ¶24. On March 12, 2026, the Parties wrote to the Court to inform it of their agreement to settle the Action and requested a stay of the Action. *Id.*, ¶25 (ECF No. 122). On March 12, 2026, the Court granted the Parties' request for a 45-day stay of the case pending the filing of the motion for preliminary approval of the Settlement. *Id.*, ¶26 (ECF No. 123). On April 23, 2026, the Court granted the Parties' request to extend the stay until May 18, 2026, so the Parties could continue their negotiations to finalize the settlement. *Id.*, ¶27 (ECF Nos. 126, 127). The Court granted an additional stay until May 26, 2026, so the Parties could complete their negotiations and execute the settlement. *Id.* (ECF No. 128). Thereafter, the Parties executed the Settlement Agreement on May 22, 2026. *Id.*, ¶28.

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The substantial time, labor, and resources Class Counsel invested in prosecuting this Action and in negotiating the terms of the Settlement demonstrates that the first *Goldberger* factor supports the reasonableness of the fee request.

2. The Magnitude and Complexity of the Action Favors the Fee Request.

"[C]lass actions have a well deserved reputation as being most complex," *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998) (internal citation omitted) ("*NASDAQ*"). "The upshot is that the magnitude and complexity of the litigation also weigh in favor of a significant award." *In re Citigroup Inc. Bond Litig.*, 988 F. Supp. 2d 371, 379 (S.D.N.Y. 2013).

Here, Plaintiffs' allege, as purchasers and payors of Pfizer's Chantix®, that they overpaid for their purchases of the Chantix because it recalled and contaminated with a genotoxic, probable human carcinogen, a nitrosamine known as N-nitroso varenicline ("NNV"), present a novel theory that has not been substantially litigated in prior cases, at least as to a branded pharmaceutical product. Successfully litigating the Action required consulting with experts and consultants regarding pharmaceuticals, cGMP compliance, and toxicology. Class Counsel spent considerable time working with experts and consultants to develop Plaintiffs' liability and damages theories.

If the Settlement had not been reached, Plaintiffs faced significant risks in continuing to litigate their claims against Pfizer. Already, Plaintiffs' claims have been fiercely challenged in multiple motions to dismiss and for reconsideration.

Complex issues of law and fact would likely be raised at class certification, and the losing party would likely seek interlocutory review under Rule 23(f). Pfizer would have almost certainly brought motions for summary judgment, which the Court could have found meritorious in part or in whole. And even if Plaintiffs overcame these risks and took the case against Pfizer to trial, a jury could have found that Plaintiffs failed to meet their burden to prove Pfizer's Chantix was worth nothing due to the contamination. If the Class prevailed against Pfizer at trial, any verdict could have been vacated or reversed on appeal. *See also* Section II.3, *infra* (discussing additional litigation risks). In sum, "[t]here can be no doubt that this class action would be enormously expensive to continue, extraordinarily complex to try, and ultimately uncertain of result." *NASDAQ*, 187 F.R.D. at 477.

3. The Fee Request is Warranted Based on the Level of Risk Undertaken by Class Counsel in this Action.

Second Circuit courts have described assessing the "risk of the litigation" as "perhaps the foremost factor to be considered in determining" a reasonable fee award. *In re Currency Conversion Fee Antitrust Litig.*, 263 F.R.D. 110, 129 (S.D.N.Y. 2009) (internal citation omitted); *see also In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 440 (E.D.N.Y. 2014). The risk of undertaking litigation is "measured as of when the case is filed." *Goldberger*, 209 F.3d at 55.

Class Counsel took this case on a fully contingent basis without any guarantee of a recovery and invested significant time, money, and resources to advance Plaintiffs' and the Settlement Class's claims. *See City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award."). This risk was more significant because this Action involved litigating against a well-resourced drug company represented by a highly regarded law firm that possesses the financial resources to litigate this case for many years through any trial and appeal process. *See In re WorldCom, Inc. Secs. 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").

Class Counsel faced significant *ex ante* litigation risks in this case at every stage. Pfizer's arguments raised its motion to dismiss (ECF Nos. 42-45) and subsequent letter briefing on the breach of warranty and negligence-based claims (ECF No. 62), and arguments in its opposition reconsideration in light of *Berk v. Choy*, 607 U.S. 187 (2026) (ECF No. 116), illustrate the complexity of the Action.

While Plaintiffs have succeeded in sustaining their claims at the pleading stage, at the time of the Settlement, numerous significant obstacles remained. At class certification, Plaintiffs would have to prove, in part through expert testimony, that Pfizer's conduct caused class-wide impact and that individual class members' damages could be computed on a common, formulaic basis. While Class Counsel believe that there would have been sufficient evidence to support a finding of class-wide impact and damages, Pfizer had vast combined resources and is represented by top counsel. It would have coordinated a substantial attack on Plaintiffs' proofs.

4. Class Counsel Provided High-Quality Representation of Class Representatives and the Settlement Class.

The Settlement Class includes numerous third-party payors with the sophistication and resources to object to the Settlement. While the objection period is ongoing for the Settlement, to date, there have been no objections to Class Counsel's fee request. The lack of objections to date following robust notice to the Settlement Class[3] is one indication of the quality of the work performed by Class Counsel on behalf of the Settlement Class. To the extent objections are filed, Class Counsel will address them on reply.

"[T]he quality of representation is [also] best measured by results," *Goldberger*, 209 F.3d at 55, which are evaluated in light of "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). The Settlement has created a $44 million Settlement Fund. The Settlement provides the Class a substantial amount of funds in terms of recovering a portion of their losses. The skill and quality of Class Counsel's representation in this Action further supports their attorneys' fee request.

5. The 33.33% Fee Request is Reasonable in Relation to the Settlement.

The fifth *Goldberger* factor, the fee request in relation to the settlement fund, weighs in favor of Class Counsel's fee request. Comparable cases serve as guideposts against which a court may determine whether a fee request is reasonable. *Grice*, 363 F. Supp. 3d at 407 ("Courts often look to empirical evidence of attorney's fees awarded in similar cases as a starting point for the baseline reasonable fee inquiry").

This Court has reasoned in another complex class action case "that an award of attorneys'

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3 The Court-approved notice informed all Class Members that Class Counsel would seek an award of attorneys' fees in an amount not to exceed one third of the Settlement Fund and reimbursement of their costs and expenses and that the Court would ultimately determine the award. ECF No. 131-1 at 67, 73, 79, 86. The notice also apprised Class Members that Class Counsel would ask the Court to approve service awards for Plaintiffs not to exceed $15,000 for TPP Plaintiffs and $5,000 for Consumer Plaintiffs (a request made herein, *see infra*). *Id.* Class Members were also informed that this Motion would be posted on the case website, https://chantixsettlement.com ("the Settlement Website"). Finally, Class Members were notified of their right to object to any aspect of the Settlement, including the fee, expense, and service award requests.

fees of 33.33% of the Settlement Fund is reasonable given the high risk, complex issues, skill of the attorneys and the contingency nature involved in bringing this litigation." *Martinek v. Amtrust Fin. Servs., Inc.*, 2022 WL 16960903, at *2 (S.D.N.Y. Nov. 16, 2022); *see also In re. Akari Therapeutics PLC Sec. Litig.*, No. 1:17-cv-03577 (S.D.N.Y. Nov. 28, 2018) (awarding one-third of the settlement fund of $2.7 million plus expenses) (Failla, J.). And other courts in this District and elsewhere have recognized that in class action cases an award of one third of the settlement fund is within the reasonable range for comparably-sized settlements in complex contingency cases. *See, e.g.*, *Velez v. Novartis Pharms. Corp.*, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (collecting cases showing that "[d]istrict courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater"); *In re Deutsche Bank AG Sec. Litig.*, 2020 WL 3162980, at *1 (S.D.N.Y. June 11, 2020) (awarding one-third fee on $18.5 million settlement fund); *In re 3D Sys. Sec. Litig.*, 2024 WL 50909, at *13 (E.D.N.Y. Jan. 4, 2024) (granting final approval where class counsel's request for attorneys' fees equaling 33.33% of the settlement amount was "reasonable"); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358 (S.D.N.Y. 2002) (awarding one-third fee on $11.5 million settlement fund); *In re China Media Express Holdings, Inc.*, 2015 WL 13639423 (S.D.N.Y. Sept. 18, 2015) (awarding one-third fee on $12 million settlement fund); *City of Providence v. Aéropostale, Inc.*, 2014 WL 1883494 (S.D.N.Y. May 9, 2014), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015) (awarding one-third fee on $15 million settlement fund); *In re Flonase Antitrust Litig.*, 951 F. Supp. 2d 739, 746 (E.D. Pa. 2013) (awarding one-third fee on $150 million settlement fund).

Likewise, empirical studies have shown that "regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery." 4 Robert Newberg, NEWBERG ON CLASS ACTIONS §14:6 at 551 (4th ed. 2002). Awards of one-third of the common fund are also commonly awarded in consumer protection litigation. *See, e.g.*, *Charvat v. Valente*, 2019 WL 5576932, at *11 (N.D. Ill. Oct. 28, 2019) (collecting cases); *Furman v. At Home Stores, Inc.*, 2017 WL 1730995, at *4 (N.D. Ill. May 1, 2017) (the fact that "plaintiffs routinely agree to a one-third contingency fee arrangement[ ] reinforces that Plaintiff's Counsel are requesting the proper market rate.").

In sum, Class Counsel's request falls in line with the observed attorneys' fees in the District and others in similarly complex cases, further confirming the reasonableness.

6. Public Policy Supports Approval of the Fee Request.

Awarding a reasonable percentage of the common fund "provid[es] lawyers with sufficient incentive to bring common fund cases that serve the public interest." *Goldberger*, 209 F.3d at 51. If attorneys' fees are routinely set too low, particularly in instances where counsel effectively and efficiently litigate a matter, they will be deterred from bringing meritorious cases in the future. *See In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 352 (S.D.N.Y. 2014).

Here, Class Counsel's work advanced the interest of the consumer protection laws and protected consumers and third party payors who might otherwise be without recourse. *See Hicks v. Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding."). Awarding a reasonable fee in achieving this excellent result will compensate Class Counsel for their efforts in investigating and bringing to light these claims, which without Class Counsel's efforts may have resulted in no recovery for the Class.

B. The Lodestar Cross-Check Confirms the Reasonableness of the Fee Request.

When using the percentage method, courts may elect to perform a "'cross check' on the reasonableness of the requested percentage" based on counsels' hours multiplied by their billing rates. *Goldberger*, 209 F.3d at 50 (quoted authority omitted). This "lodestar cross check," when used, is meant to be "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. To perform the lodestar cross-check, the Court "multiplies the reasonable hours billed by a reasonable hourly rate." *Colgate-Palmolive*, 36 F. Supp. 3d at 347 (citing *Goldberger*, 209 F.3d at 47). The lodestar calculation "should be based on 'prevailing market rates,' *Blum v. Stenson*, 465 U.S. 886, 897 (1984); and current rates, rather than historical rates, should be applied in order to compensate for the delay in payment." *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (citing *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989)). When used as a cross-check, "the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50.

Undertaking this lodestar cross-check confirms the reasonableness of Class Counsel's request: Class Counsel have spent 9,109.4 hours litigating the Action from the inception of the case through August 1, 2026, producing a total lodestar amount of $7,601,643.70, resulting in a multiplier of 1.93 against the settlement recovery of $44 million. Joint Decl. ¶32.

The hourly billing rates for attorneys working on this case ranged from $375 to $1,960. *See* Exhibits 1-5 to the Joint Decl. Billing rates in the same range have been previously approved as reflective of market rates in New York for work of comparable size and complexity. *See, e.g.*, *Steamship Trade Ass'n of Baltimore-Int'l Longshoremen's Ass'n Pension Fund v. Olo Inc.*, Case No. 1:22-cv-08288, ECF No. 128 (granting fee award using partner rates up to $1975 and associate rates of $560 to $775, *see* ECF No. 123-2); *In re Foreign Exch. Benchmark Rates Antitrust Litig.*, 2018 WL 5839691 (S.D.N.Y. Nov. 8, 2018) (granting fee award using partner rates up to $1,375 and associate rates of $350 to $700, *see* ECF No. 939).

The number of hours spent on this Action from inception through August 1, 2026 are reasonable, particularly in light of the level of independent investigation conducted by Class

Counsel to understand the drug at issue and various laws and regulations applicable to the industry, prepare numerous complaints, oppose a motion to dismiss and subsequent letter briefing on various breach of warranty and negligence-based issues, prepare a letter motion for reconsideration, engaging in substantial discovery, take a deposition, and negotiate a settlement, including obtaining preliminary approval and devising a plan of allocation. In addition, Class Counsel devoted a significant number of hours working with Plaintiffs' experts and consultants in preparing the case for class certification and summary judgment. Finally, there is substantial work remaining in the Action involving settlement approval, claims administration, and distribution of settlement proceeds to Class Members.

As explained above, awarding a 33.33% fee would result in a lodestar of 1.93. Joint Decl. ¶32. Such a multiplier is well within accepted ranges and is warranted here. *See, e.g.*, *Fikes Wholesale*, 62 F.4th at 727 (upholding fee award where the lodestar multiplier was 2.45); *Foreign Exch.*, 2018 WL 5839691, at *5 (approving lodestar multiplier of 1.72); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *17 (S.D.N.Y. April 26, 2016) (approving a lodestar multiplier of "just over 6"); *Maley*, 186 F. Supp. 2d at 369 (approving lodestar multiplier of 4.65 and noting that figure is "well within the range awarded by courts in this Circuit and courts throughout the country"); *In re TFT-LCD (Flat Panel) Antitrust Litig*., 2013 WL 1365900, at *7 (N.D. Cal. Apr. 3, 2013) (approving lodestar multiplier of 2.5 multiplier); *In re High-Tech Emp. Antitrust Litig.*, 2015 WL 5158730, at *11, *16 (N.D. Cal. Sept. 2, 2015) (approving lodestar multiplier of 2.2).

III. PAYMENT OF LITIGATION EXPENSES IS REASONABLE AND SHOULD BE GRANTED

Under the common fund doctrine, class counsel are entitled to reimbursement of reasonable litigation expenses incurred in the litigation. FED. R. CIV. P. 23(h); *Mills v. Electric Auto-Lite Co.*, 396 U.S. 375, 392 (1970) (recognizing the right to reimbursement of expenses where a common fund has been produced or preserved for the benefit of a class); *Meredith Corp*., 87 F. Supp. 3d at 671 (the attorneys whose work leads to the creation of "a common settlement fund for a class are entitled to the reimbursement of [reasonable] expenses that they advance to a class"); *In re Arakis Energy Corp. Sec. Litig.*, 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."). Such costs are "compensable if they are of the type normally billed by attorneys to paying clients." *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019). When "a class plaintiff successfully recovers a common fund for the benefit of a class, the costs of litigation should be spread among the fund's beneficiaries." *Maley,* 186 F. Supp. 2d at 369.

As detailed in the individual declarations filed concurrently herewith, Class Counsel advanced litigation expenses from inception of the Action through August 1, 2026 totaling $144,340.20. *See* Joint Decl. ¶33 and Exhibits 1-4. These expenses were required, in large part, to engage experts to develop economic models to support Plaintiffs' claims as the case headed toward the class certification and summary judgment stage. These expenses were unquestionably "critically important" to the prosecution of this Action and constitute the type of reimbursements that "[c]ourts routinely award." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. The remaining expenses advanced consist of online research, data storage, filing and service fees, copying, mailing, telephone charges and travel and meal costs. These are all the types of out-of-pocket expenses that are normally billed to paying clients and routinely reimbursed from common funds. *Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *19 (S.D.N.Y. Sept. 4, 2014) (finding computer research, photocopying, postage, meals, and court filing fees "necessary for Lead counsel to successfully prosecute this case").

IV. SERVICE AWARDS FOR THE CONTRIBUTIONS OF NAMED PLAINTIFFS ARE APPROPRIATE

Finally, Class Counsel seek service awards for the representative Plaintiffs to compensate them for the significant time they devoted to this case and in recognition of the results they were crucial to obtaining. "[S]ervice awards 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 the plaintiff." *Sanz v. Johny Utah 51 LLC*, 2015 WL 1808935, at *1 (S.D.N.Y. Apr. 20, 2015). Service awards also compensate for and recognize contributions to the advancement of policy goals and class-wide benefits. *See Spann v. AOL Time Warner Inc.*, 2005 WL 1330937, at *9 (S.D.N.Y. June 7, 2005) ("an incentive award may be given to compensate named plaintiffs for efforts expended for the benefit of the lawsuit"); *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (affirming service awards in antitrust case and noting they "reward the public service of contributing to the enforcement" of laws).

Discretionary incentive awards are routinely made in class actions. *See Newberg on Class Actions* §§17:1, 17:3 (5th ed. 2018) ("Empirical evidence shows that incentive awards are now paid in most class suits"). The amounts sought here—$15,000 for each TPP Plaintiff and $5,000 for each Consumer Plaintiff—are in line with awards made in other, similar cases. *See Laydon v. Mizuho Bank, Ltd.*, No. 12-cv-3419, Dkt. No. 724, at 2 (S.D.N.Y. Nov. 10, 2016) (approving total award of $580,000 for four named plaintiffs); *Air Cargo*, 2015 WL 5918273, at *5 (approving $90,000 awards to each of six class representatives where they "expended a significant amount of time and incurred substantial burdens in assisting with this litigation"); *Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (awarding $50,000 incentive awards to each of four named plaintiffs and noting that such awards were "in line with other cases").[4]

Each of the named plaintiffs was actively engaged in the litigation, making invaluable contributions beyond merely lending their names to the lawsuit. Their efforts included, among other things, (i) remaining apprised of the Action through intermittent communications with Class Counsel; (ii) reviewing Defendants' discovery requests served on Plaintiffs and aiding in the collection and review of their documents; and (iii) reviewing the adequacy of the proposed settlement. Joint Decl., ¶¶34-35. Four of the Consumer Plaintiffs were deposed, and all other named plaintiffs, Consumer and TPP alike, were actively preparing for their own depositions. *Id.*, ¶35. The requested awards would appropriately recognize that Plaintiffs committed a significant amount of time to the case, stood up to a powerful pharmaceutical company with no guarantee of any recovery, and played a crucial role in vindicating the private enforcement of U.S. laws.

V. CONCLUSION

For the reasons set forth above, Class Counsel respectfully request that this Court grant Plaintiffs' Motion and award attorneys' fees in the amount of $14,666,666.67, or 33.33% of the Settlement Fund, and litigation expenses in the amount of $144,340.20, plus interest earned at the same rate as the Settlement Fund on these awards, and incentive awards for TPP Plaintiffs of $15,000 and Consumer Plaintiffs of $5,000.

Dated: August 28, 2026 Respectfully submitted,

/s/ Joseph P. Guglielmo

[4] *See also, e.g.*, *Vitamin*, 2012 WL 5289514, at *11 (granting request for $50,000 incentive award to both class representatives based on their work "responding to discovery requests, including collectively producing over 10,000 pages of documents, sitting for depositions, and agreeing to appear at trial" in a complex and lengthy matter); *Wright v. Stern*, 553 F. Supp. 2d 337, 342-48 (S.D.N.Y. 2008) (approving incentive awards of $50,000 to each of eleven named plaintiffs).

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CERTIFICATE OF SERVICE

On this 28th day of August, 2026, a true and correct copy of the foregoing was filed and served upon all counsel of record via the Court's CM/ECF system.

/*s*/ Joseph P. Guglielmo
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