

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

PAUL HARVEY, MERYL  
EICHENBAUM, and ROXANNE  
KUZOWSKY, as representatives of a  
class of similarly situated persons, and  
on behalf of the BED BATH &  
BEYOND, INC. 401(K) SAVINGS  
PLAN,

Plaintiffs,

v.

BED BATH & BEYOND, INC.  
401(K) SAVINGS PLAN  
COMMITTEE and LAURA  
CROSSEN,

Defendants.

Case No. 2:23-cv-20376-CCC-SDA

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN  
SUPPORT OF THEIR UNOPPOSED MOTION FOR ATTORNEYS' FEES,  
COSTS & ADMINISTRATIVE EXPENSES AND CLASS  
REPRESENTATIVE COMPENSATION**

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## **INTRODUCTION**

Plaintiffs Paul Harvey, Meryl Eichenbaum, and Roxanne Kuzowsky submit this Memorandum in support of their Unopposed Motion for Attorneys’ Fee, Costs & Administrative Expenses and Class Representative Compensation. This Court has already preliminarily approved the Class Action Settlement with Bed Bath & Beyond, Inc. 401(k) Savings Plan Committee and Laura Crossen (“Defendants”) regarding their monitoring of the MassMutual Guaranteed Investment Account (“GIA”) investment option in the Bed Bath & Beyond, Inc. 401(k) Savings Plan (“Plan”). Dkt. 62.

Under the terms of the proposed Settlement, a Gross Settlement Amount of \$1,950,000 will be paid to resolve the claims of Settlement Class Members whose individual Plan accounts were adjusted due to the Market Value Adjustment applied to the Plan’s interest in the GIA after Bed Bath and Beyond, Inc. (“BBB”) passed a resolution terminating the Plan in 2023. This is a significant recovery for the Class and falls well within the range of negotiated settlements in similar ERISA cases.

To date, Class Counsel have received no payment for any of their efforts in this litigation, nor have they been reimbursed for their out-of-pocket costs advanced on behalf of the Class. All compensation to Class Counsel is contingent upon the Court’s award of fees and expenses as provided in the Settlement.

Class Counsel’s request of one-third of the settlement fund is reasonable and standard in cases such as this. “In complex ERISA cases, courts in this Circuit and others [] routinely award attorneys’ fees in the amount of one-third of the total settlement fund.” *High St. Rehab., LLC v. Am. Specialty Health, Inc.*, 2019 WL 4140784, at \*13 (E.D. Pa. Aug. 29, 2019); *see also* cases cited *infra* 15.

In addition, Class Representatives, without whom there would be no recovery, have served the Class by aiding in Class Counsel’s investigation and aiding in the mediation. For the following reasons, Plaintiffs’ Motion for Attorneys’ Fees and Costs, & Administrative Expenses, and Class Representative Compensation should be granted.

## **BACKGROUND**

### **I. PROCEDURAL HISTORY**

On September 14, 2023, Plaintiffs commenced this action. Dkt. 1. They alleged that Defendants breached their fiduciary duties by causing the Plan to retain the GIA as the Plan’s low-risk capital preservation option, even while the risk that the GIA could lead participants to suffer large negative losses increased. In April 2023 BBB declared bankruptcy and the Plan was later resolved to be terminated. That termination triggered a large negative market value adjustment to be applied to the Plan’s investment in the GIA.

Defendants moved to dismiss the Complaint on December 12, 2024. Dkt. 24.

In response, Plaintiffs amended their Complaint to add additional allegations regarding the foreseeability of BBB's bankruptcy and the GIA market value adjustment. Dkt. 28. Defendants then moved to dismiss the First Amended Complaint. Briefing on that motion was complete on March 12, 2024. Dkt. 37, 40. During this process the Parties exchanged preliminary discovery. *See, e.g.*, Dkt. 41.

While Defendants' motion to dismiss the First Amended Complaint was pending, the Court ordered the Parties to mediate with Judge Mark Falk (Ret.). Dkt. 49; Second Lee Dec. ¶ 7. On October 29, 2024, the Parties engaged in a mediation session with Judge Falk. Dkt. 52; Second Lee Dec. ¶ 7. That mediation was unsuccessful but ended with a mediator's proposal. *Id.* On December 2, 2024 the Parties held a second mediation and reached the Settlement that has been preliminarily approved. Dkts. 55, 62; Second Lee Dec. ¶ 7.

## **II. SETTLEMENT**

Under the terms of the Settlement, a Gross Settlement Amount of \$1.95 million will be paid to resolve the claims of the Settlement Class Members. Dkt. 61-1 ("Settlement") §1.22.

## **III. WORK OF CLASS COUNSEL**

As of the date of this motion, Class Counsel has expended more than 225 hours prosecuting this matter. Class Counsel expects to invest additional time overseeing the Settlement administration process, responding to questions from

Class Members as appropriate, preparing a motion for final approval, and attending the final approval hearing. *See* Declaration of Jennifer K. Lee in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, & Administrative Costs, and Class Representative Service Award (“Second Lee Dec.”) ¶ 11.

**A. Work conducted to date.**

Prior to filing the Complaint, Class Counsel investigated publicly available information relating to the Plan and BBB’s financial health, and researched and analyzed the legal claims. Second Lee Dec. ¶ 5. As a result of these investigatory efforts, Class Counsel drafted and filed a detailed 15-page complaint. *Id.* After Defendants moved to dismiss, Class Counsel further investigated Plaintiffs’ claims and amended the Complaint to add more allegations regarding the foreseeability of BBB’s bankruptcy and the GIA market value adjustment. *Id.* ¶ 6

While Defendants’ motion to dismiss the First Amended Complaint was pending, Class Counsel participated in multiple mediation sessions with Judge Falk (Ret.). *Id.* ¶ 7. After negotiating the settlement, Class Counsel reviewed and revised the Settlement Agreement, drafted the Settlement Notice, Rollover Form, and proposed preliminary and final approval orders. Second Lee Dec. ¶ 8. In addition, Class Counsel drafted Plaintiffs’ motion for preliminary approval of the Settlement. *Id.*

Class Counsel also solicited bids from qualified settlement administration

firms to serve as the Settlement Administrator and selected Analytics Consulting LLC (“Analytics”) after reviewing the bids. *Id.* ¶ 9. Class Counsel then worked with Analytics and Defense counsel to identify the class members and ensure the Settlement Notices were timely mailed by Analytics. *Id.* In addition, Class Counsel worked with Analytics to create a settlement website and telephone line for Class Members who wished to obtain additional information about the Settlement. *Id.* Class Counsel has also met with the Independent Fiduciary retained to review the Settlement and provided it with all information necessary for its review. *Id.*

**B. Remaining work to be performed.**

Class Counsel’s work on this matter remains ongoing. Prior to the Fairness Hearing, Class Counsel will draft Plaintiffs’ motion for final approval of the Settlement and respond to any objections. Second Lee Decl. ¶ 11. Class Counsel will then attend the Fairness Hearing, and if final approval is granted, supervise the distribution of payments to eligible Class Members, which entails up to three rounds of distributions to ensure maximum recovery among Class Members. *Id.* In addition, Class Counsel will continue to respond to questions from Class Members and take other actions necessary to support the Settlement until the conclusion of the Settlement Period. *Id.* Class Counsel estimates this will require an additional 50 hours. *Id.*

#### **IV. WORK OF CLASS REPRESENTATIVES**

Mr. Harvey, Ms. Eichenbaum, and Ms. Kuzowsky worked to advance the interests of the Class as the Class Representatives. Among other things, they (1) aided Class Counsel in their investigation and provided pertinent documents, (2) reviewed the allegations in the Complaint and First Amended Complaint, (3) communicated with Class Counsel during the course of the action and stayed informed about the case, (4) were available throughout the mediation, and (5) discussed the settlement with Class Counsel and reviewed the Settlement Agreement. *Id.* ¶ 16.

#### **V. WORK OF THIRD PARTIES TO EFFECTUATE SETTLEMENT**

On and prior to June 9, 2025, the appointed Settlement Administrator, printed and mailed settlement notices and rollover forms to all 2,107 Class Members, established the settlement website and telephone support line as provided by the Settlement. *Id.* ¶ 21. Analytics has since collected completed rollover forms, monitored returned mail, and researched additional means to contact the few Class Members whose notices were returned undeliverable. *Id.* ¶ 22. If the Settlement receives final approval, Analytics will review and process rollover forms, calculate payments to Class Members pursuant to the Plan of Allocation, and facilitate distribution of payments to Class Members. *Id.* ¶ 23. For these services Analytics will charge Class Counsel \$21,529.34. *Id.* ¶ 25.

Gallagher Fiduciary Advisors, LLC, the retained independent fiduciary, is reviewing the Settlement and will independently determine whether it is in the best interest of the Plan to release its claims against Defendants in exchange for the relief provided. Settlement § 2.1. This independent fiduciary review is required by DOL regulations. *See* PTE 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830. For their services, Gallagher Fiduciary Advisors, LLC will charge \$15,000.

## **VI. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS SOUGHT**

In consideration of the work summarized above and associated expenses, Article 6 of the Settlement Agreement provides that Plaintiffs may seek (1) attorneys' fees equal to one-third of the Gross Settlement Amount; (2) litigation costs; (3) a \$7,500 service award for each of the Class Representatives; and (4) payment of settlement administration expenses. Consistent with the above, Plaintiffs seek the following amounts in connection with this motion:

- Attorneys' fees: \$650,000 (equal to one-third of the Gross Settlement Amount)
- Litigation expenses: \$3,338.27
- Class Representative service award: \$7,500.00 per Class Representative
- Settlement administrator expenses: \$21,529.34
- Independent Fiduciary expense: \$15,000.00

## ARGUMENT

### **I. LEGAL STANDARD**

When counsel obtains a settlement for a class, courts “may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). Here, the requested distributions are authorized both under Article 6 of the Settlement Agreement and by applicable law.

The Supreme Court “has recognized consistently that 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.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Likewise, “reasonable expenses of litigation” may be recovered from a common fund, *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970), as well as administrative expenses of settlement, *see In re Corel Corp.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (awarding all settlement notice and administration expenses).

Finally, courts in this district frequently “compensate named plaintiffs for ‘the services they provided and the risks they incurred during the course of class action litigation.’” *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at \*22 (D.N.J. Apr. 8, 2011). Incentive awards also “‘reward the public service’ of contributing to the enforcement of mandatory laws.” *Id.* (quoting *In re Cendant Corp. Deriv. Action Litig.*, 232 F. Supp. 2d 327, 344 (D.N.J. 2002)). Thus, the

requested distributions are customary in a class action suit such as this and should be approved for the reasons set forth below.

## **II. CLASS COUNSEL’S REQUESTED ONE-THIRD FEE IS REASONABLE**

In the Third Circuit, the preferred method for awarding attorneys’ fees in common fund cases is the percentage-of-recovery method because “it allows the court to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.” *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at \*10 (E.D. Pa. Feb. 28, 2020) (quoting *In re AT&T*, 455 F.3d 160, 164 (3d Cir. 2006)). This percentage-of-recovery method “ensures ‘that competent counsel continue to undertake risky, complex, and novel litigation[.]’” such as this. *In re Cendant Corp.*, 232 F. Supp. 2d at 338 (quoting *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)). The approach also “encourage[s] early settlements by not penalizing efficient counsel[.]” whereas the lodestar method “arguably encourages lawyers to run up their billable hours” and discourages settlement. *Checchia v Bank of America, N.A.*, 2023 WL 6164406, at \*9 (E.D. Pa. Sept. 21, 2023) (quoting *Gunter*, 223 F.3d at 198).

In evaluating the reasonableness of an award under the percentage-of-recovery approach, courts consider factors set forth in *Gunter*, 223 F.3d 190 and *In re Prudential*, 148 F.3d 283 (3d Cir. 1998) (“*Gunter/Prudential* factors”):

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiff's counsel; (7) the awards in similar cases; (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations; (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and (10) any innovative terms of settlement.

*Stevens*, 2020 WL 996418, at \*10 (citing *Gunter*, 223 F.3d at 195 n.1; *In re Prudential*, 148 F.3d at 336-40; *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009)). Though the Court must engage in “robust assessment” of these factors, they “are not exhaustive and should not be applied in a formulaic way.” *Id.* (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301–02 (3d Cir. 2005)).

**A. The Applicable *Gunter/Prudential* Factors Strongly Support the Award of Class Counsel’s Requested One-Third Fee.**

**1. The size of the fund created and the number of persons benefitted**

The benefit to the class is the “most important factor” in assessing fees. *Huffman v. Prud. Ins. Co. of Am.*, 2019 WL 1499475, at \*7 (E.D. Pa. April 5, 2019) (citation omitted). Here, Class Counsel negotiated a significant \$1.95 million settlement, which compares favorably in light of the possible range of recoveries. Dkt. 61-1 (“First Lee Decl.”) ¶ 6. The recovery of more than \$900 per Class Member on a gross basis, Second Lee Dec. ¶ 3, confers a “substantial” benefit to

class members. *See In re Schering-Plough Corp.*, 2012 WL 1964451, at \*6 (D.N.J. 2012) (finding around \$900 per class member to be a “substantial” benefit in ERISA case). This strongly supports the requested fee.

## **2. The presence or absence of substantial objections**

*Gunter* advises the Court to consider “the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel.” 223 F.3d at 195 n.1. More than 2,100 notices were mailed to Class Members. The Settlement Notices that were approved by the Court disclosed the terms of the Settlement and contained a prominent “Statement of Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation Sought in the Class Action.” Dkt. 61-1 at 53–54. As of the date of this motion, there have been no objections to the proposed Settlement or Class Counsel’s present request. Second Lee Decl. ¶ 25. This factor supports the requested fee. *See In re Schering-Plough Corp.*, 2012 WL 1964451, at \*6 (finding this factor favored requested fee where there were no objections from a large class).

## **3. The skill and efficiency of the attorneys involved**

This factor is “measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *In re*

*Computron Software, Inc.*, 6 F. Supp. 2d 313, 323 (D.N.J. 1998). All these factors support the requested fee.

ERISA class actions are complex and require highly specialized and skill attorneys. *In re Unisys Corp.*, 886 F. Supp. 445, 477 (E.D. Pa. 1995) (“[T]he complex and difficult nature of this class action ERISA case demands a quality of service for which relatively expensive representation is to be expected”). Class Counsel achieved this substantial recovery early in the litigation, before the Court had ruled on Defendants’ motion to dismiss and before the Parties had to incur the expense and burden of fact and expert discovery.

Class Counsel’s skills, reputation, and experience were critical to this early resolution. Courts have recognized the skills and ability of Class Counsel, Engstrom Lee. *See, e.g., Colon v. Johnson*, No. 8:22-cv-888-TPB-TGW, 2024 WL 3315628, at \*4 (M.D. Fla. May 31, 2024) (finding Engstrom Lee “clearly possess the qualifications and experience to handle this litigation” and undersigned counsel “is a highly skilled and experienced litigator in class actions and ERISA cases.”). Class Counsel also faced formidable defense counsel. Morgan Lewis is a prominent international law firm with more than 2,200 attorneys worldwide. Morgan Lewis, Our Firm, *available at* <https://www.morganlewis.com/our-firm>. Accordingly, this factor supports the requested fee. *McGee v. Cont'l Tire N. Am., Inc.*, 2009 WL 539893, at \*14 (D.N.J. Mar. 4, 2009) (“The quality of opposing

counsel is also important in evaluating the quality of plaintiffs' counsel's work.” (quoting *In re Warner Commc'ns Sec. Litig.*, 618 F.Supp. 735, 749 (S.D.N.Y. 1985))).

#### **4. The complexity, expense, and likely duration of the litigation**

This factor considers “the probable costs, in both time and money, of continued litigation.” *In re Gen. Motors*, 55 F.3d 768, 812 (3d Cir. 1995) (citation omitted). ERISA class actions are “notoriously complex cases, and ESOP cases are often cited as the most complex of ERISA cases,” “often leading to lengthy litigation.” *Foster v. Adams & Assocs., Inc.*, 2021 WL 4924849, at \*6 (N.D. Cal. Oct. 21, 2021) (first quotation); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at \*1 (D. Minn. July 13, 2015) (second quotation). These cases can extend for a decade before final resolution, sometimes going through multiple appeals. *See, e.g., Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (recounting lengthy history of case where trial was held in 2011); *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017) (recounting 11-year procedural history); *Tibble v. Edison Int'l*, 2017 WL 3523737, at \*15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit filed). Had this case not settled, further litigation would have required “substantial additional discovery and motion practice at great expense to the parties.” *Stevens*, 2020 WL 996418, at \*11. There is of course “also the possibility that Plaintiff would not recover anything.” *Id.* The Settlement secures a

substantial portion of Plaintiffs’ best recovery without incurring the substantial expense or delay of protracted litigation. This factor favors the requested fee.

### **5. The risk of non-payment**

Class Counsel assumed significant risks by representing the Plaintiffs and the Class on a contingent-fee basis. “Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp.*, 2012 WL 1964451, at \*7; *McGee*, 2009 WL 539893, at \*15 (“Class Counsel accepted the responsibility of prosecuting this class action on a contingent fee basis and without any guarantee of success or award. Accordingly, this factor weighs in favor of approval.”). The risks that Class Counsel would recover nothing was great, given that this was a novel claim concerning the retention of a conservative investment under circumstances largely unique to Defendant. Despite these risks, Class Counsel was prepared to see this case all the way through trial and advance all necessary litigation costs, including expert fees. Second Lee Dec. ¶ 4. This factor therefore weighs heavily in favor of the requested award.

### **6. The amount of time devoted to the case by Class Counsel**

As explained further below, *infra* at 16–19, Class Counsel has devoted nearly 195 hours to investigating and litigating this action, as well as negotiating and seeking approval of the settlement. While this action settled relatively early in

the proceedings, the Settlement secures a substantial recovery on behalf of the Class.

### **7. Awards in similar cases**

The Court next compares the requested awards with awards in similar cases. “Percentage fee awards in common fund cases often fall between nineteen and forty-five percent of the settlement fund,” with one-third as “the “benchmark” percentage for an award to counsel.” *Huffman*, 2019 WL 1499475, at \*7; *see also Beltran v. Sos Ltd.*, 2023 WL 319895, at \*8 (D.N.J. Jan. 3, 2023), *report and recommendation adopted*, 2023 WL 316294 (D.N.J. Jan. 19, 2023) (same). “In complex ERISA cases, courts in this Circuit and others also routinely award attorneys’ fees in the amount of one-third of the total settlement fund.” *Stevens*, 2020 WL 996418, at \*12; *accord High St. Rehab.*, 2019 WL 4140784, at \*13 (same); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at \*5 (E.D. Pa. Dec. 1, 2004) (same); *Huffman*, 2019 WL 1499475, at \*6 (same); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at \*13–14 (D.N.J. Feb. 9, 2010) (same); *In re Schering-Plough Corp.*, 2012 WL 1964451, at \*8 (same). This factor therefore weighs in favor of approval.

### **8. Value of benefits attributable to the efforts of Class Counsel relative to the efforts of others**

This factor considers whether Class Counsel has piggybacked on a government investigation or existing action. That is not the case here. The value

inured to the Class through this Settlement is entirely attributable to the efforts of Class Counsel, who identified the issue through independent investigation of publicly available information and identified a novel claim. Engstrom Dec. ¶ 4. This factor therefore augurs in favor of the requested fee. *High St. Rehab.*, 2019 WL 4140784, at \*13 (awarding one-third fee where “Class Counsel were the only ones investigating the claims at issue in this case, and they alone initiated this federal action and actively litigated it.”).

### **9. Percentage fee that would have been negotiated**

This factor asks the Court “to estimate what percentage fee would have been negotiated had the case been subject to a private contingent fee arrangement from the start.” *Huffman*, 2019 WL 1499475, at \*7. It is broadly accepted that plaintiffs’ counsel routinely negotiate agreements for “between thirty and forty percent of any recovery.” *Id.* While some Courts view this hypothetical exercise as “academic” and therefore do not consider it, *id.*, Class Counsel does take individual representation on a contingent basis and routinely negotiates a 40% contingency fee. Second Lee Dec. ¶ 15. Consistent with this, Class Counsel and Class Representatives agreed to a one-third fee (subject to the approval of the Court) at the time Counsel was retained. *Id.* This factor therefore favors the requested fee.

### **B. Class Counsel’s Requested Fee is Also Reasonable Under the Lodestar Cross-Check.**

Courts sometimes use the lodestar method of calculating fees as a cross-

check of the reasonableness of a percentage-of-recovery fee award. *Stevens*, 2020 WL 996418, at \*12. The crosscheck does not “trump the primary reliance on the percentage of common fund method” nor must the multiplier “fall within any pre-defined range, provided that the District Court’s analysis justifies the award.” *In re Rite Aid*, 396 F.3d at 307. This cross-check can be an abridged lodestar analysis that requires neither “mathematical precision nor bean counting.” *Id.*

Here, Class Counsel invested more than 170 hours of attorney time and 24 hours of paralegal time. Second Lee Dec. ¶ 12. Class Counsel’s hourly rate (ranging from \$700 to \$775 for Partners) is reasonable and lower than those found reasonable in this market more than five years ago. *See, e.g., Stevens*, 2020 WL 996418, at \*13 (approving hourly rates of \$875 for partners); *High St. Rehab.*, 2019 WL 4140784, at \*14 (approving hourly rates of \$1095 for partners); *Pfiefer v. Wawa, Inc.*, 2018 WL 4203880, at \*14 (E.D. Pa. Aug. 31, 2018) (approving hourly rates of \$910 for partners, “given the complexity of this ERISA action and the skill and experience of the attorneys involved”); *accord In re Unisys Corp.*, 886 F. Supp. at 477 (“the complex and difficult nature of this class action ERISA case demands a quality of service for which relatively expensive representation is to be expected.”). Multiplying those hours by the reasonable hourly rates billed by each firm member yields a total sum of \$136,659,50. *Id.* In addition to the work performed to date, Class Counsel expects to incur approximately \$30,000 more in

fees overseeing Settlement administration and seeking final approval of the Settlement. *Id.* ¶ 13.<sup>1</sup>

Applying a cross-check, the requested fee (\$650,000) is approximately 4.8 times the lodestar \$136,659,50.<sup>2</sup> This multiplier falls within those approved by courts in this Circuit and is reasonable given the complexity of the case, the efficient manner in which it was handled, and the skill and experience of Class Counsel. “Indeed, multiples ranging from 1 to 8 are often used in common fund cases” and “are necessary to compensate counsel for the risk of assuming the representation on a contingency fee basis.” *Stevens*, 2020 WL 996418, at \*13 (citing cases); *Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at \*18 (E.D. Pa. May 19, 2005) (awarding multiplier of 15.6). Further, the multiplier reflects, in part, the fact that Class Counsel was able to leverage its expertise in this difficult field. *Id.* ¶ 14. Other firms with less experience would not have been able to litigate the case nearly as efficiently. *Id.* Moreover, Class Counsel staffed this case leanly, with 70% of attorney hours billed to this matter performed by two attorneys. *See id.* ¶ 12. Thus, Class Counsel did not bill “excessive, redundant, or otherwise unnecessary hours.” *Stevens*, 2020 WL 996418, at \*13; *see also In re Enron Corp. Sec., Derivative & ERISA Litig.*,

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<sup>1</sup> It is expected that by the time of Final Approval, Class Counsel’s lodestar crosscheck will be closer to 3.9.

586 F. Supp. 2d 732, 785 (S.D. Tex. 2008) (awarding 5.4 multiplier where counsel used a “well organized . . . ‘core’ team that followed the litigation through”).

That this case settled early in litigation further supports the requested multiplier, as “courts in the Third Circuit recognize that larger settlements or earlier settlements can—and often do—produce higher multipliers.” *In re Mercedes-Benz*, 2021 WL 7833193, at \*15 (D.N.J. Aug. 2, 2021); *Stevens*, 2020 WL 996418, at \*13 (approving a multiplier of 6.16 in ERISA breach of fiduciary duty case that settled shortly after initial pretrial conference); *see In re Rite Aid*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005) (approving a 6.96 multiplier). Class Counsel should not be penalized for securing a substantial recovery on behalf of the Class so early in the litigation. *See Sala v. National Railroad Passenger Corp.*, 128 F.R.D. 210, 215 (E.D. Pa. 1989) (“[I]t would be the height of folly to penalize an efficient attorney for settling a case on the ground that less total hours were expended in the litigation.” (internal quotations omitted)). Indeed, the Third Circuit has explicitly held that counsel should not be penalized for reaching a settlement instead of taking a case to trial. *See Gunter*, 223 F.3d at 198 (reversing district court order that reduced a fee award from 33% to 18% because “[p]rocurring a settlement . . . is never a factor that the district court should rely upon to reduce a fee award”); *see also McKenzie Constr. Co. v. Maynard*, 758 F. 2d 97, 101–02 (3d Cir 1985) (“a prompt and efficient attorney who achieves a fair settlement without

litigation serves both his client and the interests of justice”); *In re SmithKline Beckman*, 751 F. Supp. 525, 534 (E.D. Pa. 1990) (collecting cases).

\* \* \* \*

In light of the significant recovery achieved on behalf of Class Members, the risks undertaken by Class Counsel to bring this novel claim, and the skill and experience required to secure this favorable outcome so early in the litigation on behalf of Class Members, Class Counsel’s requested one-third fee is reasonable under all applicable *Gunter/Prudential* factors and should be awarded.

### **III. THE REQUESTED SERVICE AWARD IS REASONABLE**

It is common for courts to award service awards to named class representatives. *High St. Rehab.*, 2019 L 4140784, at \*15. These awards recognize that “there would be no benefit to the Settlement Class Members if Plaintiff[s] had not stepped forward and prosecuted this matter to the current resolution.” *Id.* Class representatives Mr. Harvey, Ms. Eichenbaum, and Ms. Kuzowsky took on the risks of serving as Class Representative, aided Class Counsel in their investigation, advocated for the class throughout settlement negotiations and were available during the all-day mediation. Second Lee Dec. ¶ 16. The requested service award—\$7,500 per Class Representative—falls within the range of reasonable. *See id.* (approving \$10,000 service award); *Brown v. Progressional Behav. Hlth. Servs., Inc.*, 2017 WL 2986300, at \*7 (E.D. Pa. July 13, 2017) (awarding \$10,000

to each class representative in action that settled early because they “were actively involved in the litigation since before it was commenced, they provided the information and documents that formed the basis for the lawsuit”). Finally, the Court-approved Settlement Notice also informed class members that Class Counsel would request these service awards for Class Representatives and no class members have objected to this request. *Supra* at 10–11. These considerations weigh in favor of approving the requested service awards.

#### **IV. THE REQUESTED COSTS AND EXPENSES ARE REASONABLE AND SHOULD ALSO BE AWARDED.**

##### **A. Litigation Costs.**

Courts recognize that “[t]here is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of ... reasonable litigation expenses from that fund.” *Stevens*, 2020 WL 996418, at \*14 (quoting *In re Corel*, 293 F. Supp. 2d at 498). To date Class Counsel has advanced \$3,338.27 in litigation costs and seek reimbursement for such costs. This includes costs incurred with legal research, filing fees, service, and mediator expenses. Second Lee Dec. ¶ 19. These expenses are “reasonable and expected in this type of case” and therefore should be awarded. *High St. Rehab.*, 2019 WL 4140784 at \*15.

##### **B. Settlement Administrator and Independent Fiduciary.**

Class Counsel also seeks approval of payment for settlement administration expenses, including fees for the court-appointed settlement administrator and

independent fiduciary. *See supra* at 7. These expenses are likewise reasonable and expected in a case like this and should be approved. *Stevens*, 2020 WL 996418, at \*14. Nor have any class members objected to these payments. *Supra* at 10–11.

### **CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully request the Court award Class Counsel attorneys’ fees in the amount of \$650,000, equal to one-third of the Gross Settlement Amount; service awards of \$7,500 to each Class Representative; reimbursement of litigation expenses incurred in the amount of \$3,338.27; and approve payment to Analytics Consulting LLC in the amount of \$21,529.34 for Notice and Administration of the Settlement, and to Gallagher Fiduciary Advisors, LLC in the amount of \$15,000 for its review of the Settlement, as required by DOL regulations.

Respectfully Submitted,

Date: August 19, 2025

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ATTORNEYS FOR PLAINTIFFS

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on August 19, 2025, the foregoing was electronically filed using the CM/ECF system, causing a Notice of Electronic Filing to be transmitted to all counsel of record.

/s/Andrew R. Frisch