

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

IN RE VALEANT PHARMACEUTICALS
INTERNATIONAL, INC. THIRD-PARTY
PAYOR LITIGATION

Civil Action No. 3:16-cv-3087-MAS-LHG

District Judge Michael A. Shipp

Magistrate Judge Lois H. Goodman

Special Master Dennis M. Cavanaugh, U.S.D.J.
Ret.

**MEMORANDUM OF LAW IN SUPPORT OF LEAD COUNSEL'S
MOTION FOR ATTORNEYS' FEES AND LITIGATION EXPENSES**

James E. Cecchi
CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO
5 Becker Farm Road
Roseland, NJ 07068
(973) 994-1700

Hannah Ross
James A. Harrod
Jai K. Chandrasekhar
James M. Fee
BERNSTEIN LITOWITZ BERGER
& GROSSMANN LLP
1251 Avenue of the Americas
New York, NY 10020
(212) 554-1400

*Lead Counsel, Interim Class Counsel, and
Counsel for Plaintiffs AirConditioning and
Refrigeration Industry Health and Welfare Trust
Fund, Fire and Police Health Care Fund, San
Antonio, and Plumbers Local Union No. 1
Welfare Fund*

TABLE OF CONTENTS

PRELIMINARY STATEMENT1

ARGUMENT4

I. PLAINTIFFS’ COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND4

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND5

III. THE REQUESTED ATTORNEYS’ FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY OR THE LODESTAR METHOD6

A. The Requested Attorneys’ Fees Are Reasonable Under the Percentage-of-Recovery Method..... 6

B. The Reasonableness of the Requested Attorneys’ Fees Is Confirmed by a Lodestar Cross-Check..... 7

IV. THE FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE.....9

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request 10

B. The Absence of Objections by Settlement Class Members to the Settlements and Fee Request Supports Approval of the Fee Request..... 10

C. The Skill and Efficiency of Plaintiffs’ Counsel Support Approval of the Fee Request..... 11

D. The Complexity and Duration of the Litigation Support Approval of the Fee Request..... 12

E. The Risk of Non-Payment Supports Approval of the Fee Request 13

F. The Significant Time Devoted to This Case by Plaintiffs’ Counsel Supports Approval of the Fee Request..... 15

G. The Requested Fee of 30% of the Settlement Funds is Within the Range of Fees Typically Awarded in Actions of This Nature 15

H. The Benefits of the Settlements Are Attributable to the Efforts of Class Counsel 16

I.	The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement Supports Approval of the Fee Request.....	17
V.	LEAD COUNSEL’S APPLICATION FOR LITIGATION EXPENSES SHOULD BE APPROVED	17
VI.	PLAINTIFFS ARE ENTITLED TO SERVICE AWARDS IN THE AMOUNTS REQUESTED	19
A.	Courts Routinely Award Service Awards to Plaintiffs and Class Representatives Who Provide Substantial Assistance	19
B.	The Service Awards Sought Are More Than Justified	20
C.	The Service Awards Sought Are Well Within the Range Routinely Awarded	20
VII.	CONCLUSION.....	22

TABLE OF AUTHORITIES

	Page(s)
CASES	
<i>In re AremisSoft Corp. Sec. Litig.</i> , 210 F.R.D. 109 (D. N.J. 2002).....	11
<i>In re AT&T Corp. Sec. Litig.</i> , 455 F.3d 160 (3d Cir. 2006).....	5, 7, 16
<i>Bellifemine v. Sanofi-Aventis U.S. LLC</i> , 2010 WL 3119374 (S.D.N.Y. Aug. 6, 2010).....	21
<i>Blum v. Stenson</i> , 465 U.S. 886 (1984).....	17
<i>Boeing Co. v. Van Gemert</i> , 444 U.S. 472 (1980).....	4
<i>Brady v. Air Line Pilots Ass’n</i> , 627 F. App’x 142 (3d Cir. 2015)	21
<i>Bredbenner v. Liberty Travel, Inc.</i> , 2011 WL 1344745 (D. N.J. Apr. 8, 2011).....	19
<i>Castro v. Sanofi Pasteur Inc.</i> , 2017 WL 4776626 (D.N.J. Oct. 23, 2017).....	6, 9, 21
<i>In re Caterpillar, Inc.</i> , 2016 WL 7173814 (D.N.J. Sept. 20, 2016)	21
<i>In re Cendant Corp. Sec. Litig.</i> , 404 F.3d 173 (3d Cir. 2005).....	4
<i>In re Cigna Corp. Sec. Litig.</i> , No. 02-8088, 2007 WL 2071898 (E.D. Pa. July 13, 2007)	16
<i>Craig v. Rite Aid Corp.</i> , 2013 WL 84928 (M.D. Pa. Jan. 7, 2013).....	21
<i>Cullen v. Whitman Med. Corp.</i> , 197 F.R.D. 136 (E.D. Pa. 2000).....	11
<i>Demaria v. Horizon Healthcare Servs., Inc.</i> , 2016 WL 6089713 (D. N.J. Oct. 18, 2016).....	6, 8, 21
<i>Desantis v. Snap-On Tools Co.</i> , LLC, 2006 WL 3068584 (D.N.J. Oct. 27, 2006).....	21

Devlin v. Ferrandino & Son, Inc.,
2016 WL 7178338 (E.D. Pa. Dec. 9, 2016).....19

In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.,
582 F.3d 524 (3d Cir. 2009).....4, 9, 17

Esslinger v. HSBC Bank Nev., N.A.,
2012 WL 5866074 (E.D. Pa. Nov. 20, 2012)6

In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.,
55 F.3d 768 (3d Cir. 1995).....6

Gunter v. Ridgewood Energy Corp.,
223 F.3d 190 (3d Cir. 2000).....5, 9

Haas v. Burlington Cty.,
2019 WL 413530 (D. N.J. Jan. 31, 2019).....20

In re Heckmann Corp. Sec. Litig.,
No. 1:10-cv-00378-LPS-MPT, slip op. (D. Del. June 26, 2014), ECF No. 308
(Ex. 10)6

Hensley v. Eckerhart,
461 U.S. 424 (1983).....10

In re Ikon Office Sols., Inc., Sec. Litig.,
194 F.R.D. 166 (E.D. Pa. 2000).....6, 8, 12, 17

In re Ins. Brokerage Antitrust Litig.,
297 F.R.D. 136 (D.N.J. 2013).....6

King Drug Co. of Florence, Inc. v. Cephalon, Inc.,
2015 WL 12843830 (E.D. Pa. Oct. 15, 2015).....21

In re Linerboard Antitrust Litig.,
2004 WL 1221350 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775
(E.D. Pa. June 4, 2004)10, 19, 20, 21

In re Liquid Aluminum Sulfate Antitrust Litig.,
2019 WL 7375288 (D.N.J. Nov. 7, 2019)19, 20

Louisiana Mun. v. Sealed Air Corp.,
2009 WL 4730185 (D.N.J. 2009)6

In re Merck & Co., Inc. Vytorin ERISA Litig.,
2012 WL 13186948 (D.N.J. Oct. 1, 2012).....7

In re N.J. Tax Sales Certificates Antitrust Litig.,
2016 WL 5844319 (D.N.J. Oct. 3, 2016).....6

Nichols v. SmithKline Beecham Corp.,
2005 WL 950616 (E.D. Pa. Apr. 22, 2005)7

In re Ocean Power Techs., Inc.,
2016 WL 6778218 (D.N.J. Nov. 15, 2016)5, 17

In re Processed Egg Prod. Antitrust Litig.,
2012 WL 5467530 (E.D. Pa. Nov. 9, 2012)7, 17

In re: Prudential Ins. Co. Am. Sales Practices Litig. Agent Actions,
148 F.3d 283 (3d Cir. 1998).....9, 16, 17

In re Rite Aid Corp. Sec. Litig.,
396 F.3d 294 (3d Cir. 2005).....5, 7, 8

In re Safety Components,
166 F. Supp. 2d 72 (D.N.J. 2001)18

In re Schering-Plough Corp. ENHANCE ERISA Litig.,
2012 WL 1964451 (D.N.J. May 31, 2012)7, 14

In re Schering-Plough Corp. ENHANCE Sec. Litig.,
2013 WL 5505744 (D.N.J. Oct. 1, 2013).....8

Schuler v. Medicines Co.,
2016 WL 3457218 (D.N.J. June 24, 2016)4, 9

Stevens v. SEI Invs. Co.,
2020 WL 996418 (E.D. Pa. Feb. 28, 2020)8

Sullivan v. DB Investments,
667 F.3d 273 (3d Cir. 2011).....5, 7, 19

In re Tricor Indirect Purchaser Antitrust Litig.,
2009 WL 3460769 (D. Del. Oct. 28, 2009)7

In re Veritas Software Corp. Sec. Litig.,
396 F. App’x 815 (3d Cir. 2010)8

In re Veritas Software Corp. Sec. Litig.,
No. 1:04-cv-00831-SLR, slip op. (D. Del. Aug. 5, 2008), ECF No. 143 (Ex.
11), *aff’d*, 396 F. App’x 815 (3d Cir. 2010)7

In re Vicuron Pharms. Sec. Litig.,
512 F. Supp. 2d 279 (E.D. Pa. 2007)16

In re Viropharma Inc. Sec. Litig.,
2016 WL 312108 (E.D. Pa. Jan. 25, 2016).....10, 18

Vista Healthplan, Inc. v. Cephalon, Inc.,
2020 WL 1922902 (E.D. Pa. Apr. 21, 2020)6, 20

In re Vytorin/Zetia Mktg., Sales Pracs. & Prod. Liab. Litig.,
2010 WL 11570262 (D.N.J. Feb. 9, 2010) (Cavanaugh, J.)7

In re Warner Commc'ns Sec. Litig.,
618 F. Supp. 735 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986).....12, 13, 14

In re WorldCom, Inc. Sec. Litig.,
388 F. Supp. 2d 319 (S.D.N.Y. 2005).....5

Lead Counsel Bernstein Litowitz Berger & Grossmann LLP (“BLB&G”) and Carella, Byrne, Cecchi, Olstein, Brody & Agnello P.C. (“Carella Byrne”), respectfully submit this memorandum of law in support of their motion for: (i) an award of attorneys’ fees for all Plaintiffs’ Counsel in the amount of 30% of the Settlement Funds achieved; (ii) an award of \$720,335.39 in litigation expenses reasonably and necessarily incurred by Plaintiffs’ Counsel in prosecuting and resolving the Action; and (iii) case contribution awards of \$20,000 each to Plaintiffs AirConditioning and Refrigeration Industry Health and Welfare Trust Fund (“ACR Trust”), Fire and Police Health Care Fund, San Antonio (“San Antonio”), Plumbers Local Union No. 1 Welfare Fund (“NY Plumbers”), New York Hotel Trades Council & Hotel Association of New York City, Inc. (“NYHTC”), and the Detectives Endowment Association of New York City (“DEA”) (collectively, “Plaintiffs”).¹

PRELIMINARY STATEMENT

The proposed Settlements, which provide for a combined \$23,125,000 in cash for the benefit of the Settlement Class, are an outstanding result. The recovery obtained was achieved as a result of the skill, tenacity, and effective advocacy of Lead Counsel, assisted by the other Plaintiffs’ Counsel, who litigated this Action for five years against highly skilled defense counsel, including successfully surmounting Defendants’ motions to dismiss and conducting extensive discovery. Plaintiffs’ Counsel, who litigated this Action on a fully contingent fee basis, faced

¹ Capitalized terms that are not defined in this memorandum of law have the same meanings as in the Stipulation and Agreement of Settlement with Valeant Pharmaceuticals International, Inc., dated August 4, 2021 (ECF No. 194-2) (“Valeant Stipulation”) and the Stipulation and Agreement of Settlement with the Philidor Defendants dated August 4, 2021 (ECF No. 195-2) (“Philidor Defendants Stipulation”), or in the Joint Declaration of James A. Harrod and James E. Cecchi in Support of (I) Plaintiffs’ Motion for Final Approval of Settlements and Plan of Allocation; and (II) Lead Counsel’s Motion for Attorneys’ Fees and Litigation Expenses (“Joint Declaration” or “Joint Decl.”), filed herewith. Citations to “¶ ___” herein refer to paragraphs in the Joint Declaration and citations to “Ex. ___” refer to exhibits to the Joint Declaration.

significant challenges to proving both liability and damages that posed the serious risk that there might be no recovery at all in the Action.

As detailed in the accompanying Joint Declaration,² Lead Counsel vigorously pursued the claims here for the benefit of the Settlement Class. Among other things, Lead Counsel, assisted by other Plaintiffs' Counsel³: (i) conducted a wide-ranging investigation concerning Defendants' alleged fraudulent scheme, including conducting numerous interviews with former employees and a thorough review of publicly available information; (ii) researched and drafted the Consolidated Class Action Complaint, which was filed in the Action on December 14, 2016 ("Complaint"), and the Amended Consolidated Class Action Complaint ("Amended Complaint"), which was filed on July 30, 2019; (iii) researched and drafted detailed briefing in opposition to Defendants' two rounds of motions to dismiss the Complaint and the Amended Complaint; (iv) undertook extensive fact discovery efforts, which included obtaining, reviewing, and analyzing more than 8.6 million pages of documents from Defendants and third parties, and participating in the depositions of 39 fact witnesses; (v) consulted extensively with a damages expert; and (vi) engaged in extensive arm's-length settlement negotiations with Defendants, including with a mediator, to resolve the Action. ¶¶ 10, 19-88.

The Settlements achieved through Plaintiffs' Counsel's efforts are a particularly favorable result in light of the substantial litigation risks in this Action, including the risks associated with

² The Joint Declaration is integral to this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, among other things: the history of the Action and a description of the services Plaintiffs' Counsel provided to benefit the Settlement Class (¶¶ 19-88); the nature of the claims asserted (¶¶ 18, 23); the negotiations leading to the Settlements (¶¶ 84-88); the risks and uncertainties of the litigation (¶¶ 92-105); and facts and circumstances underlying Lead Counsel's Fee and Expense Application (¶¶ 119-143).

³ Plaintiffs' Counsel consist of Lead Counsel BLB&G and Carella Byrne; Barrack, Rodos & Bacine, counsel for DEA; and Cohen Milstein Sellers & Toll PLLC, counsel for NYHTC.

proving Defendants' liability and establishing loss causation and damages. These risks are detailed in the Joint Declaration at paragraphs 92 to 105 and are summarized in the memorandum of law supporting the Settlements. These risks posed a real possibility that Plaintiffs and the Settlement Class would not recover or might have recovered a much lesser amount if the Action proceeded.

As compensation for their efforts on behalf of the Settlement Class and the risks of nonpayment they faced in bringing the Action on a contingent basis, Lead Counsel now seek an attorneys' fee award for all Plaintiffs' Counsel in the amount of 30% of the Settlement Funds. The requested fee is within the range of fees that courts in this Circuit have awarded in class actions with comparable recoveries on a percentage basis. The requested fee represents a negative multiplier of approximately 0.74 on Plaintiffs' Counsel's total lodestar—in other words, the requested fees are substantially less than the normal hourly value of Plaintiffs' Counsel's time. ¶ 124. This “negative” lodestar is below the range of multipliers typically awarded in class actions with significant contingency risks such as this one.

Moreover, the fee request has the full support of each of the Plaintiffs. *See* Declaration of Kristi Wagner on behalf of ACR Trust (Ex. 1), at ¶ 6; Declaration of James Bounds on behalf of San Antonio (Ex. 2) at ¶ 6; Declaration of Walter Saraceni on behalf of NY Plumbers (Ex. 3) at ¶ 6; Declaration of Carmine D. Russo on behalf of DEA (Ex. 4) at ¶ 6; Declaration of John Heim on behalf of NYHTC (Ex. 5) at ¶ 6.

In addition, while the deadline set by the Court for Settlement Class Members to object to the requested attorneys' fees and expenses has not yet passed, to date, no objections to the requests for fees and expenses have been received. ¶¶ 111, 142. The Notice mailed to potential Settlement Class Members states that Lead Counsel would apply for an award of attorneys' fees in an amount not to exceed 30% of the Settlement Funds, for payment of litigation expenses in an amount not

to exceed \$750,000, and for service awards to Plaintiffs not to exceed \$100,000 in total. *See* Declaration of Eric J. Miller (Ex. 6) (“Miller Decl.”), Ex. A, at ¶ 17. The fees and expenses sought by Lead Counsel are within the amounts set forth in the Notice.⁴

For all the reasons set forth here and in the Joint Declaration, Lead Counsel respectfully submit that the requested attorneys’ fees and expenses are fair and reasonable under applicable legal standards and, therefore, should be awarded by the Court.

ARGUMENT

I. PLAINTIFFS’ COUNSEL ARE ENTITLED TO COMPENSATION FROM THE COMMON FUND

An attorney who maintains a lawsuit that results in the creation of a fund or benefit in which others have a common interest may obtain fees from that common fund. *See 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”); *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 197 (3d Cir. 2005) (“attorneys whose efforts create, discover, increase, or preserve” a common fund are entitled to compensation); *In re Diet Drugs (Phentermine/Fenfluramine/Dexfenfluramine) Prod. Liab. Litig.*, 582 F.3d 524, 540 (3d Cir. 2009); *Schuler v. Medicines Co.*, 2016 WL 3457218, at *8 (D.N.J. June 24, 2016) (“Under the common fund doctrine, ‘a private plaintiff, or plaintiff’s attorney, whose efforts create, discover, increase, or preserve a fund to which others also have a claim, is entitled to recover from the fund the costs of his litigation, including attorneys’ fees.’”).

Courts have recognized that, in addition to providing just compensation, awards of fair attorneys’ fees from a common fund ensure that “competent counsel continues to be willing to

⁴ The deadline for submitting objections is November 11, 2021. Plaintiffs and Lead Counsel will file reply papers no later than November 24, 2021 addressing any objections that may be received.

undertake risky, complex, and novel litigation.” *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (citations omitted); *see also In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (“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.”).

II. THE COURT SHOULD AWARD A REASONABLE PERCENTAGE OF THE COMMON FUND

Lead Counsel respectfully submit that the Court should award a fee based on a percentage of the common fund obtained for the Settlement Class and use a lodestar cross-check to confirm that the fee is reasonable. In the Third Circuit, the percentage-of-recovery method is “generally favored” in cases involving a settlement that creates a common fund. *See Sullivan v. DB Investments*, 667 F.3d 273, 330 (3d Cir. 2011) (favoring percentage of recovery method “because it allows courts to award fees from the [common] fund ‘in a manner that rewards counsel for success and penalizes it for failure’”); *In re AT&T Corp. Sec. Litig.*, 455 F.3d 160, 164 (3d Cir. 2006); *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005). The percentage-of-recovery method is almost universally preferred in common fund cases because it most closely aligns the interests of counsel and the class. *See Rite Aid*, 396 F.3d at 300; *see In re Ocean Power Techs., Inc.*, 2016 WL 6778218, at *24 (D.N.J. Nov. 15, 2016). The Third Circuit also recommends that the percentage award be “cross-checked” against the lodestar method to ensure its reasonableness. *See Sullivan*, 667 F.3d at 330.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER EITHER THE PERCENTAGE-OF-RECOVERY OR THE LODESTAR METHOD

A. The Requested Attorneys' Fees Are Reasonable Under the Percentage-of-Recovery Method

The requested fee of 30% of the Settlement Funds is reasonable under the percentage-of-recovery method. While there is no absolute rule, courts in the Third Circuit have observed that fee awards generally range from 19% to 45% of a settlement fund. *See In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 822 (3d Cir. 1995); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000). Fees most commonly range from 25% to one-third of the recovery. *See In re Ins. Brokerage Antitrust Litig.*, 297 F.R.D. 136, 155 (D.N.J. 2013) (“Courts within the Third Circuit often award fees of 25% to 33% of the recovery”); *Louisiana Mun. v. Sealed Air Corp.*, 2009 WL 4730185, at *8 (D.N.J. 2009) (same).

A review of attorneys' fees awarded in class actions with comparably sized settlements in this Circuit strongly supports the reasonableness of the requested 30% fee. *See, e.g., Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at *21 (E.D. Pa. Apr. 21, 2020) (awarding attorneys' fees of 33.3% of \$65.8 million settlement for pharmaceutical end-payors); *Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626, at *10 (D.N.J. Oct. 23, 2017) (awarding 33.3% of \$61.5 million settlement); *Demaria v. Horizon Healthcare Servs., Inc.*, 2016 WL 6089713, at *4 (D.N.J. Oct. 18, 2016) (awarding 33.3% of \$33 million settlement and noting that “a contingency fee of 33.33% is fairly standard for the size of the Settlement”); *In re N.J. Tax Sales Certificates Antitrust Litig.*, 2016 WL 5844319, at *10 (D.N.J. Oct. 3, 2016) (Shipp, J.) (awarding 30% of \$9,585,000 combined settlements); *In re Heckmann Corp. Sec. Litig.*, No. 1:10-cv-00378-LPS-MPT, slip op. at 2 (D. Del. June 26, 2014), ECF No. 308 (awarding 33.3% of \$27 million settlement) (Ex. 10); *Esslinger v. HSBC Bank Nev., N.A.*, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) (“a fee

award of 30% of the [\$23.5 million] settlement here is reasonable and in keeping with similar precedent”); *In re Processed Egg Prod. Antitrust Litig.*, 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012) (awarding 30% of \$25 million settlement); *In re Merck & Co., Inc. Vytarin ERISA Litig.*, 2012 WL 13186948, at *6 (D.N.J. Oct. 1, 2012) (Cavanaugh, J.) (awarding 33.3% of \$10.4 million settlement); *In re Schering-Plough Corp. ENHANCE ERISA Litig.*, 2012 WL 1964451, at *6-7 (D.N.J. May 31, 2012) (Cavanaugh, J.) (awarding 33.3% of \$12.25 million settlement); *In re Vytarin/Zetia Mktg., Sales Pracs. & Prod. Liab. Litig.*, 2010 WL 11570262, at *4 (D.N.J. Feb. 9, 2010) (Cavanaugh, J.) (awarding 33.3% of \$41.5 million settlement for pharmaceutical end-payors, including consumers and TPPs); *In re Tricor Indirect Purchaser Antitrust Litig.*, 2009 WL 3460769, at *2 (D. Del. Oct. 28, 2009) (awarding 33.3% of \$65.7 million settlement in TPP and consumer class action); *In re Veritas Software Corp. Sec. Litig.*, No. 1:04-cv-00831-SLR, slip op. at 2 (D. Del. Aug. 5, 2008), ECF No. 143 (awarding 30% of \$21.5 million settlement) (Ex. 11), *aff'd*, 396 F. App'x 815 (3d Cir. 2010); *Nichols v. SmithKline Beecham Corp.*, 2005 WL 950616, at *23 (E.D. Pa. Apr. 22, 2005) (awarding 30% of \$65 million settlement).

B. The Reasonableness of the Requested Attorneys’ Fees Is Confirmed by a Lodestar Cross-Check

The Third Circuit recommends that district courts use counsel’s lodestar as a “cross-check” to determine whether the fee that would be awarded under the percentage approach is reasonable. *See Sullivan*, 667 F.3d at 330; *AT&T*, 455 F.3d at 164.⁵ “The lodestar cross-check serves the purpose of alerting the trial judge that when the multiplier is too great, the court should reconsider

⁵ Under the full “lodestar method,” a court multiplies the number of hours each timekeeper spent on the case by the hourly rate, then 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 attorneys’ work. The multiplier is intended to “account for the contingent nature or risk involved in a particular case and the quality” of the work. *Rite Aid*, 396 F.3d at 305-06.

its calculation under the percentage-of-recovery method.” *Rite Aid*, 396 F.3d at 306. “Conversely, where the ratio of the [percentage-of-recovery] to the lodestar is relatively low, the cross-check can confirm the reasonableness of the potential award under the [percentage] method.” *In re Schering-Plough Corp. ENHANCE Sec. Litig.*, 2013 WL 5505744, at *33 (D.N.J. Oct. 1, 2013).

Through August 4, 2021, Plaintiffs’ Counsel have spent 16,277.25 hours on the prosecution and resolution of this Action. ¶ 124. Plaintiffs’ Counsel’s lodestar—which is derived by multiplying their hours spent on the litigation by each firm’s current hourly rates for attorneys, paralegals, and other professional support staff—is \$9,438,433.75. *Id.* Accordingly, the requested 30% fee, which equates to \$6,937,500 (plus interest on that amount at the same rate as earned by the Settlement Funds), represents a “negative” multiplier of approximately 0.74 on counsel’s lodestar. In other words, the fee sought is only 74% of Plaintiffs’ Counsel’s lodestar.

In complex contingent litigation such as this Action, fees representing positive multiples above the lodestar are regularly awarded to reflect the contingency-fee risk and other relevant factors. Indeed, lodestar multipliers “ranging from 1 to 8 are often used in common fund cases” to “compensate counsel for the risk of assuming the representation on a contingency fee basis.” *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *13 (E.D. Pa. Feb. 28, 2020) (approving multiplier of 6.16); *see also Demaria*, 2016 WL 6089713, at *5 (D.N.J. Oct. 18, 2016) (“A multiplier of 4.3 is consistent with the considerable risks that counsel faced in taking on this litigation, and the sophisticated legal work required to achieve success.”); *In re Veritas Software Corp. Sec. Litig.*, 396 F. App’x 815, 819 (3d Cir. 2010) (“The final lodestar multiplier of 1.52 was well within the range of attorneys’ fees awarded and approved by this Court.”); *Ikon*, 194 F.R.D. at 195 (approving a 2.7 multiplier, noting it was “well within the range of those awarded in similar cases”).

Accordingly, the fact that Lead Counsel’s requested fee here is substantially *less* than Plaintiffs’ Counsel’s lodestar—approximately 74% of that amount—strongly supports the reasonableness of the requested fee. *See Sanofi Pasteur*, 2017 WL 4776626, at *9 (“Because the lodestar cross-check results in a negative multiplier, it provides strong evidence that the requested fee is reasonable.”).

Accordingly, the 30% fee request here is reasonable under both the percentage-of-the-fund approach and the lodestar approach.

IV. THE FACTORS CONSIDERED BY COURTS IN THE THIRD CIRCUIT CONFIRM THAT THE REQUESTED FEE IS FAIR AND REASONABLE

Under Third Circuit law, district courts have considerable discretion in setting an appropriate percentage-based fee award in traditional common fund cases. *See, e.g., Gunter*, 223 F.3d at 195 (“We give [a] great deal of deference to a district court’s decision to set fees.”). Nonetheless, in exercising that broad discretion, the Third Circuit has noted that a district court should consider the following factors in determining a fee award:

- (1) the size of the fund created and the number of beneficiaries,
- (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 plaintiffs’ 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.

Diet Drugs, 582 F.3d at 541 (citing *Gunter*, 223 F.3d. at 195 n.1; *In re: Prudential Ins. Co. Am. Sales Practices Litig. Agent Actions*, 148 F.3d 283, 336-40 (3d Cir. 1998)). These fee award factors “need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest.” *Id.* at 545; *Schuler*, 2016 WL 3457218, at *9. These factors strongly support the reasonableness of the 30% fee requested by Lead Counsel here.

A. The Size of the Common Fund Created and the Number of Persons Benefited Support Approval of the Fee Request

Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award. *See Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) (“most critical factor is the degree of success obtained”); *In re Viropharma Inc. Sec. Litig.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016).

Here, Plaintiffs’ Counsel secured Settlements that collectively provide for a substantial and certain payment in the amount of \$23,125,000. The Settlements benefit a large number of Third-Party Payors who purchased Valeant-branded drugs through Philidor or one of the Philidor Network Pharmacies. To date, the Claims Administrator has mailed the Notice to 41,424 potential Settlement Class Members. *See Miller Decl. (Ex. 6)*, at ¶ 4. While the deadline for submission of Claim Forms is not until January 6, 2022, a large number of Settlement Class Members can be expected to benefit from the Settlement Funds. *See In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004), *amended*, 2004 WL 1240775 (E.D. Pa. June 4, 2004) (size of benefitted population “is best estimated by the number of entities that were sent the notice describing the [Settlement]”). Thus, the size of the common fund and number of persons benefitted support approval of the requested fee.

B. The Absence of Objections by Settlement Class Members to the Settlements and Fee Request Supports Approval of the Fee Request

The Notice, which has been sent to over 41,000 potential Settlement Class Members and posted on a publicly accessible website, summarized the terms of the Settlements and stated that Lead Counsel would apply for an award of attorneys’ fees in an amount not to exceed 30% of the Settlement Funds. *See Notice*, attached as Exhibit A to the Miller Decl., at ¶ 17. The Notice also advised Settlement Class Members that they could object to the Settlements or fee request and

explained the procedure for doing so. *See id.* at ¶ 14. While the deadline set by the Court for Settlement Class Members to object has not yet passed, to date, no objections have been received.⁶

C. The Skill and Efficiency of Plaintiffs' Counsel Support Approval of the Fee Request

It required considerable skill to achieve the proposed Settlements for the benefit of the Settlement Class. Lead Counsel's efforts in bringing this action to a successful conclusion are the best indicator of the experience and ability of the attorneys involved. *See In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 131 (D. N.J. 2002) (“[t]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained”) (quoting *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 149 (E.D. Pa. 2000)).

Lead Counsel's efforts, assisted by the other Plaintiffs' Counsel, have resulted in a favorable outcome for the benefit of the Settlement Class. The substantial and certain recovery obtained results from the significant efforts of highly skilled attorneys who possess substantial experience in the prosecution of complex class actions.⁷ Lead Counsel's success in overcoming Defendants' motions to dismiss and proceeding to obtaining substantial fact discovery created the circumstances in which Plaintiffs obtained the \$23,125,000 Settlements. In addition, Lead Counsel's reputation as attorneys who will zealously carry a meritorious case through trial and appellate levels further enabled them to negotiate the very favorable recovery for the benefit of the Settlement Class.

⁶ As noted above, the deadline for submitting objections is November 11, 2021, and Plaintiffs and Lead Counsel will file reply papers no later than November 24, 2021, addressing any objections that may be received.

⁷ To avoid burdening the Court with additional exhibits, Plaintiffs' Counsel have not included their firm resumes with this submission, as they believe their qualifications and experience are known to the Court and also reflected on their firms' websites. Should the Court wish to review Plaintiffs' Counsel's firm resumes they will be promptly provided.

The quality and vigor of opposing counsel is also relevant in evaluating the quality of the services rendered by Lead Counsel. *See, e.g., Ikon*, 194 F.R.D. at 194; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 749 (S.D.N.Y. 1985), *aff'd*, 798 F.2d 35 (2d Cir. 1986) (“The quality of opposing counsel is also important in evaluating the quality of plaintiffs’ counsels’ work.”). Valeant was represented ably by Simpson Thacher & Bartlett LLP, a prominent firm with undeniable experience and skill. ¶ 126. The ability of Lead Counsel to obtain a favorable outcome for the Settlement Class in the face of this formidable legal opposition reaffirms the quality of Lead Counsel’s representation.

D. The Complexity and Duration of the Litigation Support Approval of the Fee Request

The \$23,125,000 combined recovery under the Settlements is substantial given the complexity of this case and the significant risks and expenses that the Settlement Class would have faced by litigating to trial. By the time the Settlements were reached, Plaintiffs’ Counsel had (i) conducted a wide-ranging investigation concerning the allegedly fraudulent scheme, including interviews with former employees of Valeant and Philidor and a thorough review of publicly available information; (ii) drafted and filed two detailed consolidated complaints; (iii) researched and drafted extensive papers in opposition to Defendants’ motions to dismiss the complaints; (iv) undertook extensive fact discovery efforts, which included numerous meet and confers, obtaining, reviewing, and analyzing more than 8.6 million pages of documents, and participating in the depositions of 39 fact witnesses; (v) consulted extensively with a damages expert; and (vii) engaged in an extensive arm’s-length negotiations, including two mediation sessions and the preparation of detailed mediation statements that addressed both liability and damages. *See* ¶¶ 10, 19-88.

Nonetheless, had this litigation continued, Plaintiffs would have been required to advance their case through completion of fact discovery, a contested motion for class certification, and substantial expert discovery (including preparation of expert reports and expert depositions). After the close of expert discovery, it would be highly likely that Defendants would move for summary judgment, which would have to be briefed and argued, a pre-trial order would have to be prepared, proposed jury instructions would have to be submitted, and motions *in limine* would have to be filed and argued. Substantial time and expense would need to be expended in preparing the case for trial, and the trial itself would be expensive and uncertain. ¶ 130.

Moreover, even if the jury returned a favorable verdict after trial, it is likely that any verdict would be the subject of numerous post-trial motions and a complex multi-year appellate process. Indeed, in complex class-action cases, even a victory at the trial stage does not guarantee a successful outcome. *See Warner Commc'ns*, 618 F. Supp. at 747-48 (“Even a victory at trial is not a guarantee of ultimate success. If plaintiffs were successful at trial and obtained a judgment for substantially more than the amount of the proposed settlement, the defendants would appeal such judgment. An appeal could seriously and adversely affect the scope of an ultimate recovery, if not the recovery itself.”). Considering the magnitude, expense, and complexity of this case—especially when compared to the significant and certain recovery achieved by the Settlements—Lead Counsel’s fee request is reasonable. Accordingly, this factor weighs in Lead Counsel’s favor.

E. The Risk of Non-Payment Supports Approval of the Fee Request

Lead Counsel undertook this action on a contingent fee basis, taking the risk that the litigation would yield no or very little recovery and leave them uncompensated for their time, as well as for their out-of-pocket expenses. As explained in detail in the Joint Declaration, Lead Counsel faced numerous significant risks in this case that could have resulted in no recovery or a recovery smaller than the Settlement Amount. ¶¶ 92-105. Courts across the country have

consistently recognized that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees. *See, e.g., Warner Commc'ns*, 618 F. Supp. at 747-49 (citing cases).

Lead Counsel, assisted by Plaintiffs' Counsel, undertook this litigation on a fully contingent basis and with no guarantee of their time or expenses being reimbursed – all in the face of the substantial litigation risks set forth in the Joint Declaration. Plaintiffs' Counsel have not been compensated for any time or expenses since the case began in 2016. Since that time, Plaintiffs' Counsel have expended 16,277.25 hours in the prosecution of this litigation with a resulting lodestar of \$9,438,433.75 and incurred \$720,335.39 in litigation expenses. ¶¶ 124, 132. “Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval” of a fee request. *Schering-Plough ERISA*, 2012 WL 1964451, at *7.

As discussed further in the Settlement Memorandum and Joint Declaration, this Action, from the outset, presented many risks that could have prevented Plaintiffs from achieving any recovery (and thus prevented counsel from receiving any compensation for their efforts). It was not certain that Plaintiffs could establish all the elements of their RICO claims or even their core theory of liability—that Defendants conspired to conceal a secret network of pharmacies in order to sell a greater number of Valeant-branded drugs at higher prices. ¶¶ 93-96. Moreover, Plaintiffs also faced real challenges in proving damages. Defendants would have argued that the class of TPPs could not prove that they suffered any damages by reimbursing members for Valeant-branded drugs rather than generic alternatives, especially in the case of certain drugs where no generic alternatives existed and that proving damages raised individualized issues that precluded

class certification. ¶¶ 97-99. These risks, among others, posed the real possibility that Plaintiffs would not succeed in the Action.

Because the fee here was entirely contingent, the only certainty was that there would be no fee without a successful result, and that such a result would be realized only after considerable and difficult effort. This strongly favors approval of the requested fee.

F. The Significant Time Devoted to This Case by Plaintiffs' Counsel Supports Approval of the Fee Request

As set forth above, since the case began, Plaintiffs' Counsel have expended over 16,000 hours and incurred over \$720,000 in expenses prosecuting this Action for the benefit of the Settlement Class. Plaintiffs' Counsel's efforts include, *inter alia*, the considerable time spent in the initial investigation of the case; researching complex issues of law; preparing and filing the initial complaints and the two consolidated complaints; researching and briefing the issues in connection with Defendants' two motions to dismiss; undertaking substantial fact discovery, including obtaining, reviewing, and analyzing over 8.6 million pages of documents produced by Defendants and certain non-parties and participating in 39 depositions; preparing for the mediations; drafting a detailed mediation statement; and engaging in extensive settlement negotiations. ¶¶ 10, 19-88. At all times, counsel conducted their work with skill and efficiency, conserving resources and avoiding any duplication of efforts. The foregoing unquestionably represents a very significant commitment of time, personnel, and out-of-pocket expenses by Plaintiffs' Counsel, while taking on the substantial risk of recovering nothing for their efforts.

G. The Requested Fee of 30% of the Settlement Funds is Within the Range of Fees Typically Awarded in Actions of This Nature

As discussed above in Part III, the requested fee of 30% of the Settlement Funds is well within the range of fees awarded in comparable cases, when considered as a percentage of the fund or on a lodestar basis. Accordingly, this factor strongly supports approval of the requested fee.

H. The Benefits of the Settlements Are Attributable to the Efforts of Class Counsel

The Third Circuit has advised district courts to examine whether class counsel benefited from a governmental investigation or enforcement actions concerning the alleged wrongdoing, because this can indicate whether counsel should be given full credit for obtaining the value of the settlement fund for the class. *See Prudential*, 148 F.3d at 338. Here, while the SEC brought charges against Valeant and certain of its executives for improper recognition of revenues and misleading disclosures in connection with the Philidor scheme, those securities claims—which were settled by Valeant without admitting or denying the allegations—were distinct from the RICO claims asserted in this Action so that they did not provide meaningful assistance to Plaintiffs in establishing liability in this case. Moreover, while Andrew Davenport was the subject of a criminal prosecution, the facts alleged in that prosecution (that Davenport defrauded Valeant through a kickback scheme) were distinct from the scheme alleged in this Action (that Valeant and the Philidor Defendants cooperated to sell additional drugs at higher prices through the network of pharmacies secretly controlled by Philidor). In fact, Valeant argued that Davenport’s conviction in the kickback scheme (in which Valeant was the victim) was proof that they had not formed an enterprise or conspired with Philidor. ¶ 63. Accordingly, Lead Counsel respectfully submit that the entire value of the Settlements achieved is attributable to the efforts undertaken by Plaintiffs’ Counsel in this litigation. This fact increases the reasonableness of the requested fee award. *See, e.g., AT&T*, 455 F.3d at 173; *In re Cigna Corp. Sec. Litig.*, No. 02-8088, 2007 WL 2071898, at *6 (E.D. Pa. July 13, 2007); *In re Vicuron Pharms. Sec. Litig.*, 512 F. Supp. 2d 279, 287 (E.D. Pa. 2007).

I. The Percentage Fee That Would Have Been Negotiated Had the Case Been Subject to a Private Contingent Fee Arrangement Supports Approval of the Fee Request

A 30% fee is also consistent with typical attorneys' fees in non-class cases. *See Ocean Power*, 2016 WL 6778218, at *29. If this were an individual action, the customary contingent fee would likely range between 30 and 40 percent of the recovery. *See, e.g., id.; Ikon*, 194 F.R.D. at 194 (“[I]n private contingency fee cases, particularly in tort matters, plaintiffs’ counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery.”); *Blum v. Stenson*, 465 U.S. 886, 903 (1984) (Brennan, J., concurring) (“In tort suits, an attorney might receive one-third of whatever amount the plaintiff recovers.”). Lead Counsel’s requested fee of 30% of the Settlement Funds is consistent with these private standards.

* * *

Accordingly, the Third Circuit’s factors strongly support a finding that Lead Counsel’s requested fee of 30% of the Settlement Funds is fair and reasonable.⁸

V. LEAD COUNSEL’S APPLICATION FOR LITIGATION EXPENSES SHOULD BE APPROVED

Lead Counsel also respectfully request that this Court approve payment of \$720,335.39 for litigation expenses that Plaintiffs’ Counsel incurred in connection with this Action. All of these expenses, which are set forth in declarations submitted by Plaintiffs’ Counsel, were reasonably necessary for the prosecution and settlement of this litigation. Counsel in a class action are entitled to recover expenses that were “adequately documented and reasonable and appropriately incurred

⁸ Another factor the Third Circuit asks district courts to consider is whether the settlement contains “any innovative terms.” *Diet Drugs*, 582 F.3d at 541; *Prudential*, 148 F.3d at 340. These Settlements do not, because Lead Counsel believe that an all-cash recovery is the best remedy for the injury suffered by the Settlement Class. In these circumstances, the lack of innovative terms “neither weighs in favor nor detracts from a decision to award attorneys’ fees.” *Processed Egg Prods.*, 2012 WL 5467530, at *6.

in the prosecution of the class action.” *ViroPharma*, 2016 WL 312108, at *18; accord *In re Safety Components*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001).

The expenses for which Plaintiffs’ Counsel seek payment are the types of expenses that are necessarily incurred in litigation and routinely charged to clients billed by the hour. These expenses include, among others, document management costs, expert fees, on-line research, court reporting and transcripts, photocopying, and postage expenses. The largest category of expenses was for Plaintiffs’ share of the fees and expenses of the Special Master, which total \$190,076.91, or 26% of the total litigation expenses incurred by Plaintiffs’ Counsel. ¶ 136. Another significant expense was for the retention of Plaintiffs’ experts, which totaled \$98,501.25, or 14% of the total expenses. ¶ 135. Plaintiffs’ Counsel also incurred expenses of \$18,825.75 for mediation costs; \$59,104.51 for court reporting and transcripts, including Plaintiffs’ share of the costs of the court reporters at the 39 depositions in which Plaintiffs participated; and \$79,250.40 for the combined costs of online legal and factual research, among other costs. ¶¶ 138-139.

A complete breakdown by category of the expenses incurred by Plaintiffs’ Counsel is set forth in Exhibit 8 to the Joint Declaration. These expense items are accounted for separately by Plaintiffs’ Counsel, and such charges are not duplicated in the firms’ hourly rates.

The Notice informed potential Settlement Class Members that Lead Counsel would apply for payment of litigation expenses in an amount not to exceed \$750,000. *See* Miller Decl. (Ex. 6) Ex. A at ¶ 17. The total amount of expenses requested by Lead Counsel is \$720,335.39, which is below the amount listed in the Notice. To date, there has been no objection to the request for expenses. ¶ 142.

VI. PLAINTIFFS ARE ENTITLED TO SERVICE AWARDS IN THE AMOUNTS REQUESTED

Plaintiffs seek service awards of \$20,000 each, and \$100,000 in total, to be paid from the Settlement Funds. As discussed below, such awards are common in class actions and the amounts sought are justified based on Plaintiffs' commitment to this litigation for more than four years. The Notice informed potential Settlement Class Members that Plaintiffs might apply for service awards related to their representation of the Settlement Class, in a total amount not to exceed \$100,000. *See* Miller Decl. Ex. A at ¶ 17. To date, no objection to the requested service awards has been received.

A. Courts Routinely Award Service Awards to Plaintiffs and Class Representatives Who Provide Substantial Assistance

Service awards are common in class action litigation and particularly where “a common fund has been created for the benefit of the entire class.” *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 333 n.65 (3d Cir. 2011) (*en banc*). “‘The purpose of these payments is to compensate named plaintiffs for the services they provided and the risks they incurred during the course of class action litigation,’ and to ‘reward the public service of contributing to the enforcement of mandatory laws.’” *Id.* (quoting *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *21 (D. N.J. Apr. 8, 2011)). *Accord In re Liquid Aluminum Sulfate Antitrust Litig.*, 2019 WL 7375288, at *6 (D.N.J. Nov. 7, 2019) (awarding lead plaintiffs \$25,000 each); *see also Linerboard Antitrust*, 2004 WL 1221350, at *18 (“The Court finds ample authority in this district and in other circuits for such an incentive award.”).

Plaintiffs' willingness to step forward and serve as the named plaintiffs and class fiduciaries directly led to the benefits that the proposed Settlements provide to the Settlement Class. *See Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338 at *11 (E.D. Pa. Dec. 9, 2016) (“This Court recognizes that there would be no benefit to Settlement Class Members if Plaintiffs

and Opt-In Plaintiffs had not stepped forward and prosecuted this matter to the current resolution. . . . [T]hese individuals devoted time and energy to the litigation, including assisting with discovery and at the mediation.”).

B. The Service Awards Sought Are More Than Justified

Each of the Plaintiffs has expended considerable time and effort to aid in the prosecution of this case. Plaintiffs contributed a significant amount of time and effort to the case by providing Plaintiffs’ Counsel with detailed factual information, including searches of their documents to locate relevant information about Valeant drug reimbursements they made; and by regularly communicating with their counsel, including throughout the settlement process, to ascertain the status of the case and ensure that it was moving toward resolution. *See* Declaration of Kristi Wagner on behalf of ACR Trust (Ex. 1), at ¶ 4; Declaration of James Bounds on behalf of San Antonio (Ex. 2) at ¶ 4; Declaration of Walter Saraceni on behalf of NY Plumbers (Ex. 3) at ¶ 4; Declaration of Carmine D. Russo on behalf of DEA (Ex. 4) at ¶ 4; Declaration of John Heim on behalf of NYHTC (Ex. 5) at ¶ 4. The benefits of the class-wide settlement agreement are a direct result of the services rendered by Plaintiffs. As such, the amounts sought are well-deserved. *See generally, Linerboard Antitrust*, 2004 WL 1221350, at *19 (awarding incentive awards where the class representatives “performed considerable work advancing the litigation,” including written discovery, depositions, and participation at mediation).

C. The Service Awards Sought Are Well Within the Range Routinely Awarded

The requested Service Awards of \$20,000 each to the Plaintiffs are within the range of awards regularly provided in similar cases. *See, e.g., Cephalon*, 2020 WL 1922902, at *33 (awarding \$50,000 for each of four TPP Plaintiffs); *Haas v. Burlington Cty.*, 2019 WL 413530, at *10-11 (D.N.J. Jan. 31, 2019) (approving incentive awards of \$30,000 and \$50,000); *Liquid*

Aluminum Sulfate, 2019 WL 7375288, at *6 (approving \$25,000 service award for each class representative); *Sanofi Pasteur*, 2017 WL 4776626, at *10 (approving service awards of \$100,000 to each of the two class representatives); *Demaria*, 2016 WL 6089713, at *5 (\$45,000 award to each plaintiff); *In re Caterpillar, Inc.*, 2016 WL 7173814, at *1 (D.N.J. Sept. 20, 2016) (approving incentive awards of \$20,000 to each of 33 class representatives); *Brady v. Air Line Pilots Ass’n*, 627 F. App’x 142, 146 (3d Cir. 2015) (district court did not abuse its discretion in awarding service payments to the twelve class representatives averaging \$53,000 per person); *King Drug Co. of Florence, Inc. v. Cephalon, Inc.*, 2015 WL 12843830, at *6 (E.D. Pa. Oct. 15, 2015) (approving \$100,000 incentive award for four class representatives, and \$50,000 incentive awards for two other class representatives); *Craig v. Rite Aid Corp.*, 2013 WL 84928 at *13 (M.D. Pa. Jan. 7, 2013) (noting that service awards in the Third Circuit range up to \$30,000); *Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 WL 3119374, at *7 (S.D.N.Y. Aug. 6, 2010) (\$75,000 each to named plaintiffs for “the time and energy that they have devoted to this case, and the benefit conferred on the Class”); *Desantis v. Snap-On Tools Co., LLC*, 2006 WL 3068584 (D.N.J. Oct. 27, 2006) (approving \$50,000 class representative incentive award); *Linerboard Antitrust*, 2004 WL 1221350, at *19 (“[T]he amount requested, \$25,000, is comparable to incentive awards granted by courts in this district and in other circuits.”).

The requested \$20,000 service award for each of the Plaintiffs is appropriate and consistent with applicable precedent set forth above. Among other contributions, each Plaintiff significantly contributed to the prosecution of this litigation by producing documents, responding to discovery requests, and regularly communicating with Plaintiffs’ Counsel regarding developments in the case. The requested service award amounts are reasonable and appropriate under applicable law given the extensive length of this litigation, the effort expended by each of the Plaintiffs, and the

corresponding benefit to the Settlement Class. The total service awards sought, collectively, amount to just 0.4% of the combined Settlements.

VII. CONCLUSION

For all the foregoing reasons, Lead Counsel respectfully request that the Court award attorneys' fees in the amount of 30% of the Settlement Funds; \$720,335.39 in payment of the reasonable litigation expenses that Plaintiffs' Counsel incurred in connection with the prosecution and resolution of the Action; and service awards to the Plaintiffs of \$20,000 each.

Dated: October 28, 2021

**CARELLA, BYRNE, CECCHI,
OLSTEIN, BRODY & AGNELLO, P.C.**

/s/James E. Cecchi

James E. Cecchi
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
JCecchi@carellabyrne.com

***Lead Counsel, Interim Class Counsel, and
Local Counsel for Plaintiffs AirConditioning
and Refrigeration Industry Health and
Welfare Trust Fund, Fire and Police Health
Care Fund, San Antonio, and Plumbers
Local Union No. 1 Welfare Fund***

**BERNSTEIN LITOWITZ BERGER &
GROSSMANN LLP**

Hannah Ross
James A. Harrod
Jai K. Chandrasekhar
James M. Fee
1251 Avenue of the Americas
New York, NY 10020
Telephone: (212) 554-1400
Facsimile: (212) 554-1444

Lead Counsel, Interim Class Counsel, and

Counsel for Plaintiffs AirConditioning and Refrigeration Industry Health and Welfare Trust Fund, Fire and Police Health Care Fund, San Antonio, and Plumbers Local Union No. 1 Welfare Fund

BARRACK, RODOS & BACINE

Jeffrey W. Golan
Jeffrey A. Barrack
3300 Two Commerce Square
2001 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-0600

Counsel for Plaintiff the Detectives Endowment Association of New York City

**COHEN MILSTEIN SELLERS & TOLL
PLLC**

Julie Goldsmith Reiser
S. Douglas Bunch
1100 New York Ave, N.W.
East Tower, Suite 500
Washington, DC 20005
Telephone: (202) 408-4600

- and -

Christopher Lometti
Joel P. Laitman
88 Pine Street, 14th Floor
New York, New York 10005
Telephone: (212) 838-7797

Counsel for Plaintiff New York Hotel Trades Council & Hotel Association of New York City, Inc. Health Benefits Fund

CERTIFICATION OF SERVICE

I hereby certify that on October 28, 2021, I caused a true and correct copy of the foregoing Memorandum of Law in Support of Lead Counsel's Motion for Attorneys' Fees and Litigation Expenses to be electronically filed with the Clerk of the Court using the ECF system. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Dated: October 28, 2021

s/ James E. Cecchi

James E. Cecchi
**CARELLA, BYRNE, CECCHI, OLSTEIN,
BRODY & AGNELLO, P.C.**
5 Becker Farm Road
Roseland, NJ 07068
Telephone: (973) 994-1700
Facsimile: (973) 994-1744
jcecchi@carellabyrne.com

*Lead Counsel for Plaintiffs and
the Settlement Class*