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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RICHARD GOODMAN, *Individually, And As Trustee of the Richard M. Goodman Revocable Living Trust, And On Behalf Of All Others Similarly Situated*,

Plaintiff,

vs.

UBS FINANCIAL SERVICES INC.,

Defendant.

Case No.: 2:21-cv-18123-KM-MAH

MEMORANDUM OF LAW IN SUPPORT OF LEAD PLAINTIFF'S COUNSEL'S MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION COSTS AND EXPENSES

Hon. Michael A. Hammer

Class Action

Motion Day: December 7, 2023

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

OTHER AUTHORITIES

Plaintiff's counsel, Glancy Prongay & Murray LLP ("GPM" or "Lead Plaintiff's Counsel") and Goodman Hurwitz & James, P.C. ("GHJ"; and together with GPM, "Plaintiff's Counsel"), respectfully submit this memorandum of law in support of their motion for an award of attorneys' fees and reimbursement of Litigation Expenses.[1]

I. INTRODUCTION

Plaintiff's Counsel have succeeded in obtaining a $2,500,000 non-reversionary, all cash settlement (the "Settlement") for the benefit of the Settlement Class in the above-captioned action (the "Action"). This is an outstanding result in the face of substantial risks that was the result of Plaintiff's Counsel's vigorous, persistent, and skilled efforts. Lead Plaintiff's Counsel now respectfully move this Court for an award of attorneys' fees in the amount of 33⅓% of the Settlement Fund (*i.e.*, $833,333 plus interest earned thereon), and reimbursement of $143,343.85 in Litigation Expenses. The Litigation Expenses consist of $118,343.85 in out-of-pocket costs incurred by Lead Plaintiff's Counsel

[1] Unless otherwise defined, all capitalized terms herein have the same meanings as set forth in the Stipulation and Agreement of Settlement dated June 8, 2023 ("Stipulation"; ECF No. 55-1), or in the concurrently filed Declaration of Garth A. Spencer in Support of: (I) Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Plan of Allocation; and (II) Lead Plaintiff's Counsel's Motion for an Award of Attorneys' Fees and Reimbursement of Litigation Expenses ("Spencer Declaration"). Citations to "¶__" or "Ex. __" in this memorandum refer to paragraphs in, or exhibits to, the Spencer Declaration.

while prosecuting the Action, and $25,000 to plaintiff Richard Goodman ("Mr. Goodman" or "Plaintiff"), for the time and energy he devoted to this Action on behalf of the Settlement Class.

As detailed below and in the accompanying Spencer Declaration, the Settlement represents an excellent recovery for the Settlement Class. In the absence of the Settlement, the litigation would likely have continued for many years, through class certification, fact discovery, expert discovery, summary judgment, trial, and likely appeals. Plaintiff and his counsel faced substantial obstacles in proving liability and damages, yet nevertheless reached a timely and substantial resolution for the Settlement Class.

Achieving the Settlement was not easy. Plaintiff's Counsel faced numerous hurdles and risks from the outset, including the complex nature of the claims at issue, the fact that this was a putative class action against one of the largest financial institutions in the world, and the highly skilled litigators representing the Defendant. *See Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004) ("Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation.").[2] These are not idle risks, and the risk of non-payment in this case was high. Indeed, "[t]he court needs to look no further than its own order [substantially] dismissing the . . .

[2] Unless otherwise noted, all internal citations and quotations have been omitted and emphasis has been added.

litigation to assess the risks involved." *In re Xcel Energy, Inc. Sec., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1003 (D. Minn. 2005); *see also Goodman v. UBS Financial Services, Inc.*, 2022 WL 2358403, at *8 (D.N.J. June 30, 2022) (dismissing five of seven counts).

Despite facing long odds, Plaintiff's Counsel vigorously pursued this case for approximately two years—working 866.35 hours and advancing $118,343.85 in out-of-pocket expenses, all on a fully continent basis. Among other things, Plaintiff's Counsel:

- conducted an extensive investigation of the claims asserted in the Action, which included, *inter alia*: (i) reviewing and analyzing publicly available information concerning UBS, including SEC filings and information from FINRA; (ii) researching relevant tax laws relating to the reporting of amortizable bond premium; (iii) reviewing and analyzing documents UBS had previously provided to Plaintiff, including account opening documentation and annual tax forms; (iv) interviewing a former employee of UBS with first-hand knowledge of UBS's conduct at issue in this case; and (v) researching causes of action pursuant to which UBS might be held liable for the conduct at issue;

- utilized its comprehensive investigation and additional research to draft and file the Class Action Complaint ("Complaint");

- researched, drafted, and filed an opposition to Defendant's motion to dismiss the Complaint, which led to the Court partially sustaining the Complaint;

- drafted, negotiated, and filed a joint discovery plan, confidentiality order, and discovery protocol, and prepared for and participated in telephonic scheduling conferences with the Court;

- drafted and served comprehensive requests for the production of documents and proposed search terms for electronically stored

information on UBS, and responded and objected to UBS's requests for the production of documents to Plaintiff;

- Drafted and issued a subpoena for documents to FINRA relating to UBS's tax information reporting practices, and reviewed and analyzed FINRA's document production;

- engaged in numerous communications and meet and confer discussions with Defendant's Counsel concerning, *inter alia*, discovery, scheduling, UBS's motion to dismiss, and the potential resolution of this Action;

- negotiated for Defendant to produce, prior to the Parties' mediation, substantial data reflecting UBS clients' transactions in taxable municipal securities during the relevant period, reviewed and analyzed the data produced by Defendant, and used that data to estimate recoverable damages;

- obtained copies of Plaintiff's tax returns from his accountants, and redacted and produced relevant tax returns and other relevant documents to UBS as part of the pre-mediation exchange of information;

- engaged in a mediation process overseen by a highly experienced third-party mediator, Robert A. Meyer, Esq., of JAMS, which involved an exchange of written submissions concerning the facts of the case, liability and damages, a full-day in-person mediation session, and weeks of further negotiations that culminated in a mediator's recommendation to resolve the Action for $2.5 million in cash;

- negotiated with Defendant's Counsel to obtain additional data from UBS concerning UBS clients' transactions in taxable municipal securities during the relevant period, and worked with a damages expert to analyze that data and craft a plan of allocation that treats Plaintiff and all other members of the proposed Settlement Class fairly;

- conducted an interview, arranged with Defendant's Counsel, of a UBS employee with relevant knowledge, to confirm the fairness and reasonableness of the Settlement;

- drafted and negotiated the terms of the Stipulation (including the exhibits thereto) and Supplemental Agreement with Defendant's Counsel;

- drafted the preliminary approval motion and supporting papers;
- worked with the Court appointed Settlement Administrator to provide notice to the Settlement Class; and
- drafted the final approval motion and supporting papers. *See* ¶¶11-33.

As compensation for their significant efforts and achievements on behalf of the Settlement Class, Lead Plaintiff's Counsel, on behalf of all Plaintiff's Counsel, respectfully requests a fee award in the amount of 33⅓% of the Settlement Fund. The requested fee is consistent with fee awards in comparable class action settlements, whether considered as a percentage of the Settlement or in relation to Plaintiff's Counsel's lodestar. Indeed, the requested fee represents a multiplier of 1.18 on Plaintiff's Counsel's lodestar, which is well within the range of multipliers typically awarded in class actions with substantial contingency risks such as this one. *See In re Schering-Plough Corp. Enhance Sec. Litig.*, 2013 WL 5505744, at *34 (D.N.J. Oct. 1, 2013) ("this very low 1.3 multiplier is well within the parameters allowed by courts throughout the Third Circuit and provides compelling evidence that the requested attorneys' fee is reasonable. Indeed, lodestar multipliers well above 1.3 and up to four are often used in common fund cases.").

Lead Plaintiff's Counsel also seeks reimbursement of $118,343.85 in out-of-pocket litigation expenses incurred in prosecuting the Action. *See* ¶¶82-90. This amount is below the $200,000 limit on Litigation Expenses disclosed in the

Notice—which, by definition, included a service award to Plaintiff related to his representation of the Settlement Class. The expenses are reasonable in amount and were necessarily incurred in the successful prosecution of the Action. Accordingly, they should be approved.

Finally, Lead Plaintiff's Counsel respectfully request a service award in the amount of $25,000 to compensate Mr. Goodman—an attorney by trade—for the time and effort he expended on behalf of the Settlement Class. Ex. 2 ("Goodman Decl."). Mr. Goodman, *inter alia*, (a) assisted counsel in investigating the case and in the preparation of the Complaint, including by arranging and participating in multiple investigative interviews between Plaintiff's Counsel and a former UBS employee with important information related to alleged wrongdoing; (b) supplied documentation to support the claims asserted in the Complaint; (c) reviewed and commented on all significant pleadings and briefs filed in the Action; (d) reviewed the Court's orders and discussed them with Plaintiff's Counsel; (e) reviewed and commented on the mediation briefs; (f) produced relevant tax returns and other relevant documents to UBS as part of the pre-mediation exchange of information; (g) remotely attended the mediation session and monitored the subsequent settlement negotiations; and (h) evaluated and approved the proposed Settlement. Ex. 2 at ¶¶4-7. But for his "commitment to pursuing these claims, the successful

recovery for the Class would not have been possible." *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

For all the reasons set forth herein, and in the Spencer Declaration, Lead Plaintiff's Counsel respectfully request that the Court award attorneys' fees of 33⅓% of the Settlement Fund, approve reimbursement of $118,343.85 in out-of-pocket litigation expenses, and grant Mr. Goodman a service award in amount of $25,000.

II. SUMMARY OF FACTUAL AND PROCEDURAL HISTORY

The Spencer Declaration is an integral part of this submission and, for the sake of brevity, the Court is respectfully referred to it for a detailed description of, *inter alia*: the factual background and procedural history of the Action, and the nature of the claims asserted (¶¶9-33); the negotiations leading to the Settlement (¶¶23-31); the risks and uncertainties of continued litigation (¶¶34-50); and the terms of the Plan of Allocation of the Net Settlement Fund. ¶¶57-65.

III. THE COURT SHOULD APPROVE THE FEE REQUEST

A. Plaintiff's Counsel Are Entitled to an Award of Attorneys' Fees from the Common Fund

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). The Third Circuit and courts within

this circuit have reached the same conclusion. *E.g.*, *In re Cendant Corp. Sec. Litig.*, 404 F.3d 173, 205 (3d Cir. 2005) ("[W]e agree with the long line of common fund cases that hold that attorneys 'whose efforts create, discover, increase, or preserve a [common] fund' . . . are entitled to compensation."); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 192 (E.D. Pa. 2000) ("[T]here is no doubt that attorneys may properly be given a portion of the settlement fund in recognition of the benefit they have bestowed on class members.").

Common fund fee awards, such as the 33⅓% of the Settlement Fund requested here, encourage and support representation of those seeking redress for damages inflicted on entire classes of persons. *See, e.g.*, *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 198 (3d Cir. 2000) (stating that goal of awarding fees from common fund is to "ensur[e] that competent counsel continue to be willing to undertake risky, complex, and novel litigation"). Indeed, as this District has recognized:

> Those who criticize the amount of such awards should understand that absent counsel's efforts there would be no fund; and even despite counsel's efforts, in some cases there is no success and thus no fee, no matter how much time and effort was expended. The good result should be rewarded, because the poor result will go uncompensated.

In re First Fidelity Bancorp. Sec. Litig., 750 F.Supp. 160, 164 (D.N.J. 1990).

Here, Lead Plaintiff's Counsel respectfully submits that the Court should award a fee based on a percentage of the common fund obtained for the Settlement

Class, and utilize a lodestar cross-check to confirm that the fee is reasonable. *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 330 (3d Cir. 2011) ("Because the case at issue entailed a common fund, the District Court applied the [percentage of the recovery] method and utilized a lodestar crosscheck. … [W]e find no fault with this decision."). 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 Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) (stating that in common fund cases "a reasonable fee is based on a percentage of the fund bestowed on the class"); *Sullivan* 667 F.3d at 330 (the percentage of recovery method "is generally favored in common fund cases because it allows courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.").[3]

In contrast, the lodestar method "requires more work from the already overtaxed judicial system; creates an unwarranted impression of mathematical precision; … leads to certain abuses, such as excessive hours spent on tasks and duplicative work; … creates a disincentive to settle early, and deprives courts of the discretion to structure awards so as to encourage desirable objectives such as early settlement." *McLendon v. Continental Group, Inc.*, 872 F.Supp. 142, 150

[3] *Accord 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) ("*Rite Aid I*"); *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 333 (3d Cir. 1998).

(D.N.J. 1994) (Sarokin, Circuit Judge, sitting by designation) (citing Third Circuit Task Force on Court Awarded Attorney Fees, 108 F.R.D. 237, 246-249 (1985)).[4]

Use of the percentage method does not, however, render the lodestar irrelevant. The Third Circuit has recommended that the percentage award be "cross-checked" against the lodestar method to ensure its reasonableness. *Sullivan*, 667 F.3d at 330; *see also AT&T Corp*., 455 F.3d at 164 ("we have recommended that district courts use the lodestar method to cross-check the reasonableness of a percentage-of-recovery fee award."); *Rite Aid I*, 396 F.3d 294, at 300 ("we have suggested it is sensible for a court to use a second method of fee approval to cross-check its initial fee calculation."). Of course, a cross-check is just that, and "[t]he lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method." *AT&T Corp*., 455 F.3d at 164.

As demonstrated below, Lead Plaintiff's Counsel's requested award of attorneys' fees of 33⅓% of the Settlement Fund is fair and reasonable. It should, therefore, be approved.

[4] *See also In re Ikon Office Solutions, Inc., Sec. Litig.*, 194 F.R.D. 166, 193 (E.D. Pa. May 9, 2000) (stating the that the lodestar approach "has come under attack recently" because it "may encourage attorneys to delay settlement or other resolution to maximize legal fees, places a great deal of pressure on the judicial system, as the courts must evaluate the propriety of thousands of billable hours and may also compensate attorneys insufficiently for the risk of undertaking complex or novel cases on a contingency basis." (cleaned up)).

B. Application of the *Gunter* and *Prudential* Factors Supports Lead Plaintiff's Counsel's Request for a 33⅓% Fee

In reviewing an attorneys' fee award request in a class action settlement, the Third Circuit looks at a number of factors known as the "*Gunter* factors" and the "*Prudential* factors." *AT&T Corp.*, 455 F.3d at 165. The *Gunter* factors include:

> (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 plaintiffs' counsel; and (7) the awards in similar cases.

Id. at 165. The *Prudential* factors include:

> (1) the value of benefits accruing to class members attributable to the efforts of Plaintiff's Counsel as opposed to the efforts of other groups, such as government agencies conducting investigations, (2) the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained, and (3) any "innovative" terms of settlement.

Id. Analysis of the relevant factors supports the requested award.[5]

1. The Size of the Fund Created and the Number of Persons Benefited

"The first *Gunter* factor analyzes the size of the fund created and the number of persons benefitted." *Hall v. AT & T Mobility LLC*, 2010 WL 4053547, at *16 (D.N.J. Oct. 13, 2010). The sufficiency of the result achieved is one of the primary factors to be considered in assessing the propriety of an attorneys' fee award.

[5] In application, it is well-established that "courts may give some of these [*Gunter/Prudential*] factors less weight in evaluating a fee award." *Id.* at 166.

Hensley v Eckerhart, 461 U.S. 424, 436 (1983) ("the most critical factor is the degree of success obtained"); *In re Schering-Plough Corp. Sec. Litig.*, 2009 WL 5218066, at *6 (D.N.J. Dec. 31, 2009) (finding this factor "[m]ost important"); *In re Merck & Co., Sec., Derivative & "ERISA" Litig.*, 2016 WL 11686450, at *8 (D.N.J. June 3, 2016) ("The size of the fund is indicative of the success obtained through a settlement, and, accordingly, a significant consideration in evaluating the reasonableness of an award for attorneys' fees."). "When conducting this analysis, courts may weigh the class benefit afforded under the settlement against the percentage of the class members' approximated, actual damages." *Rowe v. E.I. DuPont de Nemours & Co.*, 2011 WL 3837106, at *18 (D.N.J. Aug. 26, 2011)

Here, the result achieved—a Settlement Amount of $2.5 million—is an excellent outcome that will provide Settlement Class Members with an immediate cash recovery, while avoiding the substantial expense, delay, risk, and uncertainty of further litigation. Plaintiff's damages expert estimates that ***if*** Plaintiff had fully prevailed on his claims at both summary judgment and after a jury trial, ***if*** the Court certified the same class period as the Settlement Class Period, ***and if*** the Court and jury accepted Plaintiff's damages theory—*i.e.*, Plaintiff's best-case scenario—the $2.5 million Settlement would ***exceed the maximum*** damages attributable to Settlement Class Members' tax overpayments that are ***potentially***

recoverable in this case.[6] *See* ¶¶47-48; *see also Grier v. Chase Manhattan Automotive Finance Co.*, 2000 WL 175126, at *6, *8 (E.D. Pa. Feb. 16, 2000) (settlement that provided "all members of the Plaintiff Class with full refunds of the amounts improperly withdrawn by Chase" was an "excellent result" supporting an attorneys' fee award of one-third); *In re Safety Components, Inc. Sec. Litig.*, 166 F.Supp.2d 72, 97 (D.N.J. 2001) (characterizing "$4,500,000 settlement, which constituted approximately thirty percent of the best-case scenario damages calculated by Plaintiffs' Counsel" as a "seemingly excellent result").[7]

[6] Damages attributable to tax overpayments are the primary source of damages alleged by Plaintiff. Plaintiff also alleged other sources of damages, which Plaintiff's Counsel believes to be substantially smaller in amount than the damages attributable to tax overpayments: (i) that UBS clients were harmed by the lost time-value of their money; and (ii) that some UBS clients likely incurred unnecessary expenses such as professional fees for tax return preparation and advice. *See* Complaint ¶¶105-13. Plaintiff also pled a claim for punitive damages, which was dismissed by Judge McNulty on the grounds that "punitive damages are a remedy, not a cause of action." *Goodman*, 2022 WL 2358403, at *2. Consequently, Plaintiff's Counsel believe there was substantial risk to obtaining punitive damages.

[7] *See also Stop & Shop Supermarket Co. v. SmithKline Beecham Corp.*, 2005 WL 1213926, at *9, *17 (E.D. Pa. May 19, 2005) (characterizing recovery of approximately 11.4% of total damages as an "excellent result"); *In re Cendant Corp. Litig.*, 264 F.3d 201, 231 (3d Cir. 2001) (approving settlement of 36% of total damages and noting that typical recoveries in complex securities class actions range from 1.6%-14% of estimated damages); *In re Linerboard Antitrust Litig.*, MDL No. 1261, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004) (collecting cases in which courts have approved settlements of 5.35% to 28% of estimated damages in complex antitrust actions).

The result is even more impressive given that this case was not risk free and there were truly meaningful barriers to recovery. For instance, the Court had already dismissed the majority of Plaintiff's claims. *See Goodman v. UBS Fin. Servs., Inc.*, 2022 WL 2358403, *8 (D.N.J. June 30, 2022) (dismissing five of seven counts, including claims for breach of the implied covenant of good faith and fair dealing, breach of fiduciary duty, negligent misrepresentation, and punitive damages).[8] There was also no guarantee that Plaintiff would have prevailed on his class certification motion (*see* ¶¶35-37), or that he would have developed the evidence necessary to prevail at trial. Indeed, even in allowing Plaintiff's negligence and breach of contract claims to proceed, Judge McNulty warned, "[i]t is entirely possible that information revealed in discovery will make either Count 1 [breach of contract] or 5 [negligence] untenable." *See Goodman*, 2022 WL 2358403 at *2; *see also id*. at *7 (concluding "that, ***at this stage***, the economic loss rule does not bar Goodman's claims and declin[ing] to dismiss Count 5." (emphasis added)). Given the range of possible results in this litigation—including no recovery at all—there can be no question that the Settlement constitutes a considerable achievement and weighs heavily in favor of the requested attorneys' fee award. *See Huffman v. Prudential Ins. Co. Am.*, 2019

[8] During briefing on the motion to dismiss, Plaintiff previously determined not to pursue the Complaint's cause of action for negligence per se, which the Court also dismissed. *Goodman*, 2022 WL 2358403, at *2.

WL 1499475, at *6 (E.D. Pa. Apr. 5, 2019) (characterizing recovery of 96% of spread Prudential earned on improper investment of class members funds as an "excellent result" supporting award of one-third of $9 million settlement fund as attorneys' fees).

Furthermore, the Settlement will benefit a significant number of Settlement Class Members. The Settlement Class consists of all persons and entities in the United States that acquired At-Issue Taxable Municipal Securities at a premium (above par value) in a taxable account maintained by UBS between January 1, 2014, through December 31, 2019, inclusive, and who received a Form 1099 from UBS. Stipulation, ¶1(kk). The Court-approved Settlement Administrator, Strategic Claims Services, caused the Postcard Notice to be mailed, and/or caused the Notice to be emailed to 2,481 potential Settlement Class Members at the addresses set forth in the records provided by UBS. *See* Ex. 1 (Mailing Declaration) at ¶¶5-6. [9] After Court-approval of the Settlement and Plan of Allocation, the Settlement Administrator will determine each Settlement Class Member's *pro rata* share of the Net Settlement Fund under Lead Plaintiff's Counsel's guidance, and according to the Plan of Allocation developed with

[9] Plaintiff's Counsel is working with the Settlement Administrator and UBS to obtain and analyze additional data concerning potential Settlement Class Members, and will update the Court on the number of Settlement Class Members in the reply brief, which will be filed with the Court by November 30, 2023. ¶54 n.3.

Plaintiff's Counsel's damages expert, and mail Authorized Claimants their *pro rata* share of the Net Settlement Fund.[10] ¶¶57-65; Ex. 1 (Mailing Declaration) at ¶12. Given that UBS has provided contact information and the relevant transaction data for Settlement Class Members, the claims-free administration and distribution process will ensure that a high proportion of eligible Settlement Class Members receive compensation. *See* Ex. 1 (Mailing Declaration) at ¶¶4-6. Thus, the size of the fund and the number of persons benefitted strongly support approving the requested fee. *See Southeastern Pennsylvania Transportation Authority v. Orrstown Financial Services, Inc.*, Case No. 1:12-cv-00993, ECF No. 309 at p. 2, n.1 (M.D. Pa. May 19, 2023) (awarding 35% of the Settlement Fund plus accrued interest "given that the [$15 million] fund represents a substantial recovery of 29-36% of the maximum damages recoverable at trial as estimated by Lead Plaintiff's expert.") (Ex. 6); *Schuler v. Medicines Company*, 2016 WL 3457218, at *8, *11 (D.N.J. June 24, 2016) (finding recovery of approximately 4.0% of damages "falls squarely within the range of previous settlement approvals" and awarding 33% of common fund based on, *inter alia*, the "excellent result").

[10] This is not a claims-made settlement. If the Settlement is approved, Defendant will not have any right to the return of a portion of the Settlement Amount based on the number of Settlement Class Members determined to be eligible to receive a distribution from the Net Settlement Fund, or the amounts to be paid to Authorized Claimants from the Net Settlement Fund. *See* Stipulation ¶13.

2. There Have Been No Objections by Settlement Class Members

The reaction of the Settlement Class to the requested fee is also important. Courts consider "the presence or absence of substantial objections by members of the class to the settlement and/or fees requested by counsel." *In re Par Pharm. Sec. Litig.*, 2013 WL 3930091, at *9 (D.N.J. July 29, 2013).

While the deadline for objections is not until November 16, 2023, and thus has not yet passed, there have been no objections to the request for attorneys' fees and Litigation Expenses included in the Notice.[11] ¶¶81, 84. "[T]he absence of substantial objections by class members to the fee requests weigh[s] in favor of approving the fee request." *Rite Aid I*, 396 F.3d at 305; *Dartell v. Tibet Pharm., Inc.*, 2017 WL 2815073, at *9 (D.N.J. June 29, 2017) ("To date, no class member has objected to the requested fees. Accordingly, the reaction from the class supports the fee request.").

3. The Skill and Efficiency of Plaintiff's Counsel Supports the Request

The skill and efficiency of counsel 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

[11] Any objections or requests for exclusions received after the date of this submission will be addressed in the reply brief, which will be filed with the Court by November 30, 2023.

with which counsel prosecuted the case and the performance and quality of opposing counsel." *Hall,* 2010 WL 4053547, at *19.

As set forth above, Plaintiff's Counsel have obtained an excellent result—one that exceeds the maximum damages attributable to Settlement Class Members' tax overpayments that are potentially recoverable in this case. And, evidencing their efficiency, they have been able to litigate and settle this case relatively quickly, without wasting the Court's resources on needless discovery fights and motion practice. This is due, in large measure, to Plaintiff's Counsel's expertise and skill in litigating complex cases, which this Court has had the opportunity to observe over the course of the litigation. *See* Ex. 3-C (GPM firm resumé); Ex. 4-A (GHJ firm resumé); *see also Atanasio v. Tenaris S.A.*, 2019 WL 1916197, at *8, *10 (E.D.N.Y. Apr. 29, 2019) (noting that courts have recognized GPM "is experienced in securities class action litigation" and appointing GPM as lead counsel). In short, "[n]ot only did [Plaintiff's] Counsel's skill and expertise contribute to the favorable settlement for the class, it contributed to the overall efficiency of the case." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *7 (S.D.N.Y. Nov. 7, 2007).

"The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsel's work." *Hall*, 2010 WL 4053547, at *19; *Ikon*, 194 F.R.D. at 194. Here, Plaintiff's Counsel were opposed by Wilmer Cutler Pickering Hale

and Dorr LLP, a highly qualified defense firm that zealously represented the interests of its client and were prepared to litigate this case through trial and appeals. In the face of this experienced, well-financed, determined opposition, who aggressively disputed the issues in this case, Plaintiff's Counsel were nonetheless able to achieve an outstanding result. The fact that Plaintiff's Counsel achieved this Settlement "in the face of formidable legal opposition further evidences the quality of their work." *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d 484, 496 (E.D. Pa. 2003); *see also In re Mercedes-Benz Emissions Litig.*, 2021 WL 7833193, *13 (D.N.J. Aug. 2, 2021) ("The competence of opposing counsel favors a finding that Plaintiff's Counsel prosecuted this case with skill and efficiency."). Accordingly, "this factor strongly weighs in favor of approving the fee request." *Par Pharm.*, 2013 WL 3930091, at *9.

4. The Complexity and Duration of the Litigation Support the Request

The fourth *Gunter* factor is "the complexity and duration of the litigation." *Gunter*, 223 F.3d at 195 n.1. This "factor captures the probable costs, in both time and money of continued litigation." *P. Van Hove BVBA v. Universal Travel Grp., Inc.*, 2017 WL 2734714, at *12 (D.N.J. June 26, 2017).

"Class action suits have a well-deserved reputation as being most complex[,]" and this case was no exception. *TAL Educ. Grp.*, 2021 WL 5578665, at *9. As noted by the Court in its motion to dismiss decision, "whether UBS had

a duty to accurately report tax information on the forms it provides to its clients … is admittedly a novel issue, and there are a number of factors that are relevant to determining what duty, if any, UBS owed to Goodman. Federal statutes and Treasury regulations, FINRA investigations, and standard industry practices may all come into play." *Goodman v. UBS Fin. Servs., Inc.*, 2022 WL 2358403 at *7 (D.N.J. June 30, 2022) (cleaned up). Thus, to prosecute the case, Plaintiff's Counsel had to, *inter alia*: (a) gain a working knowledge of the relevant statutes, regulations and industry practices related to the tax reporting for interest paid on taxable municipal bonds; (b) conduct multiple interviews with a former UBS employee with first-hand knowledge of UBS's conduct with respect to the issues in this case; (c) fully understand how UBS reported amortizable bond premium and why it was wrong; and (d) determine what obligations UBS owed to Plaintiff (by agreement or otherwise). ¶¶9-13; Ex. 2 Declaration of Richard Goodman ("Goodman Decl.")) at ¶¶4-7. Plaintiff's Counsel also had to understand complex loss causation and damages issues. was All of this extensive work was required just to bring the case and survive the motion to dismiss.

Had the litigation continued, it would have inevitably involved substantially more time and money—for continued fact and expert discovery, pre-trial motions (including class certification and summary judgment), trial, post-trial motions, and the appellate process—which would have necessitated thousands of additional

attorney hours, extensive use of judicial resources, and hundreds of thousands of more dollars.[12] Consequently, by reaching the Settlement, Plaintiff's Counsel have obtained "a substantial benefit undiminished by further litigation expenses, without the delay, risk and uncertainty of continued litigation." *In re Computron Software, Inc., Sec. Litig.*, 6 F. Supp. 2d 313, 318 (D.N.J. 1998). Under such circumstances, the "Complexity and Duration" factor plainly weighs in favor of the requested fee. *See In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *10 (D.N.J. Feb. 9, 2010) ("The prospective duration of this matter if the does settle accompanied with the constant attention to detail required by an inherently complex suit favors the [33⅓%] award of attorneys' fees.").

5. The Risk of Nonpayment Supports the Requested Fee

"Courts in the Third Circuit have consistently recognized that the attorneys' contingent fee risk is an essential factor in determining a fee award." *In re Mercedes-Benz*, 2021 WL 7833193, at *14; *see also Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *7 (D.N.J. May 31, 2012) ("Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval." (collecting cases)); *Yedlowski v. Roka*

[12] As noted above and in the Spencer Declaration, Plaintiff engaged in informal discovery in conjunction with the mediation and Settlement. ¶¶23-31. "Informal discovery leading to an early settlement that avoids [litigation] costs favors approval of the fee application." *In re AremisSoft Corp. Sec. Litig.*, 210 F.R.D. 109, 133 (D.N.J. 2002).

Bioscience, Inc., 2016 WL 6661336, at *21 (D.N.J. Nov. 10, 2016) ("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."). This is because "[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974).

Here, Plaintiff's Counsel have prosecuted the Action on a ***fully*** contingent basis. Plaintiff's Counsel understood from the outset that they were embarking on a complex, expensive, and potentially lengthy litigation, with no guarantee of ever being compensated for the substantial investment of time and money the case would require. In undertaking that responsibility, "plaintiffs' counsel were obligated to assure that sufficient attorney and para-professional resources were dedicated to the prosecution of the Action; counsel also faced the responsibility of advancing litigation and overhead expenses on this case for [many] years." *In re Giant Interactive Group, Inc. Sec. Litig.*, 279 F.R.D. 151, 164 (S.D.N.Y. Nov. 2, 2011). "Unlike counsel for Defendants, who are paid substantial hourly rates and reimbursed for their expenses on a regular basis, [Plaintiff's Counsel] have not been compensated for any time or expenses since this case began [approximately two] years ago." *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550,

at *27 (S.D.N.Y. Nov. 8, 2010). Plaintiff's Counsel's commitment was substantial (*i.e.*, $703,365 in lodestar and $118,343.85 in out-of-pocket hard costs), and had they not obtained a recovery, it could have all been lost. *See In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 994 (D. Minn. 2005) ("Precedent is replete with situations in which attorneys representing a class have devoted substantial resources in terms of time and advanced costs yet have lost the case despite their advocacy."); *see also Hall*, 2010 WL 4053547, at *20 ("the risk associated with taking a case on contingency is a real and important factor to consider.").

Further, the risk of loss in this case was not illusory. Plaintiff's Counsel faced significant pleading challenges, as well as the substantial risks of establishing liability and damages. *See* ¶¶35-45; Plaintiff's Memorandum in Support of Final Approval of Settlement, §§III.C.1.-III.C.3.; *see also Goodman v. UBS Financial Services, Inc.*, 2022 WL 2358403, at *2, *7-8 (D.N.J. June 30, 2022). Even if Plaintiff won at trial, there was still the risk of loss on post-trial motions and appeal. *See Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1446, 1449 (11th Cir. 1997) (reversing judgment in plaintiffs' favor and entering judgment in

favor of defendant).[13] In short, "[t]he risk of nonpayment here, as with most contingency work, was high." *Hall*, 2010 WL 4053547, at *20.

Despite the risk that Plaintiff's Counsel's significant commitment of time, money and effort could go uncompensated, Plaintiff's Counsel vigorously prosecuted the Settlement Class's claims and never wavered in their commitment to the case. *See* ¶¶11-31. Consequently, "[t]he risk of little to no recovery weighs in favor of an award of attorneys' fees." *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010); *see also Barnes v. Winking Lizard, Inc.*, 2019 WL 1614822, at *5 (N.D. Ohio Mar. 26, 2019) ("Plaintiff's Counsel provided representation on a purely contingency fee basis, advancing all litigation costs and receiving no payment unless there was a recovery, and should be compensated for that risk.").

6. Plaintiff's Counsel Devoted Significant Time to the Case

To date, Plaintiff's Counsel have expended over 866.35 hours and advanced over $118,343.85 in out-of-pocket expenses on this case. ¶¶71, 83. These numbers reflect Plaintiff's Counsel's commitment to vigorously pursuing this

[13] *See also In re BankAtlantic Bancorp, Inc. Sec. Litig.*, Case No. 07-61542-Civ., 2011 WL 1585605 (S.D. Fla. Apr. 25, 2011) (granting judgment as a matter of law for defendants after jury returned verdict for plaintiffs), *aff'd sub nom.*, *Hubbard v. BankAtlantic Bancorp, Inc.*, 688 F.3d 713 (11th Cir. 2012); *Backman v. Polaroid Corp.*, 910 F.2d 10 (1st Cir. 1990) (where the class won a substantial jury verdict and motion for judgment N.O.V. was denied; on appeal, the judgment was reversed and the case was dismissed – after 11 years of litigation).

Action for the benefit of Plaintiff and the Settlement Class. Furthermore, additional hours and resources will necessarily be expended shepherding the distribution process, responding to Settlement Class Members' inquiries, and attending the final approval hearing. No additional compensation will be sought for this work. Accordingly, this factor supports approval of the requested attorney fees. *See Leach v. NBC Universal Media, LLC*, 2017 WL 10435878 at ¶49 (S.D.N.Y. Aug. 24, 2017) ("The fact that Plaintiff's Counsel's fee award will not only compensate them for time and effort already expended, but for the time that they will be required to spend administering the settlement going forward, also supports their fee request.").

7. Approval of Similar Awards in Similar Cases Supports the Request

With respect to the final *Gunter* factor, "the court must (1) compare the award requested with other awards in comparable settlements; and (2) ensure that the award is consistent with what the attorney would have received had the fee been negotiated on the open market." *Hall*, 2010 WL 4053547, at *21.[14] As to the first prong of the inquiry, numerous courts within the Third Circuit, including the District of New Jersey, have awarded fees of 33⅓% of the recovery, even in cases involving much larger settlement funds than the instant case. *See In re Rite Aid*

[14] The second prong of this *Gunter* factor is substantially similar to the second *Prudential* factor. *See AT&T Corp.*, 455 F.3d at 165 (listing factors).

Corp. Sec. Litig., 146 F. Supp. 2d 706, 735 (E.D. Pa. 2001) (review of 289 settlements demonstrates "average attorney's fee percentage [of] 31.71%" with a median value that "turns out to be one-third"); *In re Remeron Direct Purchaser Antitrust Litig.*, 2005 WL 3008808, at *12 (D.N.J. Nov. 9, 2005) (one-third of $75 million); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *11 (D.N.J. Feb. 9, 2010) (awarding 33⅓% of $41,500,000 settlement fund and noting that "awards in similar common fund cases appear analogous" and award was "consistent with other similar cases"); *Bodnar v. Bank of America, N.A.*, 2016 WL 4582084, at *5 (E.D. Pa. Aug. 4, 2016) (awarding 33% of $27.5 million settlement fund and "find[ing] that an award of 33% of the Settlement Fund is consistent with similar awards throughout the Third Circuit."); *Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at *28 (E.D. Pa. Apr. 21, 2020) (awarding 33⅓% of $65,877,600 settlement fund); *In re General Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431 (E.D. Pa. 2001) (awarding one-third of $48 million); *Bradburn Parent Teacher Store, Inc. v. 3M (Minnesota Mining and Manufacturing Company)*, 513 F.Supp.2d 322, 338 (E.D. Pa. 2007) (awarding 35% of $39,750,000 settlement fund, plus expenses); *Brown v. Esmor Correctional Servs., Inc.*, 2005 WL 1917869, at *14 (D.N.J. Aug. 10, 2005) (one-third of $2.5 million).[15]

[15] *See also* Ex. 10 (collecting cases); *Lincoln Adventures, LLC v. Those Certain Underwriters At Lloyd's, London Members of Syndicates*, 2019 WL 13159891, at *1 (D.N.J. Oct. 3, 2019) (awarding one-third of $21,900,000 settlement fund and

"The requested fee of 33⅓% is also consistent with a privately negotiated contingent fee in the marketplace." *Hall,* 2010 WL 4053547, at *21. "Attorneys regularly contract for contingent fees between 30% and 40% with their clients in non-class, commercial litigation." *Remeron Direct Purchaser*, 2005 WL 3008808, at *16; *see also In re Orthopedic Bone Screw Prods. Liab. Litig.*, 2000 WL 1622741, at *7 (E.D. Pa. Oct. 23, 2000) (noting that "plaintiffs' counsel in private contingency fee cases regularly negotiate agreements providing for thirty to forty percent of any recovery."); *Tibet Pharm.*, 2017 WL 2815073, at *11 (similar); *Rowe*, 2011 WL 3837106, at *22 (awarding 33⅓% as "consistent with a privately negotiated contingent fee in the marketplace"). Thus, the requested fee award is strongly supported by both subparts of the final *Gunter* factor, and second *Prudential* factor.

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stating "the amount of attorneys' fees is consistent with awards in similar cases"); *In re Virgin Mobile USA IPO Litig.*, No. 07-cv-5619 (SDW), ECF No. 146 at ¶17 (D.N.J. Dec. 8, 2010) (awarding 33⅓% of $19.5 million settlement) (Ex. 7); *Johnson v. Community Bank, N.A.*, 2013 WL 6185607, at *8 (M.D. Pa. Nov. 25, 2013) ("An award of one-third of the settlement is consistent with this Court's prior decisions and with cases decided throughout the Third Circuit."); *Myers v. Jani-King of Philadelphia, Inc.*, 2019 WL 4034736, at *11 (E.D. Pa. Aug. 26, 2019) ("the requested fee of one-third (1/3) of the settlement amount is reasonable in comparison to awards in other cases."); *In re Ravisent Techs., Inc. Sec. Litig.*, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) ("courts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses.").

8. The Settlement Is Solely Attributable to the Efforts of Plaintiff and Plaintiff's Counsel

The Third Circuit has also advised district courts to examine "the value of benefits accruing to class members attributable to the efforts of class counsel as opposed to the efforts of other groups, such as government agencies conducting investigations." *In re AT&T Corp.*, 455 F.3d 160, 165 (3d Cir. 2006) *citing Prudential*, 148 F.3d at 338.

Here, Plaintiff and Plaintiff's Counsel developed this case without the assistance of government agencies or other groups. Accordingly, "[t]his factor weighs in favor of approving Plaintiff's Counsel's fee request." *In re Comcast Corp. Set-Top Cable Television Box Antitrust Litig.*, 333 F.R.D. 364, 389 (E.D. Pa. Sept. 24, 2019); *see also Silverman v. Motorola, Inc.*, 2012 WL 1597388, at *3 (N.D. Ill. May 7, 2012) (fee request supported by fact that "there were no governmental investigations or prosecutions related to the alleged fraud upon which Plaintiff's Counsel could rest their theory of the case. Rather, they investigated the facts and developed their theory of liability from scratch, involving significant time and expense.").

9. There Are No Unusual Terms in the Settlement

The terms of the Settlement, providing a monetary benefit to the Settlement Class in return for releases, are otherwise standard, and thus, "neither weighs in favor nor detracts from a decision to award attorneys' fees." *In re Processed Egg*

Prods. Antitrust Litig., 2012 WL 5467530, at *6 (E.D. Pa. Nov. 9, 2012); *In re Merck & Co.*, 2010 WL 547613, at *12 (finding factor neutral when no innovative terms are highlighted).

Accordingly, the *Gunter* and *Prudential* factors strongly favor approving the fee request.

C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Because application of the *Gunter/Prudential* factors demonstrate that the requested fee is not "clearly excessive," a lodestar cross-check is not required. *See, e.g.*, *In re Cendant Corp.*, 264 F.3d at 221. Still, courts may "cross-check the percentage award at which [it] arrive[s] against the 'lodestar' award method[.]" *Gunter*, 223 F.3d at 195 n.1; *see also Prudential*, 148 F.3d at 333. Here, application of a lodestar cross-check confirms that the requested 33⅓% fee is fair and reasonable.

A "lodestar award is calculated by multiplying the number of hours reasonably worked on a [] case by a reasonable hourly billing rate for such services based on the given geographical area, the nature of the services provided, and the experience of the attorneys." *Rite Aid I*, 396 F.3d at 305. The "cross-check" is then performed by dividing the proposed fee award by the lodestar calculation, resulting in a lodestar multiplier. *AT&T*, 455 F.3d at 164 n. 4. "The multiplier is a device that attempts to account for the contingent nature or risk involved in a

particular case and the quality of the attorneys' work." *Rite Aid I*, 396 F.3d at 305-06; *see also Ikon*, 194 F.R.D. at 195 (multiplier may be used to "reflect the risks of nonrecovery, to reward an extraordinary result, or to encourage counsel to undertake socially useful litigation.").

In "cross-checking" the percentage of recovery award against the lodestar, the Third Circuit has emphasized that the calculation is "not a full-blown lodestar inquiry" and need not entail "mathematical precision" or "bean-counting." *AT&T*, 455 F.3d at 169, n.6 (*quoting Rite Aid I*, 396 F.3d at 306); 455 F.3d at 164 ("The lodestar cross-check, while useful, should not displace a district court's primary reliance on the percentage-of-recovery method."). Accordingly, "the district court[] may rely on summaries submitted by [counsel] and need not review [] billing records." *Rite Aid I*, 396 F.3d at 306-07.

Here, Plaintiff's Counsel (including attorneys, paralegals, and professional support staff) collectively devoted a total of 866.35 hours to the prosecution of this Action, resulting in a lodestar of $703,365. ¶71.[16] Based on a 33⅓% fee (equal to $833,333), Lead Counsel's lodestar of yields a multiplier of 1.18. *Id.* This multiplier is well within the range of multipliers commonly awarded in class actions

[16] Plaintiff's Counsel's rates range from $785 to $1,125 for partners (¶70), and "are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude." *Lea v. Tal Educ. Grp.*, 2021 WL 5578665, at *12 (S.D.N.Y. Nov. 30, 2021) (approving GPM's ***2021*** rates of $600 to $995 for partners); *see also* Ex. 5 (chart of rates charged by peer plaintiff and defense counsel in complex litigation).

and other complex litigation. *See Remeron End-Payor*, 2005 WL 2230314, at *31 ("An examination of recently approved multipliers reveals that the [1.73] multiplier requested here is on the low end of the spectrum."); *Rite Aid*, 146 F. Supp. 2d at 736 at n.44, and 362 F. Supp. 2d at 589 (awarding percentage equating to a multiplier of between 4.5 and 8.5 on 2001 settlement and multiplier of 6.96 on the 2005 settlement); *AremisSoft*, 210 F.R.D. at 135 (awarding percentage of the fund equating to 4.3 multiplier); *Bodnar*, 2016 WL 4582084, at *6 (awarding 33% of $27.5 million settlement fund that resulted in a multiplier of 4.69, and finding "that the multiplier is appropriate and reasonable, including when compared to awards in other cases in this court and Circuit."); *Schuler v. The Meds. Co.*, 2016 WL 3457218, at *9-*10 (D.N.J. June 24, 2016) (awarding one-third of settlement fund, resulting in 3.57 multiplier in case that settled ***before decision on motion to dismiss***); *AT&T*, 455 F.3d at 173 ("[W]e approved of a lodestar multiplier of 2.99 in *Cendant PRIDES*, in a case we stated 'was neither legally nor factually complex'" and that settled in 4 months); *Maley v. Del Global Techs Corp.*, 186 F. Supp. 2d 358, 369 (S.D.N.Y. 2002) (awarding fee equal to a 4.65 multiplier, which was "well within the range awarded by courts in this Circuit and courts throughout the country[]").[17]

[17] *See also In re Cendant Corp. Sec. Litig.*, 404 F.3d at 183 n.4 (noting that the fee award challenged on appeal "would appear to lead to a multiplier in the mid-single digits," and then affirming the award without further discussion of the multiplier);

Moreover, additional hours will be expended, *inter alia*, overseeing the distribution process, responding to Settlement Class Members' inquiries, and attending the final approval hearing. Because no additional compensation will be sought for this work, the multiplier will decrease by the time the Action concludes. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, [and] respond to inquiries, … the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable.").

Pfeifer v. Wawa, Inc., 2018 WL 4203880, at *14 (E.D. Pa. Aug. 31, 2018) (2.7 multiplier was "well within the range of reasonableness"); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 195 (E.D.Pa.2000) (awarding 2.7 multiplier and noting that it was "well within the range of those awarded in similar cases"); *Meijer, Inc. v. 3M*, 2006 WL 2382718 at *8, *24 (E.D. Pa. Aug. 14, 2006) (approving a percentage fee award that translated to a 4.77 multiplier in a case that settled after one year); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *13 (D.N.J. Feb. 9, 2010) (awarding 33⅓% of settlement fund, equating to a multiplier of 2.786); *Universal Travel*, 2017 WL 2734714, at *13 (awarding one-third of settlement, resulting in 2.24 multiplier); *McLennan v. LG Electronics USA, Inc.*, 2012 WL 686020, at *10 (D.N.J. Mar. 2, 2012) (multiplier of 2.93); *Flores v. Express Services, Inc.*, 2017 WL 1177098, at *4 (E.D. Pa. Mar. 30, 2017) (awarding fee equal to multiplier of 4.6).

IV. LEAD PLAINTIFF'S COUNSEL'S EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED TO ACHIEVE THE BENEFIT OBTAINED

"'Counsel in common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case.'" *Universal Travel*, 2017 WL 2734714, at *13 (*quoting In re Cendant Corp. Deriv. Action Litig.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002)).

Here, Lead Plaintiff's Counsel expended $118,343.85 in out-of-pocket costs, which are divided into categories and itemized in the declarations submitted by each individual firm. *See* ¶83; Ex. 3-B (breakdown of GPM's expenses).[18] These Litigation Expenses are well-documented, based on the books and records maintained by Lead Plaintiff's Counsel, and reflect the costs of prosecuting this Action. *Id.* They include, among other things, fees for experts; mediation fees; online legal research costs; travel and lodging expenses; copying; and court filing fees. Reimbursement of similar expenses is routinely permitted. *See In re Remeron End-Payor Antitrust Litig.,* 2005 WL 2230314, at *32 (D.N.J. Sept. 13, 2005) (approving reimbursement of "costs expended for purposes of prosecuting this litigation, including substantial fees for experts; … travel and lodging expenses; [and] copying costs"); *In re Am. Bus. Fin. Servs. Inc. Noteholders Litig.*, 2008 WL 4974782, at *18 (E.D. Pa. Nov. 21, 2008) (approving reimbursement of

[18] GHJ is not seeking reimbursement of expenses.

expenses for "duplication costs, online legal research, travel, meals, experts, telephone, fax services, transcripts, postage, messenger, mediator, filing and court fees, service fees, [and] transportation" based on declarations of counsel); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) (similar).

The Notice informed Settlement Class Members that Lead Plaintiff's Counsel would seek reimbursement of Litigation Expenses up to $200,000 (including a $25,000 service award to the Plaintiff)—and to date, there have been no objections. ¶84; Ex. 1 (Mailing Declaration), at Ex. C (Notice) ¶43. The requested Litigation Expenses should, therefore, be awarded. *See Rite Aid*, 146 F. Supp. 2d at 736 ("plaintiffs seek reimbursement of expenses . . . which they have detailed in their submissions to us. These out-of-pocket expenses . . . are compensable . . . they are also unobjected to and, in our judgment, reasonable").

V. PLAINTIFF SHOULD BE GRANTED A SERVICE AWARD

In connection with their request for reimbursement of Litigation Expenses, Lead Plaintiff's Counsel also respectfully requests a service award to Plaintiff in the amount of $25,000 for the time and effort he spent prosecuting the Action on behalf of the Settlement Class. "Courts have ample authority to award incentive or service payments to particular class members where the individual provided a benefit to the class or incurred risks during the course of litigation." *Bredbenner v.*

Liberty Travel, Inc., 2011 WL 1344745, *23 (D.N.J. Apr. 8, 2011) (collecting cases). "Payments to class representatives may be considered a form of restitutionary relief within the discretion of the trial court. They may also be treated as a reward for public service and for the conferring of a benefit on the entire class." *In re Linerboard Antitrust Litigation*, 2004 WL 1221350, at *18 (E.D. Pa. June 2, 2004) (cleaned up).

Here, there is no question that the Plaintiff, who has been a lawyer for 65-years, played a significant role in investigating this case and overseeing the litigation on behalf of the Settlement Class. Among other things, Mr. Goodman: (a) assisted counsel in investigating the case and in the preparation of the Complaint, including by arranging and participating in multiple investigative interviews between Plaintiff's Counsel and a former UBS employee; (b) supplied documentation to support the claims asserted in the Complaint, including his UBS account opening documents and 1099 tax forms; (c) reviewed and commented on all significant pleadings and briefs filed in the Action; (d) reviewed the Court's orders and discussed them with Plaintiff's Counsel; (e) discussed Defendant's requests for the production of documents with Plaintiff's Counsel, and responded and objected to the same; (f) reviewed and commented on the mediation briefs; (g) produced relevant tax returns and other relevant documents to UBS as part of the pre-mediation exchange of information, and coordinated between Plaintiff's

Counsel and his accountants to obtain the same; (h) remotely attended the mediation session overseen by Robert Meyers, Esq. of JAMS; (i) stayed abreast of the settlement negotiations; and (j) evaluated and approved the proposed Settlement. *See* Ex. 2 (Goodman Decl.), ¶¶2-7.

These are "precisely the types of activities that support awarding reimbursement of expenses to class representatives[]" (*see In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at *21 (S.D.N.Y. Dec. 23, 2009)),[19] and the request is eminently reasonable given the 50 hours Plaintiff conservatively estimates he devoted to litigation related activities. *See* Goodman Decl., ¶11. Moreover, the amount sought is consistent with awards in other complex cases. *See In re Linerboard Antitrust Litigation*, 2004 WL 1221350, at *18-*19 (E.D. Pa. June 2, 2004) (awarding $25,000 to each of the five class representatives, collecting cases and "not[ing] that the amount requested, $25,000, is comparable to incentive awards granted by courts in this district and in other circuits."); *Mylan Pharmaceuticals, Inc. v. Warner Chilcott Public Limited Comp.*, 2014 WL 12778314, at *7 (E.D. Pa. Sept. 15, 2014) (awarding $50,000 to each of

[19] *See also McLennan v. LG Electronics USA, Inc.*, 2012 WL 686020, at *11 (D.N.J. ,2012) ("The Court finds that the modest incentive payments requested in this case are reasonable, as Plaintiffs (1) assisted counsel with the preparation of the Complaint and Amended Complaint; (2) supplied documentation to support their claims; (3) stayed abreast of the settlement negotiations; and (4) reviewed and approved Settlement terms.").

the three plaintiff "in recognition of the work these Plaintiffs undertook in representing the Class.").[20] Consequently, Lead Plaintiff's Counsel respectfully requests that the Court approve the award.

VI. CONCLUSION

For the foregoing reasons, Lead Plaintiff's Counsel respectfully request the Court grant its motion.[21]

[20] *See also In re Virgin Mobile USA IPO Litig.*, No. 07-cv-5619 (SDW), ECF No. 146 at ¶19 (D.N.J. Dec. 8, 2010) (awarding co-lead plaintiffs $29,370, $29,205, $30,000, and $25,245 respectively, for a combined total of $113,820 out of $19.5 million settlement after commencement of discovery but prior to class certification) (Ex. 7); *Zacharia v. Straight Path Communications, Inc.*, No. 2:15-cv-08051-JMV-MF, ECF No. 90 at ¶6 (D.N.J. Sept. 7, 2018) (awarding lead plaintiff $30,000) (Ex. 8); *In re Automotive Refinishing Paint Antitrust Litig.*, 2008 WL 63269, at *7 (E.D.Pa.,2008) (approving $30,000 service awards to each of the four Plaintiffs); *In re Signet Jewelers Ltd. Sec. Litig.*, 2020 WL 4196468, at *24 (S.D.N.Y. July 21, 2020) (collecting cases and awarding $25,410 to lead plaintiff); *Sun v. Han et al.*, No. 2:15-cv-00703-JMV-MF, ECF No. 77 at ¶6 (D.N.J. Mar. 6, 2018) (awarding lead plaintiff $20,000 out of $1.25 million settlement prior to class certification) (Ex. 9).

[21] A proposed order will be submitted with Lead Plaintiff's Counsel's reply papers, after the deadlines for objections and seeking exclusion have passed.

DATED: November 2, 2023

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CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2023, I caused the foregoing to be filed electronically with the Clerk of the Court using the ECF system, which will send notification of such filing to all parties.

November 2, 2023

Respectfully submitted,

/s/Lee Albert
Lee Albert