UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HEIDI LANGAN, on behalf of herself and all others similarly situated, Plaintiff, v. JOHNSON & JOHNSON CONSUMER COMPANIES, INC., Defendant.	Civil Action No. 3:13-CV-01471-JAM May 27, 2019

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND A LEAD PLAINTIFF SERVICE AWARD

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

I. INTRODUCTION

Plaintiff Heidi Langan on behalf of herself and the Settlement Class Members in the above captioned Action,[1] respectfully submits this Memorandum of Law in support of her Motion for (i) an award of attorneys' fees of thirty percent (30%) of the Settlement Fund, or $720,000; (ii) reimbursement of necessary and reasonable litigation expenses of $216,534.84; and (iii) a service award of $5,000 to Lead Plaintiff, Heidi Langan.

In the interest of brevity, the factual and procedural background in the contemporaneously filed Memorandum of Law in support of Plaintiff's Motion for Final Approval of Class Action Settlement ("Final Approval Brief") is incorporated by reference.

II. ARGUMENT

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

The U.S. Supreme Court and the Second Circuit have both recognized that where counsel's efforts have created a "common fund" for the benefit of a class, counsel should be compensated from that common fund. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). "The purpose of the common fund doctrine is to fairly and adequately compensate class counsel for services rendered and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *10 (S.D.N.Y. 2014) (citing *Goldberger*, 209 F.3d at 47). "Courts have recognized that, in addition to providing just

[1] Unless otherwise indicated, all capitalized terms used herein have the same meanings set forth and defined in the Settlement Agreement (the "SA"). A true and accurate copy of the SA and its exhibits, Exhibit A and Exhibits 1–5, is attached to the Declaration of Mark P. Kindall Supporting Plaintiff's Motion for Final Approval of Class Action Settlement and Motion for an Award of Attorneys' Fees and Expenses and a Lead Plaintiff Service Award (hereinafter, "Kindall Decl."), which is filed contemporaneously with this Motion.

compensation, awards of fair attorneys' fees from a common fund should also serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future alleged misconduct of a similar nature." *Id.* at *11.

Here, Plaintiff's contributions and Class Counsel's representation in this action merit an award of fair and adequate compensation for services rendered. The requested attorneys' fees of thirty percent (30%) of the Settlement Fund, or $720,000, and reimbursement of $216,534.84 of expenses, which were necessary and reasonable, are both reasonable and warranted.

B. The Court Should Award a Reasonable Percentage of the Common Fund

"The Second Circuit has authorized district courts to employ the percentage-of-the-fund method when awarding fees in common fund cases." *Id.* (citing *Goldberger*, 209 F.3d at 47) (holding that the percentage-of-the-fund method may be used to determine appropriate attorneys' fees, although the lodestar method may also be used); *see also Hayes v. Harmony Gold Mining Co.*, 509 F. App'x 21, 24 (2d Cir. 2013) (affirming district court's conclusion that the "percentage fee award from a common settlement fund . . . aligns the interests of class counsel with those of the class"), *cert. denied*, 571 U.S. 888 (2013). In expressly approving the percentage method, the Second Circuit recognized that "the lodestar method proved vexing" and resulted in "an inevitable waste of judicial resources." *Goldberger*, 209 F.3d at 48–49.[2] Just last week, the Second Circuit

[2] Indeed, the use of the percentage method in common fund cases has been approved by nearly every other Circuit that has addressed the issue. *See Heien v. Archstone*, 837 F.3d 97, 100 (1st Cir. 2016); *Dewey v. Volkswagen Aktiengesellschaft*, 558 Fed.Appx. 191, 197 (3d Cir. 2014) (citing *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 732 (3d Cir.2001)); *Brundle on behalf of Constellis Employee Stock Ownership Plan v. Wilmington Trust, N.A.*, 919 F.3d 763, 786–87 (4th Cir. 2019); *In re Sulzer Orthopedics, Inc.*, 398 F.3d 778, 781 (6th Cir. 2005); *In re Southwest Airlines Voucher Litigation*, 898 F.3d 740, 746 (7th Cir. 2018); *Travelers Property Cas. Ins. Co. of America v. National Union Ins. Co. of Pittsburgh, Pa.*, 735 F.3d 993, 1000 (8th Cir. 2013); *Rodriguez v. Disner*, 688 F.3d 645, 653 (9th Cir. 2012); *Chieftain Royalty Company v. Enervest Energy Institutional Fund XIII–A, L.P.*, 888 F.3d 455, 459 (10th Cir. 2017); *Muransky v. Godiva Chocolatier, Inc.*, __ F.3d __, 2019 WL 1760292, at *12 (11th Cir. 2019); *Keepseagle v. Perdue*,

reaffirmed the principle that awarding fees using the percentage of fund method is appropriate even in cases involving fee-shifting statutes, so long as the case results in the creation of a common fund. *Fresno Cty. Employees' Ret. Ass'n v. Isaacson/Weaver Family Tr.*, No. 17-2662, 2019 WL 2219680, at *2 (2d Cir. May 23, 2019) ("regardless of whether a case is brought pursuant to a statute with a fee-shifting provision, if the parties settle the case by creating a common fund, common-fund principles control class counsel's fee recovery").

The percentage method is the "trend in this Circuit." *See McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 417 (2d Cir. 2010); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005); *In re IMAX Sec. Litig*, 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) ("'the percentage method continues to be the trend of district courts in th[e Second] Circuit"') (citing *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 (S.D.N.Y.2008)); *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *8 (S.D.N.Y. Oct. 24, 2005) ("The trend in the Second Circuit recently has been to use the percentage method"); *see also Amara v. Cigna Corp.*, 2018 WL 6242496, at *1 (D. Conn., 2018) (applying the percentage method).

Given the Supreme Court's indication that the percentage-of-the-fund method is proper in this type of case, the Second Circuit's explicit approval of this method in *Goldberger* and the trend among the district courts in this Circuit, this Court should award attorneys' fees based on a percentage of the fund. The percentage approach not only aligns the interests of Class Counsel and the Settlement Class Members, (*see In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 348 (S.D.N.Y. July 8, 2014)), it also recognizes that the quality of counsel's services is

334 F. Supp. 3d 58, 60 (D.C. Cir. 2018). In fact, in the Eleventh and District of Columbia Circuits, common fund cases require the use of the percentage-of-the-fund method. *See Muransky v. Godiva Chocolatier, Inc.*, 922 F.3d 1175 (11th Cir. 2019) (citing *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 773–74 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1269–71 (D.C. Cir. 1993).

measured best by the results achieved, and "can serve as a proxy for the market in setting counsel fees." *In re American Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 432 (S.D.N.Y. 2001).

C. The Requested Fee Is Reasonable Under the *Goldberger* Factors

The Second Circuit explained in *Goldberger* that whether the court uses the percentage method or the lodestar approach, it should consider the traditional criteria that reflect a reasonable fee in common fund cases, including: (1) the time and labor expended by counsel; (2) the risks of the litigation; (3) the magnitude and complexity of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations. *Goldberger*, 209 F.3d at 50. An analysis of these factors demonstrates that the requested fee of thirty percent (30%) of the Settlement Fund, or $720,000, is fair and reasonable.

1. The Time and Labor Expended by Counsel.

Class Counsel's fee request is reasonable because they have expended a substantial amount of time and effort to obtain the proposed Settlement for the Class Members. Since the inception of this Action, Class Counsel have devoted over 2000 hours to this litigation. Kindall Decl., ¶ 17. Counsel (1) engaged in extensive research concerning the nature and properties of the non-natural ingredients of the Covered Products, the pricing of the Covered Products relative to competitor products that were not marketed as "natural," and variations in state consumer protection laws around the country; (2) performed legal research about potential causes of action against Defendant, and the proper venue(s) and jurisdiction for this Action; (3) drafted and reviewed two complaints; (4) researched, prepared, and successfully defeated Defendant's Motion to Dismiss; (5) engaged in comprehensive discovery, which included fact and expert depositions as well as reviewing and analyzing over 100,000 pages of documents; (6) successfully litigated a contested class certification motion — which included expert depositions; (7) defeated Defendant's Motion for Summary Judgment and myriad challenges to her experts' testimony; (8) on interlocutory

appeal to the Second Circuit, successfully established Plaintiff's standing to represent a multistate class – an issue of first impression for that Court; (9) continued months-long negotiations with Defendant, including multiple mediation sessions with an independent mediator; (10) successfully negotiated a $2.4 million settlement; and (11) finalized the terms of the SA with Defendant. *Id.*, ¶¶ 3-10.

Moreover, the legal work on this litigation will not end with the Court's approval of the Settlement. Counsel will necessarily expend additional hours and resources to assist with shepherding the claims process and responding to Class Member inquiries. *See Aponte v. Comprehensive Health Management, Inc.*, 2013 WL 1364147, at *7 (S.D.N.Y. 2013) ("The fact that Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward, also supports their [one-third] fee request.").

At all times during this litigation, Class Counsel's efforts were driven by and focused on advancing the litigation to bring about the most successful outcome for the Class, whether through settlement or trial, by the most efficient means possible. Accordingly, the time and effort devoted to this case by Counsel to obtain the $2.4 million recovery confirms that the thirty percent (30%) fee request is reasonable.

2. The Risk of Litigation.

Courts in the Second Circuit have long recognized the risk associated with a case taken on a contingency basis as an important factor in determining an appropriate fee award:

> [Class] Counsel undertook this Action on a wholly contingent-fee basis, investing a substantial amount of time and money to prosecute the Action without a guarantee of compensation or even the recovery of expenses. Unlike counsel for Defendants, who is paid substantial hourly rates and reimbursed for their expenses on a regular basis, [Class] Counsel has not been compensated for any time or expenses since

> this case began, and would have received no compensation or expenses had this case not been successful.

City of Providence, 2014 WL 1883494, at *14. "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *Id.* (citing *Teachers' Ret. Sys. of La. v. A.C.L.N., Ltd.*, 2004 WL 1087261, at *3 (S.D.N.Y. May 14, 2004)); *see also Am. Bank Note*, 127 F. Supp. 2d at 433 (concluding it is "appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award") (citations omitted); *In re Prudential Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 417 (S.D.N.Y. 1997) ("Numerous courts have recognized that the attorney's contingent fee risk is an important factor in determining the fee award") (citation omitted). Not only do contingent litigation firms have to pay regular overhead, they must also advance the expenses of the litigation. The financial burden on contingent-fee counsel is far greater than on a firm that is paid on an ongoing basis. And even if there were ***no*** risk that the litigation would fail – which is most certainly not the case – there is ample risk that counsel might not "obtain a settlement entitling them to a fee commensurate with their efforts" *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 569-70 (7th Cir. 1992).

Indeed, as explained in greater detail in Plaintiff's accompanying Final Approval Brief, this case involves complex issues of consumer perception and establishing liability may have proved difficult. Defendant has articulated defenses to Plaintiff's allegations that the Court and/or the jury may accept at trial. The fact-finder might choose to accept the opinions of Defendant's experts rather than Plaintiff's experts on the critical questions of how consumers interpret the challenged "natural oat formula" representation, whether the Class was injured as a result of the misrepresentations and, if so, by what amount. The expert testimony would have included heated debates over survey methodology, econometrics and hedonic regression. The outcome of such expert battles is never predictable. *See In re Milken & Associates Sec. Litig.*, 150 F.R.D. 46, 54

(S.D.N.Y. 1993) (approving settlement because, among other things, "the magnitude of damages becomes a 'battle of experts' at trial, with no guarantee of the outcome").

In light of the risks of litigation, this factor weighs in favor of approval of the requested attorneys' fees.

3. The Magnitude and Complexity of the Litigation.

The litigation covers purchasers of hundreds of thousands of products from well over a dozen states. The Settlement is with Johnson & Johnson, a nationally recognized international corporation that markets and sells its products throughout the world. Further, this litigation is a complex consumer protection class action, which implicated consumer protection laws across seventeen states and the District of Columbia. As discussed, proving liability and damages would require the presentation of survey evidence, regression modeling and extensive expert testimony. The complexity surrounding this case is evidenced by the intricate issues discussed in this Court's Omnibus Ruling and in the Second Circuit's decision in the interlocutory appeal of class certification. Accordingly, this factor supports the conclusion that the requested fee is reasonable and fair.

4. The Quality of Representation.

The result achieved and the quality of the services provided are important factors that the Court should consider in determining the reasonableness of attorneys' fees under a percentage analysis. *See Goldberger*, 209 F.3d at 50; *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 748 (S.D.N.Y. 1985); *see also Taft v. Ackermans*, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007) ("To determine the 'quality of the representation,' courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit").

The Court is ultimately best positioned to judge the skill and thoroughness with which Class Counsel has prosecuted this case. However, as evidenced by Izard Kindall & Raabe's firm resume (attached as Exhibit B to the Kindall Declaration), Class Counsel are knowledgeable and experienced in complex class action cases, having served as lead- or co-lead counsel in scores of class action cases throughout the United States, achieving hundreds of millions of dollars in settlements for its clients and class members. Class Counsel leveraged their experience and resources to thoroughly evaluate the merits and value of the case and successfully negotiate the Settlement. Moreover, the $2.4 million cash Settlement Class Counsel obtained for the Class Members is substantial, representing approximately 60 percent of the aggregate damage to Class as determined by Plaintiff's own trial expert.

Further underscoring the effectiveness of representation is that Class Counsel "achieved a positive result . . . while facing well-resourced and experienced defense counsel." *Jermyn v. Best Buy Stores, L.P.*, 2012 WL 2505644, at *11 (S.D.N.Y. Jun. 27, 2012); *see also Maley*, 186 F. Supp. 2d at 373 ("The quality of opposing counsel is also important in evaluating the quality of the services rendered by Plaintiffs' Class Counsel"). This litigation was vigorously contested by Defendant who was ably represented by very experienced and qualified attorneys from Kramer, Levin, Naftalis & Frankel LLP. Opposing counsel is a highly respected, experienced and qualified international law firm representing many international companies with substantial resources, including Defendant. "[N]otwithstanding this formidable opposition, Counsel was able to develop Plaintiff['s] case so as to resolve the litigation on terms [that were] favorabl[e] to the Class." *City of Providence*, 2014 WL 1883494, at *17. The fact that Class Counsel achieved the Settlement for the Class in the face of high-caliber legal opposition "provides further evidence of the quality of their work." *Maley*, 186 F. Supp. 2d at 373.

5. The Requested Fee in Relation to the Settlement.

Under the percentage approach, Class Counsel's requested fee of thirty percent (30%), or $720,000, of the gross Settlement Fund is well within the range of fees awarded in this Circuit. *See Hicks*, 2005 WL 2757792, at *9 (finding that 30% is a reasonable percentage in the Second Circuit); *Stefaniak v. HSBC Bank USA, N.A.*, 2008 WL 7630102, at *3 (W.D.N.Y. June 28, 2008) (finding a one-third request for a $2.9 million settlement fund to be "fair and reasonable."); *Gilliam v. Addicts Rehab. Ctr. Fund*, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008) (fee equal to one-third of the settlement fund is reasonable and "consistent with the norms of class litigation in this circuit"); *see also Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *6 (S.D.N.Y. Mar. 31, 2009) (awarding 33% from a fund of over $3 million); *Collins v. Olin Corp.*, 2010 WL 1677764, at *6 (D. Conn. Apr. 21, 2010) (approving award of 33.3% of $1.39 million settlement fund); *Strougo ex rel. Brazilian Eq. Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 262 (S.D.N.Y. 2003) (approving award of 33.3% of $1.5 million); *Macedonia Church v. Lancaster Hotel, LP*, 2011 WL 2360138, at *14 (D. Conn. Jun. 9, 2011) (awarding 33.3% of $625,000 settlement fund).

6. Public Policy Considerations.

This Settlement promotes the public policy of protecting consumers as contemplated by the Connecticut Unfair Trade Practices Act and the numerous consumer protection acts of other states. *See Ferrara v. Munro*, No. 3:16-CV-950 (CSH), 2017 WL 132834, at *7 (D. Conn. Jan. 13, 2017) ("'[T]he public policy underlying CUTPA is to encourage litigants to act as private attorneys general and to engage in bringing actions that have as their basis unfair or deceptive trade practices.'") (quoting *Gebbie v. Cadle Co.*, 49 Conn. App. 265, 279-80 (2009)). Moreover, the legislature intended to "encourage attorneys to accept and litigate CUTPA cases," by, *inter alia*,

including attorneys' fee provisions in the statute. *Id.* Thus, the requested award of attorneys' fees here furthers the public policy goal of ensuring effective and experienced legal representation for class action plaintiffs acting as private attorneys general in CUTPA actions.

Thus, each of the *Goldberger* factors favor approval of the requested attorneys' fees.

D. A Lodestar Analysis Further Demonstrates the Reasonableness of the Attorneys' Fees

Although Class Counsel believe the percentage method is the appropriate method of determining attorneys' fees in this Action, they recognize that a lodestar analysis is useful to further demonstrate the reasonableness of the fees sought. *In re Twinlab Corp. Securities Litig.*, 187 F. Supp. 2d 80, 85 (E.D.N.Y. 2002) ("The Second Circuit recommends analyzing the documentation of the hours submitted by counsel as a 'cross check' on the reasonableness of the requested percentage.") Although the Second Circuit has encouraged the practice of performing this lodestar "cross-check" on the reasonableness of a fee award based on the percentage approach, when doing so, the hours documented "need not be exhaustively scrutinized." *Goldberger*, 209 F.3d at 50.

Here, the requested fee is substantially below Class Counsel's lodestar. Class Counsel spent a total of 2058 hours of professional work on this litigation. Kindall Decl., ¶ 17. Based on Class Counsel's current hourly rates,[3] the lodestar calculation for these services is $1,309,812.50. *Id.* Therefore, Class Counsel has a ***negative*** lodestar multiplier – that is, the requested fee is approximately 45 percent lower than Class Counsel's lodestar. As the district court observed in *In re NTL Inc. Sec. Litig.*, 2007 WL 1294377 (S.D.N.Y. May 2, 2007) "the multiplier applied to

[3] The use of current hourly rates rather than historical rates is appropriate to compensate for delay in receiving compensation. *Perdue v. Kenny A. ex rel. Winn*, 559 U.S. 542, 556 (2010); *see also Reiter v. MTA New York City Transit Auth.*, 457 F.3d 224, 232 (2d Cir. 2006) ("The rates used by the court should be current rather than historic hourly rates.") (internal citations and quotations omitted). This rule is particularly appropriate here, where counsel have been litigating this case since 2013 without any compensation or reimbursement of over $200,000 in litigation expenses.

the lodestar typically is positive, to account for the contingent nature of the engagement and the risk of such a case" and a negative lodestar clearly brings no "windfall" to Class Counsel. *Id.*, at *8. *See In re Blech Sec. Litig.*, 2000 WL 661680, at *5 (S.D.N.Y. May 19, 2000) (awarding lead counsel 30% of the settlement and confirming that the award was reasonable because it represented a negative multiplier of lead counsel's lodestar). The negative lodestar multiplier further demonstrates the reasonableness of the requested fee, especially considering factors such as the risk of the litigation, the quality and performance of Class Counsel, and the results achieved for the Class Members.[4]

E. The Requested Expense Reimbursements Are Also Reasonable

Counsel further request that in addition to awarding them reasonable attorneys' fees, the Court grant their request for reimbursement of $216,534.84 in litigation costs and expenses incurred in connection with the prosecution of this Action. Courts generally hold that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses that would have been reimbursed by a paying client. *See Reichman v. Bonsignore, Brignati & Mazzotta P.C.*, 818 F.2d 278, 283 (2d Cir. 1987); *Hubbard v. Total Commun., Inc.*, 2010 WL 1981560, at *6 (D. Conn. May 18, 2010); *In re China Sunergy Sec. Litig.*, 2011 WL 1899715, at *6 (S.D.N.Y. May 13, 2011); *Amara*, 2018 WL 6242496, at *4; *see Miltland Raleigh–Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y.1993) ("Attorneys may be compensated for reasonable out-of-pocket expenses

[4] Because the lodestar crosscheck demonstrated a substantial negative lodestar multiplier for Class Counsel's time alone, including time devoted to the case by other counsel for the Plaintiff (specifically, the Law Office of Nicole A. Veno, the Law Office of Michael A. Laux, and Lite DePalma Greenberg, LLC), would not have changed the analysis. It is sufficient to say that, if the hours and lodestar devoted to the case by all of the attorneys who worked on it over the course of the past six years were taken into account, the reasonableness of the requested fee would be even more apparent.

incurred and customarily charged to their clients, as long as they 'were incidental and necessary to the representation' of those clients.").

Almost 70 percent of the expenses incurred ($150,000), were for expert costs; other significant items included investigation expenses ($22,000), deposition transcripts ($12,000), electronic document hosting ($11,000) and mediation fees ($10,000), as well as additional itemized expenses in the accompanying Kindall Declaration. Kindall Decl., ¶ 20. These expenses were necessary and reasonable for the prosecution and resolution of this action. *See In re Bear Stearns Companies, Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 272 n. 8 (S.D.N.Y. 2012) (reimbursing over $1 million in expert expenses to plaintiff's counsel); *Campos v. Goode*, 2011 WL 9530385, at *8 (S.D.N.Y. Mar. 4, 2011) (reimbursing mediation fee). Thus, it is appropriate to include the reimbursement of those expenses in the award of attorneys' fees and expenses here.

F. The Named Plaintiff's Service Award is Reasonable

"In a class action, plaintiffs can request an incentive award to compensate them for efforts expended for the benefit of the lawsuit." *In re Sinus Buster Products Consumer Litig.*, 2014 WL 5819921, at *19 (E.D.N.Y. Nov. 10, 2014) (internal quotations omitted) (citing *In re Colgate-Palmolive Co. Erisa Litig.*, 36 F. Supp. 3d at 354); *Beckman*, 293 F.R.D. at 483 ("Service awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs").

Here, Plaintiff's request for a service award in the amount of $5,000 is extremely reasonable because she served the Class by being the face of the Settlement, she was available as needed to discuss the litigation with Class Counsel (or otherwise), she reviewed filings, produced documents, and transcripts, she sat for a deposition, and she conferred with Counsel about the

litigation and settlement strategies. *See In re Colgate-Palmolive Co. Erisa Litig.*, 36 F. Supp. 3d at 354 (providing a $5,000 incentive award for each of the named plaintiffs where those plaintiffs participated in the litigation, reviewed filings and "communicated regularly with Class Counsel"); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 245 (E.D.N.Y. 2010) (granting a $5,000 incentive award for a named plaintiff who "reviewed the complaint in the California Action and discussed the facts with counsel"); *Golden v. Shulman*, 1988 WL 144718, at *8 (E.D.N.Y. Sept. 30, 1988) (awarding $5,000 to named plaintiff).

Given the effort she expended for the benefit of this lawsuit, an incentive award of $5,000 is reasonable to compensate the Class Representative for her time and service to the Settlement Class, as well as to function as an incentive to serve as class representative.

III. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court grants Class Counsel's Motion for Award of Attorneys' Fees and Expenses and a Lead Plaintiff Service Award.

Dated: May 27, 2019

Plaintiff,

By: */s/ Mark P. Kindall*
Mark P. Kindall
Robert A. Izard
Izard, Kindall & Raabe, LLP
29 South Main Street Suite 305
West Hartford, CT 06107
Telephone: (860) 493-6292
mkindall@ikrlaw.com
rizard @ikrlaw.com

Nicole Anne Veno
Law Office of Nicole A. Veno, LLC
PO Box 150555
Brooklyn, NY 11215
Telephone: (860) 474-4024
nveno@venolaw.com