UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

37 BESEN PARKWAY, LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), Defendant.	Civil Action No. 15-cv-9924

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

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I. INTRODUCTION

Court-appointed Class Counsel Susman Godfrey L.L.P. ("SG" or "Class Counsel") initiated, prosecuted, and successfully resolved this hard-fought case, recovering $91.25 million for owners of John Hancock life insurance policies. To achieve this exceptional result, Class Counsel litigated this matter for over *three years* entirely on a contingent-fee basis, without any compensation of any kind, and spent millions of dollars in costs and expenses, without financing of any kind. In accordance with applicable case law, Class Counsel respectfully requests an award of attorneys' fees of 30% of the Settlement Fund, a figure well within the range approved by courts in this Circuit. *See, e.g.*, *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *10 (S.D.N.Y. Oct. 2, 2013) (Gardephe, J.) ("Class Counsel's request for 31.7% of the Fund is reasonable and 'consistent with the norms of class litigation in this circuit.'" (citation omitted)).[1]

This is an *all-cash* settlement, and none of the proceeds will revert to John Hancock. Class members do *not* need to fill out claim forms to share in the recovery – checks will be mailed *directly* to them using the addresses already on file in John Hancock's systems. Assuming a finding of liability, Plaintiff's damages expert submitted a models in support of class certification, one of which estimated damages at the high end to be $217 million. The $91.25 million settlement is therefore an exceptional recovery. Retired United States Magistrate Judge Theodore Katz, who supervised the parties in the successful mediation of this matter, has submitted a declaration attesting that this Settlement was, in his view, "an excellent result." Decl. of Hon. Theodore H. Katz in Support of Preliminary Approval ("Katz. Decl.), Dkt. 134 ¶ 8.

The $91.25 million Settlement was achieved as a result of rigorous and creative prosecution of this case by SG. After being appointed interim class counsel, SG took and

[1] All emphases added unless otherwise indicated. All capitalized terms shall have the meaning set forth in the Settlement Agreement, which was submitted in connection with the Motion for Preliminary Approval Dkt. 133-2.

defended 17 depositions (some over multiple days) involving highly technical subjects, including, among other matters, insurance financial reporting standards and requirements, mortality projections, international financial reporting standards (IFRS), Canadian GAAP accounting, experience studies, statutory accounting, financial reserving, National Association of Insurance Commissioners (NAIC) filings, account values, net amount at risk, crediting rates, pricing memoranda, redeterminations, mortality tables, scalars, underwriting classifications, banding, Frasierization, "q_xs," and other aspects of actuarial science.

SG also prepared and filed a motion for class certification, supported by expert reports and exhibits that totaled over eleven thousand pages; reviewed and analyzed over 340,000 pages of documents produced in discovery (including over two thousand spreadsheets); incurred and met significant funding requirements of experts who worked closely with SG and, who, at the direction of SG through a novel Rule 34 inspection arrangement SG successfully negotiated, spent 23 days *onsite* at John Hancock's offices to extract over a hundred million separate data entries concerning the Class policies; and issued 18 third-party subpoenas to Defendant's reinsurers and actuarial and financial advisors that unearthed important documents on liability. The Settlement was reached after fact discovery was complete, after the motion for class certification was filed, and at a mediation before Judge Katz.

This is not a case where a prior governmental investigation, criminal conviction, whistleblower, or news exposé paved the way. To the contrary: there have been *no* government investigations at all. Class Counsel performed the initial factual and legal investigation prior to filing this lawsuit, expended thousands of hours thereafter pressing the case forward, and spent millions of dollars in expert fees and other expenses, all with no promise or assurance of any kind that it would receive payment for its services.

SG invested $6.2 million in time and money into this case, on a fully contingent basis, with the real possibility of getting nothing in return. And the case was extremely risky from the outset. The case involves 28 different product lines, involving over 79,000 policies. At the initial conference in this case, the Court focused on a "fundamental issue about the language in the policy that could be dispositive," questioned whether the key contractual terms at the heart of this litigation were even "enforceable," and invited John Hancock to file "a dispositive motion addressing" whether Plaintiff can even "get[] at the issue of [John Hancock's] expectations of future mortality experience." Transcript of May 5, 2016 Hearing ("Tr.") (Dkt. 29) at 4:3-19, 12:5-8, 17:25-18:3. After briefing these issues, Class Counsel successfully persuaded John Hancock not to file a dispositive motion, and pressed this complicated and technical case through the extended, multi-year discovery process that was required to unearth the documents and huge volume of data that SG and its experts needed to analyze in order prove the Class's case, which ultimately resulted in this remarkable Settlement with one of the largest insurance companies in the world, represented by one of the most prestigious law firms in the country.

SG respectfully moves this Court for an award of attorneys' fees of 30% of the Settlement Fund ($27,375,000), plus a *pro rata* share in the interest earned in that Fund. SG also seeks reimbursement for $2,240,112.22 in litigation expenses and incentive awards for the two corporate representatives of the Plaintiff to compensate them for their time and effort in helping bring this case to a successful conclusion.[2]

[2] Class Counsel wishes to advise the Court that, with the Plaintiff's consent, it has agreed to pay Joseph Lichter, an attorney for the Plaintiff, 5% of any fees awarded to Class Counsel by the Court. Among other tasks, Mr. Lichter provided assistance to Class Counsel in responding to discovery requests directed to the Plaintiff in this litigation.

II. BACKGROUND

A. Pre-Appointment Case Investigation, the Complaint, and Proposed Dispositive Motion

Plaintiff's life insurance policy has a provision requiring that cost of insurance ("COI") rates "be based on [John Hancock's] expectations of future mortality." As part of its pre-filing investigation, SG studied how many other John Hancock policy forms share the same language or have different terms and collaborated with an expert to reverse engineer the COI rates charged, in order to compare them to recent industry-standard mortality tables. SG also prepared and submitted numerous open records requests with state insurance regulators that unearthed a description of how John Hancock set its COI rates when these policies were first priced. This analysis enabled SG to file a highly-detailed complaint on December 21, 2015. Dkt. 1. The Complaint discussed industry-standard mortality tables, including the 1980 Commissioners Standard Ordinary Mortality Table, the 2001 Commissioners Standard Ordinary Mortality Table, the 1990-95 Basic Mortality Tables published by the Society of Actuaries (SOA), surveys of large life insurance companies conducted by the SOA, and John Hancock's parent's annual reports. The complaint was so well-pled that John Hancock did not bring a motion to dismiss it under Rule 12(b)(6). Decl. of Steven G. Sklaver in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Class Counsel's Motion for Attorneys' Fees, Reimbursement of Litigation Expenses, and Incentive Awards (Sklaver Decl.) ¶ 6.

At the May 5, 2016 initial conference in this case, the Court *sua sponte* inquired about the enforceability of the promise to base COI rates on John Hancock's expectations of future mortality experience, and invited John Hancock to file "a dispositive motion addressing" whether Plaintiff can even "get[] at the issue of [John Hancock's] expectations of future mortality experience." Transcript of May 5, 2016 Hearing, Dkt. 29, at 4:3-19, 12:5-8, 17:25-

18:3. Part of the Court's concern was that "expectations of future mortality experience" could be an "awfully vague" standard, and so it needed to be persuaded if there were a way to measure whether there has been a breach of the promise to "base" COIs on those expectations. *Id.* at 4:9-11. The parties then filed letter briefs on this topic, in which SG cited to extensive case law, as well as Actuarial Standards of Practice (ASOP) and John Hancock regulatory filings, in order to show that the contractual promise at issue was not illusory. Dkt. 31. At a second conference held to address the dispute, the Court indicated that, after reviewing the parties' briefing, it was inclined to agree with Plaintiff's position, at least at the pleading stage. *See* Transcript of July 14, 2016 Conference at 14:16-18, Dkt. 37 ("[F]or the reasons that I have explained, I am dubious that the motion for judgment on the pleadings will be successful.") Shortly thereafter, John Hancock wrote the Court that it would not file a motion for judgment on the pleadings. Dkt. 39.

B. Discovery and Rule 34 Onsite Data Extraction at Hancock's Headquarters

Guided by the Court's question "How do you propose to go about getting at the issue of their expectations of future mortality experience . . . ?," Dkt. 29 at 4, SG prioritized establishing that John Hancock's "expectation of future mortality experience" is an objective, mathematically quantified fact that is determinable from John Hancock's own experience studies, mortality tables, financial reporting, and insurance reserves analyses.

At the outset of discovery, Class Counsel faced a large obstacle that, if not overcome, would have likely ended this action without any recovery for the Class. Plaintiff sought the production of policy-level data reflecting the historical credits and deductions to the account value of all Class Members' policies, in order to prove breach of the terms of the policies and damages. However, John Hancock claimed that it could not produce much of this data because it was stored on antiquated database systems, dependent on software created decades ago—some going as far back as *thirty years* ago. In response, Class Counsel invoked the (infrequently-used)

inspection rights under Federal Rule of Civil Procedure 34, and in March 2017, negotiated the entry of a Joint Stipulation Regarding Rule 34 Inspection and Protective Order, Dkt. 49, that allowed Class Counsel access to John Hancock's computer systems *onsite*, including reasonable technical assistance concerning the operation of its administrative system and permission to "run automated extraction programs or scripts that may require reasonably extended processing time to extract the policy-level data." *Id.* ¶ 5(c). The raw data had to be encrypted using an encryption algorithm and the storage of the data had to comply with HIPAA. *Id.*

Class Counsel then researched, interviewed, hired, and worked with experts in insurance databases and 1980s-era computer programming, who, in turn, helped write system-specific computer macros, scripts, and queries to pull this data *directly* from John Hancock's systems. Class Counsel worked closely with its experts to help ensure that the extract pulled what was needed for class certification and trial. In total, and in close collaboration with Class Counsel, Plaintiff's experts spent 23 days onsite at John Hancock's offices in Boston, Massachusetts, extracting this data from four separate John Hancock systems for the 28 product lines in the Class. As a result of this labor-intensive process, Class Counsel was able to get crucial data from John Hancock's computer systems *that John Hancock said it could not produce*. After extracting, sorting, processing, and analyzing this voluminous data, Class Counsel and its experts used the data to develop a sophisticated model that reconstructed the cashflows of tens of thousands of life insurance policies, and modeled what those cashflows would have been had John Hancock been found liable under Plaintiff's theory of breach. *See* Dkt. 118. These models were built from scratch, validated, and tested for accuracy. In the words of John Hancock, "[t]he 28 policy forms at issue were priced at different times by multiple actuaries, in many cases decades ago, and it is no easy matter to investigate the assumptions and facts underlying the

development and pricing of these policy forms." Dkt. 73 (John Hancock's pre-motion conference request for a protective order).

Class counsel carefully scrutinized John Hancock's records and took numerous depositions of John Hancock's current and former employees and officers, as well as three separate Rule 30(b)(6) designees. Through depositions and document review, Class Counsel learned that John Hancock maintained *another* previously undisclosed database called the "MY Experience System," from which John Hancock had not produced *any* data, which set forth what Plaintiff contended were John Hancock's mortality expectations. After John Hancock refused to produce this data, Class Counsel filed a motion to compel. Dkt. 60. After a lengthy hearing, Judge Pitman ordered John Hancock to produce that data, noting that a field in the table "provide[s] the expected deaths during a particular year," for each policy. Dkt. 83, at 3. This data was critically important to Plaintiff's motion for class certification, which, in turn preceded the mediation and Settlement.

All told, the discovery required to litigate this case to a successful conclusion was substantial:

- SG took and defended 17 fact and expert depositions (some over multiple days) involving highly technical subjects such as insurance financial reporting, statutory accounting, mortality tables, and actuarial science.
- SG took depositions of 3 separate Rule 30(b)(6) designees (two over 2 days) designated to speak as the corporate representative of John Hancock.
- SG analyzed over 340,000 pages of documents, including over two thousand spreadsheets as well as highly-technical actuarial tables and memoranda.
- SG prepared, served, and followed-up on extensive written discovery propounded to John Hancock including:
    - 442 requests for admission under Rule 36;
    - 154 document requests (including subparts) under Rule 26; and
    - 21 interrogatories under Rule 33, which John Hancock itself described as

"amounting to hundreds of individual factual questions when considering subparts and the fact that many of the interrogatories sought unique information about 28 different insurance products." Dkt. 73.

- SG issued 18 subpoenas to John Hancock's reinsurers and actuarial and financial advisors, yielding thousands of pages of documents containing key information;

- SG served initial disclosures, negotiated 2 protective orders (one with heightened protections for data pulled from John Hancock's systems under the Rule 34 inspection), and an ESI protocol;

- SG worked with its experts to spend 23 days onsite at John Hancock's headquarters in order to extract, process, analyze, and model hundreds of millions of cash flow entries for each of the insurance policies at issue.

Sklaver Decl. ¶ 6.There were also several instances where discovery disputes necessitated Court intervention. Some of the more significant disputes included:

- SG moved to compel John Hancock to produce Rule 30(b)(6) designees prepared to testify about *all* 28 product lines in the Class. John Hancock had only agreed to produce witnesses on one product line. Dkt. 82.

- SG moved to compel additional Rule 30(b)(6) testimony following unresponsive answers given by a witness designated by John Hancock under Rule 30(b)(6) that Plaintiff contended was unprepared. Dkt. 85.

- SG successfully moved to compel John Hancock to produce hundreds of thousands of records from its MY Experience System, and defeated John Hancock's efforts to keep this data from Plaintiff's experts. Dkt. 60.

The depositions taken by Class Counsel were carefully prepared for, and as a result of these cumulative efforts, Plaintiff believes that virtually every deposition led to damaging admissions that were used and relied upon by Class Counsel in prosecuting this action.

C. Class Certification, Mediation, and Settlement

SG marshaled, reviewed, and distilled the results of this thorough and necessary discovery effort to create a record that would support Plaintiff's theory of why class treatment was appropriate to secure meaningful relief for the Class members harmed by the alleged overcharges. The robust motion for class certification, memorandum of law, and supporting

expert reports for liability and damages totaled over 11,000 pages. Sklaver Decl. ¶¶ 6, 12-13.

Shortly after SG filed the motion for class certification, and prepared and defended the depositions of its experts, the parties reopened a settlement dialogue. At all times, it was Class Counsel's unrelenting, sustained advocacy and extensive work that finally convinced John Hancock to come to the bargaining table. Judge Katz led a full-day mediation with the parties on May 24, 2018, two months after the fact discovery cut-off occurred and five days before John Hancock's opposition to the motion for class certification was due. Dkt. 128. The parties agreed to a $91.25 million Settlement for the Class at the mediation. Over the following weeks, the parties heavily negotiated the long-form Settlement Agreement, which the Court preliminarily approved on November 21, 2018. Sklaver Decl. ¶¶ 7-10.

III. CLASS COUNSEL'S FEE REQUEST IS REASONABLE

A. Class Counsel is Entitled to Fees From the Common Fund

The Supreme Court has long recognized that a lawyer who obtains a recovery "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 Court's authority to award attorneys' fees in class cases "stems from the fact that the class-action device is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts." Wright & Miller, 7B Fed. Prac. & Proc. Civ. § 1803 (3d ed.). The purposes of the doctrine are to provide "just compensation for class counsel," to "encourage skilled counsel to represent" the class and "discourage future alleged misconduct of a similar nature"; and to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf. *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, 2018 WL 6168013, at *14 (S.D.N.Y. Nov. 26, 2018); *see also McMahon v. Olivier Cheng Catering & Events, LLC*, 2010 WL 2399328, at *7 (S.D.N.Y. Mar. 3, 2010) (Gardephe, J.) (one

purpose of compensating class counsel is to ensure that "attorneys who fill the private attorney general role [are] adequately compensated for their efforts"); *Goldberger v. Integrated Res*., 209 F.3d 43, 47 (2d Cir. 2000) ("The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost.").

B. The Requested Fee is Fair and Reasonable

1. The Percentage Method is Favored

While courts may award attorneys' fees under either the "lodestar" method or the "percentage of the fund" method, "[t]he trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (quotations and citation omitted). The percentage method is preferable because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Id.* (quotations omitted). "In contrast, the lodestar [method] creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line-item fee audits." *Id.* (citations omitted). "[T]here is a strong consensus-both in this Circuit and across the country-in favor of awarding attorneys' fees in common fund cases as a percentage of the recovery." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 & n.7 (S.D.N.Y. 2008) (citations omitted).[3]

The percentage method is especially appropriate in cases such as this one, with an all-cash settlement fund for class members who "cannot afford to retain counsel at fixed hourly rates . . . yet [] are willing to pay a portion of any recovery they may receive in return for successful

[3] *See also In re Facebook, Inc., IPO Sec. & Derivative Litig.*, --- F. Supp. 3d ---, 2018 WL 6168013, at *15 (S.D.N.Y. Nov. 26, 2018) ("The trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." (quotations omitted)); *In re IMAX Sec. Litig.*, 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) (same); *Fogarazzo v. Lehman Bros., Inc.*, 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011) (same); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354, at *2 (E.D.N.Y. June 24, 2010) (same); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 480 (S.D.N.Y. 2009) (same).

representation." *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 623 (S.D.N.Y. 2012); *see also In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *26 (S.D.N.Y. Nov. 26, 2002) ("[T]he percentage approach most closely approximates the manner in which private litigants compensate their attorneys in the marketplace contingency fee model . . . .").

2. A Fee of 30% is Fair and Reasonable

Class Counsel requests 30% of the Settlement Fund, which is squarely within the range of fees typically awarded by courts in the Southern District and Second Circuit in complex class actions. As this Court has explained, an award above 30% is "consistent with the norms of class litigation in this circuit." *Yuzary*, 2013 WL 5492998, at *10 (quotation omitted); *McMahon v. Olivier Cheng Catering & Events, LLC*, 2010 WL 2399328, at *7 (S.D.N.Y. Mar. 3, 2010) (Gardephe, J.) (award of 33% is "consistent with the trend in this circuit" (quotation omitted)).

"District courts in the Second Circuit routinely award attorneys' fees that are 30 percent or greater." *Sykes v. Harris*, 2016 WL 3030156, at *17 (S.D.N.Y. May 24, 2016) (Chin, J.) (quoting *Velez v. Novartis Pharm. Corp.*, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010)); *Mohney v. Shelly's Prime Steak, Stone Crab & Oyster Bar*, 2009 WL 5851465, at *5 (S.D.N.Y. Mar. 31, 2009) ("Class Counsel's request for 33% of the Settlement Fund is typical in class action settlements in the Second Circuit.").[4]

Consistent with this caselaw, courts across the country have regularly approved awards of 30% and higher, including as a percentage of settlements much larger than this one. *See In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (33.3% of $510 million settlement); *In re Mun. Derivatives Antitrust Litig.*, 2016 WL 11543257, at *1

[4] *See also In re Beacon Assocs. Litig.*, 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) ("In this Circuit, courts routinely award attorneys' fees that run to 30% and even a little more of the amount of the common fund."); *Morris*, 859 F. Supp. 2d at 623 (a fee of one-third of the recovery "is reasonable and 'consistent with the norms of class litigation in this circuit'" (quoting *Gilliam v. Addicts Rehabilitation Center Fund*, 2008 WL 782596, at *5 (S.D.N.Y. Mar. 24, 2008)).

(S.D.N.Y. July 8, 2016) (32.67% of $101 million settlement); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *8 (D. Kan. July 29, 2016) (awarding 33.3% of $835 million settlement); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1241 (S.D. Fla. 2006) (awarding 31.3% of $1.06 billion settlement); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1359 (S.D. Fla. 2011) (awarding 30% of $410 million settlement); *In re Vitamins Antitrust Litig.*, 2001 WL 34312839, at *10-12 (D.D.C. July 16, 2001) (awarding 34.06% of $359 million settlement); *In re U.S. Foodservice, Inc. Pricing Litig.*, 2014 WL 12762264, at *3 (D. Conn. Dec. 9, 2014) (awarding 33.3% of $297 million settlement); *In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439453, at *20 (E.D. Pa. July 17, 2018) (awarding 33.3% of $190 million settlement); *In re Solodyn Antitrust Litig.*, No. 14-md-2503 (D. Mass. July 18, 2018), ECF 1180 (awarding 33.3% of $72.5 million settlement); *In re CRT Antitrust Litig. (CRT I)*, 2016 WL 183285, at *3 (N.D. Cal. Jan. 14, 2016) (awarding 30% of $127.5 million settlement); *In re Apollo Group Inc. Sec. Litig.*, 2012 WL 1378677, at *9 (D. Ariz., Apr. 20, 2012) (awarding 33% of $145 million settlement fund); *Kurzwell v. Philip Morris Co.*, 1999 WL 1076105, at *1 (S.D.N.Y., Nov. 30, 1999) (awarding 30% of $123 million settlement fund); *In re Ikon Office Solutions, Inc. Sec. Litig.*, 194 F.R.D. 166, 197 (E.D. Pa. 2000) (awarding 30% of $111 million settlement fund).[5]

The "'*Goldberger* factors' ultimately determine the reasonableness of a common fund fee," *Wal-Mart*, 396 F.3d at 121, and the Court should "approximate the reasonable fee that a

[5] Percentage fee awards based on the gross settlement fund are routine, both in this Circuit and across the country. *See, e.g.*, *Kiefer v. Moran Foods, LLC*, 2014 WL 3882504, at *8 (D. Conn. Aug. 5, 2014) ("[T]he Supreme Court, the Second Circuit, and other Circuit Courts have held that it is appropriate to award attorneys' fees as a percentage of the entire maximum gross settlement fund . . . ."); *De Jesus v. Incinia Contracting, Inc.*, 2018 WL 3343236, at *2 (S.D.N.Y. June 22, 2018) (awarding fees as percentage of gross settlement fund); *Gordon v. Sonar Capital Mgmt. LLC*, 2016 WL 4272994, at *1 (S.D.N.Y. Aug. 10, 2016) (same).

competitive market would bear." *Johnson v. City of New York*, 2010 WL 5818290, at *4 (E.D.N.Y. Dec. 13, 2010) (citations omitted); *see also* 5 Newberg on Class Actions § 15:62 (5th ed. 2018) ("[M]any courts utilize a percentage approach, which approximates the manner in which plaintiff contingent fee lawyers undertake work outside the class action context." (footnote omitted)).

The requested 30% fee is also reasonable because it is less than what Class Counsel could obtain on the open market. Indeed, "market rates, where available, are the ideal proxy for . . . compensation." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 52 (2d Cir. 2000); *see also McDaniel v. County of Schenectady*, 595 F.3d 411, 422 (2d Circ. 2010) (explaining that focus should be "on mimicking a market"); *In re Lloyd's*, 2002 WL 31663577, at *26 (looking to "the manner in which private litigants compensate their attorneys in the marketplace contingency fee model"). Susman Godfrey regularly takes high-stakes non-class commercial cases on a contingent fee basis, and it typically negotiates contingent fee arrangements with individual non-class plaintiff clients for engagements where the firm advances expenses to be equal to 40% of the gross sum recovered, with percentage increases based on the time of settlement and trial. Sklaver Decl. ¶ 18. "This fact is highly relevant to determining the appropriateness of the award because the Court's ultimate task is to 'approximate the reasonable fee that a competitive market would bear.'" *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *17 (S.D.N.Y. Sept. 9, 2015) (quoting *Johnson*, 2010 WL 5818290, at *4; *accord In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) ("The class counsel are entitled to the fee they would have received had they handled a similar suit on a contingent fee basis, with a similar outcome, for a paying client."); *see also Morris*, 859 F. Supp. 2d at 623 (approving one-third fee request partly because clients "typically pay one-third of their recoveries under private retainer agreements").

C. The *Goldberger* Factors Support the Requested Fee Award

The "'*Goldberger* factors' ultimately determine the reasonableness of a common fund fee," *Wal-Mart*, 396 F.3d at 121. The *Goldberger* factors, which the Court weighs in its discretion, are:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50. Each of these factors confirms that the requested fee is reasonable.

1. Labor Expended By Counsel (*Goldberger* Factor 1)

The first *Goldberger* factor, which addresses the "the time and labor expended by counsel," strongly supports approval of the requested fee. Class Counsel spent over 7,300 hours prosecuting this case over three years. SG devoted substantial resources to litigating this case, which enabled SG to achieve this remarkable result. Among other things, SG:

- Conducted an initial investigation of this case, which included open records requests, studies of industry mortality tables, and the retention of and consultation with industry experts, to develop the theories and facts that formed the basis of the allegations in the Complaint.

- Analyzed over 340,000 pages of documents, including over two thousand spreadsheets as well as highly-abstruse actuarial tables and memoranda, and repeatedly pressing John Hancock to remedy deficiencies in its productions.

- Issued eighteen subpoenas to Defendant's reinsurers and actuarial advisors, yielding thousands of pages of documents containing key information.

- Conducted an extraordinarily labor-intensive process of extracting policy-by-policy data reflecting the historical credits and deductions to the account value of all Class members' policies from John Hancock's computer databases, including by developing custom computer scripts to automate the extract of this data out of John Hancock's systems, under a Rule 34 inspection conducted onsite over 23 days at John Hancock's headquarters.

- Took numerous highly-technical fact and Rule 30(b)(6) depositions, many stretching over multiple days.

- Defended the depositions of Plaintiff's liability expert, James Rouse, and damages expert, Robert Mills, 37 Besen's managers Eliazer and Arnold Klein, as well as managing the production of 37 Besen's documents, and depositions taken by John Hancock regarding the acquisition of the Plaintiff's policy.

- Successfully moved to compel John Hancock to produce a 30(b)(6) designee to testify about all 28 product lines in the Class.

- After discovering during deposition that John Hancock maintained a previously-undisclosed "MY experience system," successfully moved to compel the production of hundreds of thousands of records from that system which featured prominently in the class certification motion and accompanying expert reports.

- Prepared and filed a motion for class certification and supporting expert reports, which included dozens of exhibits, totaled over eleven thousand pages, and calculated damages on a policy-by-policy basis.

- Attended a full-day mediation conducted under the supervision of Judge Katz, and negotiated the non-reversionary, all-cash settlement, directly mailed to class members with no claims forms required.

Sklaver Decl. ¶ 6. The time and labor will increase as Class Counsel prepares for final-approval proceedings and administers the Settlement Agreement.

2. Magnitude and Complexity of the Litigation (*Goldberger* Factor 2)

The second *Goldberger* factor, which addresses "the magnitude and complexities of the litigation," also strongly supports approval of the requested fee. To call this litigation complex would be an understatement. *See, e.g.*, *Fleisher*, 2015 WL 10847814, at *6 ("The litigation was indisputably complex. The complaint alleged the breach of an insurance contract, the resolution of which would require conflicting testimony by experts as to actuarial standards . . . ."). To prove Plaintiff's case, Class Counsel had to contend not only with the language of the insurance policies themselves, but also John Hancock's defenses arising out of Actuarial Standards of Practice and state regulations governing the conduct of insurance carriers. Quantifying John Hancock's "expectations of future mortality experience" embroiled Class Counsel in intensive

litigation with John Hancock over sophisticated actuarial concepts, including John Hancock's process for developing, updating, and applying dozens of mortality tables. As explained at greater length in Plaintiff's motion for class certification and supporting expert reports, Class Counsel had to scour John Hancock's documents for descriptions of how John Hancock calculated its internal mortality expectations, identify the supporting mortality tables that underlay these calculations, determine what adjustments, if any, needed to be applied to those mortality tables, and confirm that Plaintiff was accurately replicating the precise "q_x" (i.e., quantified mortality expectation) that John Hancock used in its reserving and financial projections. This process had to be repeated for each year, and was further complicated by John Hancock's process of using different tables and adjustments that changed over time. Sklaver Decl. ¶¶ 6, 12-13; *see also* Decl. of James Rouse in Support of Class Certification, Dkt. 117.

This case was not just complex at a technical level; it was complex as a logistical matter as well. The Class is comprised of almost 80,000 policies, issued on 28 different product forms in 50 different states over a nearly 15-year span. Even getting the most basic data about what John Hancock *had* charged these policyholders—let alone quantifying what John Hancock *should* have been charging—necessitated the painstaking extraction of policy-level data from John Hancock's decades-old data systems. That data was split over four separate administrative systems, and in some cases could only be accessed with custom-coded scripts run in-person by Plaintiff's experts at Hancock's offices in Boston. Sklaver Decl. ¶ 6.

Class Counsel nevertheless mastered these technical and logistical hurdles and were able to successfully complete fact discovery and prepare and file a class certification brief and expert reports. This sustained, multi-year work, in turn, was what brought John Hancock to the negotiating table and ultimately led to the successful Settlement.

3. The Risk of the Litigation (*Goldberger* Factor 3)

The Second Circuit has identified "the risk of success as 'perhaps the foremost' factor to be considered in determining [a reasonable fee award]." *Goldberger*, 209 F.3d at 54 (citation omitted); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d at 592 ("Courts have repeatedly recognized that 'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions."). Risk can vary based on many factors, including the novelty of the legal claims, the complexity of the subject matter, and the existence or stage of a relevant (or even parallel) government action. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 147 (S.D.N.Y. 2010). The "litigation risk must be measured as of when the case is filed." *Goldberger*, 209 F.3d at 55

The risks SG faced here were high, including for the reasons identified by the Court at the Initial Conference. Class Counsel did not have the benefit of government investigations, let alone indictments, consent decrees, or guilty pleas. Thus, this is not an instance where a plaintiff was merely following the lead of the government, "arriving on the scene after some enforcement or administrative agency has made the kill." *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992).

The Court is familiar with the many other risks counsel faced – on class certification, in establishing liability and damages, on summary judgment, and at trial or on appeal. For example, John Hancock argued its policies did not contain a promise to reduce rates, that it had discretion over what rates to charge, that its internal mortality expectations had not deteriorated, and that damages would be "inherently and incurably speculative." Dkt. 28 at 3. And as in any complex class action, SG was never guaranteed any success. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 471 (2d Cir. 1974) ("[D]espite the most vigorous and competent of efforts, success is

never guaranteed."); *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 399 (S.D.N.Y. 2013) ("In numerous class actions . . . plaintiffs' counsel have expended thousands of hours and advanced significant out-of-pocket expenses and received no remuneration whatsoever." (citation omitted)). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) (quotations omitted). And even if SG prevailed at every risky stage in this Court – class certification, summary judgment, and trial – the risk would have continued after that. *See, e.g.*, *In re Facebook, Inc., IPO Sec. & Derivative Litig.*, --- F. Supp. 3d. ---, 2018 WL 6168013, at *16 (S.D.N.Y. Nov. 26, 2018) ("And no matter the final result at trial, lengthy and expensive appeals seem inevitable.").

SG undertook enormous risk in taking on this case – millions in advanced expenses and thousands of hours in attorney time – all of which could have resulted in no compensation had the case been lost. Courts in the Southern District and the Second Circuit have recognized that this type of contingent risk is an important factor in evaluating the reasonableness of a fee. *Sukhnandan v. Royal Health Care of Long Island LLC*, 2014 WL 3778173, at *11 (S.D.N.Y. July 31, 2014) ("Contingency risk is the principal, though not exclusive, factor courts should consider in their determination of attorneys' fees."); *Aeropostale*, 2014 WL 1883494, at *14 ("The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award . . . ."); *Beacon*, 2013 WL 2450960, at *13 (emphasizing that the risks of the litigation strongly supported the requested fee where "all of these matters were taken on contingency, so in view of the novelty of the issues there was some possibility that counsel would recover nothing at all").

The risk was also high because SG sought large damages against a deep-pocketed

insurance company with essentially limitless resources, who hired one of the world's best-known law firms to defend it. *See In re Abbott Labs. Sec. Litig.*, 1995 WL 792083, at *10 (N.D. Ill. July 3, 1995) (explaining that given "the formidable and nearly limitless resources of the opposition's nationally prominent law firms, and the amount of economic and personnel investment required to sustain the momentum of massive litigation, it is difficult to conceive of a more undesirable piece of litigation for any attorneys considering undertaking contingent fee litigation"). And that risk was compounded because SG spent more than three years litigating this case, and the delay in payment weighs strongly in favor of the requested fee. *See In re Domestic Drywall Antitrust Litig.*, 2018 WL 3439454, at *20 (E.D. Pa. July 17, 2018) ("A significant factor in awarding the full one-third requested is the delay in payment."). The only certainties from the outset of this litigation were that there would be no fee or expense award if the case was lost.

4. The Quality of the Representation (*Goldberger* Factor 4)

"[T]he quality of representation is best measured by results . . . ." *Goldberger*, 209 F.3d at 55. One way to measure the result is to compare the "extent of possible recovery with the amount of actual verdict or settlement." *In re Bisys Sec. Litig.*, 2007 WL 2049726, at *3 (S.D.N.Y. July 16, 2007). Here, the $91.25 million recovery represents at least 42% of the high-end damages calculated by Plaintiff's expert. This compares very favorably to the "one-third of their damages" which Judge Rakoff found to be "a very significant amount" in contrast to the "more typical recovery rate in class actions [of] between 5% and 6%." *Id.* That court specifically cited that result in approving an award of 30%—the same percentage requested here.

Regarding the skills of Class Counsel, the Court previously appointed SG as Class Counsel because the firm met all the requirements of Rule 23(g). The work that Class Counsel has performed in litigating this case, and the substantial resources Class Counsel has committed

to prosecuting the case, demonstrates SG's commitment to the Class and to representing the Class's interests. *See Morris*, 859 F. Supp. 2d at 622.

"The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work." *Seijas v. Republic of Argentina*, 2017 WL 1511352, at *13 (S.D.N.Y. Apr. 27, 2017).[6] John Hancock is represented by first-rate attorneys, with a well-deserved reputation for vigorous advocacy in the defense of complex class actions. In sum, all of the customary metrics indicative of high quality of representation weigh in favor of the requested fee.

5. Requested Fee In Relation to the Settlement (*Goldberger* Factor 5)

The fifth *Goldberger* factor, which addresses "the requested fee in relation to the settlement," also strongly supports approval of the requested fee. In *Dupler v. Costco Wholesale Corp.*, the court held that "the fact that the requested fee is comparable to fees that courts have found reasonable . . . weighs in favor of the fee's reasonableness." 705 F. Supp. 2d 231, 244 (E.D.N.Y. 2010). As discussed above, the proposed 30% award is well within the range of fees awarded by courts using the favored percentage-of-the-fund method.

6. Public Policy Considerations (*Goldberger* Factor 6)

Finally, the sixth *Goldberger* factor, which addresses "public policy considerations," supports approval of the requested fee. Public policy considerations strongly favor incentivizing skilled private attorneys to undertake this type of litigation, especially since the action is on behalf of small claimants who lack the financial incentive to obtain a recovery on their own behalf. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("[T]o

[6] *See also Anwar v. Fairfield Greenwich Ltd.*, 2012 WL 1981505, at *2 (S.D.N.Y. June 1, 2012) (considering "the quality and vigor of opposing counsel"); In re *Marsh & McLennan Sec. Litig.*, 2009 WL 5178546, at *19 (S.D.N.Y. Dec. 23, 2009) (reasonableness of fee was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations"); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement.").

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."); *Hicks v. Morgan Stanley*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("'To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding'" (citation omitted)).

D. The Requested Fee is Reasonable Under Lodestar "Crosscheck"

The lodestar fee calculation method has "fallen out of favor" in this Circuit. *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014); s*ee also* American Law Institute, Principles of the Law of Aggregate Litigation § 3.13(b) (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases . . . ."). Accordingly, the lodestar method is typically used in this Circuit only "as a sanity check to ensure that an otherwise reasonable percentage fee would not lead to a windfall." *Colgate-Palmolive*, 36 F. Supp. 3d at 353. "[W]here used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court." *Goldberger*, 209 F.3d at 50. Additionally, "[u]nder the lodestar method of fee computation, a multiplier is typically applied to the lodestar," reflecting "the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004).

In this entirely contingent action, Class Counsel collectively spent over 7,327 hours, representing a lodestar of $3,957,834, and advanced $2,240,112.22 in expenses. *See* Sklaver Decl. ¶¶ 19-20, 23.[7] Class Counsel's hourly rates are reasonable. The rates for Class Counsel

[7] Lodestar is calculated at current hourly rates. *See, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing "an appropriate adjustment for delay in payment" by applying "current" rate); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (rates "should be 'current rather than historic'") (citation and internal quotations omitted); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (current rates "should be applied in order

who billed significant amounts of time to this case (ranging from $325 to $900 per hour) are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude. *See* Sklaver Decl. ¶¶ 19-21; *Fleisher,* 2015 WL 10847814, at *18 (S.D.N.Y. Sept. 9, 2015) (finding SG's rates "reasonable" and "comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude"); *In re Auto. Parts Antitrust Litig.*, 2017 WL 3525415, at *4 (E.D. Mich. July 10, 2017) (finding SG's rates "justified" and "well in line with market"); *Tiffany v. Costco Wholesale Corp.*, 2019 WL 120765, at *10 (S.D.N.Y. Jan. 7, 2019) ("The Court finds that the hourly rates, ranging from $315-$585 per hour for an associate (depending on experience) to between $625 and $845 per hour for a partner, are reasonable considering the prevailing rates for firms engaging in complex litigation in this district.").[8] Under the requested fee ($27,375,000), Class Counsel's aggregate lodestar yields a "crosscheck" multiplier of 6.9. This is well within the range of crosscheck multipliers approved by courts in this Circuit, and is lower than a 7.6 lodestar multiplier previously approved by this Court. *See Yuzary*, WL 5492998, at *10 (awarding 31.7% of settlement fund, with 7.6 crosscheck multiplier, and noting that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers"); *see also In re Credit Default Swaps Antitrust Litig*., 2016 WL

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to compensate for the delay in payment"); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989) (citation omitted) (using current rates helps "compensate for the delay in receiving compensation, inflationary losses, and the loss of interest" (quotation omitted)).

[8] Courts compare hourly rates with those prevailing in the community. *See Luciano v. Olsten Corp*., 109 F.3d 111, 115 (2d Cir. 1997) ("[T]he lodestar figure should be in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation.") (internal quotations omitted). One source commonly used by courts in this Circuit to assess prevailing rates in this District is the National Law Journal Survey. *See, e.g.*, *Vista Outdoor Inc. v. Reeves Family Tr.,* 2018 WL 3104631, at *6 (S.D.N.Y. May 24, 2018) *("*"[A] 2016 National Law Journal Survey determined that the market for average associate rates at firms with their largest offices in New York City ranges from $250 to $950."); *see also* Sara Randazzo & Jacqueline Palank, *Legal Fees Cross New Mark: $1,500 an Hour*, Wall Street Journal, Feb. 9, 2016 (finding that "[f]or lawyers at the very top of th[e] fields [of antitrust and high-stakes litigation and appeals], hourly rates can hit $1,800 or even $1,950" and citing a 2011 article and observing that the increases in hourly rates "mak[e] the $1,000-an-hour legal fees that once seemed so steep look quaint by comparison"), *available at* https://www.wsj.com/articles/legal-fees-reach-new-pinnacle-1-500-an-hour-1454960708.

2731524, at *17 (S.D.N.Y. Apr. 26, 2016) (awarding $253 million in fees with a lodestar "multiple of just over 6"); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) (awarding 33.3% of fund, and noting lodestar multiplier of 6.3 "falls within the range granted by courts"); *Steiner v. Am. Broad. Co.*, 248 F. App'x 780, 783 (9th Cir. 2007) (endorsing a 6.85 multiplier as "fall[ing] well within the range of multipliers that courts have allowed"). This multiplier will decrease over time as Class Counsel continues to expend substantial time responding to Class member questions, preparing for final approval, and administering and distributing the Settlement Fund—a time commitment that will take over a year under the Settlement Agreement. *See* Settlement Agreement § 2.3.

II. CLASS COUNSEL'S EXPENSES SHOULD BE REIMBURSED

Class Counsel also requests reimbursement in the amount of $2,240,112.22 for out-of-pocket expenses reasonably and necessarily incurred in connection with the prosecution of this Action. "[C]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2018 WL 3863445, at *1 (S.D.N.Y. Aug. 14, 2018); *see, e.g.*, *Penn. Pub. Sch. Emps.' Ret. Sys. v. Bank of Am. Corp.*, 318 F.R.D. 19, 27 (S.D.N.Y. 2016) ("When the lion's share of expenses reflects the typical costs of complex litigation such as experts and consultants, trial consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses, courts should not depart from the common practice in this Circuit of granting expense requests." (quotation marks omitted)).

The expenses advanced in this litigation are described in the papers filed in support of this application. *See* Sklaver Decl. ¶ 23. These expenses were reasonable and necessary in this litigation, and have been expended for the direct benefit of the Class. *Id*. They are the type of

expenses typically billed by attorneys to paying clients in the marketplace and include such costs as expert fees, mediation costs, computerized research, document production and storage, court fees, reporting services, and travel. *See Fleisher*, 2015 WL 10847814, at *23 (reimbursing costs such as "fees paid to experts, mediation fees, notice costs, computerized research, document production and storage, court fees, reporting services, and travel in connection with this litigation"). The fact that Class Counsel was willing to expend its own money, where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary.

Class Counsel also requests that the Court approve the payment of Settlement Administration expenses pursuant to sections 1.38 and 4.6 of the Settlement Agreement. The Settlement Administrator has incurred $133,654.29 in expenses in mailing out notice to Class members to date, and will incur additional expenses as Settlement payments are distributed. Declaration of Cameron Azari ¶ 20.

III. INCENTIVE AWARDS ARE APPROPRIATE

Class Counsel seeks an incentive award of $40,000 for each of the two representatives of 37 Besen Parkway, LLC, who responded to written discovery and testified in this action. Courts "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Hicks*, 2005 WL 2757792, at *10.[9]

The discovery obligations imposed on the two representatives of 37 Besen—Eliazer and

[9] *See also Anwar*, 2012 WL 1981505, at *3 ("Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation."); *Varljen v. H.J. Meyers & Co.*, 2000 WL 1683656, at *5 n.2 (S.D.N.Y. Nov. 8, 2000) (reimbursement of such expenses should be allowed because it "encourages participation of plaintiffs in the active supervision of their counsel").

Arnold Klein—were significant, including the Defendant taking a full day deposition of each of them and related third party discovery by John Hancock on their policy. *See, e.g.*, Dkt. 69 (requesting issuance of Letter Rogatory to seek discovery in Canada of Isaac Friedman, the policy's broker). In addition, the representatives reviewed pleadings and motions, reviewed other court filings, communicated regularly with Class Counsel, and were continuously involved in the litigation process. *See* Sklaver Decl. ¶ 25.

The requested awards are in line with those awarded in other complex class actions. *See, e.g.*, *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) (approving $50,000 incentive award for each of two class representatives); *Bd. of Tr. of AFTRA Ret. Fund*, 2012 WL 2064907, at *3 ($50,000 incentive awards to three class representatives); *Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 WL 3119374, at *7 (S.D.N.Y. Aug. 6, 2010) ($75,000 awards to five named plaintiffs and $25,000 to $60,000 awards to four class member witnesses); *Kifafi v. Hilton Hotels Ret. Plan.*, 999 F. Supp. 2d 88, 105 (D.D.C. 2013) ($50,000 incentive award to lead plaintiff). Here, the total requested awards represent a mere .08% of the total recovery from John Hancock. *See Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *4 (S.D.N.Y. Nov. 29, 2018) (awarding six service awards of $100,000/$50,000 each, recognizing that "in aggregate they amount to a minuscule portion of the settlement fund").

IV. CONCLUSION

For the foregoing reasons, SG respectfully requests that this Court award its requested attorneys' fees in the amount of 30% of the Settlement Fund, plus a *pro rata* share of the interest earned in the Fund, reimbursement of costs and expenses in the amount of $2,240,112.22, and service awards of $40,000 each for the two representatives of the Plaintiff.

Dated: January 18, 2019

/s/ Glenn C. Bridgman
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Class Counsel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

37 BESEN PARKWAY, LLC, on behalf of itself and all others similarly situated, Plaintiff, vs. JOHN HANCOCK LIFE INSURANCE COMPANY (U.S.A.), Defendant.	Civil Action No. 15-cv-9924 **DECLARATION OF SERVICE**

I, Glenn C. Bridgman, declare:

1. I am over eighteen years of age, I am not a party to this action, and I am an employee with the law firm of Susman Godfrey L.L.P., in the Los Angeles, California office.

2. My business address is 1900 Avenue of the Stars, Suite 1400, Los Angeles, California 90067.

3. On January 18, 2019, I served a copy of the aforementioned document via the court's CM/ECF system upon the following:

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I declare under penalty of perjury that the foregoing is true and correct.

Dated: January 18, 2019, at Los Angeles, California.

/s/ Glenn C. Bridgman
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