DOCKET NO.: (X10) UWY-CV15-60299656-S	:	COMPLEX LITIGATION DOCKET
	:	
ANTHONY DIAZ, BRUCE SYPNIEWSKI,	:	
AND DAISY GMITTER	:	J.D. OF WATERBURY
	:	
V.	:	AT WATERBURY
	:	
GRIFFIN HEALTH SERVICES	:	
CORPORATION AND	:	
THE GRIFFIN HOSPITAL	:	NOVEMBER 13, 2023

MEMORANDUM OF LAW IN SUPPORT OF
CLASS COUNSEL'S APPLICATION FOR AWARD OF ATTORNEYS' FEES
AND REIMBURSEMENT OF LITIGATION EXPENSES

By: /s/433880
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Pursuant to Connecticut Practice Book § 9-9(f), Class Counsel requests, in connection with the proposed Settlement: (1) an award of attorneys' fees in the amount of $333,333.33, thirty-three and a third percent (33-1/3%) of the One Million Dollar ($1,000,000.00) Settlement Fund; and, (2) payment of litigation expenses in the amount of $55,602.30. For all the reasons stated below, Class Counsel respectfully submits that this fee and expense application should be granted.

I. INTRODUCTION

After nearly eight years of hard-fought litigation – encompassing over 280 docket entries in this Court and an attempted interlocutory appeal to our Supreme Court pursuant to Connecticut General Statutes § 52-265a – Class Counsel in this case has succeeded in obtaining Class Certification in a highly complex and contested medical malpractice claim affecting 2,730 patients of Griffin Hospital, resulting in a settlement of One Million Dollars ($1,000,000.00) on behalf of the Class. *See generally* Motion for Order of Preliminary Approval of Settlement and Memorandum of Law, dated August 9, 2023 (Entry No. 278.00); *see also* Proposed Order Regarding Approval of Proposed Settlement Agreement and Notice to Class Members, dated September 18, 2023 (Entry No. 283.00).

By this Settlement, Class Counsel has produced a common fund from which every individual who received insulin from a multi-dose insulin pen while a patient at Griffin Hospital and subsequently underwent blood-testing in response to learning of potential misuse of those insulin pens, will obtain monetary relief. See *id*. The total $1,000,000.00 Settlement Fund represents a meaningful and fair resolution for Class Members, whose claims for damages on a class-wide basis – pursuant to the Court's Order certifying the Class and relevant legal questions

(Entry No. 219.00) – are limited to the monetary value of having to undergo a blood test, which was offered for free by Defendants.

This result could not have been obtained without counsel's willingness to assume the substantial financial risks of pursuing a possible class action on behalf of the three named Plaintiffs and Class Members, whose claims, if brought individually in separate proceedings, could not possibly have warranted the legal time and litigation expenses necessary to prosecute this action. To obtain this recovery, Class Counsel representing the three named plaintiffs and the Class Members, risked significant hours of legal time and over $55,000.00 in litigation expenses. Class Counsel did so in a case with highly uncertain prospects at the outset, involving well-financed defendants with a reputation of tenaciously and vigorously defending claims, and against defense counsel (from two highly respected law firms with specialties in both medical malpractice and class action legal defense) who asserted, repeatedly, that class certification was not appropriate and should not be approved (and, if approved, would not be upheld); that no viable legal theory of liability existed; and that no damages could ever be established.

This Settlement was reached by way of Class Counsel's dogged efforts in prosecuting this claim to establish a factual basis for liability and legal theories of recovery. Defendants and their counsel – as, of course, was their right and obligation – vehemently opposed discovery requests, requiring extensive meet-and-confer conferences, motion practice, and briefing, as well as judicial intervention and hearings. Defendants similarly opposed the veracity and legality of Plaintiffs' underlying claims as well as their attempt to certify their causes of action as a class action claim. Every aspect of discovery was resisted by Defendants, and every element necessary to obtain recovery for the Class was vigorously contested by Defendants' counsel.[1]

[1]References throughout this Memorandum to the Defendants' and their Counsel's vigorous defense of the Plaintiffs' claims are not intended to imply that Defendants' counsel acted improperly at any point during the pendency of this

Class Counsel now applies for an award of attorneys' fees pursuant to the "common fund" doctrine, which authorizes this Court to allocate fees and costs of this litigation among the nearly 2,730 potential class members. *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *Towns of New Hartford and Barkhamsted v. Connecticut Resources Recovery Auth.*, Docket No. (X02) CV04-0185580-S, 2007 WL 4624074, at *5 (Conn. Super. Ct. Dec. 7., 2007) (Eveleigh, J.). Class Counsel respectfully seeks a percentage award of 33-1/3% of the Settlement Fund – a percentage award fully in accord with awards in similar cases of this magnitude. See, e.g., *Gruber v. Starion Energy, Inc.*, Docket No. (X03) HHD-CV17-6075408-S, 2017 WL 6262409 (Conn. Super. Ct. Nov. 13, 2017) (Moll, J.) (approving award of attorneys' fees equal to 32% of a $2,850,000.00 common fund settlement); *Faican v. Rapid Park Holding Corp.*, No. 10-cv-1118 (JG), 2010 WL 2679903 (E.D.N.Y. Jul. 1, 2010) (awarding 33-1/3% of $522,741.06 settlement fund "even considering that the settlement was reached three months after the action was filed and without any motion practice" with some contingencies based upon class member settlement participation); *In re Publication Paper Antitrust Litig.*, MDL No. 1631 (SRU), 2009 WL 2351724, *1 (D. Conn. Jul. 30, 2009) (Underhill, J.) (approving a one-third fee of a $700,000.00 settlement fund); *Strougo v. Bassini*, 258 F. Supp. 2d 254 (S.D.N.Y. 2003) (Sweet, J.) (awarding 33-1/3% of $1.5 million settlement fund).

Class Counsel further seeks reimbursement of their litigation expenses totaling $55,602.30, incurred in the successful prosecution of this action.

litigation. Class Counsel recognizes that the Defendants and their counsel have both a right, and in many circumstances, an obligation to mount a vehement defense to the Plaintiffs' claims. Rather, continued references to the Defendants' strong defense in this matter is intended to highlight the hard-work and effort required of Class Counsel to address and overcome the Defendants' legal and factual defenses.

It should be noted that the three-named Plaintiffs, each of whom entered into a 33-1/3% contingency fee agreement with counsel on their individual claims, pursuant to Connecticut General Statutes § 52-251C, supports Class Counsel's Application. *See* Declaration of Marco A. Allocca, Esq., dated November 13, 2023 (attached as Exhibit A).

II. CLASS COUNSEL IS ENTITLED TO THE REASONABLE FEE REQUESTED IN THIS APPLICATION

a. Standards Applicable to Attorneys' Fees Awards in Class Actions

Courts have long recognized that attorneys who obtain a common fund recovery for a class are entitled to an award of fees and expenses from the fund. *See Boeing Co.*, supra, 444 U.S. at 478; *see also Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000).[2] Pursuant to the "equitable or common fund doctrine established more than a century ago in *Trustees v. Greenough*, 105 U.S. 527, 532–33, 15 Otto 527, 26 L.Ed. 1157 (1881), attorneys who create a common fund to be shared by a class are entitled to an award of fees and expenses from that fund as compensation for their work." (Internal quotation marks omitted.) *In re American Bank Note Holographics, Inc. Securities Litig.*, 127 F.Supp.2d 418, 430 (S.D.N.Y. 2001); *see also*, *Boeing*, 444 U.S. at 478 (pursuant to the common fund doctrine, "a lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorney's fee from the fund as a whole").

[2]The United States Supreme Court has noted that the common-fund doctrine is a traditional practice in courts of equity. *Boeing*, supra, 444 U.S. at 478. Pursuant to this doctrine, "a lawyer who recovers a common fund for the benefit of persons other than . . . his client is entitled to a reasonable attorneys fee from the fund as a whole." *Id*. The doctrine "rests on the perception that persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigants' expense." *Id.,* at 472. As a result, the common-fund doctrine allows courts to "prevent this inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefitted by the suit." *Id*, at 478*; see also Goldberger*, supra, 209 F.3d at 47 (common fund doctrine "prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost").

In addition to ensuring that the costs of class litigation are fairly borne by all class members who benefit from a recovery, awards of attorneys' fees from a common fund serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and to discourage future misconduct of a similar nature. *See Maley v. Del Global Techs., Corp.*, 186 F.Supp.2d 358, 369 (S.D.N.Y. 2002). Compensating Class Counsel is crucial to sustaining such cases by incentivizing attorneys to bring claims on behalf of classes of injured investors. *Hicks v. Stanley*, No. 01 Civ. 10071, 2005 WL 2757792, *9 (S.D.N.Y. Oct. 24, 2005).

When determining what factors or considerations should be taken into account in awarding attorneys' fees, Connecticut courts look to federal case law for guidance. *See Collins v. Anthem Health Plans, Inc.*, 266 Conn. 12, 32–33 (2003).

> The Connecticut Supreme Court has held that because Connecticut's class action law is relatively undeveloped, and in light of the similarity between Connecticut's and federal class action rules, it is appropriate to look to federal case law "for guidance on construing our law governing class actions." *Collins v. Anthem Health Plans, Inc.*, 266 Conn. [,supra, 33]. In particular, decisions by the United States Court of Appeals for the Second Circuit, although not binding on Connecticut's courts, "are particularly persuasive" on class action issues. *Id.* at 52 n.22 836 A.2d 1124, citing *Turner v. Frowein*, 253 Conn. 312, 341 752 A.2d 955 (2000). It is, thus, appropriate to look to federal case law, and in particular to Second Circuit case law, for guidance on the standards governing awards of attorneys fees in class actions.

Towns of New Hartford and Barkhamsted v. Connecticut Res. Recovery Auth., Docket No. CV-04-0185580-S, 2007 WL 4634074, *7 (Conn. Super. Dec. 7, 2007) (Eveleigh, J.).

In *Goldberger v. Integrated Resources, Inc.*, supra, 209 F.3d, the Second Circuit identified two methods for determining a reasonable attorneys fee in a common fund action. The first method is commonly referred to as the "lodestar, under which the district court scrutinizes the fee petition to ascertain the number of hours reasonably billed to the class and then multiplies

that figure by an appropriate hourly rate" and then adjusts the total by a multiplier, which is based on factors such as the complexity of the litigation, quality of the representation, difficulty of the case, and counsel's risk of non-recovery. *Id.*, at 47; *see also Towns of Hartford and Barkhamsted*, supra, 2007 WL 4634074, *7 (applying *Goldberger* factors in Connecticut state court class action).

The other method allows the court to set "some percentage of the recovery as a fee" by considering the same factors articulated above for determining the multiplier in the lodestar method. *Id.* There are benefits to utilizing the percentage method as articulated by the Second Circuit in *Goldberger*. First, it avoids "an unanticipated disincentive to early settlements" which can be created by the lodestar method. *Id.* at 47–49. In addition, the percentage method has been found to be "simpler" and more efficient, in that "it avoids an otherwise 'gimlet-eyed review' of counsel's detailed lodestar." *Towns of Hartford and Barkhamsted*, supra, 2007 WL 4634074, *8 (quoting *Goldberger*, supra, 209 F.3d at 48–49.)

Since the Second Circuit's decision in *Goldberger*, "[i]t is now well-established that 'the trend of district courts within this Circuit is to utilize the percentage of recovery approach when calculating attorneys fees in common fund cases.'" *Id.* This is also consistent with Circuit courts outside of the Second Circuit, including the First, Third, Sixth, Seventh, Ninth and Tenth Circuit Courts of Appeals, which have also adopted the percentage method for use in common fund cases. *Id.*

b. The Percentage-of-Recovery Method is the Preferred Basis for a Common Fund Award and Should Be Utilized in This Case

Class Counsel respectfully requests that the Court award attorneys' fees based on a percentage of the common fund achieved in the Settlement. In *Blum v. Stenson*, 465 U.S. 886, 900 n.16, 104. S.Ct. 1541, 79 L.Ed.2d 891 (1984), the United States Supreme Court recognized

that under the common fund doctrine, "a reasonable fee is based on a percentage of the fund bestowed on the class . . . ." It is now well-established that the percentage-of-recovery method is the preferred method for determining a common fund award in a class action and should be utilized in this case. "The trend in this Circuit is toward the percentage method" and that method "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005), cert. denied sub nom. *Leonardo's Pizza by the Slice, Inc. v. Wal-Mart Stores, Inc.*, 544 U.S. 1044, 125 S.Ct. 2277, 161 L.Ed.2d 1080 (2005); accord *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 2007 WL 2230177, *15 ("the trend of district courts within this Circuit [is] to utilize the percentage of recovery approach . . . in common fund cases"); *In re Global Crossing Sec. and ERISA Litig.*, 225 F.R.D. 436, 469 (S.D.N.Y. 2004) ("the great weight of authority supports basing common-fund awards on a percentage of the gross recovery").[3]

"Federal and, in particular, Second Circuit – case law is clear that where counsel in a class action produce a common fund benefitting all members of the class, an award of attorneys fees, based on a percentage of the recovery, is appropriate . . . and that percentage awards of 25% ***and over are customary***." *Towns of New Hartford and Barkhamsted*, supra, 2007 WL 4634074,

[3]Accord *In re Converse Tech. Inc. Sec. Litig.*, No. 06-cv-1825 (NGG), 2010 WL 2653354, *2 (E.D.N.Y. June 24, 2010) (noting "[t]he trend in this Circuit is toward the percentage method"); *Maley*, supra, 186 F.Supp.2d 370 ("the trend within this Circuit is to use the percentage of recovery method to calculate fee awards to class counsel"); *In re American Bank Note Holographics, Inc.*, supra, 127 F.Supp.2d 431 (noting same trend); *In re Nasdaq Market Makers Antitrust Litig.*, 187 F.R.D. 465, 484 (S.D.N.Y. 1998) (citing "strong support for the percentage approach from district courts in this Circuit"); *In re Sumitomo Copper Litig.*, 74 F.Supp.2d 393, 397 (S.D.N.Y. 1999) ("ground swell of support for *mandating* a percentage-of-the-fund approach" (emphasis in original)); *Slamovics v. All for a Dollar, Inc.*, 906 F.Supp. 146, 150 (E.D.N.Y. 1995) ("[i]t is proper to compensate counsel based on a percentage of the common settlement fund"); *In re Crazy Eddie Sec. Litig.,* 824 F. Supp. 320, 325 (E.D.N.Y. 1993) ("since at least the late 1980's the trend within this Circuit has been toward the percentage of recovery method"); *In re Fine Host Corp. Sec. Litig.*, No. MDL 1241, 3:97–CV–2619 JCH, 2000 WL 33116538, *1–2 (D. Conn. Nov. 8, 2000) (Hall, J.) (citing *In re Crazy Eddie* and applying the percentage method); *In re Priceline.com, Inc. Sec. Litig.*, No. 3:00-cv-1884 AVC, 2007 WL 2115592, *5 (D. Conn. Jul. 20, 2007) (applying percentage method and awarding 30% of $80 million settlement).

*7 (Emphasis added.) (citing *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *Manual of Complex Litigation Section 14.121* ("[a]ttorneys fees awarded under the percentage method are often between 25% and 30% of the fund").

Support for the "percentage of recovery" methodology is widespread outside the Second Circuit, as well. The applicability of the percentage of recovery method in common fund cases was noted by the Supreme Court in *Blum v. Stenson*, supra, 465 U.S. 886,[4] and use of the percentage-of-the-fund method in common fund cases has now been approved by several Courts of Appeals that have addressed the issue.[5]

There are a number of persuasive reasons supporting use of the percentage-of-recovery method over the lodestar method. Under the lodestar method, the district court is required to "scrutinize[] the fee petition to ascertain the number of hours reasonably billed to the class and then multiply that figure by an appropriate hourly rate" and then may adjust the total by an appropriate multiplier, based on such subjective factors as complexity of the litigation, quality of the representation, difficulty of the case, and counsel's risk of non-recovery. *See Goldberger*, supra, 209 F.3d 47.

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[4]In *Blum v. Stenson,* supra, 465 U.S. 900 n.16, the Supreme Court differentiated between the methodology for calculating a fee under a fee-shifting statute (the lodestar method) and determining a fee award in a common fund case, noting that "under the common fund doctrine, . . . *a reasonable fee is based on the percentage of the fund bestowed on the class*." (Emphasis added.)

[5]The First, Third, Sixth, Seventh, Eighth, Ninth, Tenth, Eleventh and District of Columbia Circuit Courts of Appeals have all adopted the percentage method for use in common fund cases. See *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995) (approving percentage method and observing that "[c]ontrary to popular belief, it is the lodestar method, not the [percentage] method, that breaks from precedent"); *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 821–22 (3d Cir. 1995); *Rawlings v. Prudential-Bache Properties, Inc.*, 9 F.3d 513, 515–16 (6th Cir. 1993); *Florin v. Nationsbank of Georgia, N.A.*, 34 F.3d 560, 564–65 (7th Cir. 2004); *Johnston v. Comerica Mortgage Corp.*, 83 F.3d 241, 246 (8th Cir. 1996); *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376–77 (9th Cir. 1993); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Camden I Condominium Association, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hospital Corp. v. Shalala*, 1 F.3d 1261, 1268 (D.C. Cir. 1993).

Courts have repeatedly recognized that the lodestar method is cumbersome, inefficient and requires unwarranted and inefficient use of judicial resources. *Id.* at 49 (comparing lodestar analysis to "resurrect[ing] the ghost of Ebenezer Scrooge"); *In re Global Crossing*, supra, 225 F.R.D. 466 (percentage approach preferable to '"cumbersome, enervating, and often surrealistic process' of evaluating fee petitions under the lodestar/multiplier approach"); *In re Lloyd's American Trust Fund Litigation*, No. 96-cv-1262 RWS, 2002 WL 31663577, *25 (S.D.N.Y. Nov. 26, 2002) (lodestar approach "wasteful and burdensome process– to both counsel and the courts"); *In re Nasdaq Market Makers Antitrust Litig.*, 187 F.R.D. 465, 485 (S.D.N.Y. 1998) (describing lodestar calculations as "largely judgmental and time-wasting computations of lodestars and multipliers [which] . . . no matter how conscientious, often seem to take on the character of so much Mumbo Jumbo").

Courts have also recognized that the lodestar method creates a disincentive for early settlements and thus gives rise to a potential tension between the interests of the class and its counsel. The "lodestar create[s] an unanticipated disincentive to early settlements, tempt[s] lawyers to run up their hours, and compel[s] district courts to engage in a gimlet-eyed review of line-item fee audits." *Wal-Mart Stores, Inc.,* supra, 396 F.3d 121.

The percentage of recovery method not only avoids "an unanticipated disincentive to early settlements" created by the lodestar method but has also been found to be "simpler" and more efficient. *Goldberger*, supra, 209 F.3d 47. The percentage-of-recovery method allows the court to set "some percentage of the recovery as a fee" by considering the "same 'less objective' factors that are used to determine the multiplier for the lodestar." *Id.* No detailed analysis of lodestar hours or rates is required; rather, the court need only perform a more general "lodestar cross-check," based on its familiarity with the case, that the percentage fee falls within the range

of a reasonable lodestar award to make sure that the percentage does not represent an undue windfall for counsel. *Id.* at 50.

As one district court has explained:

> The percentage method directly aligns the interests of the Class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation, which clearly benefits both litigants and the judicial system. The percentage approach is also the most efficient means of rewarding the work of class action attorneys, and avoids the wasteful and burdensome process – to both counsel and the courts – of preparing and evaluating fee petitions, which the Third Circuit Task Force described as "cumbersome, enervating and often surrealistic.

In re Lloyd's American Trust Fund Litigation, supra, 2002 WL 31663577, *25; accord *Wal-Mart Stores, Inc.,* supra, 396 F.3d 122.

For all these reasons, the percentage method is the preferred methodology for determining counsel fees in a common fund case and should be utilized in this case.

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE UNDER THE PERCENTAGE-OF-THE-FUND METHOD AND CONSISTENT WITH SIMILAR AWARDS

The 33-1/3% attorney fee requested here is consistent with percentage fees that have been awarded by courts throughout the country, particularly within the Second Circuit. Indeed, Connecticut courts and several courts within the Second Circuit determining the appropriate percentage-of-the-fund attorneys' fees to award in cases resulting in common fund settlements similar in magnitude to this matter, have awarded attorneys' fees in the amount of 33-1/3% or close thereto. For instance, in *Gruber v. Starion Energy, Inc.*, supra, 2017 WL 6262409, *1-2, Judge Moll approved an award of attorneys' fees equal to 32% of a $2,850,000.00 common fund settlement. In *Faican v. Rapid Park Holding Corp.*, supra, 2010 WL 2679903, *2, the court awarded a 33-1/3% percentage-of-the-fund fee of an approximately $523,000.00 settlement, even though the settlement was reached only three months after the action was filed and without

any motion practice.[6] In *In re Publication Paper Antitrust Litig.*, supra, 2009 WL 2351724, *1, Judge Underhill approved a 33-1/3% fee of a $700,000.00 settlement.

Similar percentage awards have been regularly approved by federal district courts within the Second Circuit. See, e.g., *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F.Supp.2d 254 (S.D.N.Y. 2003) (awarding 33-1/3% of $1.5 million); *RMED Int'l Inc. v. Sloan's Supermarkets, Inc.*, No. 94-cv-5587 PKL, 2003 WL 21136726 (S.D.N.Y. May 15, 2003) (awarding 33-1/3% of $0.975 million); *Maley*, supra, 186 F.Supp.2d 374 (awarding 33-1/3% of $11.5 million) (citing *Newman v. Caribiner Int'l Inc.*, No. 99-cv-2271 (S.D.N.Y. Oct. 19, 2001) (awarding 33-1/3% of $15 million)); *In re Blech Sec. Litig.*, No. 94-cv-7696 (RWS), 2002 WL 31720381 (S.D.N.Y. Dec. 4, 2002) (awarding 33-1/3% of $3 million); *In re APAC Teleservices, Inc. Sec. Litig.*, No. 97-cv-9145 (S.D.N.Y. Dec. 10, 2001) (awarding 33-1/3% of $21 million); *Klein v. PDG Remediation, Inc.*, No. 95-cv-4954 (DAB), 1999 WL 38179 (S.D.N.Y. Jan. 28, 1999) (awarding 33% of $.5 million); *Adair v. Bristol Technology Systems, Inc.*, No. 97-cv-5874 (RWS), 1999 WL 1037878 (S.D.N.Y. Nov. 16, 1999) (awarding 33% of $0.975 million); *Becher v. Long Island Lighting Co.*, 64 F.Supp.2d 174 (E.D.N.Y. 1999) (awarding 33-1/3% of $7.75 million); *Maywalt v. Parker & Parsley Petroleum Co.*, 963 F. Supp. 310 (S.D.N.Y. 1997) (awarding 33.4% of $8.25 million); *Cohen v. Apache Corp.*, No. 89-cv-0076, 1993 WL 126560 (S.D.N.Y. Apr. 21, 1993) (awarding 33-1/3% of $6.75 million); *In re Allstar Ins. Sec. Litig.*, No. 88-cv-9282 (PKL), 1991 WL 352491 (S.D.N.Y. Nov. 20, 1991) (awarding 33-1/3% of $2.65 million); *Greene v. Emersons, Ltd.*, No. 76-cv-2178 CSH, 1987 WL 11558 (S.D.N.Y. May 20, 1987) (awarding 46.2% of $1.175 million).

[6]The court in *Faican* did impose a potential limitation of counsel's fee depending on settlement class participation that may have affected the percentage fee being awarded. Such participation concerns do not exist in this matter given the certainty of the amount being paid by Defendants into the Settlement Fund—*i.e.*, the Defendants have already agreed to pay the full $1 million into the fund.

Comparable percentage fees have been awarded in other district courts throughout the country. See, e.g., *In re Ravisent Tech., Inc. Sec. Litig.*, No. 00-cv-1014, 2005 WL 906361 (E.D. Pa. Apr. 18, 2005) (awarding 33-1/3% of $7 million); *In re Corel Corp. Inc., Sec. Litig.*, 293 F. Supp. 2d 484 (E.D. Pa. 2003) (awarding 33-1/3% of $7 million); *Faircloth v. Certified Finance, Inc.* 99-cv-3097, 2001 WL 527 489 (E.D. La. May 16, 2001) (awarding 35% of $1.6 million); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72 (D. N.J. 2001) (awarding 33-1/3% of $4.5 million); *In re Unisys Corp. Sec. Litig.*, 99-cv-5333, 2001 WL 1563721 (E.D. Pa. Dec. 6, 2001) (awarding 33% of $5.75 million); *In re Neoware Systems, Inc. Sec. Litig.*, 98-cv-2582, 2000 WL 1100871 (E.D. Pa. Jul. 27, 2000) (awarding 33-1/3% of $1.06 million); *In re Activision Sec. Litig.*, 723 F. Supp. 1373 (N.D. Cal. 1989) (awarding 32.8% of settlement); *Muehler v. Land O'Lakes, Inc.*, 617 F. Supp. 1370 (D. Minn. 1985) (awarding 35.5% of $1.55 million).

In fact, even in larger settlements, courts throughout the country, including District Courts in Connecticut and New York, have awarded percentage fees of 30% or more, resulting in fees with more significant lodestar multipliers. See, e.g., *Haddock v. Nationwide Life Insurance Co.*, No. 3:01-cv-1552 SRU, 2015 WL 13942222 (D. Conn., Apr. 9, 2015) (approving award of attorneys' fees of 35% of common fund settlement of $140 million); *Spencer v. The Hartford Financial Services Group*, 3:05-cv-1681 (JCH), Doc. 258 (D. Conn., Sep. 21, 2010) (approving attorneys' fees of 30% on $72.5 million common fund settlement); *In re Priceline.com Sec. Litig.*, No. 3:00-cv-1884 (AVC), 2007 WL 2115592 (D. Conn. Jul. 20, 2007) (30% of $80 million); *In re Bisys Sec. Litig*., No. 04 Civ. 3840 (JSR), 2007 WL 2049726 (S.D.N.Y. July 16, 2007) (30% of $65.87 million); *Kurzweil v. Philip Morris Cos. Inc.,* No. 94 Civ. 2373 (MBM), 1999 WL 1076105 (S.D.N.Y. Nov. 30, 1999) (30% of $123 million); *In re Buspirone Antitrust Litig.*, MDL No. 1413 (JGK), 2003 U.S. Dist. LEXIS 26538 (S.D.N.Y. Apr. 11, 2003) (33 1-3%

of $220 million); *In re Initial Public Offering Sec. Litig.,* 671 F. Supp. 2d 467 (S.D.N.Y. 2009) (33 1-3% of $586 million); *In re Marsh ERISA Litig.*, 265 F.R.D. 128 (S.D.N.Y. 2010) (awarding 33-1/3% of $11.655); *In re Crazy Eddie Sec. Litig.*, 824 F. Supp. 320 (E.D.N.Y. 1993) (34% of $42 million); *Allapattah Servs., Inc. v. Exxon Corp.,* 454 F. Supp. 2d 1185 (S.D. Fla. 2006) (31-1/3% of $1,975 billion); *Nicholas v. Smithline Beecham Corp.*, Civil Action No. 00-6222, 2005 WL 950616 (E.D. Pa. Apr. 22, 2005) (30% of $65 million); *In re Linerboard Antitrust Litig.,* MDL No. 1261, 2004 WL 1221350 (E.D. Pa. June 2, 2004) (30% of $202 million); *In re Relafen Antitrust Litig.,* 231 F.R.D. 52 (D. Mass. 2005) (33-1/3% of $67 million); *In re Monosodium Glutamate Antitrust Litig.,* MDL No. 1328, 2003 WL 297276 (D. Minn. Feb. 6, 2003) (30% of $81.4 million); *In re Vitamins Antitrust Litig.*, No. 99-197, 2001 WL 34312839 (D.D.C. Jul. 16, 2001) (34% of $365 million); *In re Aetna Securities Litig.*, MDL No. 1219, 2001 WL 20928 (E.D. Pa. Jan. 4, 2001) (30% of $82.5 million); *In re Ikon Office Sols., Inc., Sec. Litig.*, 194 F.R.D. 166 (E.D. Pa. 2000) (30% of $111 million); *Vizcaino v. Microsoft Corp.*, 290 F.2d 1043 (9th Cir. 2002) (citing several cases including those with fees in excess of 30%: *In re Informix Corp. Sec. Litig.*, No. 9701289 (N.D. Cal. Nov. 23, 1999) (30% of $137 million); *In re National Health Labs. Sec. Litig.*, 99-cv-1949 (S.D. Cal. Aug. 15, 1995) (30% of $19 million); *In re Melridge, Inc. Sec. Litig.*, No. 87-cv-1426 (D. Or. Mar. 19, 1992) (37.1% of $54 million)); *In re Lease Oil Antitrust Litig.*, 186 F.R.D. 403 (S.D. Tex. 1999) (30% of $123 million); *In re Combustion, Inc.,* 968 F. Supp. 1116 (W.D. La. 1997) (36% of $127 million); *In re Airline Ticket Comm'n Antitrust Litig.*, 953 F. Supp. 280 (D. Minn. 1997) (33.3% of $86.892 million); *Gaskill v. Gordan*, 942 F. Supp. 382 (N.D. Ill 1996) (38% of $43.69 million).

All of these cases demonstrate that courts consistently award common fund percentage fees of 33-1/3% in cases of magnitude equal to or slightly greater than this case. Indeed, as

noted above, even in cases of much larger magnitude, courts have awarded fees between 30% and 33-1/3%, even if these larger fees may result in a higher lodestar multiplier.[7] Of course, Class Counsel does not contend that 33-1/3% – or any other percentage – is an automatic "benchmark" for a common fund award. Class Counsel is aware that in *Goldberger*, the Second Circuit rejected the concept of a "benchmark" and ruled that each award must be decided on the basis of the circumstances of the case, and in particular, should reflect the level of risk associated with prosecuting each particular class action. *Goldberger*, 209 F.3d at 51, 54 ("risk of success" is "perhaps the foremost factor to be considered" in determining award of fees.). Thus, in cases where there is little risk of non-recovery – not this case – a lower percentage award is sometimes awarded.

However, as discussed below, Class Counsel faced enormous risk of non-recovery of their time and litigation expenses on every front in this case: as to liability, as to class certification, and as to proof of damages. Defendants vigorously disputed every aspect of the Class Members' claims. Defendants moved to strike the underlying claims and the putative class claims at the initiation of this matter. After Plaintiffs' negligence and class claims survived, the Defendants strongly objected to several discovery requests and contested class certification. Indeed, even upon class certification, Defendants attempted an interlocutory appeal to the

[7]Courts have awarded fees just slightly under 30% in some larger cases given the lodestar cross-check. See e.g., *In re Deutsche Telekom AG Sec. Litig.,* No. 00 Civ. 9475 (NRB) (S.D.N.Y. June, 7, 2005) (awarding 28% of $120 million settlement) (Buchwald, J.); *In re Oxford Health Plans, Inc. Sec. Litig.,* No. MDL 1222 (CLB), 2003 U.S. Dist. Lexis 26795 (S.D.N.Y. June 12, 2003) (Brieant, J.) (awarding 28% of $300 million settlement); *In re Sumitomo Copper Litig.,* supra, 74 F.Supp.2d 393 400 (Pollack, J.) (awarding 27.5% of$116 million settlement); *In re Prudential Securities Ltd. Partnership Litig.,* 912 F. Supp. 97 (S.D.N.Y. 1996) (Pollack, J.) (awarding 27% of $110 million settlement); *Dusek v. Mattel, Inc.,* CV 99-10864-MRP (C.D. Cal. Sep. 29, 2003) (awarding 27% of $122 million settlement); *In re Telectronics Pacing Systems, Inc.,* 137 F. Supp. 2d 1029 (S.D. Ohio 2001) (awarding 27.09% of $62.4 million settlement); see also *In re Comverse Technology, Inc. Securities Litigation, 06-CV-1825, *6 (NGG) (RER) (E.D.N.Y. Jun. 23, 2010)* (awarding 25% on $225 million settlement); *In re RJR Nabisco, Inc. Sec. Litig.,* MDL No. 818, 1992 WL 210138, at* 7 (S.D.N.Y. Aug. 24, 1992) (Mukasey, J.) (awarding 25% of $72.5 million settlement).

Connecticut Supreme Court, and once that was denied, sought reconsideration of this Court's underlying decision certifying the class. Defendants also filed a Motion for Summary Judgment as to Plaintiffs' injury claims. *See* Motion for Summary Judgment, dated May 16, 2022 (Entry No. 257.00). This settlement was reached prior to adjudication of that Motion. Indeed, even if the Plaintiffs prevailed over Defendants' pending Motion for Summary Judgment, Defendants would have had another opportunity to seek Summary Judgment as to the remainder of Plaintiffs' allegations not addressed in the pending Motion for Summary Judgment. *See* Scheduling Order, dated November 30, 2022 (Entry Nos. 269.00 & 269.20). Moreover, the parties engaged in extensive settlement negotiations which spanned two in-person sessions and months of subsequent telephonic negotiations.

As such, an award of a percentage fee of 33-1/3% is not only supported by relevant authority, but also by the specific facts in this matter.

IV. THE REQUESTED ATTORNEYS' FEES ARE FAIR AND REASONABLE WHEN APPLYING THE RELEVANT FACTORS

The Second Circuit has set forth six factors that should be considered in determining the reasonableness of the fee in common fund class action cases: (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. These factors have also been considered by Connecticut courts in awarding percentage-of-the-fund attorneys' fees. *See*, *e.g.*, *Towns of New Hartford & Barkhamsted*, 2007 WL 4634074, *10 (applying *Goldberger* factors to assess reasonableness of requested percentage-of-the-fund attorneys' fees); *Gruber*, 2017 WL 6262409, at *1 (noting risks associated with litigation, the complexity of the claims and lodestar cross-check in awarding attorneys' fees in amount of 32% of settlement). Consideration of the relevant

Goldberger factors clearly supports an award of a fee of 33-1/3% of the Settlement Fund to Class Counsel in this case.

a. The Significant Time and Labor Expended by Class Counsel

The first factor set forth in *Goldberger* for determining an appropriate fee is "the time and labor expended by counsel." *Id.* Class Counsel has expended more than 1,067 hours of time to pursue this case.[8] The time and labor required to successfully prosecute this litigation and achieve an outstanding settlement for the Settlement Class fully justifies the requested fee. This case has been vigorously litigated for nearly eight years since it was initially filed on December 16, 2015. The Defendants were represented by multiple law firms with highly experienced and capable counsel with specialties in both medical malpractice and class action defense. The Defendants' counsel mounted a vigorous defense at every step of the litigation, vehemently opposing discovery requests, seeking dismissal of the Plaintiffs' claims via motions to strike, asserting multiple special defenses, opposing class certification, seeking an immediate interlocutory appeal of class certification and seeking summary judgment based upon the Plaintiffs' claimed injuries. *See generally*, Docket Entries (jud.ct.gov). Class Counsel expended significant time and resources to overcome the Defendants' defenses in order to obtain this settlement.

The successful litigation of this matter involved:

- Extensive pre-filing investigation into the Defendants' use of multi-dose insulin pens between September 2008 and May 7, 2014, including obtaining and reviewing information from the Connecticut Department of Public Health's and Center for Medicare Services' investigation into the alleged misuse of multi-dose insulin pens, reviewing materials and conduct research to ascertain whether there was a plausible cause of action, as well as consultation with

[8] This does not include time spent by paralegal staff assigned to this matter or time expended by any attorney who worked less than thirty (30) hours on this matter.

physicians and nursing experts to determine whether claims could be sustained as medical malpractice claims under Connecticut law,

- Research and analysis of similar incidents regarding potential misuse of multi-dose insulin pens at other healthcare facilities and associated litigation stemming from those incidents;

- Research and analysis as to whether there was a cognizable cause of action in this matter under Connecticut law or any state or regulatory enforcement mechanisms, and whether such claims could be sustained as a Class Action, as well as the proper venue to pursue such claims;

- Consultation with a qualified healthcare provider to determine whether there was a good faith basis to pursue a medical malpractice claim against the Defendants pursuant to General Statutes § 52-190a, as well as preparation of the required Certificate of Good Fath and Opinion of a Similar Healthcare Provider, pursuant to § 52-184c, as well as drafting comprehensive, fact-specific pleadings, including a sixteen (16) page Complaint, seventeen (17) page Amended Complaint, Motion to Cite In Additional Parties and accompanying twenty-nine (29) page Second Amended Complaint, all intended to perfect the Class Members' claims against the Defendants in this matter;

- Retention of and consultation with various expert witnesses throughout this litigation – including experts in the fields of nursing, infectious disease, pharmacology, phlebotomy and hospital administration – regarding the medical claims at issue in this matter (as to all elements of the plaintiffs' claims), as well as expert consultation regarding training and administration protocols for hospitals;

- Litigating the Defendants' Motion to Strike and accompanying thirty-eight (38) page support Memorandum of Law, which challenged every legal theory in Plaintiffs' operative Complaint, which, if granted, would have resulted in the complete dismissal of all potential claims on behalf of the putative Class, at the time. The litigation of the Defendants' Motion to Strike entailed voluminous briefing – the Plaintiffs' Memorandum in Opposition encompassed forty-nine (49) pages of law and argument and required extensive research into several novel and contested legal issues – and lengthy oral argument before the Court. As a result of Class Counsel's efforts, the majority of the Plaintiffs' claims remained in this case, including their medical malpractice claims and their putative class claims, sustaining the Plaintiffs' ability to seek class certification at a later date;

- Significant discovery disputes and motion practice, including multiple "meet-and-confer" conferences with both sets of counsel retained by the Defendants, a motion to compel and briefing regarding several discovery objections and materials to which various privileges were asserted, requiring additional briefing, *in camera* review and a protracted court hearing to resolve those pending disputes;

- Extensive document and deposition discovery, including review and analysis of materials produced by the Defendants as well as production and review of the three named Plaintiffs' medical records and other responsive materials – *i.e.*, journal/diary entries. In total, fourteen (14) witnesses were deposed over fifteen (15) separate sessions. The depositions included the three named Plaintiffs and several employees and representatives of the Defendants, many of which involved complex medical issues and required deposing high-level representatives of the Defendants, including, but not limited to, the CEO and President of Griffin Hospital, the Director of the Pharmacy Department and the Vice President of Patient Care Services;

- Motion practice directed towards the pleadings in addition to the Defendants' Motion to Strike, including a Motion to Cite In Additional Parties (done in furtherance of eventually seeking class certification), a Request to Revise directed towards the Defendants Answer and Special Defenses, as well as a successful Motion to Strike several of the Defendants' Special Defenses;

- Complex class certification proceedings, including the Plaintiffs' comprehensive fifty-seven (57) page Memorandum of Law in Support of Class Certification (supported by nearly four-hundred (400) pages of exhibits), the Defendants' forty-one (41) page opposition brief (and over one hundred and eighty (180) pages of exhibits), and the Plaintiffs' twenty-seven (27) page Reply brief, culminating in an extensive oral argument before the Court;

- Significant motion practice following this Court's certification of the class, including an attempted interlocutory appeal by the Defendants to the Connecticut Supreme Court, pursuant to General Statutes § 52-265a, which was successfully opposed by Class Counsel, as well as a subsequent Motion to Reargue/Reconsider filed by the Defendants seeking to have the class decertified by this Court, which was also successfully opposed by Class Counsel;

- Complex settlement negotiations, including two days of in-person mediation, initially with the Honorable Linda Lager (Ret.) and then with Attorney Patrick Noonan, an extremely able and experienced mediator and medical malpractice litigator. These mediations required submissions of mediation statements and

exhibits, followed by months of intense settlement negotiations via telephone following the full-day mediation sessions;

- Protracted negotiation of the twenty (20) page Settlement Agreement and its exhibits, including, *inter alia*, a plan of allocation of the settlement, mail and publication notice (both long and short form), preparation of claim forms and opt-out forms, and dealings with two separate Claims Administrators.

See generally, Docket Entries (jud.ct.gov); *see also* Allocca Dec. ¶¶ 8–16.

In total, Class Counsel expended 1,067.5 hours of time, constituting a lodestar calculation of $676,075.00. As such, Class Counsel's request for a 33-1/3% fee, totaling $333,333.33, is reasonable. This is especially true given that courts routinely not only award class counsel's lodestar but also add a multiplier in determining a reasonable percentage-of-the-fund fee. *See* Section V, *infra*.

b. The Magnitude, Complexities and Risks of the Litigation

The second and third *Goldberger* factors are the magnitude, complexity, and risk of the litigation. *Goldberger*, 209 F.3d at 50. These considerations clearly support the fee requested in this case.

Courts assessing percentage-of-the-fund fees have long recognized "the risk of success as 'perhaps the foremost' factor to be considered in determining [a reasonable award of attorneys' fees]." *Id.* at 54. The risk is measured as of the commencement of the case, *id.* at 55, rather than with the benefit of hindsight after the prosecution of the case proves successful.

The settlement achieved in this matter is remarkable precisely because the risks of litigation here were so substantial. The Plaintiffs faced significant risk that they would be unable to prevail on any theory of liability; that they would be unable to obtain or sustain class certification; and that, even if they prevailed on class certification and established liability, they would be unable to prove either a cognizable injury or significant damages for class members.

As to the risk that the plaintiffs would not prevail, the Plaintiffs faced substantial factual and legal arguments by the Defendants that they could not prevail on their asserted causes of action. The Defendants have argued, *inter alia*, that Plaintiffs' medical malpractice claims must fail because: (1) any legal duty owed to Plaintiffs by Defendants does not extend to the facts alleged in this matter pursuant to the Connecticut Supreme Court's four-part test for how far to extend a legal duty; (2) Plaintiffs failed to adequately allege proximate cause because there mere receipt of a letter, absent a positive test result, is too remote from the alleged medical negligence; and, (3) Plaintiffs failed to allege that they were actually exposed to any bloodborne disease and thus, their claims far exceed the outer bounds of relevant Connecticut Supreme Court precedent. Defendants have further argued throughout this litigation that Plaintiffs' claimed injury, having to undergo a blood test, is not a cognizable injury pursuant to Connecticut law. At the time this matter was resolved by the Parties, there was a pending Motion for Summary Judgment filed by Defendants on this very issue that, if granted, would have eviscerated the entirety of the Class Members' claims.

In addition to Defendants' opposition to the underlying nature of Plaintiffs' claims, there were significant hurdles to ascertaining class certification, and a risk that the Class could be decertified as proceedings continued. Defendants have consistently argued that the class certification is not appropriate in this matter, asserting that Plaintiffs cannot establish commonality, predominance and superiority. The crux of Defendants' argument has been that class certification is not an appropriate mechanism to adjudicate medical malpractice claims given the potential individualized nature of such claims. Indeed, Class Counsel has been successful in achieving and maintaining class certification in a novel setting – a cause of action based on negligent provision of medical care – which is dissimilar to most class actions.

Defendants have further argued that the individualized nature of the Class Members' claims not only applies to liability disputes in this matter, but also extended to causation and particularly damages determinations in this matter. Although Class Counsel was successful in opposing immediate attempts by Defendants to decertify the Class, the Supreme Court denial of Defendants' attempted interlocutory appeal does not provide any insight as to whether our Appellate or Supreme Court would agree with Defendants' substantive arguments, but instead merely represents the Supreme Court's decision to not authorize an interlocutory appeal on that issue prior to a final judgment.

Class Counsel undertook this large, complex action on a wholly contingent fee basis, knowing that it would require them to risk a tremendous amount of time and expense to prosecute the action appropriately. As the Second Circuit has observed, the contingent nature of counsel's representation is an important factor in determining a reasonable award of attorneys' fees:

> No 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. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted); *see In re America Bank Note*, 127 F. Supp.2d 418, 433 (S.D.N.Y. 2001) ("[I]t [is] appropriate to take this [contingent fee] risk into account in determining the appropriate fee to award.") (citation omitted); *In re Warner Comm. Sec. Litig.*, 618 F. Supp. 735, 747 (S.D.N.Y. 1985) ("Numerous cases have recognized that the attorneys' contingent fee risk is an important factor in determining the fee award."), *aff'd*, 798 F.2d 35 (2d Cir. 1986).

Class Counsel's enormous contingency risk cannot be seriously disputed. Class Counsel litigated Plaintiffs' claims for almost eight years and, in the absence of a fair, reasonable and adequate settlement that properly furthered the interests of the class, was prepared to continue pursuing the Class Members' claims in the face of a pending Motion for Summary Judgment, with the intention to begin a full trial of this matter in March 2024, even if it meant risking the loss of their investment (and future investment to prepare for trial) of attorney time and out-of-pocket expenses. As a matter of economic reality, given the size of each individual class members' claim, absent counsel willing to assume that contingency risk, Class Members would not have received the benefits obtained by this Settlement.

In *Goldberger*, the Second Circuit noted that "[r]isk falls along a spectrum, and should be accounted for accordingly." *Id.* at 54. Taking into account the significant litigation and contingency risks in this case, the attorneys' fees requested by Class Counsel are justified.

c. The Quality of Representation

The result achieved and the quality of the services provided are also important factors to be considered in awarding reasonable attorneys' fees. *Id.* at 50; *see Hensley v. Eckerhart*, 461 U.S. 423, 436 (1983) ("most critical factor is the degree of success obtained.").

In this case, the quality of the representation of class counsel is best evidenced by the fact that despite being contested at every stage of this litigation, Class Counsel was successful in: (1) overcoming Defendants' Motion to Strike all of the Plaintiffs' claims; (2) limiting Defendants' special defenses by successfully having several of them stricken; (3) achieving class certification after nearly every element was contested by Defendants; (4) successfully overcoming an attempted interlocutory appeal; (5) defeating a motion to reargue; and (5) while a motion for summary judgment was pending, successfully negotiating a settlement resulting in a meaningful

recovery for the Class in the amount of $1 million. It should be further noted that Class Counsel achieved this outcome before having to expend even more substantial time and economic resources to this matter in the form of continued fact and expert discovery.[9] This settlement is an exceptional result for the members of the Settlement Class, each of whom stands to recover monetary compensation arising out of the blood test they underwent.

Indeed, as this Court noted during the Class Certification phase, a jury could determine the monetary value of a blood test to be "nominal". *See* Motion to Reargue/Reconsider, dated January 13,2021 (Entry No. 222.00) (citing Transcript of Class Certification Hearing, Jan. 22. 2020, at 35, 40–43, 83 (Court noting during argument that injury stemming from submission to a blood test could be nominal or "a relatively small amount[] of a potential recovery.")). But, as a result of this settlement, the amount recovered will result in recovery of more than just a "nominal" payout to Class Members without them needing to subject themselves to extensive discovery in the form of interrogatories, requests for production, waiver of privacy in the form of having to produce voluminous medical records or having to submit to a deposition.

In evaluating the quality of the representation provided by Class Counsel, it is important to note that, throughout this litigation, Defendants demonstrated that they were willing to invest substantial resources to defend against Plaintiffs' claims, hiring two of the premier law firms in this State to ensure that they had reputable, experienced and capable litigators with specialized experience in all aspects of this litigation—*i.e.*, medical malpractice defense and class action defense. The firms retained by Defendants—Neubert Pepe & Monteith and Robinson and

[9]To be clear, as noted throughout this Application, Class Counsel has expended a significant amount of time to achieve this result. This Settlement comes at an economically beneficial time for the Class in that if this matter did not resolve at this juncture, the next stage of litigation would have required additional fact discovery and extensive expert discovery (assuming Class Counsel was successful in defeating the Defendants' pending Motion for Summary Judgment).

Cole—maintain well-deserved reputations for vigorous advocacy in the defense of complex civil cases. The ability of Class Counsel to obtain this settlement in the face of such formidable legal opposition confirms the quality of counsel's representation. *See Taft v. Ackermans*, No. 02-cv-7951 (PKL), 2007 WL 414493, at *11 (S.D.N.Y. Jan. 31, 2007) (in determining appropriateness of fee, courts consider backgrounds of the lawyers involved in suit); *In re KeySpan Corp. Sec. Litig.*, No. 01-cv-5852 (ARR), 2005 WL 3093399, at *11 (E.D.N.Y. Sep. 30, 2005) ("quality of opposing counsel is also important in evaluating the quality of Class Counsel's work").

d. The Relation of the Requested Fee to the Settlement

The fifth *Goldberger* factor – the relation of the requested fee to the Settlement – also supports the fee requested in this case. As noted above, the requested fee is fully consistent with fee awards in comparable cases within the Second Circuit (and nationally), in light of the unique circumstances of this case, the intense efforts of class counsel and the extraordinary result obtained on behalf of the plaintiff class beneficiaries.

The requested fee is also fully consistent with fees "likely to have been negotiated between private parties in a similar case." *In re Aetna Sec. Litig.*, 2001 WL 20928, at *14. As one court has noted:

> What the market would pay is significant because, as the Seventh Circuit has explained, the goal of the fee setting process is to "determine what the lawyer would receive if he were selling his services in the market rather than being paid by Court Order." [quoting *In re Continental Ill. Sec. Litig.*, 962 F.2d at 568].

In re Linerboard, 2004 WL 1221350, at *15; *accord In re Synthroid Marketing Litig.*, 264 F.3d at 718 ("[W]hen deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time."); *In re Continental Ill.*, 962 F.2d at 572 ("The object . . . is to give the lawyer what he would have gotten in the way of a fee in an

arm's length negotiation."); *In re RJR Nabisco*, 1992 WL 21136726, at *7 ("What should govern such [fee] awards is not the essentially whimsical view of a judge, or even a panel of judges, as to how much is enough in a particular case, but what market pays in similar cases.").

Private plaintiffs in Connecticut, and nationwide, in contingent fee medical malpractice and complex civil litigation cases involving expert testimony routinely pay fees of 1/3 or more of the total settlement, particularly in cases in which counsel advances any costs associated with prosecuting the claim without any expectation of reimbursement absent a financial recovery – like this case. Indeed, the 33-1/3% award requested in this matter is consistent with the retainer agreement in place between the three named Plaintiffs and Class Counsel, as well as traditional fee arrangements in complex medical malpractice claims in this State and across the country.

e. Public Policy Considerations

The final *Goldberger* factor, public policy considerations, also supports the requested fee in this case. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 339 (1980) ("[w]here it is not economically feasible to obtain relief within the traditional framework of a multiplicity of small individual suits for damages, aggrieved persons may be without any effective redress unless they may employ the class action device."). The public policy consideration in this matter is particularly persuasive in that, absent Class Counsel being willing to take on this matter on a contingency fee basis, it is unlikely that any individual could have afforded to pursue the claims at issue in this matter on their own. *See Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738 (RNC), 2014 WL 3778211, at * 6–7 (D. Conn. July 31, 2014) (noting attorneys who pursue "relatively small claims" that "can only be prosecuted through aggregate litigation" should be "adequately compensated for their efforts."); *see also Maley*, 186 F. Supp. 2d at 374 (S.D.N.Y. 2002) (finding it is "imperative that the filing of such contingent lawsuits not be

chilled by the imposition of fee awards which fail to adequately compensate counsel for the risks of pursuing such litigation and the benefits which would not otherwise have been achieved but for their persistent and diligent efforts."). Absent Class Counsel pursuing this matter on a contingency fee basis, with an agreement to advance litigation costs (and take on the risk of absorbing those costs in the event the claim is unsuccessful), the Class Members would have not been able to pursue and maintain this action on an individual basis or had they been required to pay litigation counsel on an hourly basis and all related litigation expenses. *See, e.g.*, *Towns of New Hartford and Barkhamsted*, 2007 WL 4634074, at *9 (noting "[t]he benefits obtained by the class member municipalities would have not been possible absent willingness of plaintiffs' counsel to assume their representation on a contingent fee basis . . . . [The plaintiffs] would never have been able to pursue and maintain this action had it been required to pay experienced litigation counsel on an hourly basis. Nor could the [plaintiffs] – or any member of the plaintiff class – have obtained relief from the [defendants].").

V. THE LODESTAR CROSS-CHECK SUPPORTS THE REQUESTED FEE

Under *Goldberger*, a court applying the percentage of recovery method is "encourage[d]" to "cross-check" the reasonableness of the fee calculated as a percentage of the common fund by comparing that fee to that which counsel would be entitled under the lodestar method. *Goldberger*, 209 F.3d at 50; *see also Towns of New Hartford and Barkhamsted*, 2007 WL 4634074, at *10. This cross-check serves to ensure that counsel is not receiving a "windfall" from a percentage award without having put in legal time to warrant the award. Where the lodestar is "used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the [trial] court." *Id.* The court need not review actual time records,

but may rely on summaries, as the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case. *Id.*

The award of attorneys' fees is vested in the sound discretion of the district court and will only be reviewed for abuse of discretion. *Id.* at 47–48. Abuse of discretion review of a trial court's fee determination is especially deferential since "the [trial] court, which is intimately familiar with the nuances of the case, is in a far better position to make [such] decisions than is an appellate court, which must work from a cold record." *Id.*

The lodestar cross-check is exactly what it says: it is a cross-check to assure that the fees awarded pursuant to the percentage of recovery method are within a reasonable range, but is not itself either the method for calculating reasonable fees, nor a rigid parameter for an award of fees. As the Third Circuit has noted:

> . . . we reiterate that the percentage of common fund approach is the proper method of awarding attorneys' fees. The lodestar cross-check calculation need entail neither mathematical precision nor bean-counting . . . . Furthermore, the resulting multiplier need not fall within any pre-defined range, provided that the District Court's analysis justifies the award. Lodestar multipliers are relevant to the abuse of discretion analysis. But the lodestar cross-check does not trump the primary reliance on the percentage of common fund method.

In re Rite Aid, 396 F.3d at 306–07

Where counsel has undertaken a difficult matter on contingency and has secured a favorable result for the class, the normal multiplier is 4–5 times the lodestar. *In re EVCI*, 2007 WL 2230177, at *17 ("lodestar multipliers of nearly 5 have been deemed 'common' by courts in the Southern District of New York"); *Maley*, 186 F. Supp. 2d at 369 (4.65 multiplier was "well within the range awarded by courts in this Circuit and courts throughout the country"); *In re Nasdaq Market Makers Antitrust Litig.*, 187 F.R.D. at 489 ("multipliers of between 3 and 4.5 have become common"); *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *14 (quoting

Logan, *et al.*, *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167 (2003) ("the average multiplier approved in common fund class actions from 2001–2003 was 4.35 and during the 30 year period from 1973–2003, the average multiplier approved in common fund class actions was 3.89").[10]

Class counsel has devoted 1,067.5 hours to the Plaintiffs' claims, as follows:

Ernest F. Teitell, Esq.	– 242.5 Hours
Marco A. Allocca, Esq.	– 689.5 Hours
Sarah Ricciardi Russell, Esq.	– 82 Hours
Zachary A. Rynar, Esq.	– 53.5 Hours

Allocca Dec. ¶¶ 20, 24.

The current[11] hourly rates for the attorneys principally responsible for the prosecution of this litigation are, as follows:

Ernest F. Teitell, Esq.	– $875/hr.
Marco A. Allocca, Esq.	– $600/hr.
Sarah Ricciardi Russell, Esq.	– $400/hr.
Zachary A. Rynar, Esq.	– $325/hr.[12]

[10]*See also In re Interpublic Secs.*, 2004 WL 2397190, at *12 (S.D.N.Y. Oct. 26, 2004) (approving fee award representing multiplier of 3.96); *Deutsche Telekom*, 00-cv-9475 (awarding a multiplier of approximately 3.96 in a $120 million settlement); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 197 (S.D.N.Y. 1997) (approving multiplier of 5.5); *In re Buspirone Patent*, 01-MD-1410, 2003 U.S. Dist. LEXIS 26538, at *11 (S.D.N.Y. Apr. 11, 2003) (awarding multiplier of 8.46 in settlement for $220 million); *Newman*, 99-cv-2271 (percentage fee award of 33-1/3% representing multiplier of 7.7); *In re Charter Comm. Inc. Sec. Litig.*, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005) (multiplier of 5.61 "falls within the range of multipliers found reasonable for cross-check purposes by courts in other similar actions, and is fully justified here given the effort required, the hurdles faces and overcome, and the results achieved."); *In re Rite Aid*, 2005 WL 697461, at *2–3 (E.D. Pa. Mar. 24, 2005) (approving multiplier of 6.96); *In re Excel Energy, Inc. Sec. Derivative & ERISA Litig.*, 364 F. Supp. 2d 980 (D. Minn. 2005) (approving multiplier of 4.7); *In re Cendant Corp. Prides Litig.*, 51 F. Supp. 2d 537 (D. N.J. 1999), *vacated and remanded*, 243 F.3d 722 (3d Cir. 2001); *on remand*, No. 98-2819 (D. N.J. June 11, 2002) (approving multiplier of 5.28); *DiGiacamo v. Plains All Am. Pipeline*, 2001 WL 3463337, at *10 (S.D. Tex. Dec. 18, 2001) (approving multiplier of 5.3).

[11]It is appropriate to utilize current billing rates in calculating the lodestar to make up for the delay in payment over the years the case has been pending. *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (same).

[12] The hours spent by supporting lawyers (and the rates at which their time is billed) is set forth in Allocca Dec. ¶¶ 20, 24. Class Counsel has not included time spent by the paralegal assigned to this matter in its lodestar calculation. That being noted, the paralegal who worked on this matter has done so since its inception almost eight years ago and was responsible for filing motions, proof-reading filings, setting up depositions, calendaring and tracking deadlines, helping prepare discovery responses and compiling exhibits for depositions and court filings.

Allocca Dec. ¶¶ 20, 24.

At these current hourly fees, the hours devoted by four lawyers who participated in the prosecution of this action in excess of thirty (30) hours results in a lodestar, before multiplier enhancement, of $676,075.00. In total, Class Counsel has expended over 1,067 hours of legal time in its prosecution of this case.[13] The requested fee of $333,333.33 is well below the lodestar and does not seek any lodestar multiplier despite lodestar multipliers being commonly added to attorneys' fee requests. *See, e.g.*, *In re EVCI*, 2007 WL 2230177, at *17 (noting that "lodestar multipliers or nearly 5 have been deemed 'common' by courts in the Southern District of New York); *Maley*, supra, 186 F.Supp.2d 370 (awarding fee equal to 4.65 multiplier was "well within the range awarded by courts in this Circuit and courts throughout the country"); *In re Linerboard*, 2004 WL 1221350, at *16 (citing Stuart J. Logan, *et al*., *Attorney Fee Awards in Common Fund Class Actions*, 24 Class Action Rep. 167 (2003) ("the average multiplier approved in common fund class actions from 2001–2003 was 4.35 and during the 30 year period from 1973–2003, the average multiplier approved in common fund class actions was 3.89")).

VI. CLASS COUNSEL ARE ENTITLED TO REIMBURSEMENT OF THE LITIGATION EXPENSES INCURRED IN THE PROSECUTION OF THIS ACTION

The law is well-established that counsel who creates a common fund is entitled to the reimbursement of expenses that they advance to a class. "Courts routinely grant the expense requests of class counsel." *Towns of New Hartford and Barkhamsted*, 2007 WL 4634074, at **10–11 (quoting *In re Gilat Satellite Networks, Ltd.*, 02-cv-1510 (CPS), 2007 WL 2743675, at

[13] Not included in Class Counsel's lodestar calculation is time spent by several attorneys in Class Counsel's Firm discussing this matter at meetings, conducting moot court arguments in preparation of hearings or consultation on various issues that have arisen throughout this matter. Nor is there any time included relating to the preparation of this Fee Application or supporting documentation. *See* Allocca Dec. ¶¶ 25, 26.

*19 (S.D.N.Y. Sept. 18, 2007); *In re American Bank Note*, 127 F. Supp. 2d at 433; *Taft*, 2007 WL 414493, at *11. "[G]ranting requests for expenses is consonant with the public policy underlying fee awards in common fund cases." *In re KeySpan Corp.*, 2005 WL 3093399, at *11. "Since counsel in a class action will necessarily incur substantial costs and expenses over the course of many years and will presumably have paid the expenses is a component of affording adequate compensation to counsel in order to encourage attorneys to pursue common fund cases." *Id.*

Class counsel has incurred $55,602.30 in expenses to date in prosecuting this litigation. *See* Allocca Dec. ¶ 28. Counsel requests that the Court approves reimbursement from the common fund of these expenses.

VII. CONCLUSION

This litigation was risky, involving complicated factual and legal disputes, and was hotly contested by a sophisticated corporate defendant with resources to defend these claims, represented by multiple premier law firms who tenaciously advocated for their clients. Class Counsel worked extremely hard, took significant risk in terms of their time and expenses advanced, and obtained an excellent result. The percentage fee requested is well within the range of reasonableness, and is supported by recent awards in our area, throughout the Second Circuit and across the country.

Accordingly, Class Counsel respectfully requests that the Court award attorneys' fees in the amount of $333,333.33, representing 33-1/3% of the settlement fund, and reimbursement of Class Counsel's legal expenses in the amount of $55,602.30.

By: /s/433880

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MARCO A. ALLOCCA, ESQ.
SILVER GOLUB & TEITELL LLP
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STAMFORD, CT 06901
JURIS NO. 058005

CERTIFICATION

This is to certify that on November 13, 2023, a true copy of the foregoing was delivered electronically and/or by regular mail to the following counsel and pro se parties of record and that written consent for electronic delivery was received for all counsel who were electronically served:

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MARCO A. ALLOCCA, ESQ.

EXHIBIT A

DOCKET NO.: (X10) UWY-CV15-60299656-S	:	COMPLEX LITIGATION DOCKET
ANTHONY DIAZ, ET AL.	:	J.D. OF WATERBURY
V.	:	AT WATERBURY
GRIFFIN HEALTH SERVICES CORPORATION, ET AL.	:	NOVEMBER 13, 2023

DECLARATION OF MARCO A. ALLOCCA IN SUPPORT OF CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES, FILED ON BEHALF OF CLASS COUNSEL, SILVER GOLUB & TEITELL LLP

I, Marco A. Allocca, hereby affirm, as follows:

1. I am a partner in the law firm of Silver Golub & Teitell LLP ("SGT" or the "Firm"). I submit this Declaration in support of Class Counsel's application for an award of attorneys' fees in connection with services rendered in the above-captioned action (the "Action"), as well as for payments of expenses incurred by SGT in connection with the Action. I have personal knowledge of the facts stated in this Declaration.

2. SGT was appointed as Class Counsel by order of this Court (Lager, J.), on April 27, 2021 (Entry No. 230.10). As such, SGT is also Class Counsel for the Settlement Class in this Action.

3. My Firm was retained by each of the three named plaintiffs, Anthony Diaz, Daisy Gmitter and Bruce Sypniewski. Each of these individuals entered into a 33-1/3% contingency fee agreement with SGT pursuant to General Statutes § 52-251C.

4. Class Counsel agreed to advance all of the costs required to litigate the Action on a contingent basis. None of the three named Plaintiffs were responsible for payment of those costs. Reimbursement of costs, and payment of attorneys' fees, was contingent upon a successful outcome, to be paid pursuant to an order of the Court from the amounts, if any, recovered from

the Defendants. If no recovery was achieved for the Class, Class Counsel agreed to absorb all of the costs of litigating the Action, and would receive no attorneys' fees.

5. The undersigned represents that the three named Plaintiffs support Class Counsel's Fee Application.

6. SGT maintained, and continues to maintain, an attorney-client relationship with each of the three named plaintiffs—Anthony Diaz, Bruce Sypniewski and Daisy Gmitter. None of the representations herein are intended to waive any attorney-client privilege, nor should any representations herein be construed as subject-matter waiver of attorney-client privilege.

7. SGT, as Class Counsel, has been involved in all aspects of the prosecution and resolution of the Action since its inception, is the only firm appointed as Class Counsel in the Action, and, to date, remains the only firm with an appearance on behalf of the Plaintiffs or the Class.

8. SGT's work in this matter included extensive pre-filing investigation and research into the potential misuse of multi-dose insulin pens at Griffin Hospital between September 2008 and May 7, 2014. As part of that investigation, SGT sought and obtained documents relating to the Connecticut Department of Public Health's and Center for Medicare Services' investigations into the conduct at issue in this matter via Freedom of Information Requests.

9. SGT attorneys conducted legal research to determine potential causes of action and assessed whether this matter could be certified as a Class Action. In addition, factual and legal research was done by SGT attorneys to determine whether there have been similar incidents at other healthcare facilities and whether any litigation was brought relating to such incidents. Additional research was done to determine whether Class Members sustained a cognizable injury under Connecticut law.

10. SGT retained and consulted with qualified expert witnesses in furtherance of prosecuting this claim, including medical experts in the areas of nursing, infectious disease, pharmacology and phlebotomy as well as an expert regarding hospital administration.

11. SGT attorneys expended significant time conducting legal research and drafting pleadings to: (a) defend against the Defendants' Motion to Strike; (b) support the Plaintiffs' Motion for Class Certification, (c) oppose Defendants' attempted interlocutory appeal; (d) oppose Defendants' Motion to Reargue/Reconsider; and, (e) compel production of responsive materials from the Defendants during the course of written discovery.

12. SGT attorneys reviewed thousands of pages of documents in furtherance of pursuing the Class Members' claims, including the Defendants' document productions, the three named Plaintiffs' medical records and materials relating to multi-dose insulin pens.

13. SGT attorneys prepared for, conducted and/or defended fourteen (14) separate depositions taking place during the course of fifteen (15) sessions. Many of these depositions were of sophisticated and senior healthcare providers who were employees and/or agents of the Defendants, including, but not limited to, the CEO and President of the defendant entities and the Director of Pharmacy.

14. SGT attorneys expended considerable time preparing for and conducting settlement negotiations in this matter, including the drafting and submission of mediation statements as well as extended discussions with Attorney Patrick Noonan, the private mediator that was engaged following the retirement of the Honorable Linda Lager.

15. SGT attorneys also devoted significant time to the drafting, editing and finalizing the Settlement Agreement and accompanying documents, including the Motion for Preliminary

Approval, Long Form Notice, Short Form Notice, Opt-Out Form, Claim Form and proposed Order.

16. The summary of time contained within this Declaration sets forth the amount of time spent by each SGT attorney involved in this Action who devoted thirty (30) or more hours to this Action from its inception through, and including, September 18, 2023 (the date of the filing of the Final Proposed Order Preliminarily Approving the Proposed Settlement Agreement). *See* Proposed Order, dated September 18, 2023 (Entry No. 283.00).

17. The lodestar calculation for those individuals set forth herein is based on SGT's current hourly rates, which are set in accordance with paragraph 20 below. For personnel who are no longer employed by SGT, the lodestar calculation is based upon the hourly rate for such personnel at the time they last worked on this matter. The time set forth herein was prepared from records prepared and maintained by SGT.

18. As one of the lead attorneys prosecuting this matter on behalf of SGT, I reviewed these records to prepare this Declaration. The purpose of this review was to confirm both the accuracy of the time and expenses and the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made in the exercise of counsel's judgment including reductions made for various electronic mail correspondences, telephone calls, internal office meetings and other miscellaneous items. In addition, all time expended in preparing this application for fees and expenses has been excluded.

19. Following this review and the adjustments made, I believe that the time reflected in the Firm's lodestar calculation and the expenses for which payment is sought as stated in this Declaration are reasonable in amount and were necessary for the effective and efficient

prosecution and resolution of the litigation. In addition, based on my and my Firm's experience in similar litigation, the expenses are all of a type that would normally be billed to a fee-paying client in the private legal marketplace.

20. The hourly rates of those SGT attorneys that worked thirty hours (30) or more hours on this matter are as follows: (a) Ernest F. Teitell, Esq.– $875 per hour; (b) Marco A. Allocca, Esq. – $600 per hour; (c) Sarah Ricciardi Russell, Esq – $400 per hour; (d) Zachary A. Rynar, Esq. – $325 per hour[1]

21. The hourly rates for the aforementioned SGT attorneys are the same as, or comparable to, the rates submitted by SGT and accepted by courts for lodestar cross-checks in other class action litigation fee applications recently submitted by this Firm.

22. My Firm's rates are set based on periodic analysis of rates used by law firms performing comparable work and that have been approved by courts. Different personnel within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the Firm, years in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our Firm and other law firms.

23. The total number of hours expended on this Action by SGT from its inception through and including September 18, 2023, is 1,067.5 hours. The total lodestar for SGT for that period is $676,075.00. My Firm's lodestar figures are based upon the Firm's hourly rates, which do not include litigation costs.

24. The number of hours expended by each SGT attorney that worked more than thirty (30) hours on this matter with associated lodestar calculations are as follows:

[1] Attorney Rynar no longer works with SGT and this reflects his hourly rate at the time he last worked on this matter.

NAME	HOURS	HOURLY RATE	LODESTAR
Ernest F. Teitell	242.5	$875.00	$212,187.50
Marco A. Allocca	689.5	$600.00	$413,700.00
Sarah Ricciardi Russell	82	$400.00	$32,800.00
Zachary A. Rynar	53.5	$325.00	$17,387.50
Total	**1,067.5**		**$676,075.00**

25. In addition to those attorneys that worked on this matter, a dedicated paralegal has devoted substantial time to this matter since its inception. The paralegal was responsible for filing motions, proof-reading all court filings, setting up and scheduling depositions, calendaring and tracking deadlines, helping prepare discovery responses and compiling exhibits for depositions and court filings. That being noted, Class Counsel is not seeking to add that paralegal's work to its lodestar calculation.

26. Similarly, in addition to those attorneys listed above, there were several meetings and consultations within the Firm with other SGT lawyers that are not included in the above lodestar calculation.

27. None of the attorneys listed herein and including in my Firm's lodestar for the Action are (or ever were) "contract attorneys." All attorneys and employees of the Firm listed herein work at SGT's offices at One Landmark Square, 15th Floor, Stamford, CT 06901 or remotely during relevant times (*i.e.* during the height of the pandemic). Except for the partners listed herein, all of the other attorneys listed are (or were) W-2 employees of the Firm and were not independent contractors issued Form 1099s. Thus, the Firm pays FICA and Medicare taxes on their behalf, along with state and federal unemployment taxes. These employees are (or were)

fully supervised by SGT's partners and have (or had) access to secretarial, paralegal, and information technology support. SGT also assigns an email address to each attorney or other employee it employs, including those listed herein.

28. SGT is seeking payment for a total of $55,602.30 in expenses incurred in connection with the prosecution of this Action from its inception through and including September 18, 2023. The following is additional information regarding the expenses:

CATEGORY	AMOUNT
Court Fees	$1,124.20
Service of Process	$144.70
Experts	$19,750.00
Depositions / Transcript Fees / Records	$18,615.82
Mediation	$9,700.89
Copying Charges / Administrative Costs / Travel	$2,630.71
Class Administration Costs	$3,635.98
TOTAL	**$55,602.30**

29. The charges for experts include amounts incurred by SGT to locate and retain expert witnesses as to issues relating to liability, causation and damages in this matter. SGT relied on these expert consultations to both initiate this matter pursuant to the requirements set forth in Connecticut General Statutes § 52-190a, as well as for advice throughout the litigation and to ensure that the Plaintiffs could sustain their burden of proof.

30. The deposition and transcript fees reflect the costs associated with conducting several depositions, as well as receiving transcripts and video from those depositions.

31. The mediation costs reflect my Firm's share of the fees paid to the mediator during the extended negotiations that occurred during this matter.

32. The Copying, Administrative Costs and Travel include expenses relating to technical support, travel to and from depositions and meetings and copying associated with deposition exhibits and discovery responses.

33. Class Administration Costs reflect my Firm's share of the costs associated with establishing Class notice prior to the Settlement Agreement.

34. The expenses incurred in this Action are reflected in the records of my Firm, which are regularly prepared and maintained in the ordinary course of business. These records are prepared from expense vouchers, check records, and other source materials and are an accurate record of the expenses incurred.

35. The Settlement provides for a One Million Dollar ($1,000,000.00) cash payment (the "Settlement Fund") to the Settlement Class, and, if approved, would resolve the Action. In addition to providing relief to the Settlement Class now, the Settlement avoids the substantial risk, expense, and delay of continuing the Action and proceeding to trial, including the risk that the Settlement Class would recover less than the amount of the Settlement Fund at trial, or nothing at all, after additional years of litigation.

36. The Settlement was the product of arm's length negotiations among experienced counsel. The Class Representatives and Class Counsel had a thorough understanding of the strengths and weaknesses of the claims asserted in the Action at the time they reached the Settlement.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on November 13, 2023.

MARCO A. ALLOCCA, ESQ.

Before me personally appeared MARCO A. ALLOCCA, ESQ., who swore to the truth and accuracy of the foregoing, this 13th day of November, 2023.

Commissioner of the Superior Court