DOCKET NO.: FST-CV21-6054676-S	:	SUPERIOR COURT
SARAH KENT, and ALISON PACTONG, individually and on behalf of all other similarly situated,	:	JUDICIAL DISTRICT OF
	:	STAMFORD/NORWALK
Plaintiff,	:	
VS.	:	AT STAMFORD
WOMEN'S HEALTH USA, INC., IN VITRO SCIENCES, LLC, CENTER FOR ADVANCED REPRODUCTIVE SERVICES, P.C., and REPRODUCTIVE MEDICINE ASSOCIATES OF CONNECTICUT, P.C.,	:	
Defendants.	:	OCTOBER 17, 2022

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS AND EXPENSES AND FOR CLASS REPRESENTATIVE SERVICE AWARDS

I. INTRODUCTION

Through the efforts of Plaintiffs Sara Kent and Alison Pactong ("Plaintiffs" or "Class Representatives"), and Plaintiffs' counsel ("Settlement Class Counsel"), a settlement totaling $2,850,000 ("Settlement Fund")[1] was reached with Defendant Center for Advanced Reproductive Services, P.C. ("CARS"), Defendant Reproductive Medicine Associates of Connecticut, P.C. ("RMACT"), Defendant In Vitro Sciences, LLC ("IVS"), and Defendant Women's Health USA, Inc. ("WHUSA") (collectively, "Defendants").

Plaintiffs respectfully move for an order: (1) awarding Settlement Class Counsel attorneys' fees of one-third of the Settlement Fund, or $950,000; (2) awarding $3,441.84 in unreimbursed litigation costs and expenses incurred in the prosecution of this litigation; and (3) authorizing a

[1] Unless otherwise stated, all capitalized terms used herein are as defined in the Settlement Agreement, which was attached as Exhibit A to the Memorandum in Support of Motion for Preliminary Approval (Docket Entry 116.00).

service award of $10,000 to each of the Class Representatives. For the reasons set forth herein, Settlement Class Counsel respectfully submit that the requested fee, expenses, and service awards are reasonable and fair under both Connecticut and Second Circuit precedent regarding class action litigation.

II. BACKGROUND

Plaintiffs allege that Defendants engaged in an anticompetitive scheme from 2004 to 2021, which resulted in them and all other members of the proposed Settlement Class ("Class Members") paying artificially inflated prices for assisted reproductive technology ("ART") services. Plaintiffs further allege that Defendant IVS jointly negotiated reimbursement rates that Defendant CARS and Defendant REMACT would receive from insurance companies for the ART services they offered, thus ensuring the two otherwise-competitors would not compete on price and other competitively significant terms. As a direct result, Plaintiffs allege that they and all other Class Members paid more for ART services in Connecticut than they would have paid in a competitive market. Defendants deny the allegations and maintain that they have agreed to settle this action to avoid the burden and expense of prolonged litigation.

On May 27, 2022, the parties reached a settlement whereby Defendants agreed to make a non-reversionary payment of $2,850,000 to the Settlement Class. On July 19, 2022, the Court entered an order ("Preliminary Approval and Notice Order"): (1) preliminarily approving the settlement; (2) certifying the proposed Settlement Class; (3) appointing Plaintiffs as Class Representatives and their counsel as Settlement Class Counsel; (4) approving the form and manner of the notice plan and authorizing notice to the proposed Settlement Class; and (5) scheduling a Fairness Hearing to consider final approval of the settlement and other matters, including

Plaintiffs' motion for attorneys' fees, costs and expenses, and service awards for the Class Representatives.[2]

III. SUMMARY OF WORK PERFORMED TO DATE

In summary, Settlement Class Counsel have:

- Conducted an extensive factual and legal investigation regarding the alleged scheme whereby Defendants artificially inflated the cost of ART services;
- Prepared and filed the initial and amended class action complaints against Defendants;
- Engaged in vigorous, arm's-length settlement negotiations with counsel for Defendants;
- Prepared the settlement agreement;
- Drafted the settlement notices, orders, and preliminary approval motion and memorandum in support thereof;
- In conjunction with the settlement administrator, designed and disseminated the class notices and claim forms, and created and maintained a settlement website; and,
- Drafted the final approval motion and memorandum in support thereof.

The foregoing does not include the significant time Settlement Class Counsel have spent and will continue to devote to overseeing the claims process, speaking with class members, coordinating with the settlement administrator regarding same, and the preparation of the motion seeking the Court's authorization to distribute the Net Settlement Fund to the Settlement Class.

[2] Plaintiffs are filing a separate motion for final approval and supporting memorandum contemporaneously with the filing of the instant motion.

IV. CLASS NOTICE

Pursuant to Practice Book §§ 9-8 and 9-9 (and consistent with Federal Rule of Civil Procedure 23), summary notice of the proposed settlement with Defendants was mailed to putative Class Members on September 2, 2022 ("Summary Notice"); the Summary Notice directed recipients to the settlement website where the long-form notice ("Notice") was posted. The Notice informed Class Members that Settlement Class Counsel would request an award of attorneys' fees of up to one-third of the Settlement Fund, reimbursement of expenses, and service awards of up to $10,000 for each Class Representative; the Notice also explained how Class Members could exclude themselves or object to the requests.

The deadline for objections or requests for exclusion is November 16, 2022. To date there has been only one request for exclusion and there have been no objections to the settlement, or the requests for fees, expense reimbursement, and service awards for the Class Representatives. (*See* Affidavit of Jonathan M. Jagher in Support of Plaintiffs' Unopposed Motion for Final Approval of Proposed Settlement and Proposed Plan of Distribution of Settlement Fund and Plaintiffs' Motion for Award of Attorneys' Fees, Costs and Expenses and for Class Representative Service Awards ("Jagher Aff.") at ¶14.) Settlement Class Counsel will provide the Court with a final report on objections or requests for exclusion before the fairness hearing scheduled for December 5, 2022.

V. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Section 9-9 of the Practice Book and Federal Rule of Civil Procedure 23(h) authorize courts to "award reasonable attorney's fees and nontaxable costs." Practice Book § 9-9(f)(1); *see also* Fed. Civ. P. 23(h). Because the sections of Connecticut's Practice Book relating to class actions are largely patterned after Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"), Connecticut

courts often look to Rule 23 and federal case law interpreting it for guidance in deciding class-related issues. *See Collins v. Anthem Health Plans, Inc.*, 275 Conn. 309, 322-23, 880 A.2d 106, 114 (2005) ("Because our class certification requirements are similar to those embodied in [R]ule 23 of the Federal Rules of Civil Procedure, and our jurisprudence governing class actions is relatively undeveloped, we look to federal case law for guidance in construing the provisions of Practice Book §§ 9-78 and 9-8"); *Rivera v. Veterans Mem'l Med. Ctr.*, 262 Conn. 730, 737, 818 A.2d 731, 736 (2003) ("We note at the outset that our class action jurisprudence is sparse … Our class action requirements, however, are similar to those applied in the federal courts. … Thus, we look to federal case law for guidance in construing our class certification requirements"). As discussed above, Settlement Class Counsel complied with the requirements of Rule 23(h)(1) and (2) (*i.e.*, notice to the class of the attorneys' fees request and an opportunity to object). What remains for the Court to determine is whether the requested fee is reasonable and fair to Class Members and Settlement Class Counsel under the circumstances of this case. As discussed below, Settlement Class Counsel's fee request of one-third of the Settlement Fund in this case is reasonable and well-supported by applicable law.

A. Settlement Class Counsel Is Entitled to a Reasonable Fee

The Supreme Court has held that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Central States Southeast & Southwest Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 249 (2d Cir. 2007) (same). The rationale is to compensate counsel fairly and adequately for their services and to prevent unjust enrichment of persons who benefit from a lawsuit without shouldering its costs. The Connecticut Supreme Court has specifically affirmed this rationale. *Town of New Hartford v. Connecticut Res. Recovery Auth.*, 291 Conn. 511, 517-18,

970 A.2d 583, 588-89 (2009) (citing *Boeing* for proposition that "persons who obtain the benefit of a lawsuit without contributing to its cost are unjustly enriched at the successful litigant's expense."). In addition, courts have recognized that awards of fair attorneys' fees from a common fund should serve to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes of persons, and therefore to discourage future misconduct of a similar nature. *See Hicks v. Morgan Stanley & Co*., 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("To make certain that the public is represented by talented an experienced trial counsel, the remuneration should be both fair and rewarding.") (citation omitted).

Two common methods have been used by courts around the country for calculating attorneys' fees in a common fund case: the percentage method and the lodestar method. The percentage method awards counsel a percentage of the total recovery obtained for the class, while the lodestar method multiplies the number of hours reasonably billed by the reasonable hourly rate (the "lodestar"). *See Savoie v. Merchants Bank*, 166 F.3d 456, 460 (2d Cir. 1999). Under the latter method, a court may adjust the "lodestar," applying a multiplier after considering such factors as the quality of counsel's work, the probability of success of the litigation and the complexity of the issues. *See In re Agent Orange Product Liab. Litig*., 818 F.2d 226, 232 (2d Cir. 1987). The enhancement of lodestar amounts by a factor of 4-5 is common. *Towns of New Hartford & Barkhamsted v. Connecticut Res. Recovery Auth*., No. CV040185580S(X02), 2007 WL 4634074, at *6, 10 (Conn. Super. Ct. Dec. 7, 2007).

The Supreme Court has suggested that the percentage-of-the-fund is the appropriate method for awarding fees under the common fund doctrine. *See Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984) ("[U]nder the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class . . . ."). Most federal courts of appeals – including

the Second Circuit – have also endorsed the percentage-of-the-fund method as an appropriate method for determining an award of attorneys' fees in common fund cases.[3] *See Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 48-49 (2d Cir. 2000).

This is consistent with the ruling in *Towns of New Hartford & Barkhamsted*, where the court, after carefully reviewing recent jurisprudence from various federal cases from First, Second, Third, Sixth, Seventh, Ninth and Tenth Circuits on the subject, concluded that the fee award in a common fund case should be set as a percentage of the common fund, rather than the older "lodestar" method. 2007 WL 4634074, at *8 (citing federal cases). *See also Archbold v. Wells Fargo Bank, N.A.*, No. 3:13-CV-24599, 2015 WL 4276295, at *5 (S.D.W. Va. July 14, 2015) ("[T]here is a clear consensus among the federal and state courts, consistent with Supreme Court precedent, that the award of attorneys' fees in common fund cases should be based on a percentage of the recovery."). In reaching this conclusion, the court in *Towns of New Hartford & Barkhamsted* found that the percentage method was simpler and more efficient, allowed for consideration of the same factors used to determine the appropriate multiplier in a lodestar case, and avoided "'an unanticipated disincentive to early settlements' created by the lodestar method." 2007 WL 4634074, at *8 (quoting *Goldberger*, 209 F.3d at 48-49). "The percentage method 'is designed to allow courts to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.'" *Deem v. Ames True Temper, Inc.*, No. 6:10-CV-01339, 2013 WL 2285972, at *5

[3] *See, e.g.*, *Heien v. Archstone*, 837 F.3d 97, 100 (1st Cir. 2016); *Goldberger v. Integrated Res., Inc*., 209 F.3d 43, 49-50 (2d Cir. 2000); *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 821-22 (3d Cir. 1995); *Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 644 (5th Cir. 2012); *Rawlings v. Prudential-Bache Props., Inc*., 9 F.3d 513, 515-16 (6th Cir. 1993); *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019); *Vizcaino v. Microsoft Corp*., 290 F.3d 1043, 1047-50 (9th Cir. 2002); *Gottlieb v. Barry*, 43 F.3d 474, 487 (10th Cir. 1994); *Camden I. Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991); *Swedish Hosp. Corp. v. Shalala*, 1 F.3d 1261, 1268-70 (D.C. Cir. 1993).

(S.D.W. Va. May 23, 2013) (quoting *In re Prudential Ins. Co. Am. Sales Litig.*, 148 F.3d 283, 333 (3d Cir. 1998)).

As shown above, Settlement Class Counsel's request that the Court use the percentage method is consistent with Connecticut and federal precedent. As explained below, the factors courts consider when assessing percentage of the fund requests demonstrates the reasonableness of the requested fee.

B. The Requested Fee Award is Fair and Reasonable

In *Goldberger*, the Second Circuit set forth six factors for courts to consider when determining the reasonableness of a fee request resulting from a common fund recovery: (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 result; and (6) public policy concerns. 209 F.3d at 50. *See Town of New Hartford*, 291 Conn. at 515 and n.6, 970 A.2d at 587.

1. Settlement Class Counsel Obtained an Excellent Result for the Class

"The first and most important factor for a court to consider when making a fee award is the result achieved." *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 843 (E.D. Va. 2016); *see also Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983) ("[T]he most critical factor is the degree of success obtained."). To evaluate the "quality of representation," courts applying the *Goldberger* factors have "review[ed] the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *In re Merrill Lynch Tyco Research Sec. Litig.*, 246 F.R.D. 156, 174 (S.D.N.Y. 207) (citation omitted). Plaintiffs respectfully submit that the result achieved here – a $2,850,000 non-reversionary payment to the Settlement Class – is excellent. Indeed, assuming a 100% participation rate, each Class Member would receive approximately $120 after payment of the requested fees,

expenses, and service awards. This represents a substantial amount of the alleged overcharge resulting from the Settling Defendants' artificial inflation of the cost for ART services. Further, the proposed settlement provides resolution now instead of years from now and assures payment in a complex case where success is far from guaranteed. Accordingly, this *Goldberger* factor supports the fairness and reasonableness of Plaintiffs' requested fee award.

2. The Risks of Litigation

As addressed more fully in Plaintiffs' memorandum in support of final approval, risk is inherent in any litigation, but especially in class actions. So, while Plaintiffs are optimistic about the outcome of this litigation, they must acknowledge the risk that any or all Defendants could prevail with respect to certain legal or factual issues, which could reduce or eliminate any potential recovery. *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 324 (3d Cir. 2011) (settlement represents a compromise that takes into account risks, expense and delay of further litigation); *In re Telectronics Pacing Sys. Inc.*, 137 F. Supp. 2d 985, 1013 (S.D. Ohio 2001) (settlement avoids costs, delays, and multitude of other problems associated with complex class actions). Defendants are represented by highly experienced and competent counsel. They deny Plaintiffs' allegations of liability and damages and would vigorously oppose Plaintiffs' motions for class certification and assert numerous defenses. Plaintiffs believe the Defendants are prepared to defend this case through trial and appeal, if necessary.

As the proposed settlement with the Defendants has not yet been finally approved, it is not appropriate to discuss with any specificity Settlement Class Counsel's analysis of the risks of litigation as Defendants could seek to use any such disclosures against Plaintiffs if the proposed settlement is not approved. Settlement Class Counsel believe that at this point it is sufficient to state that complex antitrust litigation of this scope has certain inherent risks that the settlement negates. Antitrust class actions have a well-deserved reputation for being "notoriously complex,

protracted, and bitterly fought." *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989); *see also Wal-Mart*, 396 F.3d at 122 (2d Cir. 2005) ("[A]ntitrust cases, by their nature, are highly complex"); *Virgin Atl. Airways Ltd. v. Brit. Airways PLC*, 257 F.3d 256, 263 (2d Cir. 2001) (noting "factual complexities of antitrust cases"). Even if this case resulted in a future recovery for the Settlement Class, it likely would follow a prolonged, hard-fought battle involving motions to dismiss, extensive fact and expert discovery, class certification, summary judgment motions, motions for reconsideration, and appeals, whereas approval of the proposed settlement will result in immediate, certain, and meaningful relief. *See Cardiology Assocs., P.C., Pension Plan Trust v. Nat'l Intergroup, Inc.*, 1987 WL 7030, at *3 (S.D.N.Y. Feb. 13, 1987) (if matter is fully litigated and appealed, any recovery would be years away). Thus, this *Goldberger* factor supports the requested fee award.

3. The Relationship of the Requested Fee to the Settlement

A request of one-third is "typical of awards in this Circuit." *Bozak v. FedEx Ground Package Sys., Inc.*, No. 3:11-CV-00738-RNC, 2014 WL 3778211, at *7 (D. Conn. July 31, 2014); Capsolas v. Pasta Resources Inc., No. 10 Civ. 5595, 2012 WL 4760910, at *8 (S.D.N.Y. Oct. 5, 2012) (fee request of one-third is "consistent with the norms of class litigation in this circuit") (internal quotation marks omitted); *Willix v. Healthfirst Inc.*, No. 07 Civ. 1143, 2011 WL 754862, at *7 (E.D.N.Y. Feb. 18, 2011) (same); *see also Towns of New Hartford & Barkhamsted*, 2007 WL 4634074, at *5 (finding that established class action case law supports a percentage award of attorneys' fees of 25% or more from recoveries producing a common fund for the benefit of the class members); *McCullough v. Waterside Assocs.*, No. CV010183809S, 2005 WL 757988, at *6 (Conn. Super. Ct. Feb. 23, 2005) (finding an agreement to pay an attorney a one-third contingency fee, is reasonable and acceptable). Accordingly, the percentage fee requested in relation to the settlement here is reasonable and consistent with the precedent in the Second Circuit.

4. The Complexities and Magnitude of the Litigation

This case is a class action lawsuit affecting artificially inflated prices for ART services, which impacted more than 15,000 Class Members. The complexities involved in this litigation weigh in favor of awarding the requested fee to Plaintiffs' counsel for several reasons, including the uncertainty of the legal claims and the likelihood of long and difficult litigation, as discussed above. The costs and risks associated with litigating this case to a verdict, not to mention through the inevitable appeals, would have been high, and the process would require many hours of the Court's time and resources. Further, as mentioned above, a favorable result for Class Members is far from certain because of the inherent litigation risks; moreover, even a successful verdict would lead to inevitable post-trial motions and appeals, which would deny Class Members any recovery for years. *Hicks*, 2005 WL 2757792, at *6 ("Further litigation would necessarily involve further costs [and] justice may be best served with a fair settlement today as opposed to an uncertain future settlement or trial of the action."); *Strougo v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("even if a shareholder or class member was willing to assume all the risks of pursuing the actions through further litigation … the passage of time would introduce yet more risks … and would, in light of the time value of money, make future recoveries less valuable than this current recovery"). This factor likewise supports the requested fee award.

5. Considerations of Public Policy

Public policy considerations support the requested fee. Where individual class members suffer real damages, but the amount at issue is too small in comparison to the costs of litigation to justify filing an individual suit, "the class action mechanism and its associate percentage-of recovery fee award solve the collective action problem" and allow plaintiffs an opportunity to obtain redress. *Hicks*, 2005 WL 2757792, at * 9. As the *Hicks* court further observed, "[t]o make certain that the public is represented by talented and experienced trial counsel, the remuneration

should be both fair and rewarding." *Id*.; *see also Bozak*, 2014 WL 3778211, at *6-7 ("Where relatively small claims can only be prosecuted through aggregate litigation, and the law relies on prosecution by 'private attorneys general,' attorneys who fill that role must be adequately compensated for their efforts"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 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."). This factor supports the requested fee award.

6. Reaction of the Class

Although not a formal *Goldberger* factor, the reaction by the Class Members is entitled to great weight by the Court. *See In re Xcel Energy, Inc., Sec., Deriv. & "ERISA" Litig.*, 364 F. Supp. 2d 980, 996 (D. Minn. 2005) (number and quality of objections enables court to gauge reaction of class to request for award of attorneys' fees). "[N]umerous courts have [noted] that the lack of objection from members of the class is one of the most important . . ." factors in determining reasonableness of the requested fee. *In re Prudential Sec. Ltd. P'ships Litig.*, 985 F. Supp. 410, 416 (S.D.N.Y. 1997) (internal quotations omitted); *see also New Hartford*, 291 Conn. at 515 (noting with approval that trial court had found there were no objections to the proposed fee award). Here, Summary Notice was mailed to 19,063 Class Members, and the recipients were directed to the settlement website to review the long form Notice. (Jagher Aff. ¶ 14.) The Notice informed Class Members that Settlement Class Counsel would request an award of attorneys' fees of up to one-third of the Settlement Fund, reimbursement of expenses, and service awards of up to $10,000 for each Class Representative; the Notice also explained how Class Members could exclude themselves or object to the requests. Although objections and requests to opt out are not due until November 16, 2022, as of the date of this filing, no Class Member has filed an objection

to the settlement or to Plaintiffs' request for fees, expenses, or service awards; and only one Class Members has opted out. (*Id*. ¶ 15.) This factor also supports the requested fee award.

7. Class Counsel's Time and Lodestar

To the extent the Court deems it relevant, Settlement Class Counsel and the other firms representing the Plaintiffs and the Settlement Class collectively spent 665.15 hours on this litigation with a total lodestar of $487,739.25. (Jagher Aff. at ¶ 19.) Accordingly, the fee sought constitutes a 1.95 multiple of this lodestar. Such a multiple is well within, if not below, the range of those approved in other cases. *See*, *e.g.*, *Towns of New Hartford & Barkhamsted*, 2007 WL 4634074, at *10 ("In cases where counsel have undertaken a difficult matter on a contingency basis and have secured a favorable result for the class, the normal multiplier is 4-5 times the lodestar.") (citing *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, No. 05 CIV 10240 CM, 2007 WL 2230177, at *17 (S.D.N.Y. July 27, 2007)); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 (2d Cir. 2005) (finding a multiplier of 3.5 to be reasonable). As in *Town of New Hartford*, there can be no question of counsel obtaining a "windfall." *See* 291 Conn. at 515 & n.6. This case has been hard-fought, and counsel devoted 665.15 hours of time to achieve a substantial recovery for Class Members.

VI. THE EXPENSES PLAINTIFFS' COUNSEL INCURRED WERE REASONABLE AND NECESSARY TO THE EFFECTIVE PROSECUTION OF THIS ACTION

"It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advance to a class." *In re Veeco Instruments Inc. Sec. Litig.*, 2007 WL 4115808, at *10 (S.D.N.Y. Nov. 7, 2007). Settlement Class Counsel requests reimbursement for $3,441.84 in expenses they incurred while prosecuting this action. (Jagher Aff. at ¶ 20.) Plaintiffs' counsel reviewed these expenses carefully and determined that these expenses were reasonably incurred and were necessary to the successful prosecution of this action.

VII. THE REQUESTED SERVICE AWARDS ARE REASONABLE

Plaintiffs and Settlement Class Counsel respectfully submit that Plaintiffs Sara Kent and Alison Pactong should each receive a $10,000 service award in recognition of the time and effort they each contributed to the prosecution of this litigation. As with the fee request, the service award request was subject to arm's-length negotiations between the parties and was specifically disclosed to Class Members: the long-form Notice expressly states that Plaintiffs will seek up to $10,000 as service awards (*see* Exhibit B to Memorandum in Support of Plaintiffs' Motion for Final Approval of Proposed Settlement and Proposed Plan of Distribution of Settlement Fund, at pg. 5), and no objection has been received to date. (Jagher Aff. At ¶ 15.) Providing service awards to consumers who come forward to represent a class is a necessary and important component of any class action settlement. *See Hall v. ProSource Technologies, LLC*, No. 14 Civ. 2502 (SIL), 2016 WL 1555128, at *9 (E.D.N.Y. Apr. 11, 2016) ("Courts regularly grant requests for service awards in class actions to compensate plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.") (internal quotations and citations omitted); *Viafara v. MCIZ Corp.*, No. 12 Civ. 7452 (RLE), 2014 WL 1777438, at *16 (S.D.N.Y. May 1, 2014); *Elliot v. Leatherstocking Corp.*, No. 10 Civ. 0934 (MAD) (DEP), 2012 WL 6024572, at *7 (N.D.N.Y. Dec. 4, 2012). Plaintiffs voluntarily submitted themselves to public scrutiny by bringing a class action claim concerning sensitive matter. Moreover, Plaintiffs have been highly motivated and involved in prosecuting this litigation. (Jagher Aff. at ¶¶ 22-23.) Plaintiffs consulted regularly with Settlement Class Counsel regarding the conduct of this case. (*Id.*) Awards of equal or greater amounts than $10,000 are routinely awarded by courts to compensate representative class plaintiffs for their efforts. *See*, *e.g.*, *Gray v. Found. Health Sys., Inc.*, No. X06CV990158549S, 2004 WL 945137, at *4 (Conn. Super. Ct. Apr. 21, 2004) (approving awards of $23,333 for each plaintiff);

Norflet v. John Hancock Life Ins. Co., 658 F. Supp. 2d 350, 354 (D. Conn. 2009) (awarding $20,000 to named plaintiff as "reasonable and equitable" for the time she spent "working with Settlement Class Counsel to prosecute and resolve this case").

Without Plaintiffs' willingness to serve in this litigation on behalf of the Settlement Class, the favorable settlement for the entire class would not have been possible. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 189 (W.D.N.Y. 2005) ("public policy favors such an award. As already noted, were it not for this class action, many of the plaintiffs' claims likely would not be heard."). Plaintiffs' participation was substantial and indispensable.

VIII. CONCLUSION

For the reasons discussed above, Plaintiffs respectfully request that the Court: (1) award Settlement Class Counsel $950,0000, one-third of the Settlement Fund, as attorneys' fees; (2) order reimbursement of litigation costs and expenses incurred by Plaintiffs' counsel in the amount of $3,441.84; and (3) award each Class Representative a service award of $10,000.

Dated: October 17, 2022

Respectfully submitted,

THE PLAINTIFFS,
SARAH KENT and ALISON PACTONG, individually and on behalf of all others similarly situated,

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Counsel for Plaintiffs and the Class

CERTIFICATION

I hereby certify that a copy of the above was mailed or electronically delivered on this 17th day of October, 2022 to all counsel and pro se parties of record and that written consent for electronic delivery was received from all counsel and pro se parties of record who were electronically served including:

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Docket Number:	FST-CV-21-6054676-S
Case Name:	KENT, SARAH v. WOMEN'S HEALTH USA, INC. Et Al
Type of Transaction:	Pleading/Motion/Other document
Date Filed:	Oct-17-2022
Motion/Pleading by:	AETON LAW PARTNERS LLP (433168)
Document Filed:	122.00 MEMORANDUM IN SUPPORT OF MOTION For Counsel Fees
Date and Time of Transaction:	Monday, October 17, 2022 4:42:06 PM

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