UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

CHAIM LERMAN, ROSLYN WILLIAMS, and JAMES VORRASI, individually and on behalf of others similarly situated, Plaintiffs, v. APPLE INC., Defendant.	Hon. Sterling Johnson, Jr. Hon. Lois Bloom 15-cv-07381 (SJ) (LB)

NOTICE OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES TO CLASS COUNSEL AND SERVICE AWARDS TO THE PLAINTIFFS

PLEASE TAKE NOTICE tht pursuant to Federal Rule of Civil Procedure 23(e) and this Court's Order Certifying Settlement Class; Granting Preliminary Approval of Class Action Settlement; and Approving Form and Content of Class Notice (Dkt. No. 157), Plaintiffs Chaim Lerman, Roslyn Williams and James Vorrasi (collectively "Plaintiffs"), by their undersigned counsel, respectfully move this Court for entry of an Order granting an award of attorneys' fees, reimbursement of litigation expenses to Class Counsel, and awards to Plaintiffs.

This motion is based upon the accompanying Memorandum of Law, the Declaration of Michael Grunfeld and the exhibits thereto, which are filed contemporaneously herewith, and other such matters and argument as the Court may consider at the hearing on this motion. Plaintiffs will file a proposed final order and judgment with their reply, to account fully for any requests for exclusion or objections received by the August 25, 2022 and August 29, 2022 deadlines.

Dated: August 11, 2022

Respectfully submitted,

*/s/ Michael Grunfeld*_____
Jeremy A. Lieberman
Michael Grunfeld
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100
Facsimile: (212) 661-8665
Email: jalieberman@pomlaw.com
Email: mgrunfeld@pomlaw.com

Peretz Bronstein
Eitan Kimelman
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
60 East 42nd Street, Suite 4600
New York, New York 10165
Telephone: (212) 697-8209
Facsimile: (212) 697-7296
Email: peretz@bgandg.com
Email: eitank@bgandg.com

Counsel for Plaintiffs and the Class

CERTIFICATE OF SERVICE

I hereby certify that on this, the 11th day of August, 2022, a true and correct copy of the foregoing was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF System.

/s/ Michael Grunfeld
Michael Grunfeld

UNITED STATES DISTRICT COURT
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CHAIM LERMAN, ROSLYN WILLIAMS, and JAMES VORRASI, individually and on behalf of others similarly situated, Plaintiffs, v. APPLE INC., Defendant.	Hon. Sterling Johnson, Jr. Hon. Lois Bloom 15-cv-07381 (SJ) (LB)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF LITIGATION EXPENSES TO CLASS COUNSEL AND SERVICE AWARDS TO THE PLAINTIFFS

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Pursuant to Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs Chaim Lerman, Roslyn Williams and James Vorrasi (collectively "Plaintiffs") submit this memorandum of law in support of their motion for an award of attorneys' fees, reimbursement of expenses, and awards to Plaintiffs.[1]

I. INTRODUCTION

As discussed in detail in the memorandum of law in support of final approval of the class action settlement, filed concurrently with this motion, Pomerantz LLP and Bronstein, Gewirtz & Grossman, LLC (collectively, "Class Counsel") achieved an excellent $20 million settlement on behalf of the Class that provides for substantial monetary relief. The Settlement was achieved after more than six years of hard-fought litigation, including, among other steps, briefing and decisions on Apple's Motion to Dismiss, Plaintiffs' Motion for Class Certification and related *Daubert* briefing, Apple's Rule 23(f) petition to the Second Circuit Court of Appeals, extensive facts and expert discovery at the class certification and merits phases of this litigation, and extensive arm's length negotiations with the assistance of a retired federal magistrate judge acting as a mediator. Class Counsel had to overcome significant opposition from Apple at every turn, as described further below. Class Counsel now moves for attorneys' fees of 33.33% of the Settlement fund ($6,666,000) and the reimbursement of $2,809,371.74 in litigation expenses. Class Counsel also requests incentive awards of $15,000 for each Plaintiff (totaling $45,000) for their contributions to, and active participation in, the action as the court-appointed Class Representatives.

As the record demonstrates, the favorable outcome in this case is the result of Class Counsel's hard work and diligent efforts. The amount requested in fees and expenses for Class

[1] Terms not defined herein have the same meaning as in the Settlement Agreement and Release (the "Settlement Agreement," ECF No. 155-3).

Counsel fairly and reasonably compensates them for over six years of hard work and diligent efforts in litigating and negotiating a resolution to this matter, as well as their unreimbursed expenses.[2] The requested amount is in line with Second Circuit precedent in terms of both the percentage-of-recovery and lodestar methods for calculating attorneys' fees in class action litigation, as described further below.

In addition, Class Counsel's requested fees are supported even further by the New York General Business Law and New Jersey Consumer Fraud Act, which are the basis for Plaintiffs' claims. Both statutes provide for the recovery of reasonable attorneys' fees. The fee request should be granted so that Class Counsel receive the fees that they are entitled to by statue.

Indeed, because of the extraordinary amount of effort that Class Counsel was required to put into this litigation over more than six years, the requested fees come out to the extremely low multiplier of just 1.13 times Class Counsel's lodestar. Class Counsel's fee request is particularly warranted given how much effort went into successfully litigating this action to such an advanced stage, as described further below. It is even more supported by the complexity of this case that involved the application of consumer class action principles and consumer protection law to the operation of Apple's advanced iOS 9 software on the iPhone 4S. Based on the Plaintiffs' contributions to the Action and incentive awards in other cases, the incentive awards requested for Plaintiffs are also warranted.

The Honorable Diane M. Welsh (Ret.), who served as the mediator for this Settlement, wholly supports Class Counsel's fee and expense request. *See* Welsh Decl. at ¶¶17-19. This

[2] Plaintiffs respectfully refer to the Declaration of Michael Grunfeld in Support of Final Approval ("Grunfeld Final Approval Decl.") filed herewith, the Declaration of Michael Grunfeld in Support of Motion for Preliminary Approval filed on May 3, 2022 (ECF No. 155-2, "Grunfeld Preliminary Approval Decl."), and the Declaration of Mediator Hon. Diane M. Welsh (Ret.) ("Welsh Decl.," Ex. 4 to the Grunfeld Final Approval Decl.) for a detailed description of the history of the case, the claims asserted, the work Class Counsel performed, the settlement negotiations, and the risks and uncertainties of the litigation.

position of the parties' highly respected mediator provides even more reason for the Court to approve Class Counsel's requested fees and expenses.

For all of these reasons, as described further below, the Court should grant Plaintiffs' motion for the award of attorneys' fees and litigation expenses to Class Counsel and incentive awards to Plaintiffs.

II. ARGUMENT

A. The Requested Award of Attorneys' Fees is Reasonable

The Supreme Court, the Second Circuit, and district courts within this Circuit have all recognized that where counsel's efforts have created a "common fund" for the benefit of a class, counsel should be compensated from that fund. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 354 (S.D.N.Y. 2005).

Attorneys' fee awards from common funds both encourage representatives to seek redress for damages caused to an entire class of persons and prevent that class from being unjustly enriched by the representative's success. *See Boeing*, 444 U.S. at 478; *Goldberger*, 209 F.3d at 47; *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 122 (2d Cir. 2005) (approving of district court's decision "that the *Goldberger* factors compel an 'extraordinary' fee under these circumstances: lead counsel devoted tremendous time and labor to this case for seven years"). Awards of reasonable "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." *In re Veeco Instruments Inc. Sec. Litig.*, No. 05 MDL 01695CM, 2007 WL 4115808, at *2 (S.D.N.Y. Nov. 7, 2007); *see also Hicks v. Stanley*, No. 01 CIV. 10071 (RJH), 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("'To make certain that

the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.'").

1. The Requested Fee is Fair and Reasonable Under the Percentage-of-Recovery Method and the *Goldberger* Factors

The Supreme Court has consistently held that courts may employ the percentage-of-recovery approach to determine attorneys' fees in common fund cases. *See Blum v. Stenson*, 465 U.S. 886, 900, n.16 (1984). In *Goldberger*, 209 F.3d at 50, the Second Circuit examined the history of the alternative methods for calculating attorneys' fees and expressly approved the percentage-of-recovery method for awarding fees from a common fund. Indeed, "[t]he trend in this Circuit is toward the percentage method" when awarding attorneys' fees in common fund cases. *Wal-Mart*, 396 F.3d at 121 (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.").

In *Goldberger*, the Second Circuit set forth the six factors that courts should consider in determining whether a fee request is reasonable:

> (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.

209 F.3d at 50 (citation omitted). Each of these factors supports the fee requested here.

a. The Time and Labor Expended by Class Counsel Support the Requested Fee

Class Counsel has worked strenuously for more than six years to achieve the Settlement, expending 10,172.48 hours for an aggregate lodestar of 5,896,792.50. *See* Declaration of Michael Grunfeld on behalf of Pomerantz LLP Concerning Attorneys' Fees and Expenses ("Grunfeld Fee Decl.," Ex. 2 to the Grunfeld Final Approval Decl.) at ¶6; Declaration of Peretz Bronstein on behalf

of Bronstein, Gewirtz & Grossman, LLC Concerning Attorneys' Fees and Expenses ("Bronstein Fee Decl.," Ex. 3 to the Grunfeld Final Approval Decl.) at ¶6. To litigate this action, Class Counsel: (1) investigated the claims in the initial complaints, as amended by the Second Amended Class Action Complaint (the "Complaint," ECF No. 18); (2) successfully defeated Apple's Motion to Dismiss the Complaint; (3) successfully moved for class certification and defeated related *Daubert* motions; (4) successfully defeated Apple's attempt to move for summary judgment before the class certification stage; and (5) successfully defeated Apple's Rule 23(f) Petition to the Second Circuit. *See* Grunfeld Final Approval Decl. at ¶19; Grunfeld Fee Decl. at ¶4; Bronstein Fee Decl. at ¶4.

These victories were supported by extensive discovery efforts at both the class certification and merits stages, including (1) reviewing over 48,000 documents—spanning over 539,000 pages—much of which contain highly technical language and data produced by Apple; (2) conducting depositions of eleven different Apple employees across several departments; (3) coordinating discovery for Plaintiffs, including their responses to Apple's many discovery requests and defending their depositions; (4) retaining experts who produced reports covering the functionality of iOS 9 on the subject iPhone 4S device, its impact on consumers, and damages; (5) taking the depositions of Apple's experts, and defending the depositions of Plaintiffs' experts, at the class certification stage; (6) engaging in extensive meet-and-confer correspondence with Apple's counsel concerning the parameters of discovery; (7) defeating Apple's multiple motions to compel discovery from Plaintiffs at the class certification stage and successfully bringing a motion to compel Apple to produce additional documents at the merits stage; (8) drafting a detailed mediation statement; (9) attending a full-day mediation; and (10) documenting and seeking the Court's approval of the Settlement. *See* Grunfeld Final Approval Decl. at ¶20; Grunfeld Fee Decl. at ¶4; Bronstein Fee Decl. at ¶4.

Further, this Action involved a multitude of complex legal and factual issues related to the operation of Apple's highly technical and advanced iOS software on the iPhone 4S. Grunfeld Final Approval Decl. at ¶21. Class Counsel was therefore required to spend a significant amount of time and labor to develop Plaintiffs' case in order to achieve this substantial Settlement. For example, at the Class Certification stage, Class Counsel had to review documents that Apple produced concerning the performance if iOS 9 on the iPhone 4S, take the 30(b)(6) depositions of four Apple employees related to this issue, and consult with Plaintiffs' experts to establish an effective methodology for preliminarily testing the performance of iOS 9 on the iPhone 4S as compared to iOS 7 and 8, as well as a methodology for measuring damages on a class-wide basis. *Id*. Class Counsel also had to review highly technical expert reports that Apple produced on these topics, take the depositions of Apple's technical and damages experts, and defend the depositions of Plaintiffs' experts. *Id*. In addition, Class Counsel prepared extensive briefing opposing Apple's *Daubert* challenges to Plaintiffs' experts and making *Daubert* challenges against Apple's experts. *Id*. These activities required a considerable understanding of the very complicated technological and legal issues related to the performance of iOS 9 on the iPhone 4S, as well as the advanced economic and statistical issues related to damages. *Id.*

Then Class Counsel was required to expend even more effort during merits discovery. Grunfeld Final Approval Decl. at ¶22. Apple did not collect and produce email correspondence from its employees until the merits stage of this action.[3] *Id.* Class Counsel reviewed these hundreds of thousands of pages of documents that were replete with highly technical language concerning the performance of iOS 9 on the iPhone 4S. *Id*. This was particularly challenging given that Plaintiffs sought to show common performance issues across the many iOS versions at issue. *Id.*

[3] Nearly all of the approximately 539,000 pages of documents that Apple produced were at the merits stage.

Class Counsel then took the depositions of eight Apple employees at the merits stage based on Class Counsel's review of these documents covering highly technical and complicated topics related to the performance of iOS 9 on the iPhone 4S. Grunfeld Final Approval Decl. at ¶23. Information gained from these exhaustive discovery efforts enabled Class Counsel to guide the work of their experts in determining the issues that were most relevant to this action. *Id.*

In addition, Class Counsel conducted extensive legal research in order to understand how the New York General Business Law and the New Jersey Consumer Fraud Act, as well as consumer class action principles, apply to smartphone updates such as iOS 9 on the iPhone 4S. Grunfeld Final Approval Decl. at ¶24. A thorough understanding of this vast amount of evidence and these significant legal issues allowed Class Counsel to draft a detailed mediation statement that clearly explained the complex issues in this case and, ultimately, led to the Settlement with Apple following extensive, hard-fought and arm's length negotiations facilitated by the mediator, the Hon. Diane Welsh (Ret.). *Id.* at ¶28; Welsh Decl.

Beyond the extensive time and labor involved due to the complexities of this action, Class Counsel had to expend significant time and resources defending against Apple's vigorous opposition at every turn. Grunfeld Final Approval Decl. at ¶29. For example, Apple brought motions that sought to compel Plaintiffs to provide irrelevant evidence related to their personal backgrounds and to expand Plaintiffs' depositions beyond their evidentiary purpose. *Id*. Class Counsel defeated these attempts. *Id*.

In addition, Apple sought leave to move for summary judgment before class certification briefing. Grunfeld Final Approval Decl. at ¶30. This required Plaintiffs to oppose Apple's premature request, including with a detailed Rule 56.1 statement. *Id*. The Court denied Apple's motion without prejudice. *Id.*

Apple also vigorously contested the scope of discovery. Grunfeld Final Approval Decl. at ¶31. Class Counsel spent a significant amount of time engaged in meet-and-confer calls and written correspondence with Apple's counsel discussing the parameters of discovery. *Id*. These efforts enabled Class Counsel to obtain substantial sets of documents from Apple that they would not have received if they accepted the more limited set of materials that Apple proposed. *Id*. Class Counsel also brought a motion to compel Apple to produce documents that the parties could not agree upon after their lengthy meet-and-confer correspondence. *Id*. The Court granted this motion in significant part, which led to Class Counsel obtaining even more evidence from Apple. *Id*.

In addition, Class Counsel would have conducted mediation earlier in the merits stage of this litigation, but Apple did not agree to mediation until after fact discovery was complete and Plaintiffs served their merits expert reports. Grunfeld Final Approval Decl. at ¶32. All of this case history shows that Apple's fierce opposition at each step of the litigation added substantial effort and expense that Plaintiffs and Class Counsel needed to expend on their prosecution of this action.

Moreover, Class Counsel's work will not end with the filing of the accompanying motion seeking final approval of the Settlement, or even with the Court's approval of the Settlement. Class Counsel will spend more time and resources drafting and filing a reply brief in further support of the Settlement, preparing for and appearing at the Final Approval Hearing scheduled for September 22, 2022, overseeing the claims process and distribution of the Settlement Funds to Settlement Class Members, and responding to Settlement Class Members' inquiries. Grunfeld Final Approval Decl. at ¶45; *see Aponte v. Comprehensive Health Mgmt., Inc.*, 2013 WL 1364147, at *7 (S.D.N.Y. Apr. 2, 2013) ("That Class Counsel's fee award will not only compensate them for time and effort already expended, but for time that they will be required to spend administering the settlement going forward, also supports their fee request."). Class Counsel will seek no

additional compensation for this work. *See In re Facebook, Inc. IPO Sec. & Deriv. Litig.*, 2015 WL 6971424, at *10 (S.D.N.Y. Nov. 9, 2015) ("Considering that the work in this matter is not yet concluded for Plaintiffs' counsel who will necessarily need to oversee the claims process, respond to inquiries, and assist Class Members in submitting their Proof of Claims, the time and labor expended by counsel in this matter support a conclusion that a 33% fee award in this matter is reasonable."), *aff'd sub nom. In re Facebook, Inc.*, 674 F. App'x 37 (2d Cir. 2016).

As such, the time and labor that Class Counsel invested in this litigation supports the requested fee.

b. The Magnitude and Complexities of the Litigation Support the Requested Fee

The magnitude and complexity of this litigation support the requested fee award. Consumer class action lawsuits by their very nature are complex, expensive, and lengthy. *See, e.g.*, *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 239 (E.D.N.Y. 2010). If this action had not settled, continued litigation would have included additional motion practice, as Apple has made clear its intention to move for summary judgment, move to decertify the Class, and continue to strenuously contest this case through trial and appeals. Grunfeld Final Approval Decl. at ¶35.

Furthermore, as described above, the nature of the claims asserted, in of themselves, are highly complex. Plaintiffs allege that the operation of Apple's technical and advanced iOS software negatively impacted the performance of its iPhone 4S devices. Grunfeld Final Approval Decl. at ¶21. To substantiate these claims, Class Counsel was required to retain experts at the class certification and merits stages who studied the functionality of the subject iPhone 4S device, the impact of iOS 9 on the iPhone 4S on consumers, and damages. *Id.* at ¶20. These two experts were deposed at the class certification stage by Apple, which subsequently challenged their methodologies in *Daubert* motions. *Id* at ¶¶20-21. In addition, as described above, Class Counsel

reviewed over 48,000 documents—spanning over 539,000 pages—many of which contained highly technical information concerning the operation of iOS 9 on the iPhone 4S. *See supra* at 5.

Also as described above, Class Counsel conducted extensive legal research into how the New York General Business Law, the New Jersey Consumer Fraud Act, and consumer class action principles apply to smartphone updates such as iOS 9 on the iPhone 4S. Grunfeld Final Approval Decl. at ¶24. For example, this case involved novel issues that required applying established consumer class action principles "to the nascent phenomenon of hardware that depends on periodic software updates." *See* Class Certification Reply (ECF No. 102) at p. 14); *see also* Grunfeld Final Approval Decl. ¶¶25-27. The application of these legal issues to the operation of iOS 9 on the iPhone 4S was the focus of the parties' briefing on Apple's Motion to Dismiss, Plaintiffs' Motion for Class Certification and related *Daubert* motions, Apple's Rule 23(f) Petition, and the topics raised in fact and expert discovery. Grunfeld Final Approval Decl. at ¶24. A review of the extensive briefing in support of, and in opposition to, these motions, as well as the Court's decisions on these motions, highlights the complexity of the issues involved. *Id.*

Additionally, by any measure, the magnitude of this case is substantial, fully justifies Class Counsel's investment of time and labor, and fully merits the requested fee award. There are approximately 1.5 million potential Settlement Class Members and a settlement fund of $20,000,000 to pay their claims, attorneys' fees, and expenses. *See* accompanying Memo in Support of Plaintiffs' Unopposed Motion for Final Approval at 9 & n.4. The Settlement calls for Settlement Class Members to recover $15 dollars per applicable device. Grunfeld Final Approval Decl. at ¶16. Based on the number of claims submitted, this can increase to a maximum of $150 per device. *Id*. This represents a substantial recovery for Settlement Class Members, especially when considering Apple's position that even if Apple were liable (which Apple vehemently

contests), damages would not exceed $15 per applicable device because that is the price at which Apple argued that an iPhone 4S could be purchased on the secondary market when iOS 9 was released to the public in September 2015. *Id.* at ¶17.

For all of the foregoing reasons, the complexity and magnitude of the litigation weighs in favor of granting Class Counsel's fee and expense requests.

c. The Risks of the Litigation Support the Requested Fee

The requested fee is also reasonable because Class Counsel obtained a highly favorable result though it faced substantial risks. "[T]he risk of success [is] 'perhaps the foremost' factor to be considered" in determining a reasonable fee. *Goldberger*, 209 F.3d at 54. "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." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 470 (2d Cir. 1974). In applying this factor, "'litigation risk must be measured as of when the case is filed,' rather than with the hindsight benefit of subsequent events." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (quoting *Goldberger*, 209 F.3d at 55).

This Court has recognized that "class actions confront even more substantial risks than other forms of litigation." *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354 at *5 (E.D.N.Y. June 24, 2010) (quoting *In re Metlife Demutualization Litig.*, 689 F.Supp.2d 297, 361 (E.D.N.Y.2010)). Further, courts have described as "misplaced" attorneys' confidence that they can predict with any degree of certainty the outcome of litigation. *State of W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743–44 (S.D.N.Y. 1970), *aff'd,* 440 F.2d 1079 (2d Cir. 1971). That court pointed to two instances in which it had disapproved of proposed settlements only for the plaintiffs to recover nothing or less than the settlement the defendants had offered. *Id.*

So too here, Plaintiffs and Class Counsel face the risk that after litigation this action for over six years, they could have summary judgment entered against them, have a decision entered against them at trial or on appeal, or win a judgment that is less than the Settlement amount. From the outset, Class Counsel understood they were embarking on a complex, expensive, and likely lengthy litigation with no guarantee of ever being compensated for the substantial investment of time and money the case would require. Grunfeld Final Approval Decl. at ¶42.

This action was particularly risky given the technical nature of the claims at issue and the related challenges in establishing and measuring damages, which required the retention of several experts. *Id.* at ¶¶20-21 and 33. In undertaking that responsibility, Class Counsel ensured that sufficient resources were dedicated to the action and that funds were available to compensate staff and to cover the expenses the case would require. *Id.* at ¶42. With an average lag time of several years for a case like this to conclude, the financial burden on Class Counsel was greater than those for a firm paid on an ongoing basis, as defense counsel were. *See In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010); *Khait v. Whirlpool Corp.*, 2010 WL 2025106 at *9 (E.D.N.Y. Jan. 20, 2010) (emphasizing Class Counsel risked time, effort, advanced costs, and expenses, with no ultimate guarantee of compensation). Indeed, Class Counsel received no compensation from this case during the litigation and have incurred $2,809,371.74 in expenses in prosecuting this action for the benefit of the Settlement Class. *Id.* at ¶41; Grunfeld Fee Decl. at ¶7; Bronstein Fee Decl. at ¶7.

The risk of continuing this litigation is heightened by Apple's insistence that if the parties did not settle, Apple would move for summary judgment, move to decertify the Class, and continue to strenuously contest this case through trial and appeals. As Apple explained in its statement in support of the Settlement, "[h]ad the matter not settled, the parties would have had to complete

merits expert discovery, brief summary judgment and related *Daubert* motions, brief Apple's motion to decertify the Class, prepare for trial, conduct a complex trial, and prosecute and defend appeals." ECF No. 156. This statement contains a substantive explanation of why "Apple is confident that if this litigation were to continue, it would prevail on its defense of all of the plaintiffs' claims" at summary judgment, trial, or appeal. *Id.* at 2-3. While Plaintiffs are confident in the merits of their claims, there is no guarantee that they would prevail in the face of Apple's fierce opposition.

Despite these many uncertainties, Class Counsel undertook this case on a wholly contingent basis. They did so knowing that the litigation could last for years and would require the devotion of a substantial amount of time and litigation expenses. Class Counsel's assumption of this contingency fee risk strongly supports the reasonableness of the requested fee.

d. The Quality of Class Counsel's Representation Supports the Requested Fee

The quality of Class Counsel's representation can be measured mainly by the results achieved. Here, the goals of the litigation were to obtain monetary recovery for consumers in New York and New Jersey who downloaded iOS 9 on their iPhone 4S devices as a result of allegedly false and misleading marketing. For the reasons described above and in Plaintiffs' accompanying motion in support of final approval, the Settlement achieves this significant goal due, in large part, to Class Counsel's extensive efforts and vigorous advocacy on behalf of the Settlement Class.

When determining whether requests for fees and expenses are fair, the standing and prior experience of Class Counsel is relevant. *See, e.g.*, *Grinnell*, 495 F.2d at 470; *Eltman v. Grandma Lee's, Inc.*, 1986 WL 53400, at *4 (E.D.N.Y. May 28, 1986). Plaintiffs and the Settlement Class are represented by Pomerantz LLP ("Pomerantz") and Bronstein, Gewirtz & Grossman, LLC ("Bronstein"). As their firm résumés demonstrate, Pomerantz and Bronstein have extensive

experience and stellar reputations in class actions and consumer litigation. Courts regularly praise their efforts on behalf of the class in complex class actions. *See, e.g., In re Petrobras Sec. Litig.*, 312 F.R.D. 354, 362 (S.D.N.Y. 2016) ("[O]n the basis not only of [the Firm's] prior experience but also the Court's observation of its advocacy over the many months since it was appointed lead counsel, the Court concludes that Pomerantz, the proposed class counsel, is 'qualified, experienced and able to conduct the litigation.'"); *In re Comverse Tech., Inc. Sec. Litig.*, 2010 WL 2653354 at *6 (E.D.N.Y. June 24, 2010) ("The court also notes that, throughout this litigation, it has been impressed by [Pomerantz's] acumen and diligence. The briefing has been thorough, clear, and convincing, and as far as the court can tell, [Pomerantz] has not taken short cuts or relaxed its efforts at any stage of the litigation."); *Duncan v. Joy Global, Inc. el als.*, No. 2:16-01229, ECF No. 81 (E.D. Wis. Jan. 4, 2019) (approving settlement and explaining in reference to Bronstein that "it's always a pleasure to work with people who are experienced and who know what they are doing and are professional and who go about their work in a professional manner. So your clients were blessed to have you . . ."); *In re Toronto-Dominion Bank Sec. Litig.*, No. 1:17-cv-01665, ECF No. 130 (D.N.J. Oct. 10, 2019) ("[T]his settlement appears to have been obtained through the hard work of the Pomerantz firm"). Class Counsel leveraged its experience and resources to assess the merits and value of this case and negotiate the Settlement.

The quality and vigor of opposing counsel is also important in evaluating the services rendered and challenges overcome by Class Counsel. *See, e.g.*, *In re KeySpan Corp. Sec. Litig.*, No. 01 CV 5852(ARR), 2005 WL 3093399, at *12 (E.D.N.Y. Sept. 30, 2005); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."). Apple was represented by DLA Piper, one of the top class action defense firms in

the country. Grunfeld Final Approval Decl. at ¶39. That Class Counsel achieved the Settlement while opposed by formidable attorneys further justifies the fee they request.

Moreover, the positive reaction by Settlement Class Members confirms the quality of Class Counsel's representation. *See Flag Telecom*, 2010 WL 4537550, at *29 (explaining that "numerous courts have noted that the lack of objection from members of the class is one of the most important factors in determining the reasonableness of a requested fee"). The Settlement Class overwhelmingly favors the Settlement. To alert potential Settlement Class Members of the Settlement, the Settlement Administrator sent 1,350,780 copies of the E-mail Notice to potential Settlement Class Members, mailed 389,872 copies of the Postcard Notice to potential Settlement Class Members who could not be reached via e-mail, and posted the Notice of Pendency and Proposed Settlement of Class Action ("Long Notice") and Proof of Claim and Release Form on the Settlement Administrator's website, along with a form for online claim filing and a list of important deadlines. Declaration of Luiggy Segura of JND Legal Administration (Ex. 1 to the Grunfeld Final Approval Decl.) at ¶¶11, 13 and 17. Each of these notices, as well as the subsequent notices that JND is sending, tell potential Settlement Class Members that they could exclude themselves from the Settlement or object to any part thereof. *Id*. at ¶¶23-27. As of August 11, 2022, less than three weeks before the deadline to object or opt out, the Settlement Administrator and Class Counsel have received only three requests for exclusion and no objections to the Settlement or Class Counsel's requests herein. *Id*. at ¶¶28-30; Grunfeld Final Approval Decl. at ¶18. Accordingly, this factor weighs strongly in favor of the reasonableness of the requested fee.

e. The Requested Fee is Supported in Relation to the Settlement

In the Second Circuit, the amount of the attorneys' fees awarded in class actions under the percentage methodology is often one-third of the settlement amount before accounting for costs expenses. *See Torres v. Gristede's Operating Corp.*, 519 F. App'x 1, at 6 (2d Cir. 2013) (holding

"the district court did not abuse its discretion by awarding attorney's fees in an amount exceeding one-third of the settlement's pecuniary value"); *In re Restasis (Cyclosporine Ophthalmic Emulsion) Antitrust Litig.,* 2022 WL 3043103, at *9 (E.D.N.Y. Aug. 2, 2022) (approving an "attorneys' fee award of $10,000,000, which is one-third of the settlement amount," noting class counsel's experience, successful prosecution of the action, and the fact that "[d]uring their court appearances before me and in their written submissions, they were thorough, diligent, and professional as they prosecuted this complex, discovery-intensive, and expert-dependent action"); *Tony Luib v. Henkel Consumer Goods Inc.*, No. 1:17-cv-03021, ECF Nos. 57, 60 (E.D.N.Y. 2019) (settlement granting class counsel's 33% fee request); *Puglisi v. TD Bank, N.A.*, 2015 WL 4608655 at *1 (E.D.N.Y. July 30, 2015) (awarding 33.3% of $9.9 million settlement fund); *Khait*, 2010 WL 2025106 at *7-9 (awarding 33% of $9.25 million settlement fund and holding that "Class Counsel's request for 33% of the Fund is reasonable and "***consistent with the norms of class litigation in this circuit***" (emphasis added) (citing cases)); *Maley v. Del Global Techs. Corp.*, 186 F. Supp. 2d 358, 374 (S.D.N.Y. 2002) (awarding 33.3% of $11.5 million settlement fund); *In re Dental Supplies Antitrust Litig.*, No. 1:16-cv-00696-BMC-GRB, Minute Order (E.D.N.Y. June 25, 2019) (approving attorneys' fees of one-third of $80,000,000 settlement). As one court recently noted, "courts in this circuit have routinely awarded attorney's fees amounting to 33% of the settlement amount." *Chen v. XpresSpa at Terminal 4 JFK LLC*, 2021 WL 4487835, at *7 (E.D.N.Y. Oct. 1, 2021).[4]

[4] *See also Schnall v. Annuity & Life Re (Holdings) Ltd.*, No. 3:02-cv-02133, ECF No. 192 (D. Conn. Jan. 21, 2005) (awarding 33.3% of $16.5 million settlement, plus expenses); *Rapoport-Hecht v. Seventh Generation, Inc.*, 2017 WL 5508915 at *3 (S.D.N.Y. Apr. 28, 2017) (awarding 33.3% of $4.5 million settlement fund); *Raniere v. Citigroup Inc.*, 310 F.R.D. 211, 216, 220–22 (S.D.N.Y. 2015) (approving fee request for one-third of settlement amount); *In re APAC Teleservices Inc. Sec. Litig.*, No. 97 Civ. 9145, ECF No. 58 at *2 (S.D.N.Y. Dec. 10, 2001) (awarding 33.3% of $21 million settlement).

The requested $6,666,000 award for attorneys' fees, which is one-third, or 33.33%, of the $20 million Settlement amount, is therefore consistent with the percentage of the settlement amount that courts within the Second Circuit routinely approve. This amount is particularly supported here because (as described above, *see supra* at pp. 4-10, and below in the discussion of the lodestar cross-check, *see infra* at pp. 18-21) this action was especially complex and challenging given the complicated nature of the legal and factual issues involved and the contentious litigation spanning over six years. To obtain the $20 million Settlement in this case, Class Counsel had to dedicate a significant amount of their time and resources toward substantiating the Class's claims while overcoming Apple's challenges at every turn.[5]

The Honorable Diane M. Welsh (Ret.), the mediator for this Settlement, wholly supports Class Counsel's fees request based on all of the effort they expended to successfully litigate this action from its inception through Apple motion to dismiss, the class certification process, Apple's Rule 23(f) petition, and merits discovery. Welsh Decl. at ¶¶15-18. Class Counsel's request for attorneys' fees in the amount of 33.33% of the Settlement amount is therefore particularly warranted.

f. Public Policy Considerations Support the Requested Fee

Public policy considerations weigh in favor of granting Class Counsel's requested fees. In awarding attorneys' fees, the Second Circuit "take[s] into account the social and economic value

[5] If a portion of the Settlement amount is awarded to *cy pres* recipients, which will not be able to be determined until later in the settlement process, those funds are included in the settlement amount used in the calculation of attorneys' fees under the percentage-of-the-recovery method. *See Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 437 (2d Cir. 2007) (holding that "[a]n allocation of fees by percentage should therefore be awarded on the basis of the total funds made available"); *Jones v. Monsanto Co.*, 38 F.4th 693, 700 (8th Cir. 2022) (affirming district court's "including the amount allocated *cy pres* in calculating the attorney's fee").

of class actions, and the need to encourage experienced and able counsel to undertake such litigation." *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999).

Courts have recognized that fee awards in cases like this serve the dual purposes of encouraging "private attorney[s] general" to seek redress for violations and discouraging future misconduct of a similar nature. *See Deposit Guar. Nat'l Bank v. Roper*, 445 U.S. 326, 338–39 (1980). Through this action, Plaintiffs have operated as private attorneys general to police false advertising claims. Only Plaintiffs' and Class Counsel's willingness to bring this litigation has provided the Settlement Class with compensation for the significant decline in the performance of their iPhone 4S devices that they alleged and prosecuted throughout this litigation.

An award of attorneys' fees helps to ensure that "plaintiffs' claims [will] . . . be heard." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 189 (W.D.N.Y. 2005). If courts denied sufficient attorneys' fees "no attorneys . . . would likely be willing to take on" this type of class action. *Id.*; *see also In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 524 (E.D.N.Y. 2003), *aff'd sub nom*, *Wal-Mart Stores*, 396 F.3d 96 (explaining that as a matter of public policy, fees "must . . . serve as an inducement for lawyers to make similar efforts in the future"). Public policy considerations therefore support approval of the attorneys' fees requested by Class Counsel.

2. The Requested Fee is Reasonable Under the Lodestar Cross-Check

This Court may also consider whether the requested fee determined under the percentage approach is consistent with an award that would result under the lodestar/multiplier approach. *Grinnell*, 495 F.2d at 470-71. The lodestar is calculated by multiplying the number of hours expended on the litigation by each particular attorney or paralegal by their current reasonable and customary hourly rate and totaling the amounts for all timekeepers. Additionally, a multiplier is typically applied to the lodestar, which "represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *Glob.*

Crossing, 225 F.R.D. at 468 (citing *Goldberger*, 209 F.3d at 47); *see also Comverse Tech.*, 2010 WL 2653354, at *5 ("Where . . . counsel has litigated a complex case under a contingency fee arrangement, they are entitled to a fee in excess of the lodestar"). When performing a lodestar "cross-check," the hours documented "need not be exhaustively scrutinized." *Goldberger*, 209 F.3d at 50.

Here, Class Counsel devoted a total of 10,172.48 hours to the prosecution of the action, resulting in a lodestar of $5,896,792.50. Grunfeld Final Approval Decl. at ¶40; Grunfeld Fee Decl. at ¶¶5-6; Bronstein Fee Decl. at ¶¶5-6. Based on the requested fee of $6,666,000, the lodestar multiplier is 1.13. Grunfeld Final Approval Decl. at ¶40; Grunfeld Fee Decl. at ¶9; Bronstein Fee Decl. at ¶9. All of this work was necessary based on the steps that Class Counsel were required to take to successfully litigate this case from the filing of the initial complaint through Apple's motion to dismiss, Plaintiffs' motion for class certification, Apple's Rule 23(f) petition, merits discovery, and all of the other steps described above. *See supra* at pp. 4-10.

The 1.13 multiplier here is a very favorable figure that falls far below multipliers typically approved by courts in this Circuit and around the country in complex class actions. *See e.g., Thompson v. Cmty. Bank, N.A.*, 2021 WL 4084148, at *12 (N.D.N.Y. Sept. 8, 2021) (awarding 2.576 lodestar multiplier); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) (holding 5.85 multiplier "is within the range of acceptable multipliers"); *Woburn Ret. Sys. v. Salix Pharms., Ltd.*, 2017 WL 3579892, at *6 (S.D.N.Y. Aug. 18, 2017) (awarding lodestar multiplier of 3.14); *Hall v. ProSource Techs., LLC*, 2016 WL 1555128, at *17 (E.D.N.Y. Apr. 11, 2016) (approving a lodestar multiplier of 2.08); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 447–48 (E.D.N.Y. 2014) (holding that "with a fee award of $544.8 million, and a lodestar of about $160 million, the

multiplier is about 3.41," which is "comparable to multipliers in other large, complex cases"); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) (holding that "the lodestar sought by Class Counsel, approximately 6.3 times, falls within the range granted by courts and equals the one-third percentage being sought"); *In re EVCI Career Colleges Holding Corp. Sec. Litig.*, 2007 WL 2230177 at *17 n. 17 (S.D.N.Y. July 27, 2007) (explaining that "[l]odestar multipliers of nearly 5 have been deemed 'common' by courts in this District."); *Comverse*, 2010 WL 2653354, at *5 (awarding fee representing a 2.78 multiplier); *In re AT&T Corp.*, 455 F.3d 160, 173 (3d Cir. 2006) (holding multiplier of 2.99 was reasonable in a case that lasted four months even when "discovery was virtually nonexistent"); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 363–64, 373 (S.D.N.Y. 2002) (awarding 4.65 multiplier in a case that settled after one year); *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (awarding attorney's fees representing a multiplier of 5.2).

The hourly rates used by Class Counsel to arrive at the lodestar calculation are the firms' current, customary rates. Grunfeld Final Approval Decl. at ¶43; Grunfeld Fee Decl. at ¶5; Bronstein Fee Decl. at ¶5. Courts in this District and Circuit have approved Class Counsel's requests for attorneys' fees based on the same or similar rates as those submitted here. *See, e.g., Too v. Rockwell Medical, Inc.*, No. 18-cv-04253-ARR-RER, ECF No. 65 (E.D.N.Y. Feb. 26, 2020); *Pirnik v. Fiat Chrysler Automobiles N.V.*, No. 15-cv-07199-JMF, ECF No. 369 (S.D.N.Y. Sept. 5, 2019); *In re Jumia Techs. S.A. Sec. Litig.*, Case No. 1:19-cv-04397-PKC, ECF No. 128 (S.D.N.Y. Mar. 24, 2021); *see also Christine Asia Co. v. Yun Ma*, No. 115MD02631CMSDA, 2019 WL 5257534, at *17 (S.D.N.Y. Oct. 16, 2019); *Chu v. BioAmber, Inc.*, No. 17-cv-1531-JMA-AKT, ECF No. 68 (E.D.N.Y. Dec. 14, 2020). Additionally, Class Counsel submits that the

rates billed for their attorneys are comparable to peer defense-side law firms litigating matters of similar magnitude. Grunfeld Final Approval Decl. at ¶44.

Thus, the time and effort Class Counsel have devoted to this case to obtain the $20 million Settlement confirms that the requested fee is reasonable, whether calculated as a percentage of the fund or in relation to Class Counsel's lodestar.

3. The Requested Fee is Further Supported by the NYGBL and NJCFA's Provisions for Attorneys' Fees

Class Counsel's requested fees are supported even further because the New York General Business Law ("NYGBL") and New Jersey Consumer Fraud Act (NJCFA"), which are the basis for Plaintiffs' claims, both provide for the recovery of reasonable attorneys' fees. *See* NYGBL §§ 349 and 350-e ("The court may award reasonable attorney's fees to a prevailing plaintiff"); NJCFA § 56:8-19; *see also Kurtz v. Kimberly-Clark Corp.*, 321 F.R.D. 482, 526 (E.D.N.Y. 2017) (quoting NYGBL provision that "[t]he court may award reasonable attorney's fees to a prevailing plaintiff" and noting that statutory damages "is $50 or $500 per purchase plus attorneys' fees"); *Doe v. Bank of Am., N.A.*, No. CV 16-3075, 2018 WL 5005004, at *3 (D.N.J. Oct. 15, 2018) (holding "[t]he NJCFA provides for attorneys' fees, filing fees, and costs to a prevailing party").

In fact, the awarding of reasonable attorneys' fees is ***required*** under the NJCFA, which provides that "the court *shall* also award reasonable attorneys' fees, filing fees and reasonable costs of suit." NJCFA § 56:8-19. For example, in *Monteleone v. Nutro Co.*, No. CV 14-801 (ES) (JAD), 2016 WL 3566964 (D.N.J. June 30, 2016), class counsel did not even address the percentage-of-the-recovery calculation because the lodestar method was appropriate given the NJCFA's "statutory fee-shifting provision." *Id.* at *2, 6.

Class Counsel's requested fees here are reasonable based on all of the effort they expended to successfully prosecute this complex action for over six years, as described above. They should

therefore be awarded their requested fees of one-third of the Settlement amount, which is just 1.13 times the $5,896,792.50 worth of work they put into successfully litigating this action from the initial complaint through class certification and near the close of merits expert discovery. The NYGBL and NJCFA's statutory provisions for attorneys' fees therefore provide an independent basis to support Class Counsel's requested fees.

B. Reimbursement of Litigation Expenses

In addition to Class Counsel's request for a fee of 33.33% of the Settlement amount, Class Counsel seeks reimbursement of $2,809,371.74 in litigation costs and expenses incurred in connection with the prosecution of this Action. "Courts routinely grant the expense requests of class counsel." *In re Gilat Networks, Ltd.*, 2007 WL 2743675, at *18 (E.D.N.Y. Sept. 18, 2007) (quoting *KeySpan*, 2005 WL 3093399, at *18).

Class Counsel incurred $2,809,371.74 in unreimbursed expenses to prosecute this action, which is less than the $3.1 million amount described in the Long Notice. Grunfeld Final Approval Decl. at ¶41. Substantial expenses were spent on experts, electronic database charges, and depositions, among other categories that incurred lower expenses. Grunfeld Fee Decl. at ¶7; Bronstein Fee Decl. at ¶7.

Notably, the vast majority of expenses, approximately $2.56 million, are attributable to the experts that Plaintiffs retained to support their claims. These expert expenses were necessary due to the very complicated issues that needed to be addressed at both the class certification and merits stages of the action. Grunfeld Final Approval Decl. at ¶¶20-21, 25-26, 33. To substantiate Plaintiffs' claims, Class Counsel retained a computer expert to analyze the performance of iOS 9 on the iPhone 4S and a damages expert who conducted a choice-based conjoint analysis to measure class-wide damages. *Id.* at ¶ 20. At the merits stage, in response to arguments that Apple made at class certification, Class Counsel added a human factors expert who addressed how iOS 9

performed on the iPhone 4S from the consumer's perspective. *Id.* at ¶33. These experts produced reports that described the substantial work that they performed, assisted by teams acting at their direction. *Id.* at ¶¶20 and 33. For example, as the Court explained in its Class Certification Order, Dr. Nettles, Plaintiffs' computer expert, analyzed performance test results that Apple produced, conducted his own independent testing of several operations on multiple versions of iOS 7 through iOS 9, and planned to conduct even-more comprehensive testing of iOS 7 through iOS 9 at the merits phase (which he subsequently did). *See* Class Certification Decision (ECF No. 127) at pp. 4-5 and 7-8. Furthermore, Plaintiffs' two experts at the class certification stage were deposed by Apple. Grunfeld Final Approval Decl. at ¶20.

The expenses incurred are reflected in Class Counsel's books and records and were reasonable and necessary to achieve the Settlement. Grunfeld Fee Decl. at ¶¶7-8; Bronstein Fee Decl. at ¶¶7-8; *see In re MetLife*, 689 F. Supp. 2d at 364 (reimbursing "expert fees, electronic research charges, long distance telephone and facsimile charges, postage and delivery expenses, discovery costs, filing fees, photocopying, expenses associated with locating and interviewing dozens of witnesses, and out-of-town travel expenses"). Courts award Class Counsel their litigation expenses because these are costs that Class Counsel are required to pay to prosecute the action. This is particularly the case where counsel is required to spend large amounts on experts needed to opine on complicated issues. *See In re Restasis,* 2022 WL 3043103, at *9 (approving "$4,635,684 in expenses that counsel seek to reimburse, [including] almost $3.1 million [that] was spent on experts for class certification and trial"); *In re Signet Jewelers Ltd. Sec. Litig.*, No. 1:16-CV-06728-CM-SDA, 2020 WL 4196468, at *22 (S.D.N.Y. July 21, 2020) (granting request for $3,175,711.52 in expenses, including $2,004,360.72 for experts); *Christine Asia Co.*, No. 115MD02631CMSDA, 2019 WL 5257534, at *19 (approving $3,937,803.35 in expenses);

Woburn Ret. Sys. v. Salix Pharms., Ltd., 2017 WL 3579892, at *8 (S.D.N.Y. Aug. 18, 2017) (holding "the request to reimburse litigation expenses of $1,953,908.41 is reasonable" where "[t]he significant bulk of expenses went toward Lead Plaintiff's experts, as well as online legal research, and an electronic discovery vendor, among other expenses and costs"); *In re Bear Stearns Cos., Inc. Sec., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 272 (S.D.N.Y. 2012) (reimbursing over $1 million in expert expenses and over $2 million in total expenses).

There have been no objections to the expense reimbursement request, and the actual amount requested is well below the $3.1 million limit disclosed in the Notice. The Court should grant Class Counsel's request for reimbursement of reasonable and necessary litigation expenses.

C. The Proposed Awards to Plaintiffs are Reasonable

Plaintiffs also move the Court to approve incentive awards to compensate them for the extensive time and effort they committed to this action. Courts in the Second Circuit "routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive for such plaintiffs to remain involved in the litigation and to incur such expenses in the first place." *Gilat*, 2007 WL 2743675, at *19; *In re Bank of Am. Corp. Sec., Derivative, & Emp. Ret. Income Sec. Act (ERISA) Litig.*, 772 F.3d 125, 132–33 (2d Cir. 2014) (affirming the awards totaling $453,000 to lead plaintiffs).

Plaintiffs have devoted a substantial amount time to this case. Each of the Plaintiffs were deposed for a full day, spent substantial time preparing for their depositions, and spent a significant amount of time responding to Apple's discovery requests, reviewing the pleadings and other key case materials, and corresponding with Class Counsel regarding the litigation and Settlement. Grunfeld Final Approval Decl. at ¶47 and Exhibits 5-7 (Plaintiffs' Declarations). Plaintiffs therefore request an award of $15,000 each, or $45,000 total, to reimburse them for the time they

spent on this case. Such an award is "reasonable and appropriate relative to the . . . overall settlement." *MetLife*, 689 F. Supp. 2d at 370 (collecting cases); *Veeco*, 2007 WL 4115808, at *12 (awarding plaintiff approximately $15,900 for time spent supervising litigation and characterizing such awards as "routine" in this Circuit); *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *8 (E.D.N.Y. Nov. 20, 2012) (collecting cases approving service awards ranging up to $30,000 per plaintiff); *Puglisi*, 2015 WL 4608655 at *1 (approving service awards to named plaintiffs totaling $60,000). *Khait*, 2010 WL 2025106 at *7-9 (approving service awards to plaintiffs totaling $175,000); *Colabufo v. Cont'l Cas. Co*., 2009 WL 8626041 at *4 (E.D.N.Y. 2009) (awarding $15,000 service awards to each named plaintiff).

Furthermore, the Long Notice informs Settlement Class Members that Class Counsel will apply for Service Awards to Plaintiffs of up to $15,000 each. To date, no Settlement Class Member has objected to the service award requests. For the foregoing reasons, Plaintiffs respectfully request that the Court approve Plaintiffs' requested service awards.

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant the Motion for Award of Attorneys' Fees and Litigation Expenses to Class Counsel and Service Awards to the Plaintiffs, including $6,666,000 in attorneys' fees (33.33% of the Settlement Amount), $2,809,371.74 in expenses, and $15,000 as an award to each of the three Plaintiffs.

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/s/ Michael Grunfeld
Jeremy A. Lieberman
Michael Grunfeld
POMERANTZ LLP
600 Third Avenue, 20th Floor
New York, New York 10016
Telephone: (212) 661-1100

Facsimile: (212) 661-8665
Email: jalieberman@pomlaw.com
Email: mgrunfeld@pomlaw.com

Peretz Bronstein
Eitan Kimelman
BRONSTEIN, GEWIRTZ & GROSSMAN, LLC
60 East 42nd Street, Suite 4600
New York, New York 10165
Telephone: (212) 697-8209
Facsimile: (212) 697-7296
Email: peretz@bgandg.com
Email: eitank@bgandg.com

Counsel for Plaintiffs and the Settlement Class