

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

Charles Tufano, Richard Warren, and
Dave Gunton as representatives of a
class of similarly situated persons, and
on behalf of the Pride Mobility
Employee Stock Ownership Retirement
Plan,

Plaintiffs,

v.

Pride Mobility Products Corporation
and the Pride Mobility Products
Corporation ESOP Committee,

Defendants.

Case No. 3:24-cv-00765-KM

(Hon. Karoline Mehalchick)

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF THEIR UNOPPOSED MOTION FOR ATTORNEYS' FEES,
COSTS & ADMINISTRATIVE EXPENSES AND CLASS
REPRESENTATIVE COMPENSATION**

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INTRODUCTION

Plaintiffs Charles Tufano, Richard Warren, and Dave Gunton submit this Memorandum in support of their Motion for Preliminary Approval of Class Action Settlement with Defendants Pride Mobility Products Corporation and the Pride Mobility Products Corporation ESOP Committee regarding the management of the non-company-stock assets held in the Other Investments Account (“OIA”) of the Pride Mobility Employee Stock Ownership Retirement Plan (“Plan” or “ESOP”). Under the Settlement, a Gross Settlement Amount of \$2,100,000 will be paid to resolve the claims of the Settlement Class. This is a significant recovery for the Class.

To date, Class Counsel have received no payment for any of their efforts in this litigation, nor have they been reimbursed for their out-of-pocket costs advanced on behalf of the Class. All compensation to Class Counsel is contingent upon the Court’s award of fees and expenses as provided in the Settlement.

Class Counsel’s request of one-third of the settlement fund is reasonable and standard in cases such as this. “In complex ERISA cases, courts in this Circuit and others [] routinely award attorneys’ fees in the amount of one-third of the total settlement fund.” *High St. Rehab., LLC v. Am. Specialty Health, Inc.*, 2019 WL 4140784, at *13 (E.D. Pa. Aug. 29, 2019); *see also* cases cited *infra* 15.

In addition, Class Representatives, without whom there would be no

recovery, have served the Class by aiding in Class Counsel’s investigation and aiding in the mediation. For the following reasons, Plaintiffs’ Motion for Attorneys’ Fees and Costs, & Administrative Expenses, and Class Representative Compensation should be granted.

BACKGROUND

I. PROCEDURAL HISTORY

On May 7, 2024, Plaintiffs Charles Tufano and Richard Warren filed a Class Action Complaint asserting a breach of ERISA’s fiduciary duty of prudence with respect to the investment of the OIA Dkt. 1.¹ Specifically, Plaintiffs alleged Defendants should have invested the OIA in equities rather than Treasury bills and cash equivalents. On June 24, 2024, Defendants moved to dismiss the Complaint. Dkt. 24. Briefing on that motion was completed on August 12, 2024. Dkts. 26, 28.

While Defendants’ motion was pending, the Parties participated in an all-day mediation on December 3, 2024, facilitated by Judge Mark Bennett (Ret.). Dkt. 34 (“First Lee Dec.”) ¶ 12. On February 4, 2025, Plaintiffs filed a motion seeking preliminary approval of the Settlement. Dkt. 32. The Court granted that motion on February 6, 2025. Dkt. 40.

¹ The Court appointed Dave Gunton to serve as an additional Class Representative. Dkt. 40 ¶ 3.

II. SETTLEMENT

Under the terms of the Settlement, a Gross Settlement Amount of \$2.1 million will be paid to resolve the claims of the Settlement Class Members. Dkt. 34-1 (“Settlement”) §1.22. In addition, for a period of no less than three years, Pride Mobility or the Plan trustee will retain an independent investment manager to manage the OIA and its investment. *Id.* § 7.1.1. This will provide additional benefit to the Settlement Class on a prospective basis.

III. WORK OF CLASS COUNSEL

As of the date of this motion, Class Counsel has expended more than 248 hours prosecuting this matter. Class Counsel expects to invest additional time meeting with the court-appointed independent fiduciary, overseeing the Settlement administration process, responding to questions from Class Members as appropriate, preparing a motion for final approval, and attending the final approval hearing. *See* Declaration of Jennifer K. Lee in support of Plaintiffs’ Motion for Attorneys’ Fees, Expenses, & Administrative Costs, and Class Representative Service Award (“Second Lee Dec.”) ¶ 11.

A. Work conducted to date.

Prior to filing the Complaint, Class Counsel conducted an in-depth investigation of information relating to the Plan, the Plan’s investment of the OIA, the investment practices of other ESOP fiduciaries, and researched and analyzed the legal claims. Second Lee Dec. ¶ 5. As a result of these investigatory efforts,

Class Counsel drafted and filed a detailed 19-page complaint. *Id.*

Defendants moved to dismiss this action and while that motion was pending, the Parties participated in an all-day mediation on December 3, 2024, facilitated by Judge Mark Bennett (Ret.). *Id.* ¶ 7. That mediation resulted in the settlement that the Court preliminarily approved.

After negotiating the settlement, Class Counsel reviewed and revised the Settlement Agreement, and drafted the Settlement Notices, Former Participant Claim Form, and proposed preliminary and final approval orders. Second Lee Dec. ¶ 8. In addition, Class Counsel drafted Plaintiffs’ motion for preliminary approval of the Settlement. *Id.*

Class Counsel also solicited bids from qualified settlement administration firms to serve as the Settlement Administrator and selected Analytics Consulting LLC (“Analytics”) after reviewing the bids. *Id.* ¶ 9. Class Counsel then worked with Analytics and Defense counsel to identify the class members and ensures the Settlement Notices were timely mailed by Analytics. *Id.* In addition, Class Counsel worked with Analytics to create a settlement website and telephone line for Class Members who wished to obtain additional information about the Settlement. *Id.*

B. Remaining work to be performed.

Class Counsel’s work on this matter remains ongoing. Prior to the Fairness Hearing, Class Counsel will draft Plaintiffs’ motion for final approval of the

Settlement and respond to any objections. Second Lee Decl. ¶ 10. Class Counsel also will communicate with the Independent Fiduciary that has been engaged to review the Settlement, and will provide it with all necessary information in connection with its review. *Id.* Class Counsel will then attend the Fairness Hearing, and if final approval is granted, supervise the distribution of payments to eligible Class Members, which entails two rounds of distributions to ensure maximum recovery among Class Members. *Id.* In addition, Class Counsel will continue to respond to questions from Class Members and take other actions necessary to support the Settlement until the conclusion of the Settlement Period. *Id.* Class Counsel estimates this will require an additional 50–100 hours. *Id.*

IV. WORK OF CLASS REPRESENTATIVES

Mr. Tufano, Mr. Warren, and Mr. Gunton worked to advance the interests of the Class as the Class Representatives. Among other things, they (1) aided Class Counsel in their investigation and provided pertinent documents, (2) reviewed the allegations in the Complaint, (3) communicated with Class Counsel during the course of the action and stayed informed about the case, (4) provided input during early negotiations and were available throughout the mediation, and (5) discussed the settlement with Class Counsel and reviewed the Settlement Agreement. *Id.*

¶ 15.

V. WORK OF THIRD PARTIES TO EFFECTUATE SETTLEMENT

On and prior to March 10, 2025, the appointed Settlement Administrator, printed and mailed settlement notices and rollover forms to all 1,350 Class Members, established the settlement website and telephone support line as provided by the Settlement. *Id.* ¶ 20. Analytics has since collected completed rollover forms, monitored returned mail, and researched additional means to contact the few Class Members whose notices were returned undeliverable. *Id.* ¶ 21. If the Settlement receives final approval, Analytics will review and process rollover forms, calculate payments to Class Members pursuant to the Plan of Allocation, and facilitate distribution of payments to Class Members. *Id.* ¶ 22. For these services Analytics will charge Class Counsel \$14,528.00. *Id.* ¶ 23.

Fiduciary Counselors, the appointed independent fiduciary, will review the Settlement and independently determine whether it is in the best interest of the Plan to release its claims against Defendants in exchange for the relief provided. Settlement § 2.1. This independent fiduciary review is required by DOL regulations. *See* PTE 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830. For their services, Fiduciary Counselors will charge an amount not to exceed \$20,000. The exact amount will depend on any expenses incurred associated with the forthcoming final fairness hearing and will be reported in Plaintiffs' forthcoming motion for final approval. Second Lee Dec. ¶ 25.

VI. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS SOUGHT

In consideration of the work summarized above and associated expenses, Article 6 of the Settlement Agreement provides that Plaintiffs may seek (1) attorneys' fees equal to one-third of the Settlement Fund; (2) litigation costs; (3) a \$5,000 service award for the Class Representatives; and (4) payment of settlement administrative expenses. Consistent with the above, Plaintiffs seek the following amounts in connection with this motion:

- Attorneys' fees: \$700,000 (equal to one-third of the common fund)
- Litigation expenses: \$11,552.69
- Class Representative service award: \$5,000.00
- Settlement administrator expenses: \$14,528.00
- Independent Fiduciary expense: \$20,000.00

ARGUMENT

I. LEGAL STANDARD

When counsel obtain a settlement for a class, courts "may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). Here, the requested distributions are authorized both under Article 6 of the Settlement Agreement and by applicable law.

The Supreme Court "has recognized consistently 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). Likewise, “reasonable expenses of litigation” may be recovered from a common fund, *see Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970), as well as administrative expenses of settlement, *see In re Corel Corp.*, 293 F. Supp. 2d 484, 498 (E.D. Pa. 2003) (awarding all settlement notice and administration expenses).

Finally, courts in this district “routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.” *Cullen v. Whitman Medical Corp.*, 197 F.R.D. 136, 145 (E.D. Pa. 2000) (citation omitted). Thus, the requested distributions are customary in a class action suit such as this and should be approved for the reasons set forth below.

II. CLASS COUNSEL’S REQUESTED ONE-THIRD FEE IS REASONABLE

In the Third Circuit, the preferred method for awarding attorneys’ fees in common fund cases is the percentage-of-recovery method because “it allows the court to award fees from the fund in a manner that rewards counsel for success and penalizes it for failure.” *Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *10 (E.D. Pa. Feb. 28, 2020) (quoting *In re AT&T*, 455 F.3d 160, 164 (3d Cir. 2006)). This percentage-of-recovery method “ensures ‘that competent counsel continue to undertake risky, complex, and novel litigation[.]’” such as this. *In re Cendant*

Corp., 232 F. Supp. 2d 327, 338 (D.N.J. 2002) (quoting *Gunter*, 223 F.3d at 195 n.1). The approach also “encourage[s] early settlements by not penalizing efficient counsel[.]” whereas the lodestar method “arguably encourages lawyers to run up their billable hours” and discourages settlement. *Checchia v Bank of America, N.A.*, 2023 WL 6164406, at *9 (E.D. Pa. Sept. 21, 2023) (quoting *Gunter*, 223 F.3d at 198).

In evaluating the reasonableness of an award under the percentage-of-recovery approach, courts consider factors set forth in *Gunter*, 223 F.3d 190 and *In re Prudential*, 148 F.3d 283 (3d Cir. 1998) (“*Gunter/Prudential* factors”):

- (1) the size of the fund created and the number of persons benefitted;
- (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel;
- (3) the skill and efficiency of the attorneys involved;
- (4) the complexity and duration of the litigation;
- (5) the risk of nonpayment;
- (6) the amount of time devoted to the case by plaintiff's counsel;
- (7) the awards in similar cases;
- (8) the value of benefits attributable to the efforts of class counsel relative to the efforts of other groups, such as government agencies conducting investigations;
- (9) the percentage fee that would have been negotiated had the case been subject to a private contingent fee arrangement at the time counsel was retained; and
- (10) any innovative terms of settlement.

Stevens, 2020 WL 996418, at *10 (citing *Gunter*, 223 F.3d at 195 n.1; *In re Prudential*, 148 F.3d at 336-40; *In re Diet Drugs*, 582 F.3d 524, 541 (3d Cir. 2009)). Though the Court must engage in “robust assessment” of these factors, they “are not exhaustive and should not be applied in a formulaic way.” *Id.* (quoting *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 301–02 (3d Cir. 2005)).

A. The Applicable *Gunter/Prudential* Factors Strongly Support the Award of Class Counsel’s Requested One-Third Fee.

1. The size of the fund created and the number of persons benefited

The benefit to the class is the “most important factor” in assessing fees. *Huffman v. Prud. Ins. Co. of Am.*, 2019 WL 1499475, at *7 (E.D. Pa. April 5, 2019) (citation omitted). Here, Class Counsel negotiated a significant \$2.1 million settlement, which compares favorably in light of the possible range of recoveries. First Lee Decl. ¶ 13. The recovery of approximately \$1,500 per Class Member on a gross basis, and more than \$1,000 on a net basis, Second Lee Dec. ¶ 3, exceeds what has been described as an “excellent” or “substantial” result in other ERISA cases in this District. *See Huffman*, 2019 WL 1499475, at *6 (finding around \$1,000 per class member “an excellent result” in ERISA class action); *In re Schering-Plough Corp.*, 2012 WL 1964451, at *6 (D.N.J. 2012) (finding around \$900 per class member to be a “substantial” benefit in ERISA case). This strongly supports the requested fee.

Further, the settlement includes meaningful prospective relief benefitting Class Members going forward, including the retention of an independent investment manager to manage the OIA and its investment. This will provide additional benefit to the Settlement Class going forward. These non-monetary benefits further favor approval of the requested fees. *See Stevens*, 2020 WL

996418, at *10; *see also High St. Rehab.*, 2019 WL 4140784, at *12.

2. The presence or absence of substantial objections

Gunter advises the Court to consider “the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel.” 223 F.3d at 195 n.1. More than 1,300 notices were mailed to Class Members. The Settlement Notices that were approved by the Court disclosed the terms of the Settlement and contained a prominent “Statement of Attorneys’ Fees and Costs, Administrative Expenses, and Class Representatives’ Compensation Sought in the Class Action.” Dkt. 34-1 at 43–44. As of the date of this motion, there have been no objections to the proposed Settlement or Class Counsel’s present request. Second Lee Decl. ¶ 24. This factor supports the requested fee.

3. The skill and efficiency of the attorneys involved

This factor is “measured by the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel.” *In re Viropharma Inc.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016). All these factors support the requested fee.

ERISA class actions are complex and require highly specialized and skill attorneys. *In re Unisys Corp.*, 886 F. Supp. 445, 477 (E.D. Pa. 1995) (“[T]he

complex and difficult nature of this class action ERISA case demands a quality of service for which relatively expensive representation is to be expected”). Class Counsel achieved this substantial recovery early in the litigation, before the Court had ruled on Defendants’ motion to dismiss and before the Parties had to incur the expense and burden of fact and expert discovery.

Class Counsel’s skills, reputation, and experience were critical to this early resolution. Courts have recognized the skills and ability of Class Counsel, Engstrom Lee. *See Colon v. Johnson*, No. 8:22-cv-888-TPB-TGW, 2024 WL 3315628, at *4 (M.D. Fla. May 31, 2024) (finding Engstrom Lee “clearly possess the qualifications and experience to handle this litigation” and undersigned counsel “is a highly skilled and experienced litigator in class actions and ERISA cases.”). So too has the ESOP industry. *See, e.g.,* Corey Rosen, NCEO, *Spate of Lawsuits Challenges ESOP Cash Investment Policy*, available at <https://www.nceo.org/employee-ownership-blog/spate-lawsuits-challenges-esop-cash-investment-policy> (ESOP industry blog discussing “the first lawsuits ever filed on this topic” “all filed by the same law firm, Engstrom Lee,” warning plan sponsors and trustees, “if some portion of the cash may not be used for several years, a more aggressive [asset] mix is probably a good idea.”). It is a testament to Class Counsel’s pre-suit investigative work and experience and reputation that one of “the first lawsuits ever filed on this topic” could resolve so early. *Id.* Class

Counsel also faced formidable defense counsel. Jackson Lewis is a prominent law firm focused on employment and labor with more than 1,000 attorneys nationwide. Jackson Lewis, About Us, *available at* <https://www.jacksonlewis.com/firm/about-us>. The co-leader of Jackson Lewis’s ERISA Complex Litigation practice appeared in this case and participated in the mediation. Dkt. 21. Accordingly, this factor supports the requested fee.

4. The complexity, expense, and likely duration of the litigation

This factor considers “the probable costs, in both time and money, of continued litigation.” *In re Gen. Motors*, 55 F.3d 768, 812 (3d Cir. 1995) (citation omitted). ERISA class actions are “notoriously complex cases, and ESOP cases are often cited as the most complex of ERISA cases,” “often leading to lengthy litigation.” *Foster v. Adams & Assocs., Inc.*, 2021 WL 4924849, at *6 (N.D. Cal. Oct. 21, 2021) (first quotation); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) (second quotation). These cases can extend for a decade before final resolution, sometimes going through multiple appeals. *See, e.g., Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (recounting lengthy history of case where trial was held in 2011); *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017) (recounting 11-year procedural history); *Tibble v. Edison Int’l*, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit filed). Had this case not settled, further litigation would have

required “substantial additional discovery and motion practice at great expense to the parties.” *Stevens*, 2020 WL 996418, at *11. There is of course “also the possibility that Plaintiff would not recover anything.” *Id.* The Settlement secures a substantial portion of Plaintiffs’ best recovery without incurring the substantial expense or delay of protracted litigation. This factor favors the requested fee.

5. The risk of non-payment

Class Counsel assumed significant risks by representing the Plaintiffs and the Class on a contingent-fee basis. “Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval.” *In re Schering-Plough Corp.*, 2012 WL 1964451, at *7. The risks that Class Counsel would recover nothing was great, given that this was the one of the first cases of its kind ever filed, *see supra* at 12, and at the time no Court had ruled on the merits of Plaintiffs’ claims. *See Schultz v. Aerotech, Inc.*, 2025 WL 563585 (W.D. Pa. Feb. 20, 2025) (first order ruling on a motion to dismiss in a similar case, denying the motion, nine months after this action was filed). Despite these risks, Class Counsel was prepared to see this case all the way through trial and advance all necessary litigation costs, including expert fees. Second Lee Dec. ¶ 4. This factor therefore weighs heavily in favor of the requested award.

6. The amount of time devoted to the case by Class Counsel

As explained further below, *infra* at 16–19, Class Counsel has devoted more

than 248 hours to investigating and litigating this action, as well as negotiating and seeking approval of the settlement. While this action settled relatively early in the proceedings, the Settlement secures a substantial recovery on behalf of the Class.

7. Awards in similar cases

The Court next compares the requested awards with awards in similar cases. “Percentage fee awards in common fund cases often fall between nineteen and forty-five percent of the settlement fund,” with one-third as “the “benchmark” percentage for an award to counsel.” *Huffman*, 2019 WL 1499475, at *7. “In complex ERISA cases, courts in this Circuit and others also routinely award attorneys’ fees in the amount of one-third of the total settlement fund.” *Stevens*, 2020 WL 996418, at *12; *accord High St. Rehab.*, 2019 WL 4140784, at *13 (same); *Godshall v. Franklin Mint Co.*, 2004 WL 2745890, at *5 (E.D. Pa. Dec. 1, 2004) (same); *Huffman*, 2019 WL 1499475, at *6 (same); *In re Merck & Co., Inc. Vytorin ERISA Litig.*, 2010 WL 547613, at *13–14 (D.N.J. Feb. 9, 2010) (same); *In re Schering-Plough Corp.*, 2012 WL 1964451, at *8 (same). This factor therefore weighs in favor of approval.

8. Value of benefits attributable to the efforts of Class Counsel relative to the efforts of others

This factor considers whether Class Counsel has piggybacked on a government investigation or existing action. That is not the case here. The value inured to the Class through this Settlement is entirely attributable to the efforts of

Class Counsel, who identified the ESOP through independent investigation of publicly available information and created a new legal theory that has prevailed in courts. *See supra* at 12. This factor therefore augurs in favor of the requested fee. *High St. Rehab.*, 2019 WL 4140784, at *13 (awarding one-third fee where “Class Counsel were the only ones investigating the claims at issue in this case, and they alone initiated this federal action and actively litigated it.”).

9. Percentage fee that would have been negotiated

This factor asks the Court “to estimate what percentage fee would have been negotiated had the case been subject to a private contingent fee arrangement from the start.” *Huffman*, 2019 WL 1499475, at *7. It is broadly accepted that plaintiffs’ counsel routinely negotiate agreements for “between thirty and forty percent of any recovery.” *Id.* While some Courts view this hypothetical exercise as “academic” and therefore do not consider it, *id.*, Class Counsel does take individual representation on a contingent basis and routinely negotiates a 40% contingency fee. Second Lee Dec. ¶ 14. Consistent with this, Class Counsel and Class Representatives agreed to a one-third fee (subject to the approval of the Court) at the time Counsel was retained. *Id.* This factor therefore favors the requested fee.

B. Class Counsel’s Requested Fee is Also Reasonable Under the Lodestar Cross-Check.

Courts sometimes use the lodestar method of calculating fees as a cross-check of the reasonableness of a percentage-of-recovery fee award. *Stevens*, 2020

WL 996418, at *12. The crosscheck does not “trump the primary reliance on the percentage of common fund method” nor must the multiplier “fall within any pre-defined range, provided that the District Court’s analysis justifies the award.” *In re Rite Aid*, 396 F.3d at 307. This cross-check can be an abridged lodestar analysis that requires neither “mathematical precision nor bean counting.” *Id.* The Court therefore need not review actual billing records when conducting this analysis.

Here, Class Counsel invested more than 224 hours of attorney time and 23.6 hours of paralegal time. Multiplying those hours by the reasonable hourly rates billed by each firm member yields a total sum of \$176,699.55. In addition to the work performed to date, Class Counsel expects to incur approximately \$30,000 more in fees overseeing Settlement administration and seeking final approval of the Settlement. Second Lee Dec. ¶ 12. Further, Class Counsel has exercised its discretion in writing off legal research performed by an associate and law clerk, thus the current multiplier is an overestimate of actual work performed. *Id.* Thus, Class Counsel did not bill “excessive, redundant, or otherwise unnecessary hours.” *Stevens*, 2020 WL 996418, at *13.

Class Counsel’s hourly rate (ranging from \$700 to \$775 for Partners) is reasonable and lower than those found reasonable in this market more than five years ago. *See, e.g., Stevens*, 2020 WL 996418, at *13 (approving hourly rates of \$875 for partners); *High St. Rehab.*, 2019 WL 4140784, at *14 (approving hourly

rates of \$1095 for partners); *Pfiefer v. Wawa, Inc.*, 2018 WL 4203880, at *14 (E.D. Pa. Aug. 31, 2018) (approving hourly rates of \$910 for partners, “given the complexity of this ERISA action and the skill and experience of the attorneys involved”); *accord In re Unisys Corp.*, 886 F. Supp. at 477 (“the complex and difficult nature of this class action ERISA case demands a quality of service for which relatively expensive representation is to be expected.”).

Applying a cross-check, the requested fee (\$700,000) is approximately 3.96 times the lodestar (\$176,699.55).² This multiplier falls within those approved by courts in this Circuit and is reasonable given the complexity of the case, the efficient manner in which it was handled, and the skill and experience of Class Counsel. “Indeed, multiples ranging from 1 to 8 are often used in common fund cases” and “are necessary to compensate counsel for the risk of assuming the representation on a contingency fee basis.” *Stevens*, 2020 WL 996418, at *13 (citing cases).

That this case settled early in litigation further supports the requested multiplier, as “courts in the Third Circuit recognize that larger settlements or earlier settlements can—and often do—produce higher multipliers.” *In re Mercedes-Benz*, 2021 WL 7833193, at *15 (D.N.J. Aug. 2, 2021); *Stevens*, 2020

² After performance of additional work, Class Counsel expects the multiplier to be closer to 3.4. *See* Second Lee Dec. ¶ 12.

WL 996418, at *13 (approving a multiplier of 6.16 in ERISA breach of fiduciary duty case that settled shortly after initial pretrial conference); *see In re Rite Aid*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005) (approving a 6.96 multiplier); *Bodnar v. Bank of Am., N.A.*, 2016 WL 4582084, at *5–6 (E.D. Pa. Aug. 4, 2016) (approving 33% fee where counsel was able to negotiate the settlement “at the early stages” of the litigation and finding 4.69 multiplier was “appropriate and reasonable”). Class Counsel should not be penalized for securing a substantial recovery on behalf of the Class so early in the litigation. *See Sala v. National Railroad Passenger Corp.*, 128 F.R.D. 210, 215 (E.D. Pa. 1989) (“[I]t would be the height of folly to penalize an efficient attorney for settling a case on the ground that less total hours were expended in the litigation.” (internal quotations omitted)). Indeed, the Third Circuit has explicitly held that counsel should not be penalized for reaching a settlement instead of taking a case to trial. *See Gunter*, 223 F.3d at 198 (reversing district court order that reduced a fee award from 33% to 18% because “[p]rocurring a settlement... is never a factor that the district court should rely upon to reduce a fee award”); *see also McKenzie Constr. Co. v. Maynard*, 758 F. 2d 97, 101–02 (3d Cir 1985) (“a prompt and efficient attorney who achieves a fair settlement without litigation serves both his client and the interests of justice”); *In re SmithKline Beckman*, 751 F. Supp. 525, 534 (E.D. Pa. 1990) (collecting cases).

* * * *

In light of the significant recovery achieved on behalf of Class Members, the risks undertaken by Class Counsel to bring this novel claim, and the skill and experience required to secure this favorable outcome so early in the litigation on behalf of Class Members, Class Counsel’s requested one-third fee is reasonable under all applicable *Gunter/Prudential* factors and should be awarded.

III. THE REQUESTED SERVICE AWARD IS REASONABLE

It is common for courts to award service awards to named class representatives. *High St. Rehab.*, 2019 L 4140784, at *15. These awards “reward the public service’ of contributing to the enforcement of mandatory laws,” and recognize that “there would be no benefit to the Settlement Class Members if Plaintiff[s] had not stepped forward and prosecuted this matter to the current resolution.” *Id.* Class representatives Mr. Tufano, Mr. Warren, and Mr. Gunton aided Class Counsel in their investigation, advocated for the class throughout settlement negotiations and were available during the all-day mediation. Second Lee Dec. ¶ 15. The requested service award—\$5,000 per Class Representative—falls within the range of reasonable. *See id.* (approving \$10,000 service award); *Brown v. Progressional Behav. Hlth. Servs., Inc.*, 2017 WL 2986300, at *7 (E.D. Pa. July 13, 2017) (awarding \$10,000 to each class representative in action that settled early because they “were actively involved in the litigation since before it was commenced, they provided the information and documents that formed the

basis for the lawsuit”). Finally, the Court-approved Settlement Notice also informed class members that Class Counsel would request these service awards for Class Representatives and no class members have objected to this request. *Supra* at 11. These considerations weigh in favor of approving the requested service awards.

IV. THE REQUESTED COSTS AND EXPENSES ARE REASONABLE AND SHOULD ALSO BE AWARDED.

A. Litigation Costs.

Courts recognize that “[t]here is no doubt that an attorney who has created a common fund for the benefit of the class is entitled to reimbursement of ... reasonable litigation expenses from that fund.” *Stevens*, 2020 WL 996418, at *14 (quoting *In re Corel*, 293 F. Supp. 2d at 498). To date Class Counsel has advanced \$11,552.69 in litigation costs and seek reimbursement for such costs. This includes costs incurred with legal research, filing fees, service, and mediator expenses. Second Lee Dec. ¶ 18. These expenses are “reasonable and expected in this type of case” and therefore should be awarded. *High St. Rehab.*, 2019 WL 4140784 at *15.

B. Settlement Administrator and Independent Fiduciary.

Class Counsel also seeks approval of payment for settlement administration expenses, including fees for the court-appointed settlement administrator and independent fiduciary. *See supra* at 5–6; Dkt. 40. These expenses are likewise reasonable and expected in a case like this and should be approved. *Stevens*, 2020 WL 996418, at *14. Nor have any class members objected to these payments.

Supra at 11.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request the Court award Class Counsel attorneys' fees in the amount of \$700,000, equal to one-third (33.33%) of the Gross Settlement Amount; reimbursement of litigation expenses incurred in the amount of \$11,552.69; and approve payment to Analytics Consulting LLC in the amount of \$14,528 for Notice and Administration of the Settlement, and to Fiduciary Counselors in the amount of \$20,000 for its review of the Settlement, as required by DOL regulations.

Respectfully Submitted,

Dated: April 26, 2025

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ATTORNEYS FOR PLAINTIFFS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 26, 2025, the foregoing was electronically filed using the CM/ECF system, causing a Notice of Electronic Filing to be transmitted to all counsel of record.

/s/Jennifer K. Lee
Jennifer K. Lee

LOCAL RULE 7.8(b)(2) CERTIFICATION OF COMPLIANCE

Pursuant to Local Rule 7.8(b)(2), the undersigned certifies as follows:

1. Plaintiffs' Memorandum of Points and Authorities in Support of Their Unopposed Motion for Attorneys' Fees, Costs & Administrative Expenses and Class Representative Compensation contains 4,988 words, excluding the parts of the brief exempted by the federal rules.

2. Plaintiffs' Memorandum of Points and Authorities in Support of Their Unopposed Motion for Attorneys' Fees, Costs & Administrative Expenses and Class Representative Compensation complies with the typeface requirements of Local Rule 7.8(b)(2) as this brief has been prepared in a proportionally spaced typeface using Microsoft Word for Mac, in 14-point Times New Roman.

Dated: April 26, 2025

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