

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Southern Division)**

DAVID STARR, BERNADETTE
MAVRIKOS, EDMUND QUIAMBAO,
JAMES TETTENHORST, JEREMY
HANSEN, KRISTA KARO,
ARLENE REED-COSSAIRT, PETER STAVROS,
HEATHER FARKAS,
on behalf of themselves and all others
similarly situated,

Plaintiffs,

v.

VSL PHARMACEUTICALS, INC.; LEADIANT
BIOSCIENCES, INC., F/K/A SIGMA-TAU
PHARMACEUTICALS, INC.; and ALFASIGMA
USA, INC.,

Defendants.

No. 8:19-cv-02173-LKG

**MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR AN
AWARD OF ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS**

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Plaintiffs submit this memorandum in support of their Motion for an Award of Attorneys’ Fees, Expenses, and Service Awards (the “Attorneys’ Fees Motion”). In that motion, Plaintiffs seek: (i) an award of attorneys’ fees for Class Counsel in the amount of \$6,666,666.67 out of the Settlement Fund, which is one-third of the \$20 million Settlement Fund created as a result of their highly successful efforts in this litigation; (ii) an award of \$1,241,580 out of the Settlement Fund for Litigation Expenses that were reasonably and necessarily incurred by Class Counsel in prosecuting and settling the action; (iii) service awards, out of the Settlement Fund, of \$10,000 to each of the Class Representatives; and (iv) authorization for Class Counsel to pay the Settlement Administrator its actual fees and expenses—in an amount not to exceed \$195,000—out of the Settlement Fund for notice and claims administration.

In support of the Attorneys’ Fees Motion and this Memorandum in Support, Plaintiffs submit the Joint Declarations of Class Counsel (the “Declaration” or “Decl.”). As set forth therein and below, Class Counsel’s considerable experience and skill, and the excellent results achieved for the Class support these requests.

I. Introduction

For over seven years, attorneys Jeremy Schulman and Jeffrey Gavenman, formerly of the law firm Schulman Bhattacharya, LLC (“Schulman Bhattacharya”) and, since January 12, 2026, at Hughes Hubbard & Reed LLP (“Hughes Hubbard”), and attorneys Edward F. Haber, Michelle Blauner, Patrick Vallely and Ian McLoughlin of the law firm Shapiro Haber & Urmy LLP (“Shapiro Haber”) (collectively, “Class Counsel”) have represented the Plaintiffs David Starr, Bernadette Mavrikos, Edmund Quiambao, James Tettenhorst, Jeremy Hansen, Krista Karo, Arlene Reed-Cossairt, Peter Stavros, Heather Farkas (collectively, “Plaintiffs”) in vigorously litigating this fiercely contested class action against Defendants VSL Pharmaceuticals, Inc. (“VSL”),

Leadiant Biosciences, Inc. (“Leadiant”) and Alfasigma USA, Inc. (“Alfasigma”) (collectively, the “Defendants”). Class Counsel’s vigorous efforts have resulted in a non-reversionary \$20 million cash settlement, which represents an excellent result for the Settlement Class¹. In undertaking this litigation, Class Counsel faced numerous challenges in proving liability, causation, and damages, posing a serious risk of no recovery or a recovery significantly less than the \$20 million settlement. The significant recovery was achieved through Class Counsel’s skill, tenacity, and effective advocacy in litigating this action on a fully contingent basis against highly skilled defense counsel.

Without Class Counsel’s willingness to pursue this case on a contingency basis with no guarantee of payment or recovery of expenses, the Settlement Class Members would not have obtained these significant benefits of the Settlement Agreement.² From the outset, it was clear that pursuing this case would require Class Counsel to outlay an enormous amount of both time and money, and that is exactly what occurred in this case. Indeed, to date, Class Counsel have logged more than 9,266.8 hours of attorney and paralegal time (representing a lodestar using the Fitzpatrick Matrix of \$8,109,782.60) and have incurred \$1,241,580 in out-of-pocket expenses to secure this result for the Settlement Class. Decl. ¶¶ 51, 56, 59.

Class Counsel respectfully submits that in light of Class Counsel’s extensive efforts and vigorous advocacy on behalf of the Settlement Class, and the recovery achieved for the Settlement Class, Class Counsel’s request for an attorneys’ fee award for all Class Counsel in the amount of \$6,666,666.67, which is one-third of the \$20 million Settlement Fund, is fair and reasonable. The

¹ The “Settlement Class” is defined in ECF No. 379; such definition is incorporated herein.

² The definition of “Settlement Class Members” and “Settlement Agreement” is likewise incorporated from ECF No. 379.

requested fee is well within the range of fees that courts in this Circuit and elsewhere typically award in complex class actions with comparable risks and recoveries.

Class Counsel also respectfully requests that this Court approve the requested litigation expenses of \$1,241,580, which were reasonable and necessary for the prosecution and resolution of this action, and authorize Class Counsel to pay the actual fees and expenses of the Settlement Administrator—not to exceed \$195,000—out of the Settlement Fund for notice and claims administration. Decl. ¶¶ 59-65.

Finally, Class Counsel respectfully requests that the Court approve the requested service awards of \$10,000 for each of the Class Representatives (i.e., the named plaintiffs in this action), each of whom has spent considerable time representing the Class with dedication and thoughtfulness, including sitting for interviews with counsel, providing information for the complaints, gathering and producing documents—including private and personal medical records—and responding to interrogatories, sitting for depositions, monitoring the progress of the litigation, and considering and approving the terms of the Settlement. Decl. ¶¶ 66-70.

II. Overview of the History of this Litigation

Plaintiffs filed this case in July 2019, alleging claims against Defendants for violation of the Racketeer Influenced and Corrupt Organizations Act (“RICO”), 18 U.S.C. §§ 1961–68; breach of express warranty in violation of the Uniform Commercial Code (“UCC”); violations of several state consumer protection statutes; and unjust enrichment. Plaintiffs alleged that, starting in June 2016, Defendants marketed and sold the probiotic VSL#3 as containing a clinically tested and proven formulation developed by Professor Claudio De Simone (“Prof. De Simone”), when it did not. This case followed from prior litigation in this Court brought by VSL’s competitor, ExeGi Pharma, LLC (“ExeGi”), in a case styled as *De Simone, et al. v. VSL Pharmaceuticals, Inc., et al.*,

Case No. 8:15-cv-01356 (D. Md. 2015) (the “*ExeGi Action*”), which resulted in a substantial jury verdict and permanent injunction against Alfasigma and Leadiant on claims of false advertising of VSL#3, which was affirmed on appeal. *See De Simone v. VSL Pharm., Inc.*, 395 F. Supp. 3d 617 (D. Md. 2019); *De Simone v. VSL Pharm., Inc.*, 2019 U.S. Dist. LEXIS 104568 (D. Md. June 20, 2019); *De Simone v. VSL Pharm., Inc.*, 36 F.4th 518 (4th Cir. 2022).

Over more than seven years, Class Counsel litigated this case tenaciously, vigorously, and successfully against seasoned defense counsel, who contested and challenged Plaintiffs at every step of this litigation. The following sections provide an overview of the principal stages of the litigation and describe the work Class Counsel performed during each such stage.

A. Investigation and Initial Complaint Preparation.

Prior to filing the initial complaint in this action, Class Counsel conducted an intensive legal and factual investigation. Class Counsel leveraged the legal and factual knowledge obtained during the prior *ExeGi Action* against the Defendants. Their translation of that information into a consumer class action involved substantial work, including determining how such facts would support a RICO claim and claims under various states’ consumer protection and warranty laws. Because class actions often focus on state-law claims, it was important for Class Counsel to identify and obtain detailed information from, and vet, potential class representatives from several states. Decl. ¶ 15.

Class Counsel’s pre-suit investigation culminated in the July 23, 2019, filing of the initial Complaint (ECF No. 1) in this action, which contained 290 paragraphs and asserted sixteen claims. Decl. ¶ 16.

B. First Amended Complaint and Motion to Dismiss Practice.

On December 18, 2019, Defendants moved to dismiss the complaint. ECF Nos. 38, 38-1. Pursuant to Rule 15(a)(1)(B), Plaintiffs elected to amend their complaint on January 8, 2020 (the “Amended Complaint”). The 363-paragraph Amended Complaint added substantial factual allegations to address Defendants’ arguments for dismissal, to ensure the case would proceed to discovery. Decl. ¶ 17; ECF No. 40.

Defendants moved to dismiss the Amended Complaint on March 11, 2020. ECF Nos. 49, 49-1. Defendants’ consolidated motion totaled fifty pages and presented a dozen and a half distinct arguments for dismissal, some of which applied broadly to all claims and others focused on particular elements of certain claims, including complex arguments attacking Plaintiffs’ claims under RICO. The research and analysis to respond to this motion was considerable. As consumer class actions often involve state law claims, which can vary from state to state, Class Counsel had to carefully evaluate the variation in proof among claims in different states and explain how the Amended Complaint satisfied the applicable pleading and substantive law requirements for each state’s laws. Class Counsel’s efforts culminated in Plaintiffs’ fifty-page opposition to Defendants’ motion to dismiss in which they painstakingly detailed the factual basis for their claims and how those facts supported each claim they asserted. Decl. ¶ 18; ECF No. 55.

In December 2020, this Court (Chuang, J.) denied Defendants’ motion to dismiss, upholding Plaintiffs’ allegations that Defendants violated RICO. *Starr v. VSL Pharm., Inc.*, 509 F. Supp. 3d 417, 433-43 (D. Md. 2020) (“Starr I”). The Court also sustained state consumer protection, express warranty claims, and unjust enrichment claims asserted by Plaintiffs who purchased VSL#3 in Florida, Idaho, Illinois, Kentucky, Massachusetts, Michigan, New Jersey, Washington, and Wisconsin. *Id.* at 443-57. Decl. ¶ 19.

Defendants answered the Amended Complaint on August 11, 2021. Decl. ¶ 19; ECF Nos. 98-100.

C. Fact Discovery.

Thereafter, the parties commenced discovery, which was extensive and hard-fought in both directions. Class Counsel leveraged the work done in the *ExeGi* Action to streamline merits discovery. Class Counsel procured Defendants' agreement that all discovery produced by Defendants in the *ExeGi* Action would be deemed produced in this action. Class Counsel also propounded additional, non-duplicative document requests, interrogatories, and requests for admission. In total, Defendants produced over 200,000 documents in this case. Class Counsel closely analyzed those documents to build their evidentiary merits case. That analysis is incorporated into Plaintiffs' motion for class certification (discussed more fully below), which reflects a compelling synthesis and overview of the core evidence Class Counsel obtained in discovery that they would have used to prove their claims on a class basis had this case gone to trial. Decl. ¶ 21.

Class Counsel's discovery efforts also included substantial efforts to obtain relevant discovery from third parties, including retailers that possessed documents, transactional data, and class member information that could be used as part of a damages model or for class notice or settlement administration. Class Counsel's negotiations with third-party retailers were extensive, as several pushed back against producing transactional data on various grounds, including burden, health privacy, and other objections. Class Counsel's efforts were successful, ultimately obtaining significant data from third-party retailers for use by Plaintiffs' damages experts. That data also ultimately facilitated direct notice to over 200,000 class members. Decl. ¶ 22.

Defendants' discovery efforts directed to Plaintiffs and third parties were likewise substantial. They sought discovery from Plaintiffs and their doctors. Class Counsel performed significant work in responding to such discovery, including negotiating and litigating the scope of production by Plaintiffs and their doctors, weighing issues of relevance and privacy, and collecting and analyzing documents. Class Counsel worked closely with Plaintiffs to gather and produce responsive documents, including medical records and proofs of purchase from their purchases of VSL#3 and other medical products. Decl. ¶ 23.

The parties collectively took 21 fact depositions, including depositions of Plaintiffs and their doctors, a deposition of a minor child of one of the named plaintiffs, and depositions of each Defendant pursuant to Rule 30(b)(6). These depositions, whether Class Counsel defended them or took them, required careful preparation and analysis, particularly given the significant universe of documents about which witnesses might be questioned and the need to use the depositions to further build the evidence to prove Plaintiffs' claims on a class-wide basis. The parties also engaged in expert discovery for class certification described below. Decl. ¶ 24.

There were many discovery disputes. Some of the disputes were resolved by the parties through the meet-and-confer process. Others required the Court's involvement, including a dispute over Plaintiffs' efforts to conduct discovery from retailers (which was ultimately resolved by the parties following pre-motion letters); a dispute over whether Defendants could take the deposition of a minor child of one of the named plaintiffs (which was allowed) (ECF Nos. 103, 105, 133, 263, 264, 268, 274, 284, 287); and a dispute regarding Defendants' effort to obtain discovery from the manufacturer of the De Simone Formulation of VSL#3, Danisco USA, which the Court did not permit (ECF Nos. 132, 148, 154, 169, 174, 189, 193, 202, 203, 205, 209, 237, 239, 243, 248). Decl. ¶ 25.

D. Damages Analysis and Expert Discovery.

As case law under Rule 23 has evolved, courts have imposed increasingly exacting standards on plaintiffs in consumer cases, particularly regarding class-wide proof of damages, to obtain class certification and ultimately secure a class-wide damage award at trial. It behooves plaintiffs and their attorneys to develop reliable, valid damages models that can establish damages on a class-wide basis, as such proof can often be the difference between a court finding that common issues predominate and that individual issues do not. This was particularly the case here, because the class member consumer purchasers of VSL#3 often did so based on their physicians' recommendations. Class Counsel invested substantial resources—in the form of both their own time working with experts and in significant out-of-pocket expense paid to damages experts—to ensure they came to the Court with a sophisticated, reliable damages model that would demonstrate that damages could be proven on a class-wide basis. Decl. ¶ 26.

Class Counsel and their experts ultimately prepared detailed reports in support of Plaintiffs' Class Certification Motion, totaling over 200 pages between two principal damages expert reports (ECF Nos. 313-45, 313-46) and two supplemental reports (ECF Nos. 335-1, 335-2), fully designed consumer and physician surveys, and an econometric model to translate survey data and other sources into a class-wide damages calculation. Plaintiffs' damages experts were deposed, and Class Counsel defended those depositions. Decl. ¶ 27.

As reflected in the Plaintiffs' Motions for Class Certification and Defendants' motion challenging the admissibility of that expert evidence, Plaintiffs' damages experts were critical to obtaining class certification in this case and having that certification upheld over Defendants' Rule 23(f) petition. Although substantial, the time and out-of-pocket expense relating to experts played

a central role in Class Counsel's successful recovery of a highly favorable settlement for the benefit of the Settlement Class. Decl. ¶ 28.

Defendants also engaged experts, including two damages experts who challenged the work and conclusions of Plaintiffs' damages experts. Working closely with Class Counsel's damages experts, Class Counsel performed substantial work in analyzing Defendants' experts' analyses and their criticisms of Plaintiffs' experts' reports, including scrutiny of Defendants' expert workpapers and documentary support for their opinions. Class Counsel conducted thorough depositions of Defendants' two damages experts to undermine their challenges to Plaintiffs' experts' opinions and to reinforce Plaintiffs' arguments for class certification. Decl. ¶ 29.

E. Plaintiffs' Class Certification Motion and Defendants' Challenge to Plaintiffs' Experts.

On June 3, 2024, Plaintiffs moved for class certification. ECF Nos. 312, 313. Class certification in this case presented complex issues, including the assertion of a federal RICO claim and the overlapping, but varying, consumer and warranty laws of nine states, and a complex modeling of class-wide damages where, as here, in many instances doctors recommended probiotic products for their patients. Class Counsel prepared a comprehensive Class Certification Motion that organized and presented the core evidence to prove liability on a class-wide basis, along with sophisticated damages evidence supported by expert reports demonstrating how damages could be proven class-wide. Decl. ¶ 30; ECF Nos. 312, 313-45, 313-46.

Defendants vigorously opposed class certification, submitting a large volume of evidence to contest the elements under Rule 23 and a motion to exclude the expert opinions of Plaintiffs' two damages experts. ECF Nos. 322, 326. Among other things, Defendants argued (a) that the predominance and superiority requirements were not satisfied because Plaintiffs could not

establish causation, deception, injury, and damages on a class-wide basis, (b) that Plaintiffs' claims were not typical, (c) that the proposed classes were not ascertainable, and (d) that Plaintiffs could not establish standing on a class-wide basis because indirect purchasers do not have standing to sue under RICO. Decl. ¶ 31; ECF No. 322.

Class Counsel engaged with Defendants' legal arguments and evidence in their reply brief in support of class certification. ECF No. 334. Class Counsel also vigorously opposed Defendants' motions to exclude Plaintiffs' damages experts, including by working with Plaintiffs' two experts to prepare supplemental reports to respond to Defendants' arguments made in the motion to exclude. Decl. ¶ 32; ECF No. 335, 335-1, 335-2.

On January 28, 2025, the Court issued its Memorandum Opinion denying Defendants' motion to exclude the expert reports of Plaintiffs' experts and granting Plaintiffs' Class Certification Motion. *Starr v. VSL Pharm., Inc.*, 2025 U.S. Dist. LEXIS 81502 (D. Md. Jan. 28, 2025) ("*Starr I*") (*see also* ECF No. 339). In *Starr II*, this Court certified the following class for Plaintiffs' federal RICO claims: the "Nationwide Class," consisting of "all persons who purchased VSL#3 in the United States from June 1, 2016, through June 19, 2019." *Id.* at *56. The Court also certified nine classes of VSL#3 purchasers in nine states during that same time frame who have claims under those states' statutes and common law. *Id.* at *56-57. All members of those classes are also members of the certified Nationwide Class. Decl. ¶ 33.

Thereafter, Class Counsel successfully defended this Court's class certification decision, procuring a denial of Defendants' Rule 23(f) petition seeking interlocutory review of the Court's class certification decision. Decl. ¶ 34; *VSL Pharmaceuticals, Inc. v. Starr*, Appeal No. 25-115 (4th Cir. Apr. 7, 2025) (ECF No. 45).

F. Plaintiffs' Notice Motion.

After the Fourth Circuit denied Defendants' Rule 23(f) petition, Class Counsel reengaged with third-party retailers to procure transactional data, including class member identifying information, that they had previously committed to produce in the event a class was certified. That data would maximize the ability to provide direct notice to class members. Class Counsel also procured bids from several experienced notice administrators and negotiated with the settlement administrators to obtain competent notice administration at a reasonable cost. Class Counsel also engaged with Defendants to negotiate the contents of a notice program. Although the parties agreed on several parts of the class notice, they had persistent disagreements regarding several material aspects of the notices, resulting in Class Counsel having to file a contested motion for class notice on November 14, 2025 (the "Notice Motion"). ECF Nos. 364, 366. The Notice Motion was supported by a declaration from the proposed notice administrator. ECF No. 364-4. Defendants opposed the Notice Motion on December 15, 2025. ECF No. 366. Thereafter, the parties agreed to a mediation in an effort to reach a settlement of the class action. Hence, the Notice Motion was never fully briefed or decided by the Court. Decl. ¶¶ 35-36.

G. Pre-Motion Letters Regarding Potential Dispositive Issues.

On November 4, 2025, Class Counsel filed a letter on behalf of the certified classes requesting a pre-motion conference at which Plaintiffs would seek leave to file a motion for partial summary judgment. The letter explained that the summary judgment motion would seek an order from this Court that would preclude Defendants from relitigating in this case key material issues that had been previously fully and finally decided against Defendants in the *ExeGi* Action, based upon the doctrine of non-mutual offensive collateral estoppel, which is also called "issue preclusion." ECF No. 359. Class Counsel prepared the pre-motion letter after conducting extensive

research into the doctrine of non-mutual offensive collateral estoppel and examining the issues raised and decided in the *ExeGi* Action. Decl. ¶ 37.

On November 21, 2025, Defendants filed a letter seeking a pre-motion conference to request permission to file a motion for partial summary judgment on the RICO claims asserted by Plaintiffs and the certified class to the extent that those claims were being made by indirect purchasers of VSL#3. Defendants argued that individuals who did not directly purchase VSL#3 from any of the Defendants could not maintain a claim under RICO. ECF No. 365. Neither pre-motion conference was held because the parties informed the Court that they had agreed to mediation. Decl. ¶ 38.

H. Mediation and Settlement.

The parties engaged JAMS mediator Robert Meyer, a nationally recognized mediator, to mediate a possible settlement of this longstanding action. Class Counsel devoted significant effort to mediation, including preparing a 50-page mediation statement. The mediation statement marshaled the extensive evidence to support Plaintiffs' claims, contained an extensive review of the legal bases for Plaintiffs' claims, addressed legal arguments that Plaintiffs anticipated would be made by Defendants, and included additional analyses of class-wide damages. Decl. ¶ 39.

On January 7, 2026, the parties conducted good-faith, arm's-length negotiations at a mediation in New York City with Mr. Meyer. A settlement was not reached at that mediation session. However, after the mediator's numerous communications with the parties in the days following the mediation session, the parties reached an agreement in principle to settle this action. Thereafter, Class Counsel worked closely with Defendants' counsel to negotiate a comprehensive class settlement agreement, and a notice and administration program to notify class members of the settlement and distribute settlement benefits. That was all codified in the Settlement Agreement

filed with the Court as an Exhibit to Plaintiffs' motion for preliminary approval. ECF No. 376, which the Court allowed, ECF No. 379. Decl. ¶ 40.

The Settlement Agreement provides for Defendants to pay a total of \$20 million to settle this class action. That \$20 million will create a common fund to pay claims made by Settlement Class Members, legal fees and expenses of Class Counsel, as approved by the Court, incentive awards to Plaintiffs, as approved by the Court, and the costs of providing notice and administering the Settlement Agreement. If the settlement is approved, under no circumstances would any of the \$20 million be returned to the Defendants. The Settlement will provide for substantial cash benefits to Settlement Class Members and represents an excellent recovery for the Class. Decl. ¶¶ 41-42.

III. Argument

A. The Attorneys' Fee Request Is Reasonable.

In a class action, the court may award reasonable attorneys' fees and nontaxable costs as authorized by law or by agreement. Fed. R. Civ. P. 23(h). The Supreme Court has recognized that 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).

The Fourth Circuit has explained that "[t]here are two main methods for calculating the reasonableness of attorneys' fees—the lodestar method and the percentage-of-recovery method"—and that a "district court may choose the method it deems appropriate based on its judgment and the facts of the case." *McAdams v. Robinson*, 26 F.4th 149, 162 (4th Cir. 2022); *see also Black v. USAA Gen. Indem. Co.*, 2026 U.S. Dist. LEXIS 98528, at *4 (D. Md. May 5, 2026) (same); *In re Medstar ERISA Litig.*, 2024 U.S. Dist. LEXIS 161002, at *18-19 (D. Md. Sep. 5,

2024) (same); *Donaldson v. Primary Residential Mortg. Inc.*, 2021 U.S. Dist. LEXIS 101625, at *18-19 (D. Md. May 28, 2021) (same).

1. The Percentage of the Recovery Is the Favored Method for Calculating Attorneys' Fees from a Common Fund.

“[C]ourts in the Fourth Circuit generally use a percentage of recovery method and supplement it with the lodestar method as a cross-check.” *Black*, 2026 U.S. Dist. LEXIS 98528, at *4. “The percentage method has overwhelmingly become the preferred method for calculating attorneys’ fees in common fund cases.” *Jones v. Dominion Res. Servs., Inc.*, 601 F. Supp. 2d 756, 758 (S.D.W. Va. 2009); *Galloway v. Williams*, 2020 U.S. Dist. LEXIS 238950, at *17 (E.D. Va. Dec. 17, 2020) (“the favored method for calculating attorneys’ fees in common fund cases is the percentage of the fund method.”); *Starr v. Credible Behav. Health, Inc.*, 2021 U.S. Dist. LEXIS 99783, at *15 (D. Md. May 26, 2021) (“the percentage-of-recovery approach is not only permitted but is the preferred approach to determine attorney’s fees’ in class actions.”).

2. The Requested Fee of One-Third of the Recovery Is Reasonable under the Percentage-of-the-Fund Method

The requested fee of one-third of the recovery is reasonable. “Many courts in the Fourth Circuit have held that attorneys’ fees in the amount of 1/3 of the settlement fund is reasonable.” *Chrismon v. Meadow Greens Pizza*, 2020 U.S. Dist. LEXIS 119873, at *12 (E.D.N.C. July 7, 2020) (citing *Devine v. City of Hampton, Virginia*, 2015 U.S. Dist. LEXIS 177155, at *42 (E.D. Va. Dec. 1, 2015)); *Hatzey v. Divurgent, LLC*, 2018 U.S. Dist. LEXIS 187007, at *13, 16-17 (E.D. Va. Oct. 9, 2018); *DeWitt v. Darlington Cty., S.C.*, 2013 U.S. Dist. LEXIS 172624, at *21-22 (D.S.C. Dec. 6, 2013); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 483 (D. Md. 2014); *Montague v. Dixie Nat. Life Ins. Co.*, 2011 U.S. Dist. LEXIS 92178, at *6-7 (D.S.C. Aug. 17, 2011)).

As this Court observed in *Black*, “the total amount of the attorneys’ fees requested in this case is approximately 37% of the total settlement value,” which “falls within the range of percentage-of-recoveries that this Court has found to be reasonable.” 2026 U.S. Dist. LEXIS 98528, at *17; *see also Ciarciello v. Bioventus Inc.*, 760 F. Supp. 3d 377, 400 (M.D.N.C. 2024) (“Courts in the Fourth Circuit have found awards of approximately one-third of the class fund to be reasonable”); *In re Allura Fiber Cement Siding Litig.*, 2021 U.S. Dist. LEXIS 96931, at *10 (D.S.C. May 21, 2021) (“Courts in the Fourth Circuit have held that attorneys’ fees in the amount of 1/3 of the settlement fund are reasonable.”).

3. The Seven-Factor Test Supports the Fee Award.

“[T]he Court analyzes the following seven factors in determining whether attorneys’ fees are reasonable: ‘(1) the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the settlement terms and/or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy[.]’” *Black*, 2026 U.S. Dist. LEXIS 98528, at *4-5, quoting *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 771 (D. Md. 2022); *see also Medstar*, 2024 U.S. Dist. LEXIS 161002, at *19-20; *Donaldson*, 2021 U.S. Dist. LEXIS 101625, at *20; *Kelly v. Johns Hopkins Univ.*, 2020 U.S. Dist. LEXIS 14772, at *6 (D. Md. Jan. 28, 2020). “But the Court need not apply these factors in a ‘formulaic way’ and may weigh the factors as appropriate for a particular case.” *Black*, 2026 U.S. Dist. LEXIS 98528, at *5 (citation omitted); *Medstar*, 2024 U.S. Dist. LEXIS 161002, at *20.

a. Results Obtained

The degree of success obtained is often considered “the most critical factor in calculating a reasonable fee award[.]” *McKnight v. Circuit City Stores, Inc.*, 14 Fed. App’x 147, 149 (4th Cir.

2001); *see also In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 843-44 (E.D. Va. 2016) (result obtained for the class is the “most important factor” in determining the reasonableness of a fee award); *Phillips v. Triad Guaranty, Inc.*, 2016 U.S. Dist. LEXIS 60950, at *12 (M.D.N.C. May 9, 2016) (noting “the Fourth Circuit considers [the degree of success obtained] factor particularly important.”).

Here, the creation of a \$20 million settlement fund is an excellent result for the Settlement Class. It will provide Settlement Class Members with a cash recovery that was achieved despite many complexities and risks, while avoiding the substantial expense, delay, risk, and uncertainty of continued litigation, including summary judgment, trial, and appeal. *See Genworth*, 210 F. Supp. 3d at 844 (approving fees where settlement “provides a fair and adequate result for the plaintiffs” and constitutes “an excellent result for the class.”); *In re Interior Molded Doors*, 2021 U.S. Dist. LEXIS 218589, at *8-11 (E.D. Va. July 27, 2021) (approving fees in connection with a settlement which “provides a meaningful recovery to the Settlement Class.”).

The results obtained are considerable given the complexity and uncertainty of this litigation. *See Boyd v. Coventry Health Care, Inc.*, 299 F.R.D. 451, 463 (D. Md. 2014) (approving settlement which “achieved a substantial value on behalf of the class, given the complexity and uncertainty of litigation”); *In re Wachovia Corp. ERISA Litig.*, 2011 U.S. Dist. LEXIS 123109, at *20 (W.D.N.C. Oct. 24, 2011) (measuring results against “significant hurdles in continuing the litigation”).

Defendants have vigorously denied any liability, arguing that the RICO claims are defective and the state claims are deficient. Defendants also have vigorously challenged the computation of damages. Here, Plaintiffs have presented two damages theories.

Under their first theory, Plaintiffs argued that “full refund” damages are warranted because most, if not all of VSL#3’s value derives from its false promise of clinical proof of efficacy. *See Mullins v. Direct Digital, LLC*, 2014 U.S. Dist. LEXIS 155018, *8-9 (N.D. Ill. Sept. 30, 2014), *aff’d*, 795 F.3d 654, 673-74 (7th Cir. 2015). One of Plaintiffs’ experts has computed full refund damages to be \$135.5 million on behalf of the nationwide class. ECF No. 313-45 at 34 n.136. However, Plaintiffs faced two potentially significant obstacles to recovering full-refund damages: *First*, Defendants have argued that Plaintiffs are not entitled to full-refund damages and that full-refund theories have been rejected time and again in putative class actions. ECF No. 322 at 42-43.³ *Second*, Defendants have argued that only those who purchased VSL#3 directly from one of the Defendants could recover under RICO, and they filed a pre-motion letter seeking partial summary judgment on that basis. ECF No. 322 at 58-59; ECF No. 365. Although Plaintiffs dispute that legal position, if it prevailed, the size of the nationwide class would have been significantly reduced, and the full-refund damages would have been a fraction of the above-referenced \$135.5 million.

Under their second damage theory, Plaintiffs argued that they are entitled to recover “benefit of the bargain” damages measured as “the difference in the objective, market value between the product class members were promised and the product class members received.” ECF No. 339, at 27. Plaintiffs would have to prove the overcharge or price premium caused by Defendants’ misrepresentations about VSL#3 through expert testimony, which would likely be hotly contested. That expert analysis has not yet been completed. Even if the price premium is

³ Because the Court accepted Plaintiffs’ alternative damages model, it did not address the availability of full refund damages in its class certification decision. *Starr II*, 2025 U.S. Dist. LEXIS 81502, at *27-29.

high, it will still result in damages below the full refund amount. For example, if the premium price was 75%, the damages would be \$101.6 million; if the premium price was 50%, the damages would be \$67.5 million. And again, those amounts would have been materially reduced if the Defendants had succeeded in arguing that only direct purchasers could recover under RICO.

Under all of these circumstances, the non-reversionary common fund Settlement of \$20 million in this matter provides excellent relief for the Settlement Class. *See, e.g., In re PPDAL Grp. Inc. Sec. Litig.*, 2022 U.S. Dist. LEXIS 11427, at *31-32 (E.D.N.Y. Jan. 21, 2022) (approving class action settlement representing “6.4% of the maximum estimated aggregate damages [of] \$140,000,000, assuming Plaintiffs can prove all their relevant causation arguments” as “within the range of reasonableness”); *In re Snap Inc. Sec. Litig.*, 2021 U.S. Dist. LEXIS 34126, at *6 (C.D. Cal. Feb. 18, 2021) (approving settlement “represent[ing] approximately 7.8% of the class’s maximum potential aggregate damages”); *Thorpe v. Walter Inv. Mgmt. Corp.*, 2016 U.S. Dist. LEXIS 144133, at *32 (S.D. Fla. Oct. 14, 2016) (“The Settlement thus returns an excellent 5.5% of maximum damages and 10% of the most likely damages scenario”).

The Settlement will provide immediate and certain compensation to the Settlement Class Members and avoid the substantial risks from continued litigation. The benefit obtained favors approval of the fee request. *See In re Constellation Energy Grp., Inc. Sec. Litig.*, 2013 U.S. Dist. LEXIS 208311, at *8 (D. Md. Nov. 4, 2013) (approving fee “given the substantial risks of non-recovery, the time and effort involved, and the result obtained for the Class”); *Seaman v. Duke Univ.*, 2019 U.S. Dist. LEXIS 163811, at *10 (M.D.N.C. Sep. 25, 2019) (results obtained must be measured against “significant risks at the time of the settlement.”). The excellent results obtained are an important factor supporting Class Counsel’s fee request.

b. Quality, Skill, and Efficiency of the Attorneys

Class Counsel are experienced and skilled consumer class action and complex commercial litigators who achieved a favorable result for the Settlement Class after years of combative litigation. Decl. ¶¶ 2-3, 6-7, Modesty aside, this statement, in another case about other lawyers, applies here: “Before this Court and in settlement negotiations, the lawyers zealously advocated their clients’ positions with great skill.” *Genworth*, 210 F. Supp. 3d at 844. Class Counsel successfully defeated Defendants’ motion to dismiss, including Defendants’ arguments regarding RICO claims. Class Counsel efficiently leveraged the work already done by Class Counsel in the *ExeGi* Action to avoid unnecessary and duplicative discovery, and to argue that key material issues were subject to issue preclusion. Class Counsel worked closely with their experts to develop a damages model tied to their theory of liability and successfully defended their experts’ work against Defendants’ challenge to such experts. Those expert reports were critical to successfully moving for class certification. Class Counsel obtained certification of a nationwide class under RICO – a rarity. And Class Counsel defeated Defendants’ petition to appeal the class certification decision under Rule 23(f). Those successes enabled Class Counsel to negotiate the very favorable \$20 million settlement.

As this Court held when it appointed Class Counsel under Rule 23(g):

In this case, the evidence before the Court and the litigation history for this case show that the proposed Class Counsel have performed substantial work in this case, to include identifying potential claims, analyzing the legal issues and obtaining discovery. The evidence before the Court also makes clear that the law firm of Shapiro Haber & Urmy LLP has significant experience and knowledge in handling class action matters and other complex litigation. The evidence also makes clear that the law firm of Schulman Bhattacharya, LLC has significant prior experience representing Professor De Simone and ExeGi in related litigation. Given this, the Court is satisfied that proposed Class Counsel are adequate and satisfy Rule 23(g)’s

requirements. And so, the Court will APPOINT these law firms as Class Counsel in this matter.⁴

Starr II, 2025 U.S. Dist. LEXIS 81502, at *53-54 (citations to the record omitted).

In assessing the quality and skill of Class Counsel’s handling of this matter, the Court may also consider the quality and skill of their opposing counsel. *In re Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 262 (E.D. Va. 2009) (“quality of opposing counsel is a factor to be considered in evaluating Lead Counsel’s performance”) (citation omitted). Defendants were represented by leading local and national law firms, who vigorously and tenaciously defended this action.

The quality, skill, and efficiency of Class Counsel are additional factors supporting the requested fee award.

c. Risk of Nonpayment

Class Counsel litigated this case on a contingent basis. They devoted 9,266.8 hours and incurred \$1,241,580 in expenses litigating this action for over seven years. Decl. ¶¶ 45, 51, 56, 59. They assumed considerable risk in doing so and had no assurance of payment. The extraordinary time and resources Class Counsel committed to this case over the past seven years weigh strongly in favor of the requested fee and expense award.

“‘In determining the reasonableness of an attorneys’ fee award, courts consider the relative risk involved in litigating the specific matter compared to the general risks incurred by attorneys taking on class actions on a contingency basis.’” *Fangman v. Genuine Title, LLC*, 2017 U.S. Dist. LEXIS 92273, at *13-14 (D. Md. June 15, 2017) (citation omitted). For example, litigating on a

⁴ As previously noted, on January 12, 2026, attorneys Jeremy Schulman and Jeffrey Gavenman, who were Members of the Schulman Bhattacharya, LLC firm, became partners at Hughes Hubbard & Reed LLP, and the Schulman Bhattacharya law firm ceased active operations. Accordingly, this Court appointed Shapiro Haber & Urmey and Hughes Hubbard & Reed LLP (rather than Shapiro Haber & Urmey and Schulman Bhattacharya, LLC) as Settlement Class Counsel in ECF No. 379.

contingent fee basis and covering litigation costs where the case is vigorously contested by opposing counsel demonstrates a “relatively high risk of nonpayment.” *Decohen*, 299 F.R.D. at 482.

Here, Class Counsel “agreed to prosecute this case on contingency despite several known risks.” *Seaman*, 2019 U.S. Dist. LEXIS 163811, at *11. “The outcome of the case was hardly a foregone conclusion, but nonetheless counsel accepted representation of the plaintiff and the class on a contingent fee basis, fronting the costs of litigation.” *Mills*, 265 F.R.D. at 264 (citation omitted). Among other things, Class Counsel “bore the risks involved with surviving dispositive motions, obtaining class certification, proving liability, causation, and damages, prevailing with experts, and litigating through trial and possible appeals” knowing “that the only way [they] would be compensated was to achieve a successful result.” *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *19.⁵ Class Counsel “still faced significant risks at the time of the settlement.” *Seaman*, 2019 U.S. Dist. LEXIS 163811, at *10. On the eve of mediation, Defendants filed a notice of motion letter seeking permission to file a motion for partial summary judgment on the RICO claim, which, if successful, would have substantially limited the size of the class. ECF No. 365.

Additionally, Class Counsel self-funded \$1,241,580 in total expenses to prosecute this litigation, Decl. ¶¶ 59, 60, 62, which would not have been reimbursed absent a successful result. *Seaman*, 2019 U.S. Dist. LEXIS 163811, at *11-12 (Class Counsel’s risk “were not limited to a loss of attorney time, but also substantial out-of-pocket expenses.”); *In re Rent-Way Sec. Litig.*,

⁵ See also *In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg.*, 2020 U.S. Dist. LEXIS 181103, at *86-87 (E.D. Va. Sep. 4, 2020) (“Further underscoring the opportunity cost borne by counsel was the persistent risk of non-payment” presented in the case); *Genworth*, 210 F. Supp. 3d at 844 (in addition to the risk of non-recovery at trial, “any victory at trial in this case would have to withstand appeals which could reverse or limit any award by a jury.”).

305 F. Supp. 2d 491, 516 (W.D. Pa. 2003) (“Aside from investing their time, counsel had to front copious sums of money Thus, the risks that counsel incurred in prosecuting this case were substantial and further support the requested fee award.”).

The risk of non-payment is another factor that weighs in favor of the requested fee award.

d. Objections

In accordance with the Court’s Preliminary Approval Order (ECF No. 379), on August 21, 2026, direct notice of the Settlement was disseminated to approximately 200,000 Settlement Class Members for whom Class Counsel had contact information from third-party retailers. The Notice advised Settlement Class Members that:

As part of the Settlement, Class Counsel will seek up to one-third of the settlement amount (i.e., up to \$6,666,666.67) for compensation for their attorneys’ fees, plus reasonable expenses incurred in pursuing this action, but the Court must approve any such payment to Class Counsel. Class Counsel will also seek an award from the Court of up to \$10,000 for each Class Representative for their service in representing the Class.

ECF No. 376-3, at PDF page 71. The Notice also advised Settlement Class Members of their right to object no later than October 20, 2026. *See, e.g.*, ECF No. 376-3, at PDF pages 66, 70, 75, 78, 79, 82.⁶

As of the filing of this Attorneys’ Fees Motion, it is not yet known whether there will be any objections from Settlement Class Members to the Settlement Agreement or the instant Attorneys’ Fees Motion. However, no such objections have been filed to date. Decl. ¶ 13. A lack

⁶ Under the Preliminary Approval Order, the present Attorneys’ Fees Motion had to be filed by September 21, 2026, so that Settlement Class Members would have the opportunity to see and review such motion and the supporting submissions. The Attorneys’ Fees Motion will be posted on the settlement website (www.vsl3lawsuit.com) within one business day of its filing. ECF No. 379 at 24.

of objections by class members regarding the requested fee award would weigh in favor of its reasonableness. *See Genworth*, 210 F. Supp. 3d at 844. Class Counsel will further advise the Court regarding this factor should any objections subsequently be filed.

e. Awards in Similar Cases

As discussed in Section III-A-2 above, the requested one-third fee is well within the range of fees that Fourth Circuit courts have awarded on a percentage basis.

Numerous courts in this Circuit have approved attorneys' fees awards of one-third of a common fund in consumer class actions like this one.⁷ *MedStar*, 2024 U.S. Dist. LEXIS 161002, at *22-23 (considering whether "the requested amount is in line with fee awards in" similar type of class actions). Courts also consider whether the award is consistent with "cases of similar size." *In re Retina Group of Washington Data Sec. Incident Litig.*, 2025 U.S. Dist. LEXIS 139159, at *33-34 (D. Md. July 21, 2025); *Bailey v. Mercury Fin., LLC*, 2025 U.S. Dist. LEXIS 226155, at *20 (D. Md. Nov. 18, 2025) (same). The requested fee percentage of one-third of the recovery is

⁷ *See, e.g., Jilek v. Compass Group, USA Inc.*, Case No. 23-cv-00818, ECF No. 356, at p. 4 (W.D.N.C. Jan. 9, 2026) (awarding fees in the amount of one-third of settlement fund in consumer class action); *Six v. Loancare, LLC*, 2022 U.S. Dist. LEXIS 202284, at *19 (S.D. W. Va. Nov. 7, 2022) (awarding fee of one-third of settlement fund in consumer class action which is "consistent with fee awards in similar common-fund cases") (citing cases); *Thomas v. FTS USA, LLC*, 2017 U.S. Dist. LEXIS 45217, at *15 (E.D. Va. Jan. 9, 2017) (awarding fee of one-third of the settlement fund in consumer class action as being "consistent with that awarded in other cases"); *Decohen*, 299 F.R.D. at 482 (fee award of one-third of settlement fund was "is in-line with those awarded in consumer class actions involving a similar degree of complexity and risk to counsel"); *McDaniels v. Westlake Servs., LLC*, 2014 U.S. Dist. LEXIS 16081, at *38 (D. Md. Feb. 7, 2014) ("the 33 1/3 percent award of the settlement fund requested by Class Counsel in this case is in line with the awards approved by other judges of the United States District Court for the District of Maryland in consumer class actions settled with a common fund.").

also well within the range of percentage fees typically awarded by courts in class actions with comparable recoveries.⁸

Thus, awards in similar cases further support the fee request.

f. Complexity and Duration of the Case

As set forth above, this action has involved numerous complex issues during its more than seven years of litigation. Further litigation would have remained difficult and, if taken to trial and appeal, would likely span additional years of uncertainty.

“In evaluating the complexity and duration of the litigation, courts consider . . . the amount of motions practice prior to settlement and the amount and nature of discovery.” *Jones*, 601 F. Supp. 2d at 761. As detailed above, this case was heavily litigated for seven years, involved complex medical and scientific issues, and presented special challenges in connection with proof of class-wide damages.

Moreover, civil RICO cases are inherently complex. *Uselmann v. Pop*, 2026 U.S. Dist. LEXIS 79467, at *29 (E.D. Mich. Mar. 27, 2026); *see also Compound Prop. Mgt. LLC v. Build Realty, Inc.*, 822 F. Supp. 3d 859, 871 (S.D. Ohio 2026) (“remarking on complexity of civil RICO claims”); *Perez v. DIRECTV Group Holdings, LLC*, 2023 U.S. Dist. LEXIS 13920, at *24 (C.D. Cal. Jan. 23, 2023) (remarking on the “complexities inherent in litigating RICO claims”). Here, Defendants challenged each element of RICO (ECF No. 49-1 at 10-32) and challenged the ability

⁸ *See, e.g., Plymouth Cnty. Ret. Sys. v. GTT Commc’ns, Inc.*, 2021 U.S. Dist. LEXIS 83425, at *15 (E.D. Va. Apr. 23, 2021) (awarding 33.3% of \$25 million recovery); *In re Perrigo Co. PLC Sec. Litig.*, 2022 U.S. Dist. LEXIS 32929, at *3-4 (S.D.N.Y. Feb. 18, 2022) (awarding 33.3% of \$31.9 million recovery); *In re Flowers Foods, Inc.*, 2019 U.S. Dist. LEXIS 216826, at *3-4 (M.D. Ga. Dec. 11, 2019) (awarding 33.3% of \$21 million recovery); *In re Banc of California Sec. Litig.*, 2020 U.S. Dist. LEXIS 48778, at *4-5 (C.D. Cal. Mar. 16, 2020) (awarding 33% of \$19.75 million recovery); *In re Deutsche Bank AG Sec. Litig.*, 2020 U.S. Dist. LEXIS 103134, at *6-7 (S.D.N.Y. June 11, 2020) (awarding 33.3% of \$18.5 million recovery).

of indirect purchasers to recover under RICO (ECF No. 365), an unsettled question of law in this Circuit.

In addition, Plaintiffs have brought separate claims under the laws of nine different states for breach of warranty and unfair and deceptive trade practices, requiring Class Counsel to analyze the laws of each of those nine states.

Accordingly, the complexity of this case, including the novelty and difficulty of the questions raised, strongly supports the reasonableness of Class Counsel's fee request.

g. Public Policy

Public policy considerations also support the fee award. “The class action device, when not abused, serves an important public interest in securing remedies for consumers who, for economic and practical reasons, would be unable to recover on an individual basis.” *In re Capital One Consumer Data SEC Breach Litig.*, 2022 U.S. Dist. LEXIS 213070, at *11 (E.D. Va. Nov. 17, 2022). This is particularly the case here, where it was in the public interest to hold Defendants accountable for misrepresenting facts regarding the health benefits of VSL#3. Here, suits by individual consumers against a large corporation, like Defendants, “would be, at best, problematic, as the cost to litigate would quickly outpace any possible recovery.” *Id.* Moreover, as the court recognized in *Capital One*, “law firms can only be expected to take on consumer class actions on a contingent basis if there is a significant upside. Therefore, public policy favors a significant award of attorneys’ fees above what Class Counsel would have charged on an hourly fee basis.” *Id.* at *12.⁹

⁹ See also *Medstar*, 2024 U.S. Dist. LEXIS 161002, at *24-25 (“public policy ‘supports compensating attorneys for their efforts in prosecuting cases to remedy large-scale problems that would not be financially practicable to litigate on an individual basis.’”) (citation omitted);

Accordingly, this class action serves the public interest.

4. The Fee Request Is Reasonable under the Lodestar Cross-Check

The lodestar amount is defined as a “reasonable hourly rate multiplied by hours reasonably expended.” *Black*, 2026 U.S. Dist. LEXIS 98528, at *4 (*quoting Lopez v. XTEL Const. Grp., LLC*, 838 F. Supp. 2d 346, 348 (D. Md. 2012)). “The purpose of a lodestar cross-check is to determine whether a proposed fee award is excessive relative to the hours reportedly worked by counsel, or whether the fee is within some reasonable multiplier of the lodestar.” *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *22 (citation omitted).

Using the Fitzpatrick Matrix Rates and the hours described in the Declaration, Class Counsel’s lodestar totals \$8,109,782.60, which is significantly above the attorneys’ fees requested, resulting in a negative multiplier of .822. Here, as detailed below, Class Counsel’s fee request of one-third of the \$20 million Settlement, which is \$6,666,666.67, is less than Class Counsel’s lodestar using the Fitzpatrick Matrix hourly rates. Decl. ¶¶ 45-48.

As this Court held in *Black v. USAA Gen. Indem. Co.*, the “Fitzpatrick Matrix is an appropriate guideline for determining reasonable hourly rates in this District.” 2026 U.S. Dist. LEXIS 98528, at *7-9. Since the current hourly rates of Class Counsel are higher than the Fitzpatrick Matrix rates, we have used the Fitzpatrick Matrix rates to compute our lodestar for the lodestar cross-check. Decl. ¶ 49. In the Declaration, Class Counsel provide tables detailing the hours spent by each attorney and staff and each individual’s hourly rates using the Fitzpatrick

Thomas, 2017 U.S. Dist. LEXIS 45217, at *4-5 (“Class counsel play a vital role in protecting the rights of class members.... The important role of class counsel continues in the consumer protection context as well. Class counsel help protect consumers by enforcing the rights created by... consumer protection statutes.”); *Jones*, 601 F. Supp. 2d at 765 (“At the heart of the class action lies the belief that the interests of justice are well served by class actions that vindicate rights that might otherwise go unprotected....”) (internal citation and quotations omitted).

Matrix, as well as a breakdown of the time expended by category as provided in Appendix B to the Local Rules. Decl. ¶¶ 50-58. The resulting total, per firm, is as follows:

Law Firm	Hours	Fitzpatrick Lodestar
Shapiro Haber	6,400.8	\$5,589,423.70
Hughes Hubbard/Schulman Bhattacharya	2,866	\$2,520,358.90
TOTAL	9,266.8	\$8,109,782.60

Decl. ¶¶ 51, 56.

The requested fee is presumptively reasonable, as it is less than the Fitzpatrick Matrix lodestar figure. *McAdams*, 26 F.4th at 162. Courts in this Circuit routinely approve significant lodestar multipliers.¹⁰ Since the requested fee award of \$6,666,666.67 is substantially less than the Fitzpatrick Matrix lodestar, and hence represents a negative multiplier of approximately .822, it is certainly reasonable when considering lodestar cross-check.

a. Hours Reasonably Expended

Class Counsel's lodestar calculation includes 9,266.8 total hours invested in the litigation over the course of more than seven years. Decl. ¶¶ 45, 51, 56. In the Declaration, Mr. Haber attests to the reasonableness of the hours spent by Shapiro Haber and Mr. Schulman attests to the reasonableness of the hours spent by Schulman Bhattacharya and Hughes Hubbard. Decl. ¶ 46. As explained in the Declaration, these hours reflect extensive litigation conducted in this action, which included extensive fact discovery, more than 20 fact depositions, expert reports, expert depositions, motions to dismiss, discovery motions, and extensive briefing on Plaintiffs' Class

¹⁰ See, e.g., *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *20 ("The requested fee would result in a lodestar multiplier of 2.45—well within the range routinely approved in this Circuit."); *Jones*, 601 F. Supp. 2d at 766 ("Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee.").

Certification Motion and Defendants’ related motion to exclude Plaintiffs’ damages experts. Defense Counsel contested and challenged Plaintiffs at every step of this litigation. Early efforts to reach a settlement were unsuccessful. Accordingly, Class Counsel was forced to spend considerable hours in order to achieve the favorable result obtained. Decl. ¶¶ 11-23, 48.

b. The Hourly Rates Are Reasonable

Under the lodestar calculation, the determination of a reasonable hourly rate should be guided by the “prevailing market rate.” *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 244-45 (4th Cir. 2009); *Kruger v. Novant Health, Inc.*, 2016 U.S. Dist. LEXIS 193107, at *12 (M.D.N.C. Sep. 29, 2016) (“relevant market rate for cases such as the present case to be a nationwide market rate”). “The hourly rate should be in line with the market rate for ‘similar services by lawyers of reasonably comparable skill, experience, and reputation.’” *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *17. “The use of current as opposed to historical market rates is appropriate to account for the delay in payment to counsel.” *Seaman*, 2019 U.S. Dist. LEXIS 163811, at *13-14.

This Court has held that the “Fitzpatrick Matrix is an appropriate guideline for determining reasonable hourly rates in this District.” *Black*, 2026 U.S. Dist. LEXIS 98528, at *7-9. Instead of using their higher regular rates, Class Counsel has calculated their lodestar using the Fitzpatrick Matrix rates for 2025,¹¹ based on each person’s position and experience level. Use of the

¹¹ “Fair and reasonable compensation to class counsel ‘requires charging current rates for all work done during the litigation... Using historical rates ‘inadequately compensate[s] [a] firm for the delay in receiving its fees.’” *Marshall v. Northrop Grumman Corp.*, 2020 U.S. Dist. LEXIS 177056, at *18-19 (C.D. Cal. Sep. 18, 2020) (citations omitted); *see also Norman v. Housing Auth. of City of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988) (holding that “where there is a delay [in payment to class counsel] the court should take into account the time value of money and the effects of inflation and generally award compensation at current rates rather than historic rates.”).

Fitzpatrick Matrix rates results in a conservative lodestar crosscheck number and a negative multiplier, which more than supports the fee request. Decl. ¶¶ 49, 51-54, 56-58.

B. Class Counsel Should Be Awarded Reasonable Expenses Incurred in Prosecuting This Action.

“It is well-established that the Plaintiffs may recover costs for “those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.” *Black*, 2026 U.S. Dist. LEXIS 98528, at *17 (*quoting Spell v. McDaniel*, 852 F.2d 762, 771 (4th Cir. 1988)). Costs that may be charged include “those reasonable out-of-pocket expenses incurred by the attorney which are normally charged to a fee-paying client, in the course of providing legal services.” *Spell*, 852 F.2d at 771 (citation omitted). “The prevailing view is that expenses are awarded in addition to the fee percentage.” *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *20-21 (citation omitted). Expenses may include court costs, transcripts, travel, contractual personnel, photocopying, postal fees, telephone costs, and expert witness fees. *Id.*; *see also Boyd*, 299 F.R.D. at 468 (approving expense request that included “filing fees, expert and mediation fees, travel costs, computer research, copies, and other miscellaneous costs” and concluding that the expenses were “reasonable and typical”).

In the Declaration, Class Counsel provide tables detailing the \$1,241,580 in expenses they incurred in prosecuting this action over the past seven years. Decl. ¶¶ 59-64. Those expenses were reasonable and necessary for the successful prosecution of this action. Those expenses included expert witness fees for two highly specialized damages experts whose testimony was necessary to obtain class certification, the costs for five depositions taken by Plaintiffs and more than twenty depositions taken by Defendants, the costs of legal research, document management expenses required to produce documents to Defendants and review documents produced by Defendants, and

the expenses of a nationally recognized mediator, who was critical to the resolution of this case. *Id.* The expenses are reasonable and should be approved.

In addition, under the Settlement Agreement, the fees and expenses of the Settlement Administrator for notice and claims administration are to be paid out of the Settlement Fund. Class Counsel seek approval to pay the Settlement Administrator their actual fees and expense, in an amount not to exceed \$195,000 out of the Settlement Fund for notice and claims administration. Decl. ¶ 65.

C. Service Awards in the Amount of \$10,000 to Each of the Named Plaintiffs Should Be Approved.

Plaintiffs seek a service award of \$10,000 for each named plaintiff. “Incentive awards are intended to compensate class representatives for work done on behalf of the class, to make up for financial or reputational risk undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private attorney general.” *Berry v. Schulman*, 807 F.3d 600, 613 (4th Cir. 2015) (citation omitted). “To determine whether an incentive payment is warranted, the court should consider ‘the actions the plaintiff has taken to protect the interests of the class, the degree to which the class has benefitted from those actions, and the amount of time and effort the plaintiff expended in pursuing the litigation.’” *Decohen*, 299 F.R.D. at 483 (citation omitted).

Each of the named plaintiffs devoted considerable time and effort to this litigation and contributed to its successful outcome. As this Court held in its class certification decision: “The Plaintiffs commenced this case in 2019, and the litigation history of this case makes clear that they have actively participated in this litigation since that time.” *Starr II*, 2025 U.S. Dist. LEXIS 81502, at *44. In addition to meeting with counsel to support the allegations of the complaints, each of the named Plaintiffs produced documents, including medical records, answered interrogatories, sat

for depositions. In addition, they helped facilitate the production of their medical records by their health care providers, who were also deposed. Decl. ¶ 69. Their role was critical in a case which involved deception about a healthcare product that was marketed as being clinically tested to treat the severe gastrointestinal conditions they had, when that was not the case. A service award of \$10,000 for each of the named plaintiffs is warranted and reasonable. Decl. ¶ 70.

Further, the requested service awards are in line with such awards made in other class action litigation in this Court (*see Boger v. Citrix Sys., Inc.*, 2023 U.S. Dist. LEXIS 96379, at *28 (D. Md. June 1, 2023) (“service payment of \$10,000 to Mr. Boger as the Class Representative is also reasonable”)) and this Circuit.¹²

Service awards in the amount of \$10,000 to each of the named Plaintiffs are reasonable and should be approved.

IV. Conclusion

For all the foregoing reasons, this Court should award Class Counsel attorneys’ fees in the amount of \$6,666,666.67, which is one-third of the \$20 million Settlement Fund created as a result of their highly successful efforts in this litigation; award \$1,241,580 to reimburse Class Counsel for the expenses that were reasonably and necessarily incurred in prosecuting and settling the

¹² *See Williams v. GbR Pizza, Inc.*, 2023 U.S. Dist. LEXIS 233405, at *3, 10 (M.D.N.C. Apr. 26, 2023) (approving service payment of \$10,000); *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *21-22 (approving incentive awards of \$20,000 each to eight class representatives in an ERISA class action); *Chrismon*, 2020 U.S. Dist. LEXIS 119873, at *14 (approving service award “in the amount of \$10,000”); *Skochin v. Genworth Fin., Inc.*, 2020 U.S. Dist. LEXIS 207926, at *30-31 (E.D. Va. Nov. 5, 2020) (approving \$25,000 service award in light of “the time and effort expended by Named Plaintiffs and in perspective of the fact that their efforts helped to secure a settlement that is highly beneficial to the class”); *Clark v. Duke Univ.*, 2019 U.S. Dist. LEXIS 105696, at *15-16 (M.D.N.C. June 24, 2019) (approving awards of \$25,000 and \$30,000 for named plaintiffs); *Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 577 (D.S.C. 2015) (approving a \$15,000 award); *Decohen*, 299 F.R.D. at 483 (approving incentive payment of \$10,000).

action; approve the payment for actual fees and expenses of the Settlement Administrator, not to exceed \$195,000, for notice and claims administration; and authorize service awards of \$10,000 to each of the Class Representatives.

[SIGNATURE PAGE TO FOLLOW]

Dated: September 21, 2026

Respectfully submitted,

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