IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

BRIANA WRIGHT, individually and on behalf of all others similarly situated, Plaintiff, v. SOUTHERN NEW HAMPSHIRE UNIVERSITY, Defendant.	CASE NO. 1:20-cv-00609-LM Hon. Landya B. McCafferty

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S ASSENTED TO MOTION FOR ATTORNEY'S FEES, COSTS, EXPENSES, AND SERVICE AWARD

Dated: June 17, 2021

BURSOR & FISHER, P.A.
Philip L. Fraietta (*Pro Hac Vice*)
New York Bar No. 5297825
Alec M. Leslie
New York Bar No. 5520721
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@bursor.com
aleslie@bursor.com

BURSOR & FISHER, P.A.
Sarah N. Westcot
Florida Bar No. 1018272
701 Brickell Avenue, Suite 1420
Miami, FL 33131
Telephone: (305) 330-5512
Facsimile: (305) 676-9006
Email: swestcot@bursor.com

Class Counsel

[Local Counsel Listed on Signature Page]

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I. INTRODUCTION AND BACKGROUND

Plaintiff Briana Wright ("Plaintiff") was a student enrolled in the on-campus experience program for the Spring 2020 Semester at Defendant Southern New Hampshire University ("SNHU" or "Defendant") (collectively, the "Parties"). Plaintiff alleged that SNHU breached its contract with students to provide an in-person, on-campus experience when it shut down midway through the Spring 2020 semester and moved to online learning due to COVID-19. After extensive arms' length negotiations, including a full-day mediation with the Honorable Frank Maas (Ret.) of JAMS New York, the Parties reached a Class Action Settlement (the "Agreement" or "Settlement") that requires SNHU to establish a $1.25 million non-reversionary common fund for Settlement Class Members to partake in. The Settlement provides that Class Counsel may seek up to one-third in attorneys' fees, costs, and expenses, and a $5,000 incentive award for Plaintiff.

This Court preliminarily approved the Settlement on April 26, 2021 (*see* ECF No. 31), and also approved a detailed Notice of Settlement of Class Action ("Notice") that outlined the Settlement terms, including attorneys' fees, costs, expenses, and incentive award. So far, the Class response has been overwhelming: Class Members resoundingly approve the Settlement—not a single Class Member has objected to the Settlement.

Accordingly, Plaintiff seeks (1) reasonable attorneys' fees and costs totaling $416,666.66, or one-third of the Settlement Fund; and (2) an incentive service award of $5,000 for Plaintiff in recognition of her contributions to the case, her service to the Class Members, and the efforts and risks she undertook in bringing this litigation.

II. PLAINTIFF'S APPLICATION FOR ATTORNEYS' FEES, COSTS, AND EXPENSES

The Settlement provides that Class Counsel will seek (a) an award of attorneys' fees, costs, and expenses in an amount not to exceed one-third of the Settlement Payment Amount. *See* Agreement ¶ 8.1 (Fraietta Decl., Ex. A). This fee is reasonable in light of the complexity of the litigation, the high degree of risk assumed by Counsel, the amount of time and resources expended on the case, and the excellent result achieved for the Class. A more detailed review of the work performed by Class Counsel in this litigation is included in the Declaration of Philip L. Fraietta ("Fraietta Decl.") submitted herewith. For the reasons set forth therein and herein, the Court should grant Plaintiff's application for attorneys' fees, costs, and expenses.

III. PLAINTIFF'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES SHOULD BE GRANTED

The relevant considerations all support Class Counsel's fee request. ***First***, this Court should determine Class Counsel's fee based on the total value of the Settlement that was obtained for the Class: $1,250,000. *See infra* § III.A. ***Second***, Class Counsel requests a reasonable percentage of the total settlement recovery. Courts in the First Circuit and nationwide routinely award attorneys one-third, or more, of the total fund in class actions. *See infra* § III.B. ***Third***, the relevant factors support Class Counsel's fee request. *See infra* § III.C (discussing seven factors considered by courts in the First Circuit). ***Fourth***, a lodestar cross-check confirms the reasonableness of Class Counsel's fee request. *See infra* § III.D.

A. Class Counsel Secured A $1,250,000 Common Fund.

This Court should determine Class Counsel's fee based on the *total value* of the Settlementthat was obtained for the class, which is $1,250,000. Class Counsel's fee request amounts to one-third of the $1,250,000 Settlement. It is well-established that the percentage of fund method of calculating fees "is based on a percentage of the actual value to the class of any

settlement fund…." Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* (3d ed.).Here, the overall value of the Settlement is $1,250,000, the Court should determine Class Counsel's fees based on a percentage of this total settlement fund. The resulting fee request for one-third of the Settlement is well within the range of reasonableness.

B. Class Counsel's Request for One-Third of the Fund Represents a Reasonable Percentage That is Customarily Awarded

Class Counsel's fee request for one-third of the settlement fund is well within the range of reasonableness. Indeed, Courts in this Circuit routinely award one-third of common funds in class action settlements. *Rapuano v. Trustees of Dartmouth College*, 2020 WL 3965784, at *2 (D.N.H. July 10, 2020) (awarding 35% of $14 million settlement fund in attorneys' fees); *Gordan v. Massachusetts Mut. Life Ins. Co.*, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (awarding one-third of $30.9 million settlement); *Lapan v. Dick's Sporting Goods, Inc.*, No. 1:13-CV-11390, ECF No. 220 (D. Mass. April. 19, 2016) (awarding one-third of $10 million settlement); *Sylvester v. Cigna Corp.*, 401 F. Supp. 2d 147, 151 (D. Me. 2005) (awarding one-third of settlement fund); *In re Asacol Antitrust Litig.*, 2017 WL 11475275, at *4 (D. Mass. Dec. 7, 2017) (approving fee request for one-third of $15 million settlement); *In re StockerYale, Inc. Sec. Litig.*, 2007 WL4589772, at *6-7 (D.N.H. Dec. 18, 2007) (awarding 33% of fund).

Notably, courts in this Circuit have awarded one-third in cases with significantly larger funds than this one. *See Matamoros et al v. Starbucks Corporation*, Case No. 08-cv-1077, ECF No.169 (D. Mass. 2013) (approving fee request for one-third of the $23.5 million settlement); *see also In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 82 (D. Mass. 2005) (approving attorneys' fees amounting to one-third of the $67 million settlement andnoting that "the one-third percentage of fund fee is not unreasonable as matter of law.").

C. The Relevant Factors Support Counsel's Attorneys' Fees Application

It is well-settled that "a lawyer who recovers a common fund for the benefit of persons otherthan himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *BoeingCo. v. Van Gemert*, 444 U.S. 472, 478 (1980). In analyzing an attorneys' fee request, "the touchstone of the inquiry is reasonableness." *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 350 (D. Mass. 2015). Courts in the First Circuit typically, but are not required to,[1]consider the following factors: "(1) the size of the fund and the number of persons benefitted; (2) the skill, experience, and efficiency of the attorneys involved; (3) the complexity andduration of the litigation; (4) the risks of the litigation; (5) the amount of time devoted to the caseby counsel; (6) awards in similar cases; and (7) public policy considerations." *In re Neurontin Mktg.& Sales Pracs. Litig.*, 58 F. Supp. 3d 167, 170 (D. Mass. 2014).

Although courts have discretion to apply either the lodestar or percentage of the fund methods of calculating fees, the First Circuit has observed that the percentage of the fund method,which "permits the judge to focus on a showing that the fund conferring a benefit on the class resulted from the lawyers' efforts," is often preferable. *See In re Thirteen Appeals Arising Out ofSan Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (noting that the percentage of fund method "is often less burdensome to administer than the lodestar method," "enhances efficiency," and "is result-oriented rather than process-oriented."); *see also*, *e.g.*, *Gordan*, 2016 WL 11272044, at *2 ("As held by the First Circuit, the 'percentage of fund' approachoffers distinctive advantages . . . the First Circuit has stated that the use of the [percentage of fund]method in common fund cases is the prevailing praxis. Indeed, there is a

[1] "[T]he First Circuit does not require courts to examine a fixed laundry list of factors." *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265-66 (D.N.H. 2007).

clear consensus among federal and state courts that the percentage of fund approach is the more efficient, better reasoned,and effective method.") (citations and quotations omitted).

1. Factor 1: The Size of the Fund and the Number of Persons Benefitted

The Settlement provides significant and immediate relief to the Class Members: a $1.25 million non-reversionary payment that will benefit the 2,815 Class members. These benefits to the Class are particularly exceptional in light of the risks involved with continued litigation, and because the $1.25 million represents approximately one-third of the maximum possible damages the Class could have received if it were to prevail at trial. This factor therefore weighs in favor of the requested fee.

2. Factor 2: Counsel for Both Parties are Highly Competent and Qualified

Class Counsel is highly skilled and experienced in class action litigation, particularly in the consumer context, and has achieved a number of exceptional results throughout the country over the last several years. Bursor & Fisher, P.A. has significant experience in litigating class actions of similar size, scope, and complexity to the instant action. The firm has been recognized by courts across the country for its expertise and skilled, effective representation. *See* Fraietta Decl. ¶ 41. Accordingly, this factor weighs heavily in favor of the requested fee.

3. Factor 3: This Class Action is Complex

This complex nature of this litigation favors the requested fee award. It goes without saying that the claims and legal theories at issue are novel, complicated, and unsettled, to put it lightly. This litigation is thus inherently "a complex case raising difficult and in some instances novel legal issues"as well as "thorny issues of fact." *In re Lupron Mktg. & Sales Practices Litig.*, 2005 WL 2006833, at *4 (D. Mass. Aug. 17, 2005). And "Courts have recognized that the novelty, difficulty and complexity of the issues involved are significant factors in determining a

fee award." *In re Heritage Bond Litig.*, 2005 WL 1594403, at *20 (C.D. Cal. June 10, 2005) (awarding one-third of the $27.8 million fund where the class action "concerned relatively uncharted territory" and "cannot be considered a garden variety … class action" … "Cases of first impression generally require more time and effort on the attorney's part ... [counsel] should not be penalized for undertaking a case which may make new law, [but] appropriately compensated for accepting the challenge.").

The complexity of this case is further underscored by the challenges Plaintiff faced on a motion to dismiss, and even more so if they were to prevail and seek class certification. Indeed, substantially similar motions to dismiss have been granted by federal courts across the country. *See* Fraietta Decl. ¶ 25 (citing cases). This factor favors the requested fee.

4. Factor 4: The Risk of Non-Payment

"Many cases recognize that the risk assumed by an attorney is perhaps the foremost factor in determining an appropriate fee award." *In re Lupron*, 2005 WL 2006833, at *4.[2] Class Counsel took this case on a pure contingency basis and committed substantial resources of attorney and staff time towards investigating and litigating this action. Fraietta Decl. ¶ 31. In doing so, Class Counsel "bore the risk of the case being dismissed at the pretrial stage, of losing at trial, or of failing to prove damages." *In re Lupron*, 2005 WL 2006833, at *4. Indeed, Class Counsel recognizes that Plaintiff faced considerable risks in establishing class-wide liability, obtaining Rule 23 certification of the proposed class action (and perhaps opposing a motion for

[2] "A contingency fee arrangement often justifies an increase in the award of attorneys' fees. This rule helps assure that the contingency fee arrangement endures. If this 'bonus' methodology did not exist, very few lawyers could take on the representation of a class client given the investment of substantial time, effort, and money, especially in light of the risks of recovering nothing." *In re Lupron*, 2005 WL 2006833, at *4 (quoting *Behrens v. Wometco Enterprises, Inc.*, 118 F.R.D. 534, 548 (S.D. Fla. 1988), *aff'd,* 899 F.2d 21 (11th Cir. 1990)).

decertification or a Rule 26(f) petition), and establishing damages. Fraietta Decl. ¶ 24. Class Counsel also assumed the risk of the significant delay associated with achieving a final resolution through trial and any appeals. *Id* ¶ 26. "Where, as here, lead counsel undertook this action on a contingency basis and faced a significant risk of non-payment, this factor weighs more heavily in favor of rewarding litigationcounsel." *Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *9 (D.R.I. Feb. 17, 2016); *see also Roberts*, 2016 WL 8677312, at *13 (awarding one-third and citing "the significant risk [class counsel] assumed in taking the case on a wholly contingent basis").

Moreover, given that Defendant was represented by highly sophisticated and renowned counsel, this was clearly a high-risk case whose outcome was unprecedented. Accordingly, the fee requested by Class Counsel is reasonable for a complex, high risk action such as this one.

5. Factor 5: Class Counsel Dedicated Significant Time and Labor to This Case

Since Class Counsel began investigating this matter in March 2020, Counsel has devoted over 277 hours to the successful pursuit of this matter. Fraietta Decl. ¶ 31. Class Counsel's dedication to this matter and expenditure of substantial time, effort, and resources has brought this complex litigation to a successful resolution.

(i) Class Counsel Thoroughly Investigated the Claims and Allegations in this Matter

Class Counsel extensively investigated legal and factual allegations of Plaintiff's breach of contract and unjust enrichment claims due to SNHU campus closures resulting from COVID-19. Class Counsel's workincluded, *inter alia*, conducting an extensive factual investigation, including (i) interviewing witnesses with knowledge of the underlying allegations set forth in the Complaint; (ii) reviewing extensive records and documents provided by the Plaintiff and other witnesses; (iii) reviewing public statements issued by SNHU; (iv) reviewing SNHU course

registration portals, various policy documents, and handbooks; (v) reviewing other publicly available information on SNHU's website. *See* Fraietta Decl. ¶¶ 3-16.

(ii) Class Counsel Actively Litigated this Case

Class Counsel drafted pleadings including a complaint and an amended complaint. Class Counsel briefed a motion to dismiss, which included drafting and submitting multiple notices of supplemental authority. And Class Counsel participated in meet and confer sessions with SNHU's counsel. *See* Fraietta Decl. ¶ 3-16.

(iii) Class Counsel Committed Substantial Time and Resources to Reaching a Comprehensive Class Settlement and Obtaining Preliminary Approval

Class Counsel also dedicated a significant amount of time to reaching a resolution of this matter. Class Counsel worked with damages experts to investigate Plaintiff's allegations and formulate a programmatic relief proposal; participated in a full day of mediation, which was preceded by several weeks of settlement negotiations, and followed by several weeks of additional settlement negotiations after the mediation; negotiated and prepared the Class Action Settlement Agreement and the Class Notice documents and Claim Form; and secured and worked with a Settlement Administrator to effectuate the Settlement. *See* Fraietta Decl. ¶ 28.

Class Counsel also successfully moved for Preliminary Approval of the Proposed Class Action Settlement (*see* ECF Nos. 30, 31). Class Counsel provided this Court with lengthy briefing, declarations, and exhibits in support of their Motion.

(iv) Class Counsel's Significant Work After Preliminary Approval

After this Court granted Preliminary Approval, Class Counsel spent a substantial amount of time working with the Settlement Administrator and assisting the Plaintiff and Class Members with the Settlement and their claims submissions. *See* Fraietta Decl. ¶ 29. Throughout this

litigation, Class Counsel has participated in countless calls with the Plaintiff and class members regarding their claims, the litigation, the Settlement, and the claims submission (in addition to extensive written communications). *Id*.

(v) Over the Next Several Months, Class Counsel Will Commit Additional Time and Resources to Monitoring the Settlement

Class Counsel will commit significant ongoing time and resources to this litigation. Fraietta Decl. ¶ 32. Class Counsel will, in the immediate future, be required to dedicate time and resources to administering the Settlement. *Id*. Based on Class Counsel's experience in other cases, this ongoing work will likely involve approximately 50-75 total additional hours. *Id*. This additional work should be accounted for as well. *See Roberts*, 2016 WL 8677312, at *13 (awarding one-third and noting that class counsel has "already committed, and anticipate continuing to commit, additional time to the administration of the claims.").

(vi) Class Counsel's Expeditious Resolution of this Case Should Not Reduce the Fee Award

The timing of this settlement does not suggest a reduced percentage fee. *See Roberts*, 2016 WL 8677312, at *13 (where case settled shortly after pleadings stage, awarding one-third of the total settlement fund based on counsel's efforts and the risk assumed in taking the case on a contingency basis); *In re StockerYale, Inc. Sec. Litig.*, 2007 WL 4589772,at *6-7 (D.N.H. Dec. 18, 2007) (awarding 33%, or $1,122,000 in attorneys' fees despite lodestar value of just $521,985); *In re Sequoia Sys., Inc. Sec. Litig.*, 1993 WL 616694,at *1 (D. Mass. Sept. 10, 1993) (awarding one-third and finding that "the speed with which relatively complex litigation has been resolved" was "a function of the quality of the counsel involved, their ability to get to the core of the case, the jugular of the case promptly, and effect a prompt resolution. That prompt resolution is a time value to the members of the class themselves."). Indeed, as the First Circuit

has explained, the "percentage of fund" method is preferable because it avoids acting as a "strong disincentive to early settlement" and instead rewards efficiency. *In re Thirteen Appeals*, 56 F.3d at 307.

It is axiomatic that Class Counsel should be rewarded rather than punished for efficiently reaching an excellent settlement that provides immediate benefits to the Class. *See*, *e.g.*, *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002) (awarding one-third of $11.5 million fund, noting "such efficient prosecution of plaintiffs' claims weighs in favor of a finding of the quality of [Class Counsel's] representation here . . . [A] prompt and efficient attorney who achievesa fair settlement without litigation serves both his client and the interests of justice.' In the contextof a complex class action, early settlement has far reaching benefits in the judicial system."); *see also In re Nat'l Football League Players' Concussion Injury Litig.*, 2018 WL 1635648, at *5-6 (E.D. Pa. Apr. 5, 2018) (awarding over $100 million in attorneys' fees in "mega-fund" case even where the settlement "was secured without formal discovery, with limited litigation of motions, and with no bellwether trials"; because class counsel"mastered the intricacies of this case," they were able to reach a "relatively quick resolution" thatallowed class members to receive compensation "as quickly as possible"); *Williamson v. MicrosemiCorp.*, 2015 WL 13650045, at *2 (N.D. Cal. Feb. 19, 2015) ("This Court will not . . . punish [attorneys] for resolving matters quickly, when such quick resolution is, as here, highly beneficial to the class. Indeed, if Class Counsel had not managedto resolve the case so quickly, the case might have bogged down in expensive and protractedlitigation."); *In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330, 1365 (S.D. Fla. 2011) (awarding 30% of a $410 million "mega-fund" settlement: "this is one of the occasions when an early resolution may demonstrate that the parties and their counsel are well prepared and well aware of the strength and weaknesses of their

positions and of the interests to beserved by an amicable end to the case.") (quotations omitted).

6. Factor 6: The Requested Award is Aligned with Awards in Comparable Cases

Courts in this Circuit routinely award one-third of the total fund in attorneys' fees. *See supra* Section III.B (collecting cases in this Circuit and throughout the country awarding one-third in attorneys' fees). Class Counsel's fee request for one-third of the total fund is in line with fee awards in other complex class action settlements within this Circuit. *See id.*

7. Factor 7: Public Policy Considerations

Public policy considerations also favor Class Counsel's fee request. There is a public interest in having experienced counsel undertake the risk of pursuing complex class actions. This is particularly true where it is unlikely that the Class Members will pursue litigation on their own foreconomic or personal reasons. *See*, *e.g.*, *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 1029, 1043 (S.D. Ohio), *decision clarified,* 148 F. Supp. 2d 936 (S.D. Ohio 2001) ("We believe that, without such a classaction, small individual claimants would lack the resources to litigate a case of this magnitude. Attorneys who take on class action matters serve a benefit to society and the judicial process by enabling such small claimants to pool their claims and resources.").

Moreover, courts in this Circuit have recognized that public policy supports rewarding ClassCounsel for the time, expense, and risk involved in litigating complex matters, "especially where counsel's dogged efforts—undertaken on a wholly contingent basis—result in satisfactory resolution for the class." *Medoff*, 2016 WL 632238, at *9; *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007) (finding that "countervailing public policy considerationsweigh against any reduction of the [percentage of fund] award" where class counsel's "expenditure of time, money, and effort" and "dogged effort" contributed to the

favorable end result:"public policy favors granting counsel an award reflecting that effort."). "Without a fee that reflectsthe risk and effort involved in this litigation, future plaintiffs' attorneys might hesitate to be similarly aggressive and persistent when faced with a similarly complicated, risky case and similarly intransigent defendants." *Id*.

D. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fee

Finally, a lodestar cross-check[3] confirms the reasonableness of Class Counsel's fee request. Class Counsel has devoted more than 277 to prosecuting this litigation.[4] *See* Fraietta Decl. ¶ 31. Class Counsel's aggregate lodestar exceeds $140,000. *Id*.

The requested fee award represents a multiplier of just 2.9, which is well within the range of reasonableness. "Multipliers of 2 and more have been found reasonable in common fund cases" in the First Circuit. *Roberts*, 2016 WL 8677312, at *13; *Mooney v. Domino's Pizza, Inc.*, 2018 WL 10232918, at *1 (D. Mass. Jan. 23, 2018) ("Taking into account the additional time that class counsel have and will spend on settlement administration, the multiplier in this case is approximately 4.77, which is within the bounds of reasonableness for a class action."); *In re Tyco*, 535 F. Supp. 2d at 271 ("the resulting lodestar multiplier of 2.697 appropriately compensates counsel for the risk that they assumed in litigating the case."); *In re Relafen Antitrust Litig.*, 231 F.R.D. at 81-82 ("A multiplier of 2.02 is appropriate.") (citing cases).

Notably, Class Counsel's current lodestar does not takeinto account the additional hours that will be dedicated to administering and overseeing the Settlementover the next several

[3] "The First Circuit does not require a court to cross check the percentage of fund against the lodestar in its determination of the reasonableness of the requested fee." *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 81 (D. Mass.2005). However, "[a]s the First Circuit explained, the 'percentage of fund' approach is a useful approach, and may beespecially helpful in certain cases when combined with the lodestar approach." *Mooney*, 2018 WL 10232918, at *1.

[4] Detailed time records are attached to the Fraietta Decl. as Exhibit B.

months. Fraietta Decl. ¶ 32.

IV. PLAINTIFF IS ENTITLED TO AN INCENTIVE AWARD IN THE AMOUNT REQUESTED

The Settlement states that Plaintiff may seek an incentive award of $5,000. Agreement ¶ 8.3. This incentive award is fair and reasonable in light of the time and effort Plaintiff expended for the benefit of the Class, and the risks she assumed by initiating the litigationand publicly representing the Class. Further, the award is not excessive in light of the overallSettlement Fund.

Courts recognize that named plaintiffs are "an essential ingredient of any class action" and that "an incentive award can be appropriate to encourage or induce an individual to participate in the suit." *Scovil v. FedEx Ground Package System, Inc.*, 2014 WL 1057079 *6 (D. Maine Mar. 14, 2014). Incentive awards are viewed favorably because they encourage "named plaintiffs to participate actively in class action litigation in exchange for reimbursement for their pursuits on behalf of the class overall." *Bezdek*, 79 F. Supp. 3d at 351. Plaintiff has actively pursued this litigation from the outset. Her initiative, time, and effort were essential to the successful prosecution of the case. She: (1) worked with Class Counsel to investigate and develop the case; (2) participated in preliminary discovery and provided counsel with necessary documents, communications, and information; and (3) conferred with Class Counsel during the ligation and settlement negotiations. Wright Decl. ¶¶ 4-8. An incentive award is appropriate in light of the efforts made by Plaintiff to protect the interests of the other Settlement Class members, the time and effort she expended pursuing this matter, and the substantial benefit she helped achieve for the other Settlement Class members. An incentive award of $5,000 is well-deserved, reasonable, and equivalent to awards approved by other courts in this Circuit. *See Scovil*, 2014 WL 1057079 at *6 (citing a 2006 study of incentive awards during 1993-2002 found the median incentive payment to be $4,537, with the average being $15,992). Based on

the foregoing, Class Counsel respectfully request that the Court approve an incentive award of $5,000 for Plaintiff.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant Plaintiff's application for attorneys' fees, costs, expenses, and an incentive award to the Plaintiff.

Dated: June 17, 2021

Respectfully submitted,

By: */s/ Philip L. Fraietta*
Philip L. Fraietta

BURSOR & FISHER, P.A.
Philip L. Fraietta (*Pro Hac Vice*)
New York Bar No. 5297825
Alec M. Leslie
New York Bar No. 5520721
888 Seventh Avenue
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@bursor.com
aleslie@bursor.com

BURSOR & FISHER, P.A.
Sarah N. Westcot
Florida Bar No. 1018272
701 Brickell Avenue, Suite 1420
Miami, FL 33131
Telephone: (305) 330-5512
Facsimile: (305) 676-9006
Email: swestcot@bursor.com

Class Counsel

DOUGLAS, LEONARD & GARVEY, P.C.
Benjamin T. King
New Hampshire Bar No. 12888
14 South Street, Suite 5
Concord, NH 03301
Telephone: (603) 224-1988

Email: benjamin@nhlawoffice.com

Local Counsel for Plaintiff and the Proposed Settlement Class