**IN THE UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**

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| MELISSA FERRICK, et al.,<br><br>Plaintiff,<br><br>vs.<br><br>SPOTIFY USA INC., et al.,<br><br>Defendants. | No. 1:16-cv-08412 (AJN) |

**CORRECTED**
**MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES AND PAYMENT OF LITIGATION EXPENSES**

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## I. INTRODUCTION

Court-appointed class counsel Susman Godfrey L.L.P. and Gradstein & Marzano, P.C. ("Class Counsel"), having recovered $112.55 million in total relief for the benefit of the Class, respectfully apply for an award of attorneys' fees and expenses.[1] The requested fee, which totals $15.86 million, is 14% of the gross settlement benefit, well within the range approved by courts in this Circuit. *See Velez v. Novartis Pharm. Corp.*, No. 04 CIV 09194 CM, 2010 WL 4877852, at *21 (S.D.N.Y. Nov. 30, 2010) (noting that "federal courts have established that a standard fee in complex class action cases like this one, where plaintiffs' counsel have achieved a good recovery for the class, ranges from 20 to 50 percent of the ***gross settlement benefit***," which includes the value of both monetary and nonmonetary relief, and that "[d]istrict courts in the Second Circuit routinely award attorneys' fees that are 24.59 percent or greater"). Here, the requested award is warranted by the outstanding results achieved for the Class through the efforts of Class Counsel in pursuing the novel and complex claims at issue in this case, and the enormous risks taken and overcome in litigation brought entirely on a contingency fee basis.

The Settlement was achieved as a result of the tenacious prosecution of the case by Class Counsel.[2] Class Counsel invested over ***$2,658,084.92 in time and money*** into this case. Class Counsel undertook this litigation on a wholly contingent basis, with no assurance either of payment or of recouping expenses. This class action was risky from the outset, as Spotify reiterated time and again that "copyright claims are poor candidates for class-action treatment." Dkt. No. 150 (quoting *Football Ass'n Premier League Ltd. v. YouTube, Inc.*, 297 F.R.D. 64, 65 (S.D.N.Y. 2013)). Attacking both liability and damages, Spotify vigorously contested the

[1] Class Counsel opposes the Motion for Attorneys' Fees and Costs filed at Dkt. 261-3 and notes that none of the "plaintiffs" listed in the motion are, in fact, plaintiffs. *See* Dkt. 177 ¶ 7. The individuals that the Michelman firm represents were all dismissed from this action, also by order of the Court. Dkt. 87 (August 18, 2016 Order).

[2] All emphases added unless otherwise indicated. All capitalized terms shall have the meaning set forth in the Settlement Agreement, Dkt. 176-3.

number of musical compositions even eligible for any recovery for their owners by excluding unregistered works, already-fully licensed works, already-partially licensed works, works in the public domain, ownership disputes, unstreamed works, works covered by pass-through rights from aggregators, implied licenses (including voluntary promotion), among other defenses. This case was also litigated under the shadow of a separate, private agreement between Spotify and the members of the National Music Publishers' Association ("NMPA"), the music publishing industry's major trade group, which added significant uncertainties to the size of the Class and value of its claims, because "***over 96% of the music publishing community***, as measured by NMPA Market Share" participated in that settlement.[3] That NMPA settlement with Spotify was negotiated between sophisticated parties and music industry veterans, and resulted in a $30 million recovery.[4] In contrast, Class Counsel achieved in this Settlement, for what the NMPA contends is the remaining 4% of market share, a settlement valued at $112.55 million that will provide Class Members with outstanding monetary and nonmonetary relief.

The Class was advised in the Notice that Class Counsel may apply for fees up to one-third of the Settlement Fund, plus $5 million that Spotify agreed to pay over and above the benefits provided to the Class in cash and other relief, which would have equaled $19.48 million. An application for $19.48 million as provided for in the Notice would be fair and reasonable in light of all the circumstances. Despite these facts, Class Counsel determined to only apply for a fee equal to $15.86 million, an amount which equals 14% of the gross settlement benefit (including the value of the future monetary and nonmonetary benefits), or using a less-accepted and more conservative methodology, 25% of the cash fund, plus up to $5 million in attorneys'

[3] *See, e.g.,* https://www.digitalmusicnews.com/2016/07/12/spotify-crushing-david-lowery-lawsuit/ (last visited Nov. 9, 2017).

[4] *See, e.g.,* http://www.billboard.com/articles/business/7263747/spotify-nmpa-publishing-30-million-settlement-unpaid-royalties (last visited Nov. 9, 2017).

fees Spotify agreed to pay in conjunction with the prospective relief provided by the Settlement.[5] Class Counsel's fee request would be reasonable under governing standards even if there had never been a future monetary and non-cash component of the Settlement's benefits. If this application is approved, the Class will end up with 75% of the cash fund because $5 million of the fees are being separately paid by Spotify.

For each of these reasons, Class Counsel respectfully moves this Court for an award of attorneys' fee of $15,860,000. Class Counsel also seeks reimbursement for $632,111.92 in litigation expenses and incentive awards for the named Plaintiffs to compensate them for their time and efforts in bringing this case to a successful resolution.

## II. BACKGROUND

The relevant facts supporting the motion are set forth in detail in the Memorandum of Law in Support of Class Plaintiffs' Motion for Final Approval of Class Action Settlement (filed concurrently herewith) and the Motion for Preliminary Approval of Settlement and the accompanying declarations, previously filed at Dkt. Nos. 168–70, 176.

## III. ARGUMENT

### A. Class Counsel's Fee Request Is Reasonable

#### 1. Class Counsel Is Entitled to Fees from the Common Fund

The Supreme Court has long recognized that a lawyer who obtains a recovery "for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also, e.g.*, *Tart v. Lions Gate Entm't Corp.*, No. 14-cv-08004, May 16, 2016 Order (Dkt. 52) (S.D.N.Y.) ("Awarding attorneys' fees based on a percentage of the settlement fund rather than the amount of claims submitted by class members is proper."). "The court's authority to reimburse the

[5] (0.25 * $43,450,000.00) = $10,862,500.00 + $5,000,000.00 = $15,862,500.00

parties stems from the fact that the class action [device] is a creature of equity and the allowance of attorney-related costs is considered part of the historic equity power of the federal courts." 7B Charles A. Wright et al., *Federal Practice and Procedure* § 1803 (3d ed. 1998).

> The purposes of the doctrine are to fairly and adequately compensate class counsel for services rendered; to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf; and to encourage skilled counsel to represent those who seek redress for injury inflicted on an entire class and thereby discourage future misconduct of a similar nature.

*Fleisher v. Phoenix Life Ins. Co.*, No. 11-cv-8405, 2015 WL 10847814, at *14 (S.D.N.Y. Sept. 9, 2015); *see also Athale v. Sinotech Energy Ltd.*, No. 11-cv-05831, 2013 WL 11310686, at *7 (S.D.N.Y. Sept. 4, 2013) ("The rationale for the doctrine is an equitable one: it prevents unjust enrichment of those benefitting from a lawsuit without contributing to its cost.").

**2. The Requested Fee Is Fair and Reasonable Under the Percentage Method**

*a. The Percentage Method Is Favored*

Under the percentage method, the "court sets some percentage of the recovery as a fee." *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). While courts may award attorneys' fees under either the "lodestar" method or the "percentage of the recovery" method, "[t]he trend in this Circuit is toward the percentage method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (quotations and citation omitted). The percentage method is preferable because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Id.*; *see also, Hyun v. Ippudo USA Holdings*, No. 14-cv-8706, 2016 WL 1222347, at *3 (S.D.N.Y. Mar. 24, 2016) (applying percentage method and awarding 33.33% of settlement fund for fees where the parties were able to settle relatively early and before any depositions occurred," as the method "avoids the lodestar method's potential to 'create a disincentive to early

settlement'" (quoting *McDaniel v. Cty. of Schenectady*, 595 F.3d 411, 418 (2d Cir. 2010))).[6] "[T]he percentage method continues to be the trend of district courts in this Circuit and has been adopted in the vast majority of circuits." *In re Marsh & McLennan Cos., Inc. Sec. Litig.,* No. 04-cv-8144, 2009 WL 5178546, at * 14 (S.D.N.Y. Dec. 23, 2009).[7]

*b. Fee of 14% of the Overall Settlement Value Is Fair and Reasonable*

Here, Class Counsel is seeking a $15.86 million fee, which represents ***less than 15% of the overall settlement value***, including cash and future monetary and non-monetary benefits. As set forth in the Declaration and accompanying expert report of Joao dos Santo ("dos Santo Decl."), who has more than 20 years of professional experience and a Master of Science degree in applied economics from Rutgers University, with field concentrations in econometric modeling and forecasting, the future monetary relief provided in the Settlement is valued at $63.1 million. *See* dos Santo Decl. ¶ 2, 10; Ex. B ¶ 1. The overall immediate cash payment by Spotify is at least $49,450,000, consisting of a $43,450,000 payment from which distributions to the Class will be made (before fees and costs), approximately $1 million in settlement administration and notice costs to be paid separately by Spotify, Dkt. 170 (Cirami Decl.) ¶ 46;

[6] The Second Circuit has also explained the disadvantages of the lodestar method: "In contrast, the lodestar [method] creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line-item fee audits." *Wal-Mart Stores, Inc.*, 396 F.3d at 121; *see also Davenport v. Elite Model Mgmt. Corp.*, No. 13-cv-01061, 2014 WL 12756756 (S.D.N.Y. May 12, 2014) (noting that the percentage "method 'preserves judicial resources because it relieves the court of the cumbersome, enervating, and often surrealistic process of evaluating fee petitions.'" (quoting *Johnson v. Brennan*, No. 10-cv-4712, 2011 WL 4357376, at *15 (S.D.N.Y. Sept. 16, 2011))).

[7] *See also In re Beacon Assocs. Litig.*, No. 09-cv-3907, 2013 WL 2450960, at *5 (S.D.N.Y. May 9, 2013) ("The trend in this Circuit has been toward the use of a percentage of recovery as the preferred method of calculating the award for class counsel in common fund cases, reserving the traditional 'lodestar' calculation as a method of testing the fairness of a proposed settlement"); *In re IMAX Sec. Litig.,* No. 06-cv-6128, 2012 WL 3133476, at *5 (S.D.N.Y. Aug. 1, 2012) (same); *Fogarazzo v. Lehman Bros., Inc.*, No. 03-cv-5194, 2011 WL 671745, at *2 (S.D.N.Y. Feb. 23, 2011) (same); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 480 (S.D.N.Y. 2009) (same); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 586 & n.7 (S.D.N.Y. 2008) (same).

and a separate payment for the first $5 million in attorneys' fees awarded.[8] The gross settlement value, combining the monetary and nonmonetary benefits, is approximately $112.55 million.

In calculating the overall settlement value for purposes of the "percentage of the recovery" approach, courts include the value of both the monetary and nonmonetary benefits conferred on the Class. *See Fleisher*, 2015 WL 10847814, at *16 (granting fee award of $38.125 million fee after "compar[ing] the fee to the 'gross value of the settlement,' which combined the values of the monetary relief, the nonmonetary benefits and the money earmarked for attorneys' fees"). Leading authorities agree,[9] as do courts in this Circuit and nationwide.[10] The Federal Judicial Center provides an example of when it is appropriate to base a percentage fee on the value of prospective relief through objective criteria: "[A]n injunction against an overcharge may be valued at the amount of the overcharge multiplied by the number of people likely to be exposed to the overcharge in the near future."[11] In this case, the valuation of the Future Royalty Payments Program, one component of the substantial prospective relief achieved for Class

[8] In calculating the value of the monetary benefit, courts include any amounts earmarked for attorneys' fees. *See Velez*, 2010 WL 4877852, at *18 ("Based on the 'percentage of the fund' approach for evaluating class action fees, the amount of attorneys' fees in question is compared to the overall settlement value, ***including any portion earmarked for said fees***.").

[9] Federal Judicial Center, *Managing Class Action Litigation: A Pocket Guide for Judges* 35 (3d ed. 2010) ("Courts use two methods to calculate fees for cases in which the settlement is susceptible to an objective evaluation. ***The primary method is based on a percentage of the actual value to the class of any settlement fund plus the actual value of any nonmonetary relief.***"); The American Law Institute, *Principles of the Law of Aggregate Litigation* § 3.13 (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary ***and nonmonetary value*** of the judgment or settlement.").

[10] *See Velez*, 2010 WL 4877852, at *8, *18 (approving settlement that was "21.8 percent of the ***total relief*** available through the settlement," which included "both nonmonetary and monetary relief valued at up to $175 million"); *Sheppard v. Consol. Edison Co. of New York*, No. 94-cv-0403, 2002 WL 2003206, at *7 (E.D.N.Y. Aug. 1, 2002) (approving fee petition where fee was measured as a percentage of the "total settlement," which included $6.745 million in monetary relief and "an estimated $5 million in non-monetary, injunctive relief); *In re Auction Houses Antitrust Litig.*, No. 00-cv-0648, 2001 WL 170792, at *10, *17 (S.D.N.Y. Feb. 22, 2001) (approving fee measured as a "percentage of the recovery," which was valued at $512 million based on cash payments and nonmonetary discount certificates); *cf. Blessing v. Sirius XM Radio Inc.*, 507 F. App'x 1, 4 (2d Cir. 2012) (holding that the district court properly determined that settlement was fair based in part on its valuation of the "nonmonetary antitrust" benefits, principally a "price freeze").

[11] Federal Judicial Center, *supra* note 9, at 34-35.

Members, is valued using a similar approach. *See* dos Santo Decl. ¶¶ 5-7.

In *Velez v. Novartis Pharmaceuticals Corp.*, the court held that, in addition to monetary relief, the settlement provided equitable relief that would improve the defendant's employment practices in order to ensure that its sales force was treated fairly. 2010 WL 4877852, at *1. The court valued this programmatic relief at "at least $22.5 million." *Id.* at *15. In granting the requested $38.125 million fee request, the court compared the fee to the "gross value of the settlement," which combined the values of the monetary relief, the nonmonetary benefits and the money earmarked for attorneys' fees:

> Based on the "percentage of the fund" approach for evaluating class action fees, the amount of attorneys' fees in question is compared to the overall settlement value, including any portion earmarked for said fees. Here, the requested fees represent approximately 21.8 percent of the ***total relief*** available through the settlement. Even if calculated in ***the more conservative and less-accepted methodology of percent against monetary fund*** (rather than overall value), the requested fees represent approximately 25 percent of the monetary relief available through settlement.

*Id.* at *18. Similarly, the requested fee here represents less than 15% of the total gross value of the Settlement, which is far below the mainstream of percentage awards in this Circuit. Even if calculated in "the more conservative and less-accepted methodology of percent against monetary fund (rather than overall value)," *id.*, the requested fees represent just 25% of the total of the cash fund, and the $5 million that Spotify has agreed to separately pay for the value of future benefits.

"Fee awards representing one third of the total recovery are common in this District." *Hyun*, 2016 WL 1222347, at *3 (quoting *Gaspar v. Pers. Touch Moving, Inc.,* No. 13-cv-8187, 2015 WL 7871036, at *2 (S.D.N.Y. Dec. 3, 2015)); *see also Villalva-Estrada v. SXB Rest. Corp.*, No. 14-cv-10011, 2016 WL 1275663, at *3 (S.D.N.Y. Mar. 31, 2016) (approving fee representing 37.5% of common fund while noting that fees of 30% to 33.3% "are not uncommon in this Circuit" (quoting *Guzman v. Joesons Auto Parts*, No. 11-cv-4543, 2013 WL 2898154

(E.D.N.Y. June 13, 2013))).[12]

In further support of its fairness, the requested fee is far less than the 40% that Class Counsel would obtain on the open market under its standard contingency fee arrangement in which expenses are advanced. *See* Declaration of Steven G. Sklaver in Support of Plaintiffs' Motion for Final Approval of Settlement and Class Counsel's Motion for Attorneys' Fees ¶ 19 ("Sklaver Decl."). "This fact is highly relevant to determining the appropriateness of the award because the Court's ultimate task is to 'approximate the reasonable fee that a competitive market would bear.'" *Fleisher*, 2015 WL 10847814, at *17 (quoting *Johnson v. City of New York*, No. 08-cv-3673, 2010 WL 5818290, at *4 (E.D.N.Y. Dec. 13, 2010)); *see also McDaniel*, 595 F.3d at 422 (noting that the district court's focus should be "on mimicking a market"); *see also In re Lloyd's Am. Trust Fund Litig.*, No. 96-cv-1262, 2002 WL 31663577, at *26 (S.D.N.Y. Nov. 26, 2002) ("[T]he percentage approach most closely approximates the manner in which private litigants compensate their attorneys in the ***marketplace contingency fee model***.").

**3. The Requested Fee is Reasonable Under Lodestar "Crosscheck"**

The Second Circuit also permits courts to utilize a lodestar "crosscheck" to further test the reasonableness of a percentage-based fee. *See Goldberger*, 209 F.3d at 50. The "lodestar" is calculated by multiplying the number of hours expended on the litigation by each particular attorney or paraprofessional by their current hourly rate, and totaling the amounts for all timekeepers. Additionally, "[u]nder the lodestar method of fee computation, a multiplier is typically applied to the lodestar." *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004). "The multiplier represents the risk of the litigation, the complexity of the issues, the contingent nature of the engagement, the skill of the attorneys, and other factors." *Id.*

[12] *See, e.g., In re Marsh ERISA Litig.*, 265 F.R.D. 128, 135 (S.D.N.Y. 2010) (awarding one-third of $35 million); *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (awarding 33.3% fee of $510 million net settlement recovery).

(citing *Goldberger*, 209 F.3d at 47). "When used as a 'cross check,' courts are not required to 'exhaustively scrutinize[]' the hours documented by Class Counsel." *Davenport*, 2014 WL 12756756 at 13 (quoting *Goldberger*, 209 F.3d at 50).

In this entirely contingent action, as of November 9, 2017, Class Counsel collectively spent over 3,475.4 hours, representing a lodestar of $2,025,973.00, and advanced $632,111.92 in expenses, in investigating, prosecuting and ultimately settling these claims. *See* Sklaver Decl. ¶¶ 21, 24. Additional time and expenses will be incurred through the final approval hearing, scheduled to occur on December 1, 2017. This lodestar is calculated at current hourly rates, an approach which has been endorsed repeatedly by the Supreme Court, the Second Circuit, and district courts within the Second Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation.[13] Class Counsel's requested fee of $15.86 million yields a crosscheck multiplier of 7.82.

Courts regularly award similar multipliers, especially where counsel have achieved an early settlement, because class counsel should not be "penalized for achieving an earlier settlement, particular[ly] where, as here, the settlement amount is substantial." *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 482 (S.D.N.Y. 2013) (awarding 33% of the $4.9 million settlement fund, which resulted in a 6.3 multiplier). *See also Cosgrove v. Sullivan,* 759 F.Supp. 166-67, n. 1 (S.D.N.Y. 1991) (multiplier of 8.74 based on $1 million fee against lodestar of $114,398); *Weiss v. Mercedes-Benz of N.Am., Inc.,* 899 F.Supp. 1297, 1304 (D.N.J. 1995)

[13] *See, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing "an appropriate adjustment for delay in payment" by applying "current" rate); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (rates "should be 'current rather than historic'") (citation and internal quotations omitted); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (current rates "should be applied in order to compensate for the delay in payment"); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989) (citation omitted) (Using current rates helps "compensate for the delay in receiving compensation, inflationary losses, and the loss of interest.").

(awarding fee that resulted in a multiplier of 9.3 times hourly rate), *aff'd,* 66 F.3d 314 (3d Cir. 1995).

This Court acknowledged in *Athale* that a higher multiplier is justified in a case where the case is large and relatively complex, there were a number of risks of litigation and recovery, the quality of representation was high, and the settlement was speedy and substantial. *Althale*, 2013 WL 11310686, at *8 (awarding a multiplier of 5.65 where counsel obtained a $20 million recovery and invested $55,454 in expenses). A higher multiplier is justified in this case because the risk was even greater and the settlement was more substantial. Not only does this Settlement have a higher cash component than *Athale*, but this Settlement also provides substantial future monetary and non-monetary relief. And unlike most other settlements in any class action, this Settlement has an almost apples-to-apples market-based cross-check that establishes what an outstanding result has been achieved: the NMPA Settlement. The NMPA Settlement purports to account for 96% of the published music potentially at issue, *see supra* notes 3-4 and accompanying text, and through those sophisticated lawyers and industry veterans, secured a settlement of only $30 million. Yet here, Class Counsel negotiated a $112.55 million recovery for what Spotify and NMPA contends is the remaining 4%. Put differently, adjusted for market share, had the NMPA lead been followed, here, only a settlement of $1.25 million would have been secured, rather than $112.55 million (or 90x that amount) that the Settlement actually achieved.[14] Also, compared with $55,454 in expenses in *Althale*, Class Counsel invested $632,111.92 in expenses here to reach this outstanding result.

Class Counsel's hourly rates are also reasonable. The rates for Class Counsel who billed meaningful time to this case (ranging from $325 to $750 per hour) are comparable to peer

[14] $1.25 million = ($30 million NMPA / 96% NMPA market share) – $30 million NMPA.

plaintiffs and defense-side law firms litigating matters of similar magnitude. *See* Sklaver Decl. ¶¶ 22, 25; *see also Genger v. Genger*, No. 14-cv-5683 KBF, 2015 WL 1011718, at *2 (S.D.N.Y. Mar. 9, 2015) (noting that "New York district courts have approved rates for experienced law firm partners in the range of $500 to $800 per hour" and "for law firm associates in the range of $200 to $450 per hour," and collecting cases); *In re Hi-Crush Partners L.P. Sec. Litig.*, No. 12-cv-8557, 2014 WL 7323417, at *14 (S.D.N.Y. Dec. 19, 2014) ("The rates billed by Lead Counsel (ranging from $425 to $825 per hour) for attorneys, are comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude.").[15]

**4. The *Goldberger* Factors Support the Requested Fee Award**

Under either the percentage method or the lodestar multiplier approach, the "'*Goldberger* factors' ultimately determine the reasonableness of a common fund fee," *Wal-Mart*, 396 F.3d at 121. The *Goldberger* factors, which the Court weighs in its discretion, are:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . . ; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

*Goldberger*, 209 F.3d at 50 (citation omitted). Each of these factors confirms that the requested fee is reasonable on a percentage basis.

*a. Time and Labor Expended by Counsel (Goldberger Factor 1)*

The first *Goldberger* factor, which addresses the "the time and labor expended by counsel," strongly supports approval of the requested fee. Class Counsel spent over 3,475.4

[15] Courts compare hourly rates with those prevailing in the community. *See Luciano v. Olsten Corp.*, 109 F.3d 111, 115 (2d Cir. 1997) ("The lodestar figure should be in line with those [rates] prevailing in the community for similar services by lawyers of reasonably comparable skill, experience, and reputation."). One source commonly used by courts in this Circuit to assess prevailing rates is the National Law Journal Survey. *See, e.g.*, *Williamsburg Fair Hous. Comm. v. N.Y. City Hous. Auth.*, No. 76-cv-2125, 2005 U.S. Dist. LEXIS 5200, at *35 (S.D.N.Y. Apr. 4, 2005) (observing that "a recent billing survey made by the National Law Journal shows that senior partners in New York City charge as much as $750 per hour and junior partners charge as much as $ 490 per hour"). The National Law Journal survey for 2012 shows that partners at New York firms charge between $330 to $1200 and associates range between $215 to $760. *See* Ex. 1 to Sklaver Decl. (2012 National Law Journal survey).

hours prosecuting this case and, as discussed above, the lodestar multiplier is well within the range approved by courts in this Circuit. The substantial time devoted to this litigation over almost two years reflects the intensive effort Class Counsel exerted to bring this case to a favorable resolution, and was reasonable, particularly given the complex nature of this copyright class action. Class Counsel's services to the Class include, among other things:

- Conducting an initial investigation of this case to develop the theories and facts that formed the basis of the allegations in the complaint, and compiling evidence for, and filed, the Consolidated Class Action Complaint ("CCAC"). Dkt. No. 75.[16]

- Defending the CCAC from Spotify's motion to dismiss, and conducting jurisdictional discovery in connection with that effort. Dkt. No. 96.

- Defending the CCAC from Spotify's motion to strike class allegations, both in the Central District of California, Dkt. No. 98, and in this Court, Dkt. No. 153.

- Collecting documents from Class Plaintiffs in anticipation of Spotify's discovery requests and drafting initial disclosures (which would have been served absent the Settlement). Sklaver Decl. ¶ 5.

- Preparing discovery requests for Spotify and two third parties, and participating in multiple meet and confer sessions with these entities. *Id.*

- Reviewing and analyzing documents and data produced by Spotify for the purposes of settlement, and working extensively and closely with experts to assess the value of the Class's claims. *Id.*

- Attending two full day, in-person mediation sessions in California which were conducted by a highly experienced mediator, Retired United States District Court Judge Layn R. Phillips, and required rounds of mediation briefing. All sessions were attended by counsel for Spotify and counsel for Class Plaintiffs, as well as a representative from Spotify. The terms of the Settlement were also negotiated in extensive in-person meetings, telephone conferences, and email discussions over the course of several months. A long-form settlement agreement was heavily negotiated thereafter, with the parties participating in telephonic mediation sessions with and submitting additional mediation briefs to Judge Phillips over disputed terms and issues. *Id.*

- Engaging in significant research, locating and analyzing documents and other materials on an ongoing basis throughout the litigation; responding to inquiries from

[16] *See also* Dkt. No. 72 (finding that Class Counsel had "engaged in a substantial amount of time and effort identifying and investigating the potential claims of the putative class in this case").

> Class Members, and interfacing and working extensively with Garden City Group, the Claims Administrator, in the preparation of notice and the Class website: and working with Royalty Review Counsel, the third-party Settlement Claims Facilitator, in developing the portal to assist Class Members in identifying the compositions underlying Spotify's tracks that are eligible for royalties and with submitting claims. *See* Bernstein Decl.

In sum, Class Counsel committed substantial time and resources to expeditiously achieve an excellent recovery in this case. *See In re Nissan Radiator/Transmission Cooler Litig.*, No. 10-cv-7493 VB, 2013 WL 4080946, at *16 (S.D.N.Y. May 30, 2013) (finding reasonable counsel's expenditure of 2,000 hours to settle case before substantial discovery and noting that "[c]ounsel worked expeditiously to achieve a settlement without protracted litigation and achieved substantial results").[17]

*b. Magnitude and Complexity of the Litigation (Goldberger Factor 2)*

The second *Goldberger* factor, which addresses "the magnitude and complexities of the litigation," also strongly supports approval of the requested fee. As this Court has previously recognized, "[t]he size and difficulty of the issues in a case are significant factors to be considered in making a fee award." *Davenport*, 2014 WL 12756756 at 12. The CCAC alleged widespread and willful infringement of Class Members' copyrights in music compositions, the resolution of which would have required grappling with complex issues of fact and law. *See id.* (noting that the presence of "mixed and complex questions of fact and law" should also be considered when assessing Class Counsel's fee application). By reaching a favorable settlement prior to dispositive motions or trial, Class Plaintiffs seek to avoid significant expense and delay, and instead ensure a favorable recovery for the Class as soon as possible, and without the need to

[17] The time and lodestar figures will increase as Class Counsel prepares for final-approval proceedings, handles claims administration issues, continues to respond to Class Member inquiries, and works with Spotify to implement the future, nonmonetary provisions of the Settlement. *See* Sklaver Decl. ¶ 27; *Davenport*, 2014 WL 12756756 at 12 ("Moreover, Class Counsel is certain to spend additional time in the future aiding in the further administration of the settlement, and the requested fee award is also meant to compensate them for that time.").

incur millions of dollars in expert costs and other litigation expenses that would deplete the Settlement Fund if a settlement were reached later. *See City of Providence v. Aeropostale, Inc*., No. 11-cv-7132, 2014 WL 1883494, at *16 (S.D.N.Y. May 9, 2014) (finding it relevant that the "Action involved difficult, complex, hotly disputed, and expert-intensive issues"). In addition, briefing has not yet closed on Spotify's motion to strike class action allegations, and absent the Settlement, the parties would have faced substantial discovery burdens, followed by briefing on class certification and summary judgment, trial, and appeals.

*c. Risk of the Litigation (Goldberger Factor 3)*

The third *Goldberger* factor, which addresses the "risk of the litigation," also strongly supports approval of the requested fee. The Second Circuit has identified "the risk of success as 'perhaps the foremost' factor to be considered in determining [a reasonable fee award]." *Goldberger*, 209 F.3d at 54 (citation omitted); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008) ("Courts have repeatedly recognized that 'the risk of the litigation' is a pivotal factor in assessing the appropriate attorneys' fees to award to plaintiffs' counsel in class actions."). Class Counsel confronted and overcame myriad risks in reaching the Settlement.

i. Contingency Risk

"Contingency risk is the principal, though not exclusive, factor courts should consider in their determination of attorneys' fees." *Davenport*, 2014 WL 12756756 at 12. This Court recognizes that "[n]o one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success." *Id.* (quoting *In re Top Tankers Sec. Litig.*, No. 06-cv-13761, 2008 WL 2944620, at *15 (S.D.N.Y. July 31, 2008)).[18] Here, Class Counsel has not been

[18] *See also In re Dreyfus Aggressive Growth Mut. Fund Litig.,* No. 98-cv-4318, 2001 WL 709262, at *6 (S.D.NY. June 22, 2001) ("Contingency risk is the principal, though not exclusive factor, courts should consider in their

compensated for any of its time (3,475.4 hours) with a lodestar value of $2,025,973.00, and advanced $632,111.92 in litigation expenses incurred since the case commenced. *See id.* ("Class Counsel undertook to prosecute this action without any assurance of payment for their services, litigating this case on a wholly contingent basis in the face of significant risk."). Moreover, Class Counsel would not have been compensated for its time or expenses at all had it been unsuccessful in this litigation. *See City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 471 (2d Cir. 1974) ("[D]espite the most vigorous and competent of efforts, success is never guaranteed."); *In re Beacon Assocs. Litig.*, No. 09-cv-3907, 2013 WL 2450960, at *13 (S.D.N.Y. May 9, 2013) ("And all of these matters were taken on contingency, so in view of the novelty of the issues there was some possibility that counsel would recover nothing at all."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 366 (S.D.N.Y. 2002) ("The enormous risks of litigation are why settlement is frequently preferred. Settling avoids delay as well as uncertain outcome . . . ."). The risk of no recovery in complex class actions of this type is real and supports Class Counsel's request for fees.

ii. Risks to Establishing Liability

"Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *City of Providence*, 2014 WL 1883494, at *14. Class Plaintiffs believe their position on liability is strong, but recognize that complex issues pose risk. The Court is well aware of the challenges that Class Plaintiffs faced in this lawsuit and the uncertainties avoided by the Settlement. Spotify laid out many of its defenses to liability in its motion to strike class allegations, including its contention that it had implied licenses to the

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determination of attorneys' fees."); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, No. 02-cv-3400(CM)(PED), 2010 WL 4537550, at *27 (S.D.N.Y. Nov. 8, 2010) ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *In re Am. Bank Note Holographics*, 127 F. Supp. 2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

infringed musical compositions and the statutory right to distribute musical compositions as a consequence of being authorized to distribute sound recordings. These and other contentions would also have formed the basis of Spotify's opposition to class certification under Rules 23(a) and 23(b)(3). Although Class Plaintiffs believe in the merit of their arguments, it is not clear how the Court would have resolved Spotify's pending motion or a future motion for class certification. *See Athale*, 2013 WL 11310686, at *6 ("Absent settlement, there is no assurance that Lead Plaintiff's motion for class certification would be granted or that Class status, if granted, would be maintained throughout trial."). Nor was it clear how a jury would respond to Spotify's defenses at trial. *See Sykes v. Harris*, No. 09-cv-8486, 2016 WL 3030156, at *18 (S.D.N.Y. May 24, 2016) ("Defendants asserted numerous novel defenses to Lead Plaintiffs' claims which put recovery for Class Members and Class Counsel at risk."); *West Virginia v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743-44 (S.D.N.Y. 1970)*, aff'd*, 440 F.2d 1079 (2d Cir. 1971) ("[N]o matter how confident one may be of the outcome of litigation, such confidence is often misplaced."). That trial, moreover, would have required substantial fact and expert testimony, and regardless of outcome, the parties would have pursued certain appeals thereafter.

iii. Risks to Establishing Damages

Class Plaintiffs also faced risks in establishing damages from the outset of this case. Any damages estimate would likely have been heavily expert-driven, involving at a minimum the ingestion and analysis of millions of lines of data from Spotify's database, and would also have required extensive document and deposition discovery on the hotly contested issue of willfulness. Although Class Plaintiffs are confident in their ability to prove damages, the prospect of a battle at trial and establishing the right to recovery for all Class Members without decertification adds substantial risk to Class Plaintiffs' claims. *See FLAG Telecom*, 2010 WL 4537550, at *18 (noting that the burden in proving the extent of the class's damages weighed in

favor of approving fee request, and that "[t]he jury's verdict . . . would . . . depend on its reaction to the complex testimony of experts, a reaction that is inherently uncertain and unpredictable"); *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 476 (S.D.N.Y. 1998) (observing that "[d]amages at trial would inevitably involve a battle of the experts" and noting that it is "difficult to predict with any certainty which testimony would be credited").

* * *

The only certainties from the outset of this litigation were that there would be no fee or expense reimbursement without a successful result, and that a successful result, if any, could be achieved only after lengthy and difficult effort.

*d. Quality of the Representation (Goldberger Factor 4)*

The fourth *Goldberger* factor, which addresses the "the quality of representation," also supports approval of the requested fee. Courts have consistently recognized that the result achieved is a major factor to be considered in making a fee award and in assessing the quality of the representation. *See, e.g.*, *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Class Counsel respectfully submits that the Settlement—which creates an overall value of $112.55 million — achieved in face of complex litigation and very real risks, and which rivals or even exceeds the separate relief obtained by the major players in the music publishing industry negotiating in concert, evidences the quality of Class Counsel's representation.

"To determine the 'quality of the representation,' courts review, among other things, the recovery obtained and the backgrounds of the lawyers involved in the lawsuit." *Davenport*, 2014 WL 12756756 at 12 (quoting *Taft v. Ackermans*, No. 02-cv-7951, 2007 WL 414493, at *10 (S.D.N.Y. Jan. 31, 2007)). "Susman Godfrey has significant experience with . . . class actions, including settlements thereof . . . [and] [t]he lawyers working for the Class have substantial experience prosecuting large-scale class actions," *Fleisher*, 2015 WL 10847814, at *22, while

Gradstein & Marzano, P.C. has "extensive experience with intellectual property, music rights, and class action matters," *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 13-cv-5693, 2015 WL 4776932, at *10 (C.D. Cal. May 27, 2015). Furthermore, the transferor Court previously found that both Class Counsel firms "have extensive experience representing plaintiffs in class action litigation," Dkt. No. 72, and this Court "recognize[d] the experience of Class Counsel" in adequately representing the interests of the Class, Dkt. No. 177.

"The quality of opposing counsel is also important in evaluating the quality of Lead Counsel's work." *Fleisher*, 2015 WL 10847814, at *22 (quoting *City of Providence*, 2014 WL 1883494, at *17). Courts repeatedly recognize that the caliber of the opposition faced by plaintiffs' counsel should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance. *See Anwar*, 2012 WL 1981505, at *2 (considering "the quality and vigor of opposing counsel").[19] Spotify is represented by skilled and highly regarded counsel from Mayer Brown LLP, a prestigious firm with a well-deserved reputation for vigorous advocacy in the defense of complex civil cases. All of the customary metrics indicative of high quality of representation weigh in favor of the requested fee.

*e. Requested Fee in Relation to the Settlement (Goldberger Factor 5)*

The fifth *Goldberger* factor, which addresses "the requested fee in relation to the settlement," also strongly supports approval of the requested fee. As discussed above, the proposed award of 14% of the total value of the settlement is well within the range of fees awarded by courts under the percentage method. *See Davenport*, 2014 WL 12756756 at 13 ("Class Counsel's request for less than one-third of the fund is reasonable and 'consistent with

[19] *See also In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("The high quality of defense counsel opposing Plaintiffs' efforts further proves the caliber of representation that was necessary to achieve the Settlement."); *Marsh & McLennan*, 2009 WL 5178546, at *19 (noting that the reasonableness of the requested fee was supported by fact that defendants "were represented by first-rate attorneys who vigorously contested Lead Plaintiffs' claims and allegations").

the norms of class litigation in this circuit.'" (quoting *McMahon v. Oliver Cheng Catering & Events LLC*, No. 97-cv-8713, 2010 WL 2399328, at *9 (S.D.N.Y. March 3, 2010))). Both the "valuable recompense" and the "forward-looking protections for its clients" obtained by Class Counsel support granting the fee request, particularly as this case, unlike "many class actions," was not the result of "following, or piggybacking on, regulatory investigation or settlement." *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 670 (S.D.N.Y. 2015).

*f. Public Policy Considerations (Goldberger Factor 6)*

Finally, the sixth *Goldberger* factor, which addresses "public policy considerations," supports approval of the request fee. Public policy considerations strongly favor incentivizing skilled private attorneys to undertake this type of litigation, especially since the action is on behalf of small claimants who lack the financial incentive to obtain a recovery on their own behalf. *See Davenport*, 2014 WL 12756756 at 13 ("In ruling on a request for attorneys' fees, 'the Second Circuit and courts in this district also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.'" (quoting *In re Sumitomo Copper Litig.*, 74 F. Supp. 2d 393, 399 (S.D.N.Y. 1999))); *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("[T]o attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."); *Hicks v. Stanley*, No. 01-cv-10071, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding.").

These public policy considerations are particularly salient in this case, where even the major players in the music publishing industry could obtain relief from Spotify only after coordinated action by their trade group, the NMPA, and where many of the Class Members are

individual, independent songwriters who were left out of that settlement and could not feasibly have pursued individual actions against Spotify. *See Sewell v. Bovis Lend Lease, Inc.*, No. 09-cv-6548, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) ("Were this action not settled via the class action format, hundreds of individual claims would be brought before this Court, consisting of an inefficient use of judicial resources. 'Where relatively small claims can only be prosecuted through aggregate litigation, 'private attorneys general' play an important role.'").

**B. Class Counsel's Expenses Should Be Reimbursed**

Class Counsel also requests reimbursement in the amount of $632,111.92 for out-of-pocket expenses reasonably and necessarily incurred in connection with the prosecution of this Action. This Court acknowledges that "[c]ounsel is entitled to reimbursement from the common fund for reasonable litigation expenses." *Athale*, 2013 WL 11310686, at *9.[20] The expenses advanced in this litigation were "expended for the direct benefit of the Class" and "are the type of expenses typically billed by attorneys to paying clients in the marketplace." *Fleisher*, 2015 WL 10847814, at *23; *see also Davenport*, 2014 WL 12756756 at 14 ("Attorneys may be compensated for reasonable out-of-pocket expenses incurred and customarily charged to their clients, as long as they 'were incidental and necessary to the representation of those clients.'" (quoting *Miltland Raleigh-Durham v. Myers*, 840 F. Supp. 235, 239 (S.D.N.Y. 1993))).

The expenses incurred by Class Counsel include fees paid to experts, mediation fees, court fees, electronic research, photocopies, and travel in connection with this litigation. Sklaver

[20] *See also Anwar v. Fairfield Greenwich Ltd.*, No. 09-cv-118, 2012 WL 1981505, at *3 (S.D.N.Y. June 1, 2012) ("Courts routinely note that counsel is entitled to reimbursement from the common fund for reasonable litigation expenses." (citing *Reichman v. Bonsignore, Brignati & Mazzotta, P.C.*, 818 F.2d 278, 283 (2d Cir. 1987))); *In re Arakis Energy Corp. Sec. Litig.,* No. 95cv3431(ARR), 2001 WL 1590512, at *17 n.12 (E.D.N.Y. Oct. 31, 2001) ("Courts in the Second Circuit normally grant expense requests in common fund cases as a matter of course."); *In re Vitamins Antitrust Litig.*, No. 99-197(TFH), MDL No. 1285, 2001 WL 34312839, at *13 (D.D.C. July 16, 2001) ("[A]n attorney who has created a common fund for the benefit of the class is entitled to reimbursement of . . . reasonable litigation expenses from that fund . . . . Courts have routinely awarded expenses for which counsel would normally directly bill their clients.").

Decl. ¶¶ 23, 26. Courts regularly approve similar cost applications. *See, e.g.*, *Sykes v. Harris*, No. 09-cv-8486, 2016 WL 3030156, at *18 (S.D.N.Y. May 24, 2016) (approving reimbursement of "costs for filing fees, postage, messenger services, e-discovery vendors, a forensic accountant, a data consultant, and mediation expenses"); *Fleisher*, 2015 WL 10847814, at *23 (approving reimbursement of "fees paid to experts, mediation fees, notice costs, computerized research, document production and storage, court fees, reporting services, and travel in connection with this litigation"); *Yuzary v. HSBC Bank USA, N.A.*, No. 12-cv-3693, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) (approving reimbursement of "court and process server fees, postage and courier fees, transportation, working meals, photocopies, electronic research, expert fees, and Plaintiffs' share of the mediator's fees"); *Anwar*, 2012 WL 1981505, at *3 (reimbursing expenses such as "mediation fees, expert witness fees, electronic legal research, photocopying, postage, and travel expenses, each of which is the type 'the paying, arms' length market' reimburses attorneys" (quoting *In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 468 (S.D.N.Y. 2004)); *Reyes v. Altamarea Grp., LLC*, No. 10-cv-6451, 2011 WL 4599822, at *9 (S.D.N.Y. Aug. 16, 2011) (reimbursing "mediation fees . . . telephone charges, postage, transportation, working meal costs, photocopies, and electronic research"). "The fact that Class Counsel was willing to expend their own money, where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary." *Fleisher*, 2015 WL 10847814, at *23.

### C. Incentive Awards for Named Plaintiffs Are Appropriate

Class Counsel seeks incentive awards of $25,000 each for Class Plaintiffs Melissa Ferrick, Jaco Pastorius, Inc., and Gerencia 360 Publishing, Inc., as stated in the Notice. This Court has recognized that "[s]ervice awards are common in class action cases and serve to compensate plaintiffs for the time and effort expended in assisting the prosecution of the

litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs." *Davenport*, 2014 WL 12756756 at 9; *see also Anwar*, 2012 WL 1981505, at *3 ("Courts consistently approve awards in class action lawsuits to compensate named plaintiffs for the services they provide and burdens they endure during litigation."); *Varljen v. H.J. Meyers & Co.*, No. 97-cv-6742, 2000 WL 1683656, at *4 (S.D.N.Y. Nov. 8, 2000) (noting that reimbursement of such expenses should be allowed because it "encourages participation of plaintiffs in the active supervision of their counsel").[21] Class Plaintiffs ably performed the duties associated with representing the Class, rendering "significant services to the Class" in the form of collecting documents in their possession, participating in interviews with Class Counsel, preparing declarations, and reviewing the terms of the Settlement. *Id.* at 19 (granting incentive award for similar activities); *see* Sklaver Decl. ¶ 28. Courts routinely approve incentive awards to class representatives who provide these types of services to the Class. *See, e.g.*, *Sewell v. Bovis Lend Lease, Inc.*, No. 09-cv-6548, 2012 WL 1320124, at *15 (S.D.N.Y. Apr. 16, 2012) (noting that class representatives assisted counsel in various ways and "made themselves available regularly for any necessary communications").

The magnitude of the proposed incentive awards is particularly appropriate in light of the significant value of the relief obtained for the Class. *See Sykes v. Harris*, No. 09-cv-8486, 2016 WL 3030156, at *18 (S.D.N.Y. May 24, 2016) ("[T]he service awards requested of $30,000 for each of the Lead Plaintiffs are comparable to awards made in other cases where the lead plaintiffs were able to effect ***substantial relief*** for class members."). Taken together, all three incentive awards sought by Class Counsel total less than 0.1% of the Settlement Fund, and an

[21] The risks incurred by Class Plaintiffs in "challeng[ing] [an] extremely powerful entit[y] in the entertainment industry," including the possibility of "being blacklisted," have been considered in granting incentive awards to plaintiffs in a copyright class action. *Steiner v. ABC, Inc.*, No. 00-cv-05798, slip op. at 14 n.9 (C.D. Cal. Apr. 20, 2005), *aff'd*, 248 F. App'x 780, 781 (9th Cir. 2007). In this case, at least one Class Plaintiff's works were removed from Spotify's service during the course of the litigation. *See* Declaration of Clara Perez ¶ 13, Dkt. No. 94-1.

even more miniscule percentage of the total value of the Settlement. *Id.* ("Further, the awards amount to 0.2% of the total monetary recovery. The awards suggested here are ***far below*** what has been deemed reasonable in similar cases."); *see also, e.g.*, *Reyes v. Altamarea Grp.*, No. 10-cv-6451, 2011 WL 4599822, at *9 (S.D.N.Y. Aug. 16, 2011) (approving total award of $50,000, representing approximately 16.6% of the settlement); *Parker v. Jekyll & Hyde Entm't Holdings, L.L.C.*, No. 08-cv-7670, 2010 WL 532960, at *2 (S.D.N.Y. Feb. 9, 2010) (approving total award of "$85,000, or about 11% of the settlement fund").

Courts have approved similar and higher incentive awards in numerous cases. *See, e.g.*, *Anwar*, 2012 WL 1981505, at *4 (awarding $25,000 to class representative); *Duchene v. Michael Cetta, Inc.,* No. 06-cv-4576, 2009 WL 5841175, at *9 (S.D.N.Y. Sept. 10, 2009) (award of $25,000 representing 0.8% of $3,150,000 settlement amount); *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118 (S.D.N.Y. 2001) (noting case law supports payments of between $2,500 and $85,000 to representative plaintiffs in class actions); *Yap v. Sumitomo Corp. of Am.*, No. 88-cv-700, 1991 WL 29112, at *9 (S.D.N.Y. Feb. 22, 1991) ($30,000 incentive awards to the named plaintiffs). Moreover, in a similar case brought on behalf of a class of songwriters and publishers alleging infringement of copyrights in musical compositions, the court approved incentive awards ranging from $25,000 to $50,000 per class representative. *See In re Napster, Inc. Copyright Litig.*, No. 00-md-1369, slip op. at 1-2 (N.D. Cal. Feb. 14, 2008).

## IV. CONCLUSION

For the reasons set forth herein, Class Counsel respectfully requests that this Court award its requested fees in the amount of $15.86 million, expenses in the amount of $632,111.92, and service awards in the amounts proposed.

Dated: November 13, 2017

Respectfully submitted,

By: /s/ Steven G. Sklaver
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 13, 2017**,** all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's SDNY Procedures for Electronic Filing.

*/s/ Steven G. Sklaver*
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