SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

ELIZABETH BONNOT, KIMBERLY WATSON, and DANIELLE LEIGHLEY, individually and on behalf of all others similarly situated, Plaintiffs, v. L.I. ADVENTURELAND, INC., Defendant.	Index No. 602326/2024 Motion Seq. No. 003

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS, EXPENSES, AND NAMED PLAINTIFFS' SERVICE AWARDS

Dated: December 30, 2024

BURSOR & FISHER, P.A.
Philip L. Fraietta
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@bursor.com

Stefan Bogdanovich (*pro hac vice*)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: sbogdanovich@bursor.com

DAPEER LAW, P.A.
Rachel Edelsberg, Esq.
156 W 56th St #902
New York, NY 10019
Tel.: (917) 456-9603
Email: rachel@dapeer.com

Class Counsel

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PRELIMINARY STATEMENT

The class action settlement between Plaintiffs Elizabeth Bonnot, Kimberly Watson, and Danielle Leighley ("Plaintiffs") and Defendant L.I. Adventureland, Inc. ("Adventureland" or "Defendant"), if finally approved, resolves Plaintiffs' and the Class's claims against Adventureland under New York Arts and Cultural Affairs Law ("ACAL") § 25.07(4). Under the Settlement – which was only reached after extensive negotiations – Defendant has agreed to make up to $359,900.58 available to pay approved class member claims, notice and administration costs, service awards of the Plaintiffs, and attorneys' fees, costs, and expenses to Class Counsel. Of note, the typical Processing Fee paid by a Settlement Class Member during the class period was $2.35 per ticket, and the Settlement provides that every Settlement Class Member who files a valid claim will receive a full refund of the processing fee paid, unless the total amount of approved claims, plus notice and administration costs, service awards of the Plaintiffs, and attorneys' fees, costs, and expenses exceeds $359,900.58, in which case the amount of each approved claim will be reduced pro rata.

And equally important, the Settlement also provides meaningful prospective relief as Defendant acknowledges that as a result of this lawsuit it has changed the purchase flow for tickets to its New York amusement park on its online platforms to ensure compliance with ACAL § 25.07(4) and agrees to continue to comply with this provision unless and until it is amended, repealed, or otherwise invalidated.

Obtaining this exceptional relief came with significant risks. ACAL § 25.07(4) became effective on August 29, 2022, and as such, there is no binding case law (and at the time this action was initially filed no case law) on the statute. The case law that does exist is not unanimously in Plaintiffs' favor. *See, e.g., Curanaj v. Tao Group, Inc.*, Index No. 56152/2024 at NYSCEF No. 36 (Sup. Ct. Westchester Cnty. July 25, 2024) (granting motion to dismiss similar

ACAL ticket fee case); *Frias v. City Winery New York, LLC*, Index No. 651284/2024 (Sup. Ct. New York Cnty. Oct. 15, 2024) (same). Nonetheless, Class Counsel took this case on contingency despite a significant risk that Plaintiffs, the Settlement Class, and thereby Class Counsel, would receive nothing. Rather than put Adventureland's arguments to the test and risk everything, Plaintiffs and Class Counsel achieved meaningful, immediate relief for the Settlement Class.

In light of this exceptional result, Plaintiffs respectfully request pursuant to CPLR 909 that the Court approve attorneys' fees, costs, and expenses of $119,966.86 (or one-third of the Settlement Cap), as well as Named Plaintiff Service Awards of $5,000 for each Plaintiff for their service as class representatives. The requested one-third is consistent with the attorneys' fees that New York courts routinely award in class action settlements. *Milton v. Bells Nurses Registry & Employment Agency, Inc.*, 2015 WL 9271692, at *5 (Sup. Ct. Kings Cnty. Dec. 21, 2015) (collecting cases and noting that 33.3% is "consistent with the norms of class litigation in this circuit"); *see also Norcross v. Tishman Speyer Properties, L.P.*, Case No. 23-cv-11153 at ECF No. 36 ¶ 14 (S.D.N.Y. Aug. 16, 2024) (awarding one-third of the settlement fund in attorneys' fees, costs, and expenses in an ACAL § 25.07(4) settlement); *Charles v. Color Factory, LLC*, Case No. 24-cv-00322 at ECF No. 48 ¶ 14 (S.D.N.Y. Nov. 7, 2024) (same); *Hayes v. Harmony Gold Min. Co.*, 2011 WL 6019219, at *1 (S.D.N.Y. Dec. 2, 2011) (awarding "attorneys' fees in the amount of one third" of a $9 million settlement fund), *aff'd* 509 F. App'x 21, 23-24 (2d Cir. 2013) (affirming same).

For these reasons, and as explained further below, the Court should approve the requested fee and Named Plaintiff Service Awards.

FACTUAL AND PROCEDURAL BACKGROUND

A brief summary of Plaintiffs' allegations, the litigation performed by Class Counsel for

the Settlement Class's benefit, and the beneficial terms of the Settlement provide necessary context to the reasonableness of the requested fee and Named Plaintiffs' Service Awards.

A. Plaintiffs' Allegations

Defendant is an amusement park in the State of New York and sells tickets to its place of entertainment via its online platforms to consumers throughout the United States, including in the State of New York. *See* Complaint (NYSECF Doc. No. 1) ("Compl.") ¶ 9. Plaintiffs allege that when consumers purchase tickets to Defendant's New York amusement park on Defendant's website, they are "quoted a fee-less price, only to be ambushed by a 'processing fee' at checkout after clicking through the various screens required to make a purchase." *Id.* ¶ 1; *see also id.* ¶¶ 10-15 and Figures 1-7. Plaintiffs allege that this conduct violates ACAL § 25.07(4) because Defendant failed to "disclose the 'total cost of a ticket, inclusive of all ancillary fees that must be paid in order to purchase the ticket' after a ticket is selected" and because Defendant "increas[ed] the price of their tickets during the purchase process." *Id.* ¶¶ 27-28. Plaintiffs are individuals who purchased tickets on Defendant's website to its New York amusement park and paid processing fees where the total cost was not disclosed to Plaintiffs at the beginning of the purchase process. *Id.* ¶¶ 30-31.

Adventureland denies these allegations and denies any wrongdoing.

B. The Litigation And Work Performed To Benefit The Class

On February 7, 2024, Plaintiffs Bonnot and Watson filed a putative class action in the Supreme Court of the State of New York, County of Nassau. Affirmation of Philip L. Fraietta In Support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Costs, Expenses, And Named Plaintiffs' Service Award ("Fraietta Aff.") ¶ 4. The material allegations of the complaint centered on Defendant's alleged failure to adequately disclose the total cost and a $2.35 per ticket processing fee for tickets to its place of entertainment prior to those tickets being selected

for purchase, in alleged violation of New York Arts & Cultural Affairs Law ("ACAL") § 25.07(4). *Id.* On February 8, 2024, Plaintiff Leighley filed a putative class action in the Supreme Court of New York, County of Nassau alleging the same material allegations. 6. On May 20, 2024, the Court entered an Order granting the Parties' stipulation to consolidate the two actions. *Id.* ¶ 5. On June 14, 2024, Plaintiffs filed a Consolidated Class Action Complaint in the Supreme Court of the State of New York, County of Nassau. *Id.* ¶ 6.

From the outset of the case, the Parties engaged in settlement discussions and, to that end, exchanged informal discovery, including on issues such as the size and scope of the putative class, specifically the amount of processing fees Defendant collected during the relevant time period. *Id.* ¶ 8. Given that the information exchanged would have been, in large part, the same information produced in formal discovery related to issues of class certification and summary judgment, the Parties had sufficient information to assess the strengths and weaknesses of the claims and defenses. *Id.* After substantial negotiations, the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet. *Id.* ¶ 9. Notably, Adventureland changed the purchase flow for its online platforms effective February 10, 2024, immediately upon receiving a copy of the Complaint filed by Plaintiffs. *Id.*

Thereafter, Defendant produced confirmatory discovery regarding the size and scope of the putative class, which showed that from August 29, 2022 to and through February 10, 2024, Defendant collected $359,900.58 in processing fees from purchasers to its place of entertainment. *Id.* ¶ 10. The investigation also confirmed that effective February 10, 2024, Defendant changed the purchase flow for tickets to New York amusement park on its online platforms to ensure compliance with ACAL § 25.07(4). *Id.* The Parties ultimately drafted and executed the Settlement Agreement, which is annexed to the Fraietta Affirmation as Exhibit 1.

Id. ¶ 3. The Court preliminarily approved the Settlement on October 8, 2024, which is annexed to the Fraietta Affirmation as Exhibit 2. *Id.* ¶ 13.

SUMMARY OF THE SETTLEMENT

The Settlement provides an exceptional result for the class by delivering relief to 37,779 individuals who paid a Processing Fee to gain entrance to Adventureland's New York amusement park from any of Adventureland's online platforms from August 29, 2022, to and through February 10, 2024. *Id.* ¶¶ 10, 14-15. The Settlement makes up to $359,900.58 available to pay approved class member claims, notice and administration costs, service awards of the Plaintiffs, and attorneys' fees, costs, and expenses to Class Counsel. *Id.* ¶ 14; *see also id.* Ex. 1, Class Action Settlement Agreement ("Settlement") ¶¶ 1.14, 1.28, 1.30.

The typical Processing Fee during the Class Period was $2.35 per ticket and the under the Settlement, every Settlement Class Member who files a valid claim will receive a full refund of the processing fee paid, unless the total amount of approved claims, plus notice and administration costs, service awards of the Plaintiffs, and attorneys' fees, costs, and expenses exceeds $359,900.58, in which case the amount of each approved claim will be reduced pro rata. Fraietta Aff. ¶ 15; Settlement ¶ 2.1(a).

Additionally, as part of the Settlement, Defendant acknowledges that as a result of this lawsuit it has changed the purchase flow for tickets to its New York amusement park on all of its online platforms to ensure compliance with ACAL § 25.07(4) and agrees to continue to comply with this provision unless and until it is amended, repealed, or otherwise invalidated. Settlement ¶ 2.2.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES, COSTS, AND EXPENSES ARE REASONABLE AND SHOULD BE APPROVED

This case is complex with the added class action procedural issues overlaying the

underlying litigation. It has unquestionably been litigated efficiently and with no duplication. The work performed was legal work related to the litigation and to the settlement. All tasks were pursued with one goal in mind: what was in the best interests of the Class.

"In testing the reasonableness of the negotiated fee, [courts] first look[] to the percentage of the recovery approach." *Michels v. Phoenix Home Life Mut. Ins.*, 1997 WL 1161145, at *31 (Sup. Ct. N.Y. Cnty. Jan. 7, 1997). "Federal courts around the country, including federal district courts in New York, are turning away from the lodestar/multiplier approach and are returning to the percentage of the recovery approach." *Id.* (citing cases).[1]

New York courts "have routinely granted requests for one-third or more of the fund in cases with settlement funds similar to or substantially larger than this one." *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *7 (E.D.N.Y. Nov. 20, 2012) (citing cases); *Milton*, 2015 WL 9271692, at *5 (collecting cases and noting that 33.3% is "consistent with the norms of class litigation in this circuit"); *Cucuzza v. National Debt Relief, LLC*, No. 601631/2021, NYSCEF No. 21 (Sup. Ct. Nassau Cty. Apr. 20, 2022); *Cortes v. Mexican Hospitality Operator LLC*, No. 601406/2021, NYSCEF No. 18 (Sup. Ct. Nassau Cty. Feb. 28, 2022; *Gabriel v. Homyn Enterprises Corp.*, No. 504595/2021, NYSCEF No. 15 (Sup. Ct. Kings. Cty. Nov. 23, 2021); *Coba v. Wagamama USA, LLC*, No. 614988/2020, NYSCEF No. 17 (Sup. Ct. Nassau Cty. November 3, 2021); *Flowers v. FSNY Restaurant Associates, LLC*, No. 600976/2021, NYSCEF No. 19 (Sup. Ct. Nassau Cty. Oct. 21, 2021); *Hyken v. Greenwich BBQ, LLC*, No. 608689/2020, NYSCEF No. 19 (Sup. Ct. Nassau Cty. Jun. 3, 2021); *Figueroa v. United American Security, LLC*, No. 613892/2020, NYSCEF No. 21 (Sup. Ct. Nassau Cty. May 24, 2021); *Luna v. Zuma NYC, LLC*, No. 509547/2020, NYSCEF No. 40 (Sup. Ct. Kings Cty.

[1] "New York's courts have recognized that its class action statute is similar to the federal statute and have looked to federal case law for guidance." *Fiala*, 899 N.Y.S.2d at 537 (citing cases); *Colt Indus. Shareholder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 194 (1991) ("New York's class action statute has much in common with Federal Rule 23.").

May 10, 2021); *Lemma v. 103W77 Partners LLC*, No. 513125/2019, NYSCEF No. 24 (Sup. Ct. Kings Cty. Mar. 31, 2021); *Guzman v. Del Frisco's of New York, LLC*, No. 617666/2019, NYSCEF No. 61 (Sup. Ct. Nassau Cty. Mar. 18, 2021); *Robinson v. Big City Yonkers, Inc.*, No. 600159/2016, NYSCEF No. 291 (Sup. Ct. Nassau Cty. Feb. 16, 2018). Indeed, as courts have noted, fee requests for one-third of settlement funds "reasonably approximate[] the market for the services rendered," because they represent what "reasonably paying clients typically pay … pursuant to contingency retainer agreements." *In re Nigeria Charter Flights Litig.*, 2011 WL 7945548, at *4 (E.D.N.Y. Aug. 25, 2011) (citing *Arbor Hill*, 522 F.3d 182).

"In a claims-made settlement, attorneys' fees should be based on the gross settlement amount, regardless of the number of claims actually made, because every putative class member could have claimed a portion of the fund if they wished to do so." *Lopez*, 2015 WL 5882842, at *6; *see also Behzadi v. International Creative Mgmt. Partners, LLC*, 2015 WL 4210906, *2 (S.D.N.Y. July 9, 2015) ("Awarding attorneys' fees based on a percentage of the settlement amount rather than the amount paid is proper."); *Alleyne v. Time Moving & Storage, Inc.*, 264 F.R.D. 41, 59 (E.D.N.Y. 2010) (approving one third of total settlement fund, stating that "the proper number against which attorneys' fees are measured is the amount of the entire fund created by the efforts of counsel, not the amount actually claimed or collected by the class."); *Masters v. Wilhelmina Model Agency. Inc.*, 473 F.3d 423. 437 (2d Cir. 2007) ("An allocation of fees by percentage should therefore be awarded on the basis of the total funds made available.").

A. Plaintiffs' Request For Approval Of Reimbursement Of Litigation Expenses And Attorneys' Fees Is Fair And Reasonable And Should Be Granted

Plaintiffs respectfully submit that Class Counsels' request for $119,966.86, or one-third of the Settlement Cap, in attorneys' fees and reimbursement of expenses for the successful prosecution and resolution of this class action should also be approved by the Court. Like the

Settlement, the amount of this inclusive fee and expense request was negotiated at arms-length, and those fee and expense negotiations were not commenced until after all the material terms of the Settlement had been agreed to. Maximizing the benefit to the Class was therefore Class Counsels' paramount consideration. Class Counsels' efforts to date during litigation have been without compensation of any kind, and receipt of any attorneys' fee or reimbursement of expenses has been wholly contingent upon the result achieved. For these and the other reasons set forth below, Plaintiffs respectfully submit that the expenses and attorneys' fees sought meet the applicable legal standards and, considering the contingency risk undertaken and the result achieved, should be approved.

CPLR 909 permits courts to award attorneys' fees in class action litigation. In order to assess a reasonable fee, a court should consider:

> [T]he risks of the litigation, whether counsel had the benefit of a prior judgment, standing at bar of counsel for the plaintiffs and defendants, the magnitude and complexity of the litigation, responsibility undertaken, the amount recovered, the knowledge the court has of the case's history and the work done by counsel prior to trial, and what it would be reasonable for counsel to charge a victorious plaintiff.

Milton, 2015 WL 9271692, at *7 (*citing Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 610 (Sup. Ct. N.Y. Cnty. 2010)). Each of these factors supports approval of Class Counsel's fee and expense request here.

1. The Risk Of Litigation

This factor recognizes the risk of non-payment in cases prosecuted on a contingency basis where claims are not successful, which can justify higher fees. *See, e.g.*, *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."); *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 592 (S.D.N.Y. 2008)

(noting risk of non-payment in cases brought on contingency basis). "It is well settled that class actions are notoriously complex and difficult to litigate." *Shapiro v. JPMorgan Chase 7 Co.*, 2014 WL 1224666, at *21 (S.D.N.Y. Mar. 24, 2014).

The same novelty that made this case complex also presented a substantial risk of non-payment for Class Counsel. As aforementioned, ACAL § 25.07(4) has not been heavily litigated and numerous legal issues would need to be decided in Plaintiffs' favor. For example, Defendant would argue that its online platforms were always in compliance with ACAL § 25.07(4), that Plaintiffs' claims are precluded by the voluntary payment doctrine, that plaintiffs are precluded from seeking a statutory penalty in this class action, that plaintiffs cannot meet the statutorily-required showing of harm required to bring a claim pursuant to ACAL § 25.33, and that the pertinent statute provides for an excessive penalty that is constitutionally infirm. Fraietta Aff. ¶ 19; *see also Curanaj v. Tao Group, Inc.*, Index No. 56152/2024 at NYSCEF No. 36 (Sup. Ct. Westchester Cnty. July 25, 2024) (granting motion to dismiss similar ACAL ticket fee case); *Frias v. City Winery New York, LLC*, Index No. 651284/2024 (Sup. Ct. New York Cnty. Oct. 15, 2024) (same).

The risks were exacerbated by the fact that Defendant retained highly qualified defense counsel. Nonetheless, Class Counsel embarked on a fact-intensive investigation of Defendant's practices, engaged in informal discovery, and spent months negotiating with defense counsel to try and resolve this case. Fraietta Aff. ¶¶ 4-11. Class Counsel fronted this investment of time and resources, despite the significant risk of nonpayment inherent in this case. *Id.* ¶ 23.

The fact that Class Counsel undertook this representation, despite the significant risk of nonpayment, supports the requested fee award.

2. Whether Counsel Had the Benefit of a Prior Judgment

At the time Class Counsel originally filed this action, there were no cases interpreting

ACAL § 25.07(4). Even today, there are only a few other cases interpreting ACAL § 25.07(4), none of which are binding or procedurally advanced beyond a motion to dismiss. Instead of relying on a prior judgment, Class Counsel took on the associated risk of filing this class action on a full contingency basis. This action and the instant Settlement provided a substantial benefit to thousands of Adventureland's customers in New York.

3. Standing at Bar of Counsel for the Plaintiffs and Defendant

Class action litigation presents unique challenges and – by achieving a meaningful settlement over alleged violations of an untested statute – Class Counsel proved that they have the ability and resources to litigate this case zealously and effectively.

Class Counsel are well-respected attorneys with significant experience litigating consumer class actions of similar size, scope, and complexity. Fraietta Aff. ¶¶ 25-28. Moreover, Class Counsel has been recognized by courts across the country for its expertise. *See* Firm Resume, Fraietta Aff. Ex. 3; *see also Ebin v. Kangadis Food Inc.*, 297 F.R.D. 561, 566 (S.D.N.Y. 2014) (Rakoff, J.) ("Bursor & Fisher, P.A., are class action lawyers who have experience litigating consumer claims. … The firm has been appointed class counsel in dozens of cases in both federal and state courts, and has won multi-million dollar verdicts or recoveries in five class action jury trials since 2008.").[2]

Furthermore, "[t]he quality of the opposition should be taken into consideration in assessing the quality of the plaintiffs' counsel's performance." *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 362 (E.D.N.Y. 2010). Class Counsel achieved an exceptional result in this case while facing well-resourced and experienced defense counsel.

Class Counsel litigated this case efficiently, effectively, and civilly. The excellent result

[2] Bursor & Fisher has since won a sixth jury verdict in *Perez v. Rash Curtis & Associates*, Case No. 4:16-cv-03396-YGR (N.D. Cal.), for $267 million.

is a function of the high quality of that work, which supports the requested fee award.

4. The Magnitude And Complexity Of The Litigation

"[C]lass actions have a well deserved reputation as being most complex." *In re Nasdaq Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 477 (S.D.N.Y. 1998). This case was no exception. Adventureland's Processing Fees impacted thousands of customers in New York and presented many novel and complex issues. While Plaintiffs believe that their claims are strong, they are not without risk. For example, any allegation that Adventureland engaged in deceptive conduct with its customers is vigorously disputed. The Settlement eliminates these risks and will provide substantial recovery for the Class without the risk and delay of continued litigation.

This factor therefore also supports Court approval of the requested attorneys' fee and expense award.

5. The Case History and the Responsibility Undertaken by Class Counsel

As discussed in Point I, above, Class Counsel's activities included, but were not limited to: conducting an extensive pre-filing investigation of Plaintiffs and Class Members' claims and damages and vigorously prosecuting those claims. Fraietta Aff. ¶¶ 4-7. Class Counsel engaged in informal discovery and prepared for and participated in extensive negotiations. *Id.* ¶¶ 8-11.

Class Counsel also negotiated a comprehensive settlement agreement and prepared a motion for preliminary approval of the Settlement. *Id.* ¶¶ 12-13. Since reaching the Settlement, Class Counsel have also responded to inquiries from numerous Class Members and coordinated the settlement process with the Settlement Administrator. *Id.* ¶¶ 21-22. Class Counsel anticipates expending additional time administering the Settlement to and after final approval. *Id.*

Thus, the work performed by Class Counsel to date has been comprehensive, complex, and wide ranging. This factor supports the requested fee award.

6. The Amount Recovered

Class Counsel's work has led to the creation of a substantial recovery on behalf of the Class. The Settlement provides for up to $359,900.58 in relief for approximately 37,779 individuals. Fraietta Aff. ¶¶ 10, 14. This settlement benefits all individuals who paid a Processing Fee to gain entrance to Adventureland's New York amusement park from Adventureland's online platforms from August 29, 2022, to and through February 10, 2024 and, as discussed herein, provides them a substantial percentage of the maximum recovery they could hope to recover after trial and a successful appeal. *Id.* Indeed, Adventureland's records confirm that the average Settlement Class Member paid approximately $2.35 in Processing Fees during the class period, and the Settlement provides that every Settlement Class Member who files a valid claim will receive a full refund of the processing fee paid, unless the total amount of approved claims, plus notice and administration costs, service awards of the Plaintiffs, and attorneys' fees, costs, and expenses exceeds $359,900.58, in which case the amount of each approved claim will be reduced pro rata. *Id.* ¶ 15.

And equally important, the Settlement also provides meaningful prospective relief as Defendant acknowledges that as a result of this lawsuit it has changed the purchase flow for tickets to its New York amusement park on all of its online platforms to ensure compliance with ACAL § 25.07(4) and agrees to continue to comply with this provision unless and until it is amended, repealed, or otherwise invalidated. *Id.* ¶ 16.

The Settlement is clearly an excellent result.

7. What It Would Be Reasonable for Counsel To Charge A Victorious Plaintiff

Under CPLR 909, "[i]f a judgment in an action maintained as a class action is rendered in favor of the class, the court in its discretion may award attorneys' fees … based on the reasonable value of legal services rendered and if justice requires, allow recovery of the amount

awarded from the opponent of the class."[3] Here, the Settlement provides that Class Counsel may petition the Court for an award up to one-third of the Settlement Cap (or $119,966.86). Settlement ¶ 8.1. The "Fee Award" also includes all costs and expenses incurred by Class Counsel. As mentioned above, New York courts routinely approve fee requests for one-third of the settlement in class actions. *See* cases cited in Argument § I, *supra*. Thus, Class Counsel's fee request of only one-third is reasonable.

Public policy also favors Class Counsels' requested fee. "Consumer class actions . . . have value to society . . . both as deterrents to unlawful behavior . . . and as private law enforcement regimes that free public sector resources. If we are to encourage these positive societal effects, class counsel must be adequately compensated." *Gascho v. Glob. Fitness Holdings, LLC*, 822 F3d 269, 287 (6th Cir. 2016)*; see also* Myriam Gilles & Gary B. Friedman, *Exploding the Class Action Agency Costs Myth: The Social Utility of Entrepreneurial Lawyers*, 155 U. PA. L. REV. 103, 106 (2006) ("[T]he deterrence of corporate wrongdoing is what we can and should expect from class actions."); William B. Rubenstein*, On What A "Private Attorney General" Is—and Why It Matters*, 57 VAND. L. REV. 2129, 2168 (2004) ("[Class counsel's] clients are not just the class members, but the public and the class members; their goal is not just compensation, but deterrence and compensation."); William B. Rubenstein, *Why Enable Litigation?: A Positive Externalities Theory of the Small Claims Class Action*, 74 UMKC L. REV. 709, 724-25 (2006) ("By enabling litigation, the class action has the structural

[3] The requested fee award also encompasses unreimbursed litigation costs and expenses. Settlement ¶ 8.1. Reasonable litigation-related costs and expenses are customarily awarded in class action cases and include costs such as document preparation and travel. *See, e.g.*, *Yuzary v. HSBC Bank USA, N.A.*, 2013 WL 5492998, at *11 (S.D.N.Y. Oct. 2, 2013) ("Class Counsel's unreimbursed expenses, including 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, are reasonable and were incidental and necessary to the representation of the class."). Thus, included in the requested fee award, Class Counsel respectfully seeks reimbursement of $1,521.80 for out-of-pocket costs and expenses in these standard categories. *See* Fraietta Aff. ¶ 24.

consequence of dividing law enforcement among public agencies and private attorneys general and of shifting a significant amount of that enforcement to the private sector."). Indeed, "many courts have recognized that generous fee awards … serve the dual purpose of encouraging plaintiffs' attorneys to act as private attorneys general and discouraging wrongdoing." *Michels*, 1997 WL 1161145, at *31.

Here, ACAL § 25.07(4) sat on the books for more than a year—*completely unenforced*—before Class Counsel first began filing this action and others. During that time, Adventureland collected over $350,000.00 in allegedly unlawful Processing Fees. But for Class Counsel's efforts, Adventureland's conduct likely would have continued unabated. This factor therefore supports the requested fee award.

II. PLAINTIFFS' REQUESTED SERVICE AWARDS ARE FAIR AND REASONABLE AND SHOULD BE GRANTED

Under the Settlement, Adventureland does not object to Named Plaintiff Service Awards for Plaintiffs in the amount of $5,000 each, as compensation for their efforts in bringing the Actions and achieving the benefits of the Settlement on behalf of the Settlement Class. Settlement ¶ 8.3.

It is common for courts to grant service awards in class action suits. Such awards "reward[] the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years [a] case was active and for participating in discovery, including depositions." *Milton*, 2015 WL 9271692, *2-3 (citing *Cox v. Microsoft Corp.*, 26 Misc. 3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2007)).

Here, Plaintiffs made significant contributions to this litigation by bringing these lawsuits, providing counsel with relevant documents, actively participating in the litigation, and providing important information used to prosecute this action and to achieve the Settlement. Fraietta Aff. ¶¶ 29-31. Additionally, Plaintiffs were prepared to sit through depositions and trial,

if necessary. *See id.*; *Milton*, 2015 WL 9271692, *3 (recognizing the important role that plaintiffs play as the "primary source of information concerning the claim[,]" including by responding to counsel's questions and reviewing documents).

The requested Service Awards are also well within the range previously approved by the New York courts. *See, e.g.*, *Norcross*, Case No. 23-cv-11153 at ECF No. 36 ¶ 15 (awarding $5,000 service award for plaintiff in ACAL § 25.07(4) settlement); *Charles*, Case No. 24-cv-00322 at ECF No. 48 ¶ 15 (same); *Milton*, 2015 WL 9271692, *3 (awarding $8,000 Service Award and citing several decisions in which a Service Award of $10,000 was awarded). Given that the Named Plaintiffs' contributions of time and assistance to this litigation, the requested Service Awards are reasonable, appropriate, and should be approved by the Court.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) approve attorneys' fees, costs, and expenses in the amount of $119,966.86, (2) grant Plaintiffs Service Awards of $5,000 each in recognition of their efforts on behalf of the class, and (3) award such other and further relief as the Court deems reasonable and just.

Dated: December 30, 2024

Respectfully submitted,

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

BURSOR & FISHER, P.A.
Philip L. Fraietta
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@bursor.com

Stefan Bogdanovich (*pro hac vice*)
1990 North California Blvd., Suite 940
Walnut Creek, CA 94596
Telephone: (925) 300-4455
Facsimile: (925) 407-2700
Email: sbogdanovich@bursor.com

DAPEER LAW, P.A.
Rachel Edelsberg, Esq.
156 W 56th St #902
New York, NY 10019
Tel.: (917) 456-9603
Email: rachel@dapeer.com

Class Counsel

PRINTING SPECIFICATION STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.8-b, the undersigned counsel certifies that the foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

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2. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certification, is 4,731 words. By operation of Microsoft Word's word count function, this number includes legal citations and certain forms of punctuation.

Dated: December 30, 2024

Respectfully submitted,

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

BURSOR & FISHER, P.A.
Philip L. Fraietta
1330 Avenue of the Americas, 32nd Floor
New York, NY 10019
Telephone: (646) 837-7150
Facsimile: (212) 989-9163
Email: pfraietta@bursor.com

Class Counsel