

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

TIPSY NAIL CLUB LLC, SALON PHOENIX
COSMETOLOGY, LLC, RAPHA MASSAGE, LLC,
ENLIGHTEN MASSAGE THERAPY LLC, THE
FACIAL BAR, LLC, SALON GOLDYN, INC, and
SALON HAIRROIN, INC., on behalf of themselves
and all others similarly situated,

Plaintiffs,

v.

CLASSPASS INC., CLASSPASS, LLC, FRITZ
LANMAN, and PAYAL KADAKIA,

Defendants.

No. 21 Civ. 8662 (JHR)

**MEMORANDUM OF LAW IN
SUPPORT OF PLAINTIFFS'
MOTION FOR ATTORNEY
FEES, REIMBURSEMENT OF
LITIGATION EXPENSES,
AND SERVICE AWARDS**

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INTRODUCTION

Plaintiffs Topsy Nail Club LLC (“Topsy Nail Club”), Salon Phoenix Cosmetology, LLC, Rapha Massage, LLC, Enlighten Massage Therapy LLC, The Facial Bar, LLC, Salon Goldyn, Inc., and Salon Hairroin, Inc. (“Plaintiffs” or “Named Plaintiffs”), individually and as representatives of the Settlement Class¹ respectfully move the Court for an Order (1) awarding Co-Lead Counsel one-third of the Settlement Fund as attorneys’ fees, (2) reimbursing Co-Lead Counsel \$45,648.69 in litigation costs and expenses, and (3) awarding each Named Plaintiff a service award of \$5,000, with an additional \$5,000 for Topsy Nail Club LLC, to be paid from the Settlement Fund.

Through nearly two years of litigation and pre-filing investigation, Co-Lead Counsel devoted tremendous effort and advanced thousands of dollars of unreimbursed out-of-pocket expenses to pursue claims on behalf of businesses that were listed on ClassPass’s platform without their consent. The success of those efforts is evident in the outstanding settlement negotiated by Co-Lead Counsel, which provides robust relief to the Settlement Class—the kind of which has never been achieved in a Lanham Act class action of this nature. It includes two primary components. First, it includes substantial injunctive relief that not only allows businesses to request prompt removal from ClassPass’s website and mobile application, but also requires ClassPass to make disclosures and other changes to their business practices and listings so that consumers will not be confused or misled as to the affiliation of businesses that do not partner with ClassPass. Second, the Settlement Agreement also provides an all-cash fund of \$1,893,125. SA ¶ 26. Co-Lead

¹ The Settlement Class consists of all persons or entities in the United States that ClassPass has listed on its website or mobile application (“app”) from August 1, 2020 through the Preliminary Approval Date as part of the ClassPass Concierge program that are not ClassPass Partners. Excluded from the Settlement Class are Defendants, their parent companies, subsidiaries and affiliates, and federal governmental entities and instrumentalities of the federal government and any judicial officer presiding over the Action, and any member of his or her immediate family and judicial staff. Settlement Agreement (“SA”) ¶ 27. Unless otherwise stated, capitalized terms used herein have the same meaning as those capitalized terms in the Settlement Agreement.

Counsel was able to achieve this result even though (a) Defendants' business practices at the core of the lawsuit have never generated any profits, and (b) at the time of settlement, no other Lanham Act class action based on false affiliation had *ever* achieved any monetary relief.

Per the Settlement, Co-Lead Counsel asks for one-third of the cash fund. The request for 33.33% of the fund is consistent with the percentage courts in this district usually award. *See, e.g., Springer v. Code Rebel Corp.*, 2018 WL 1773137, at *5 (S.D.N.Y. Apr. 10, 2018) ("33.3% is within the range of fee awards typically awarded."). This fee request does not account for the substantial value to the class of the injunctive relief Co-Lead Counsel secured, even though fees could also be awarded stemming from the injunctive relief, as those claims also contain fee-shifting provisions. *See* 15 U.S.C. § 1117; *Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *17 (S.D.N.Y. Sept. 9, 2015) ("The substantial injunctive relief is a major factor in favor of the fee request, even if no specific monetary value is assigned to it.").

Co-Lead Counsel asks for only a relatively modest amount of fees compared to the significant time invested in prosecuting Plaintiffs' claims. In addition to an extensive pre-complaint investigation, Co-Lead Counsel (1) briefed Defendants' motion to dismiss; (2) analyzed documents produced by Defendants in discovery and in mediation; (3) responded to more than 420 discovery requests propounded by the Defendants; (4) served subpoenas on third parties; (5) participated in two full-day mediations in June and August 2022, for which Plaintiffs prepared substantial mediation briefs and statements; (6) negotiated a Proposed Protective Order and Proposed ESI Order; and (7) continued negotiations through the end of 2022 until the Settlement Agreement was executed on January 6, 2023. Snyder Decl. ¶¶ 6–14. Given the extensive amount of work required to achieve this result, Co-Lead Counsel's multiplier is less than one, at only .51. Snyder Decl. ¶ 22.

The positive reaction to the settlement class also supports the fee award. *See, e.g., Hart v. RCI Hosp. Holdings, Inc.*, 2015 WL 5577713, at *8 (S.D.N.Y. Sept. 22, 2015) (“Where relatively few class members opt-out of or object to the settlement, the lack of opposition supports court approval of the settlement.”). The Settlement Administrator has already provided direct notice to 80,575 class members. The notices and settlement website advises class members that Co-Lead Counsel will seek up to one-third of fees and its expenses from the cash fund. To date, there have been no objections and no opt outs.

Co-Lead Counsel also requests payment for reimbursement of expenses totaling \$45,648.69. *See* SA ¶ 42 (capping requests for expenses at \$50,000). These expenses were all incurred for the benefit of the class and are therefore appropriate. *See In re Indep. Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 183 n.3 (S.D.N.Y. 2003) (the court may compensate class counsel for reasonable out-of-pocket expenses necessary to the representation of the class). These expenses are separate from those that will be paid to the Settlement Administrator directly by Defendants for the costs of providing class notice. ECF No. 104 ¶ 10.

In addition, Co-Lead Counsel requests service awards of \$10,000 to Topsy Nail Club and \$5,000 to the other Named Plaintiffs. These class representatives substantially participated in preparing the complaints in this action, responded to interrogatories and over *four-hundred twenty* requests for production, produced documents, and actively conferred with Co-Lead Counsel regarding litigation strategy, discovery, and settlement. Pollock Decl. ¶ 5. Co-Lead Counsel seeks an additional \$5,000, for a total of \$10,000, to Topsy Nail Club because its efforts went beyond those of the other Named Plaintiffs and significantly benefited the class. Pollock Decl. ¶ 6. These service awards are well within the amount approved by courts in this District. *See, e.g., Hart v.*

BHH, LLC, 2020 WL 5645984, at *5 (S.D.N.Y. Sept. 22, 2020) (“Awards on an individualized basis have generally ranged from \$2,500 to \$85,000.”).

In sum, ample reasons support Co-Lead Counsel’s request for fees, expenses, and service awards.

I. BACKGROUND

Plaintiffs’ memorandum of law in support of preliminary approval, ECF No. 102, provides a comprehensive overview of the facts and history of this lawsuit, as well as a thorough explanation of the Settlement Agreement. Accordingly, Plaintiffs briefly summarize the relevant facts here.

This case involves claims by businesses that ClassPass listed them on the ClassPass platform without their consent, constituting false affiliation and advertising in violation of Section 43 of the Lanham Act, 15 U.S.C. § 1125, and other state unfair competition and consumer protection laws. Topsy Nail Club initiated this action on October 22, 2021, and the other Named Plaintiffs joined an Amended Complaint, which was filed on November 23, 2021. ECF No. 21.

After commencing fact discovery, briefing motions to dismiss, and engaging in mediator-facilitated negotiations for over six months, the parties executed the Settlement Agreement on January 6, 2023. This Court granted preliminary approval on June 29, 2023. ECF No. 104.

To summarize the settlement, in addition to a \$1,893,125 all-cash fund—which, according to Co-Lead Counsel’s research, is the first time a Lanham Act class-action of this kind ever resulted in monetary relief—Co-Lead Counsel secured robust injunctive relief and changes to Defendants’ business practices. These include:

- (1) allowing businesses listed through ClassPass Concierge to request their pages be taken down or changed (SA ¶ 32(a));
- (2) guaranteeing that any Settlement Class Member that chooses to be removed from ClassPass Concierge as part of this Settlement will not be re-listed on ClassPass as part of ClassPass Concierge for at least twelve months, and only if that

Settlement Class Member requests to be added back to ClassPass Concierge after twelve months has elapsed (SA ¶ 32(b));

- (3) changing ClassPass' scheduling procedure and disclaimers related to attempted booking of services to reduce consumer confusion (SA ¶ 32(c));
- (4) affirmatively stating that photos displayed are stock photos to the extent that ClassPass uses stock photographs in its ClassPass Concierge landing pages (SA ¶ 32(d));
- (5) providing a link on ClassPass Concierge landing pages that will enable businesses listed through ClassPass Concierge to communicate with ClassPass, along with a standalone paragraph regarding the direct communication (SA ¶ 32(e));
- (6) removal of the instructions for ClassPass Members to show up to appointments 15 minutes in advance, and instead advising ClassPass Members to visit businesses' websites for additional information regarding their services, including but not limited to COVID-19 safety precautions and any screening forms (SA ¶ 32(f));
- (7) requiring ClassPass representatives, when contacting businesses to book appointments on behalf of ClassPass Members, to disclose the ClassPass Concierge listing and the existence of the ClassPass Concierge program (SA ¶ 32(g)); and
- (8) requiring ClassPass representatives to reach out to businesses that are not yet listed on ClassPass Concierge to verify that they will accept appointments through ClassPass. If a merchant has declined to become a partner with or otherwise be listed on ClassPass, ClassPass will not add such merchant to ClassPass Concierge unless the merchant requests to be added or if such merchant affirmatively consents to the listing. (SA ¶ 32(h))

In accordance with the Settlement Agreement, Co-Lead Counsel may seek (a) an appropriate portion (no more than 1/3, i.e. \$631,042) of the Settlement Fund for the payment of attorneys' fees, as well as (b) reimbursement of expenses incurred during the prosecution of this action, not to exceed \$50,000 (*i.e.*, not including attorneys' fees). SA ¶ 42.

II. THE COURT SHOULD AWARD CO-LEAD COUNSEL'S REQUEST FOR FEES

The Court has discretion to award a reasonable fee to counsel in a class action, *see* Fed. R. Civ. P. 23(h), and counsel who have created benefits for a class may seek an award of attorneys' fees. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Both the percentage-of-the-fund and lodestar method support awarding Co-Lead Counsel's requested fees.

A. The Percentage-Of-The-Fund Method

“Courts in this Circuit routinely use the percentage method to compensate attorneys in common fund cases.” *Rodriquez v. It’s Just Lunch Int’l*, 2020 WL 1030983, at *8 (S.D.N.Y. Mar. 2, 2020). In total, Co-Lead Counsel requests \$45,648.69 in expenses, \$631,042 in fees, and \$40,000 in service awards. Snyder Decl. ¶¶ 21–22; Pollock Decl. ¶ 7. This request of fees of 33.33% of the settlement amount is consistent with what is approved in this district. *See, e.g., Rodriguez*, 2020 WL 1030983, at *10 (“Courts in this Circuit routinely grant fee applications based on the percentage method when the fee award is one-third of a common fund.”); *Springer v. Code Rebel Corp.*, 2018 WL 1773137, at *5 (S.D.N.Y. Apr. 10, 2018); (“33.3% is within the range of fee awards typically awarded.”); *Sukhnandan v. Royal Health Care of Long Island LLC*, 2014 WL 3778173, at *9 (S.D.N.Y. July 31, 2014) (awarding one-third of the settlement fund and noting that it is “reasonable and consistent with the norms of class litigation in this circuit.”).

B. Lodestar Crosscheck

A lodestar check confirms the reasonableness of this award. *See Rodriguez*, 2020 WL 1030983, at *9 (“When utilizing the percentage method, courts often ‘crosscheck’ the adequacy of the resulting fee by applying the lodestar method.”). Co-Lead Counsel is taking a significant discount on its time, and its multiplier is less than one, at only .51. Snyder Decl. ¶ 22. The fee request is therefore reasonable, particularly because it is “considerably lower than the lodestar amount.” *Hollis v. All Am. Bar on First, Inc.*, 2023 WL 4350613, at *3 (S.D.N.Y. July 5, 2023) (Rearden, J.).

Co-Lead Counsel’s lodestar is based on their reasonable hourly rates multiplied by the reasonable number of hours worked. Exhibit 1 to the Snyder Declaration and Exhibit 1 to the Pollock Declaration are summaries of time records that show the work done by individual, their

title, their current hourly rates, and the type of work expended. Snyder Decl. ¶¶ 18, 20; *see, e.g., Cruz v. Local Union No. 3 of Int'l Bhd. of Elec. Workers*, 34 F.3d 1148, 1160–61 (2d Cir. 1994). These hourly rates are reasonable and are comparable to standard billing rates in this market. *See, e.g., Hezi v. Celsius Holdings, Inc.*, No. 1:21-cv-09892, ECF no. 40 (Jan. 13, 2023) & 2023 WL 2786820 (S.D.N.Y. Apr. 5, 2023) (attorney rates ranging from \$425 to \$1,100 approved as reasonable) (Rearden, J.); *In re Hudson's Bay Co. Data Sec. Incident Consumer Litig.*, 2022 WL 2063864, at *19 (S.D.N.Y. June 8, 2022) (approving as reasonable attorney rates ranging from \$350 to \$1,000); *City of Westland Police & Fire Ret. Sys. v. MetLife, Inc.*, 2021 WL 2453972, at *2 (S.D.N.Y. June 15, 2021) (rates ranging from \$170 to \$1,058 per hour were reasonable). In making these calculations, Co-Lead Counsel also excluded some \$32,000 of lodestar (some 119 total hours) for duplicative work or administrative tasks that in its assessment that was redundant or did not directly benefit the Settlement Class. Pollock Decl. ¶ 4.

C. The *Goldberger* Factors Further Support the Requested Fees

The Second Circuit's decision in *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000), sets forth six factors that confirm the reasonableness of the fee requested here. Those factors 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.

Id. at 50 (alteration in original).

1) The time and labor expended by counsel.

As mentioned above, Co-Lead Counsel is asking for only a relatively modest amount of fees in relation to the significant time it invested in prosecuting Plaintiffs' claims. In addition to an extensive pre-complaint investigation, Co-Lead Counsel (1) briefed Defendants' motion to dismiss; (2) analyzed documents produced by Defendants in discovery and in mediation; (3)

responded to a large volume of discovery propounded by the Defendants; (4) served subpoenas on third parties; (5) participated in two full-day mediations in June and August 2022, for which Plaintiffs prepared substantial mediation briefs and statements; (6) negotiated a Proposed Protective Order and Proposed ESI Order; and (7) continued negotiations through the end of 2022 until the Settlement Agreement was executed on January 6, 2023. Snyder Decl. ¶¶ 6–14.

Co-Lead Counsel’s lodestar is significantly higher than the fees requested, results in a negative multiplier, and therefore supports granting Plaintiffs’ requested fees. *Rodriguez*, 2020 WL 1030983, at *9 (observing that “Class Counsel spent significant time and effort to achieve this Settlement” and requested only \$1.5 million even though its lodestar was \$4.2 million); *Tolentino v. Thai Smile Rest. Corp.*, 2023 WL 5051919, at *2 (S.D.N.Y. July 5, 2023) (finding reasonable a fee award of an “amount to a negative multiple of approximately 0.45 of the proffered lodestar”); *Millien v. Madison Square Garden Co.*, 2020 WL 4572678, at *8 (S.D.N.Y. Aug. 7, 2020) (requesting a fee below the lodestar award “strongly suggests that the fee award is reasonable”).

2) The magnitude and complexities of the litigation.

This case represents a novel and relatively untested application of the Lanham Act and state unfair competition and consumer protection laws: applying these laws to online platforms acting as intermediaries providing information about and access to other businesses in a manner that lists those businesses without their consent. Co-Lead Counsel has not been able to find a similar Lanham Act class action that resulted in monetary relief to the class. There have only been a few cases that are similar, none of which, at the time the Parties executed the settlement agreement in January 2023, had been settled with monetary relief or otherwise resolved with as

comprehensive injunctive relief.² *See Rodriguez*, 2020 WL 1030983, at *9 (“The complexity and magnitude of the case weighs in favor of approving an award of \$1.5 million.”); *Millien*, 2020 WL 4572678, at *8 (S.D.N.Y. Aug. 7, 2020) (fees reasonable where “the legal theory of the [] claims was untested, and class counsel undertook significant risk by pursuing it”); *Sykes v. Harris*, 2016 WL 3030156, at *16 (S.D.N.Y. May 24, 2016) (“Class Counsel did not benefit from a previous, similar suit or from any similar government action or investigation” and “Defendants asserted numerous novel defenses to Lead Plaintiffs’ claims”).

3) The risk of the litigation

In addition to the risks of the novel and untested theories in this lawsuit, the risk of proving damages also favors a finding that the requested fee is reasonable. *City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *14 (S.D.N.Y. May 9, 2014) (“The Second Circuit has recognized that the risk associated with a case undertaken on a contingent basis is an important factor in determining an appropriate fee award.”). Defendants have presented evidence that ClassPass Concierge has not generated any profits to date, which could make it difficult for Plaintiffs to recover damages based on a disgorgement theory under the Lanham Act. *See Sykes*, 2016 WL 3030156, at *16 (“Class Counsel’s risk of no recovery was high. Class Counsel did not benefit from a previous, similar suit or from any similar government action or investigation.”); *City of Providence*, 2014 WL 1883494, at *14 (discussing risk of proving damages as factor supporting decision to grant requested attorneys’ fees of 33% of the settlement fund).

Additionally, Defendants would likely vigorously oppose class certification if the case proceeds, and this factor weighs in favor of granting preliminary approval. *See In re GSE Bonds*

² Co-lead Counsel Pollock Cohen LLP subsequently achieved a form of monetary relief for a Lanham Act class action. *WeCare RG, Inc. et al. v. Gifty Inc.*, No. 2:22-cv-02672, ECF No. 43 (E.D. Pa. Apr. 28, 2023).

Antitrust Litig., 2020 WL 3250593, at *4 (S.D.N.Y. June 16, 2020) (“At all times during the litigation, plaintiffs faced uncertainty in their ability to establish liability, obtain class certification, and prove damages.”).

4) The quality of representation

Co-Lead Counsel have extensive experience prosecuting class action and complex civil litigation. Boni, Zack & Snyder LLC (“BZS”) has been appointed as Co-Lead counsel or on the plaintiffs’ executive committee in a number of class actions, including *In re: Interior Molded Doors Antitrust Litig.*, No. 3:18-cv-00718-JAG (E.D. Va.) and *In re Apple In-App Purchase Litig.*, No. 11-CV-1758-EJD (N.D. Cal.). Additional information concerning BZS’s class action experience is available on its website, Bonizack.com. Pollock Cohen LLP has also been appointed class counsel and recently achieved preliminary approval of class action settlements in similar Lanham Act class actions. *See Salon Phoenix Cosmetology LLC et al v. Groupon, Inc.*, No. 1:22-cv-07162, ECF No. 34 (N.D. Ill., Aug. 9, 2023); *WeCare RG, Inc. et al. v. Giftly Inc.*, No. 2:22-cv-02672, ECF No. 43 (E.D. Pa. Apr. 28, 2023). Further demonstrating the quality of Co-Lead Counsel’s work, “a lack of objections from the class members . . . to the proposed fees indicates that the quality of representation was high.” *In re GSE Bonds Antitrust Litig.*, 2020 WL 3250593, at *4. And Defendants were represented by Kirkland & Ellis LLP, a high-quality law firm. *Fleisher*, 2015 WL 10847814, at *22 (“The quality of opposing counsel is also important in evaluating the quality of Lead Counsel’s work.”).

5) The requested fee in relation to the settlement

As discussed above, courts “routinely grant fee applications” for 33.33% of the settlement fund, particularly where the requested fee is *less* than class counsel’s lodestar amount. *See, e.g., Rodriguez*, 2020 WL 1030983, at *10 (“Courts in this Circuit routinely grant fee applications based

on the percentage method when the fee award is one-third of a common fund.”). That the fee is “considerably less” than Co-Lead Counsel’s actual lodestar supports its reasonableness. *See, e.g., Hollis*, 2023 WL 4350613, at *3.

This fee request does not account for the substantial value to the class of the injunctive relief Co-Lead Counsel secured, even though fees could also be awarded stemming from the injunctive relief, as those claims also contain fee-shifting provisions. *See, e.g., 15 U.S.C. §1117(a); Fleisher*, 2015 WL 10847814, at *17 (“The substantial injunctive relief is a major factor in favor of the fee request, even if no specific monetary value is assigned to it.”).

6) Public policy considerations

Public policy supports Co-Lead Counsel’s fee request. *See Rodriguez*, 2020 WL 1030983, at *10 (“‘[P]rivate attorneys should be encouraged’ to take the risks required to represent those who would not otherwise be protected”). Co-Lead Counsel took on significant risk in prosecuting this action on a contingency basis and significantly benefitted the class as a result.

Co-Lead Counsel assumed substantial risk by prosecuting the action and achieved a significant benefit to the Class. Awarding attorneys’ fees adequately compensating counsel serves an important public policy interest. *See, e.g., Cates v. Trustees of Columbia Univ. in City of New York*, 2021 WL 4847890, at *7 (S.D.N.Y. Oct. 18, 2021) (“When awarding attorneys’ fees in common fund cases 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.”) (cleaned up). Accordingly, public policy supports Co-Lead Counsel’s requested fee.

D. The Reaction of the Settlement Class to Date Supports the Requested Fee

In addition to the *Goldberger* factors, the positive reaction of class members to the

Settlement further supports Co-Lead Counsel’s fee and litigation expense request. The Settlement Administrator has already provided direct notice to 80,575 class members. Snyder Decl., Ex. 5. As of August 23, 2023, 1,107 class members have submitted valid claims. *Id.* The notices and settlement website advises class members that Co-Lead Counsel will seek up to one-third of fees, up to \$50,000 in expenses, and up to \$10,000 in service awards for each Named Plaintiff.

To date, there have been no objectors or opt outs. *Id.* Accordingly, the positive reaction of class members therefore supports the fee award. *See Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019) (“The lack of objections . . . militates in favor of approval of the Fees as requested.”); *Hart v. RCI Hosp. Holdings*, 2015 WL 5577713, at *8 (“Where relatively few class members opt-out of or object to the settlement, the lack of opposition supports court approval of the settlement.”) (citing *Tiro v. Pub. House Inv., LLC*, 2013 WL 4830949, at *7 (S.D.N.Y. Sept. 10, 2013)); *Fleisher*, 2015 WL 10847814, at *23 (“[C]ourts in the Second Circuit consider the reaction of the Class to the fee request in deciding how large a fee to award.”).

III. CO-LEAD COUNSEL’S EXPENSES ARE REASONABLE.

“It is well established that counsel who create a common fund are entitled to the reimbursement of expenses that they advanced to a class.” *Guevoura Fund Ltd.*, 2019 WL 6889901, at *22. Co-Lead counsel requests \$45,648.69 total in expenses. Snyder Decl., Ex. 4. All expenses were directly related to achieving relief to this action and are of the normal type Co-Lead Counsel would bill its clients. Snyder Decl. ¶¶ 19–20; *see Guevoura*, 2019 WL 6889901, at *22 (“Particular costs are compensable if they are of the type normally billed by attorneys to paying clients.”); *see, e.g., In re Hudson’s Bay Co. Data Sec. Incident Consumer Litig.*, 2022 WL 2063864, at *22 (approving “routine expenses such as the mediator fee, expert fees, travel, meals, filing fees, legal research, photocopying and service of process expenses”); *City of Westland Police*

& Fire Ret. Sys., 2021 WL 2453972, at *5 (approving expenses for “retained experts and consultants, travel, and the required class action notices[; and] ... mediation fees, filing fees, deposition and transcript fees, legal research expenses, eDiscovery expenses, and photocopy costs.”).

In addition, the Settlement Agreement and notice advised class members that Co-Lead Counsel could seek up to \$50,000 in costs, and there have been no objections. *Guevoura*, 2019 WL 6889901, at *22 (holding that where there were no objections to a reimbursement request that is less than the “not to exceed amount” in a settlement agreement, the factor favors granting the fee request).

IV. The Named Plaintiffs Have Earned Their Service Awards

Co-Lead Counsel requests an aggregate of \$40,000 in service awards for the seven Named Plaintiffs. Co-Lead Counsel reasonably requests service awards of \$10,000 to Topsy Nail Club and \$5,000 to the other named plaintiffs. *See Rodriguez*, 2020 WL 1030983, at *12. Each Named Plaintiff substantially participated in preparing the complaints in this action, responded to interrogatories and over *four-hundred twenty* requests for production, produced documents, and actively conferred with Co-Lead Counsel regarding litigation strategy, discovery, and settlement. Pollock Decl. ¶ 5. These requests are therefore reasonable. *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *5 (S.D.N.Y. Sept. 23, 2019) (holding that service awards of \$20,000 each to twelve class representatives are “in line with those awarded in other cases”); *Hart v. BHH*, 2020 WL 5645984, at *5 (“Awards on an individualized basis have generally ranged from \$2,500 to \$85,000.”); *Knox v. John Varvatos Enters.*, 520 F. Supp. 3d 331, 350 (S.D.N.Y. 2021) (granting service award of \$20,000 to named plaintiff and collecting cases awarding between \$1,500 and \$30,000 to named plaintiffs).

Co-Lead Counsel seeks the additional \$5,000 amount for a total of \$10,000 to Topsy Nail

Club because its efforts went beyond those of the other Named Plaintiffs and significantly benefited the class. Pollock Decl. ¶ 7. After a customer initially visited Topsy Nail Club believing they had reserved and paid for services on ClassPass, the owner of Topsy Nail Club investigated ClassPass websites, contacted other businesses that were also listed on ClassPass without consent, and therefore uncovered the pattern of business listings on ClassPass that provided both the basis of the lawsuit and the contours of membership of the settlement class. Pollock Decl. ¶ 6; *Knox v. John Varvatos Enterprises Inc.*, 520 F. Supp. 3d 331, 350 (S.D.N.Y. 2021) (increasing the service award “based on the evidence that this case would never have been brought without [the plaintiff’s] initiative”); *aff’d sub nom. Chaparro v. John Varvatos Enterprises, Inc.*, 2021 WL 5121140 (2d Cir. Nov. 4, 2021).

The Court should therefore approve the service awards.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the motion for attorneys’ fees, expenses, and service awards. This Motion and supporting filings will be posted on the class settlement website contemporaneously with filing.

Dated: August 24, 2023

Respectfully Submitted,

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