UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jamaal Lloyd and Anastasia Jenkins, as representatives of a class of similarly situated persons, and on behalf of the W BBQ Holdings, Inc. Employee Stock Ownership Plan, Plaintiffs, v. Argent Trust Company, Herbert Wetanson, Gregor Wetanson, Stuart Wetanson, BBQ Trust and its trustees, Gregor Wetanson 2015 Gift Trust and its trustees, Defendants.	Case No. 1:22-cv-04129-DLC-SDA

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, LITIGATION EXPENSES, SETTLEMENT ADMINISTRATION EXPENSES, AND SERVICE AWARDS

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INTRODUCTION

On the eve of trial, after four years of fully contingent litigation, Class Counsel negotiated the Settlement Agreement providing more than $22.5 million in economic value to the Settlement Class—approximately 71% of the ESOP's losses after accounting for the recovery obtained in the Department of Labor action.[1] Plaintiffs and Class Counsel now respectfully request that the Court award: (1) attorneys' fees in the amount of $6,200,000, representing 27.6% of the Settlement's total economic value[2]; (2) reimbursement of litigation expenses in the amount of $727,406.93; (3) settlement administration expenses in the amount of $35,000; and (4) service awards of $10,000 to each Class Representative.

These requests arise from years of fully contingent litigation, during which Plaintiffs and Class Counsel prosecuted this action through extensive motion practice, fact and expert discovery, contested class certification proceedings, and completion of virtually all trial-preparation activities before achieving the Settlement. The requested fee is particularly reasonable because, after Class Counsel had devoted years of attorney-time and substantial litigation expenses to preparing this case for trial, Defendants sought to extinguish the action based on the settlement reached in the Department of Labor's parallel enforcement action, creating an unusual procedural risk that threatened to leave both the Settlement Class and Class Counsel with no recovery.

The requested fee represents 27.6% of the Settlement's economic value, well below the one-third percentage routinely approved in ERISA class actions. *See Cates v. Trs. of Columbia*

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[1] Unless otherwise specified, all capitalized terms have the meaning assigned to them in Section 1 of the Settlement, Dkt. 380-1 (the "Settlement"), or the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Dkt. 379.

[2] As set forth in the Memorandum of Law in Support of Plaintiffs' Motion for Preliminary Approval, Dkt. 379 at 6-7, Plaintiffs' valuation expert calculated the Settlement's total economic value at $22.5 million. This value does ***not*** include value from the Liquidity Provisions.

Univ. in City of New York, 2021 WL 4847890, at *7 (S.D.N.Y. Oct. 18, 2021) ("Courts in this District routinely approve fee awards of one-third [33.3%] of the common fund" in ERISA class actions.).[3] Moreover, the requested fee is ***less*** than the lodestar expended of $7,000,332, even before accounting for the substantial work that remains to obtain final approval and implement the Settlement. It is also substantially below the one-third contingent fee authorized by the Class Representatives in their retainer agreements, reflecting Class Counsel's decision to reduce the requested fee in order to increase the recovery available to the Settlement Class.

The requested litigation expenses were reasonably and necessarily incurred in prosecuting this technically complex ESOP valuation case through the eve of trial. Likewise, the requested service awards provide modest compensation for the substantial time, effort, and responsibilities the Class Representatives undertook on behalf of the Settlement Class over four years of litigation, including discovery, settlement negotiations, and preparation to testify at trial.

As of the filing of this Motion, no Class Member has objected to the requested attorneys' fees, litigation expenses, settlement administration expenses, or service awards, all of which were disclosed in the Court-approved Class Notice. The requested awards are supported by the exceptional result achieved for the Settlement Class, the substantial risks undertaken by Class Counsel and the Class Representatives, the advanced stage of the litigation at which the Settlement

[3] *See also, e.g.*, *Kohari v. MetLife Grp., Inc.*, 2025 WL 100898, at *11 (S.D.N.Y. Jan. 15, 2025) (approving one-third fee in ERISA case); *Leber v. CitiGroup, Inc.*, No. 1:07-cv-09329, Dkt. 294 (S.D.N.Y. Jan. 3, 2019) (same); *Krohnengold v. New York Life Ins. Co.*, No. 1:21-cv-01778, Dkt. 201 (S.D.N.Y. July 18, 2024) (approving 33% fee in ERISA case); *Beach v. JPMorgan Chase Bank*, No. 1:17-cv-00563, Dkt. 232 (S.D.N.Y. Oct. 7, 2020) (same); *Jacobs v. Verizon Commc'ns. Inc.*, No. 1:16-cv-01082, Dkt. 247 (S.D.N.Y. Nov. 21, 2023) (same); *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *2-4 (S.D.N.Y. Sept. 23, 2019) (same); *Osberg v. Foot Locker, Inc.*, No. 1:07-cv-01358, Dkt. 423 (S.D.N.Y. June 8, 2018) (same); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) (same); *McCutcheon v. Colgate-Palmolive Co.*, 2026 WL 444748, at *1-2 (S.D.N.Y. Feb. 17, 2026) (approving 29% attorneys' fee in ERISA case, in part based on empirical studies of ERISA fee awards).

was reached, and well-established precedent approving comparable awards. Plaintiffs and Class Counsel respectfully request that the Court grant this Motion and approve the requested distributions.

BACKGROUND

On May 4, 2026, the Court granted Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and approved the contents of and distribution plan for the Class Notice. Dkt. 392. The Court-approved Notice advised Class Members that Class Counsel would seek attorneys' fees and litigation expenses, settlement administration expenses, and service awards, although the amounts now requested for litigation expenses and service awards are materially lower than those disclosed in the Class Notice. *See* Dkt. 391-2, *approved by* Dkt. 392. As of the date of this Motion, no Class Member has objected to any of the requested awards. Declaration of Michelle C. Yau ("Yau Decl.") ¶ 24.

The Settlement is entirely non-reversionary. *See* Settlement § 7.7. Its effectiveness is not contingent upon the Court's approval of any attorneys' fees, litigation expenses, settlement administration expenses, or service awards. Settlement §§ 8.2, 9.2.

The Settlement provides more than $22.5 million in economic value to the Settlement Class, representing approximately 71% of the ESOP's losses after accounting for the recovery obtained in the parallel Department of Labor ("DOL") action. Dkt. 379 at 13-18; Dkt. 390 ¶ 10. In addition to substantial monetary relief, the Settlement includes Liquidity Provisions that permit Settlement Class members to realize the value of their ESOP shares decades earlier than otherwise permitted under the Plan. *See* Dkt. 379 at 1, 7-8, 17, 22. Both the *Lloyd* Settlement and the DOL settlement reduce the ESOP's outstanding acquisition debt, thereby increasing the value of participants' ESOP accounts. *See id.* at 7-8. The Liquidity Provisions ensure that Settlement Class Members can realize that increased value substantially sooner than would otherwise be possible.

See id. Collectively, the two settlements provide $11 million in cash and $26 million in loan reductions, and the *Lloyd* Settlement secures substantial additional relief beyond that obtained in the DOL action, including meaningful benefits for former employees who otherwise would not have received a cash recovery. *See id.* at 3, 8-9.

At the outset of this litigation, the Class Representatives agreed that Class Counsel would be compensated through a contingent fee equal to one-third of any recovery obtained on behalf of the Settlement Class. Yau Decl. ¶ 4; Declaration of Anastasia Jenkins ("Jenkins Decl.") ¶ 2; Declaration of Jamaal Lloyd ("Lloyd Decl.") ¶ 2. Based on the Settlement's economic value, that agreement would support a fee request of approximately $7.5 million. *See* Dkt. 379 at 1, 17; Yau Decl. ¶ 5. Class Counsel, however, voluntarily seeks a reduced fee award of $6.2 million—$1.3 million less than the amount authorized by the retainer agreements—in order to increase the cash recovery available to Settlement Class members. *See* Yau Decl. ¶ 5. The requested fee therefore represents only 27.6% of the Settlement's economic value despite the advanced stage of the litigation at which the Settlement was achieved and is less than Class Counsel's lodestar. *See id.* ¶¶ 5, 8-10.

I. Work of Class Counsel

Class Counsel's skill, experience, and commitment were instrumental in achieving the Settlement. As detailed in Plaintiffs' Motion for Preliminary Approval of Settlement, Class Counsel prosecuted this action through the eve of trial, successfully navigating extensive motion practice, fact and expert discovery, class-certification proceedings, trial-preparation activities, and settlement negotiations. *See* Dkt. 379 at 1-6. Among other things, Class Counsel successfully opposed Defendants' efforts to compel arbitration, obtained class certification, conducted extensive discovery involving more than 317,000 pages of documents, took fourteen of the sixteen fact witness depositions, worked closely with valuation and fiduciary-process experts, deposed all three of Defendants' experts, prepared and filed oppositions to Defendants' Rule 12(b)(1) motion and motion for leave to move for summary judgment less than two weeks before trial, substantially completed trial preparation, and successfully negotiated the Settlement. *See id.*; Dkt. 380 ¶¶ 27-44.

Through April 17, 2026—the date the Motion for Preliminary Approval was filed—Class Counsel devoted more than 8,678 hours to prosecuting this action, while appellate counsel devoted an additional 93.9 hours successfully defending the Court's order denying Defendants' motion to compel arbitration. Yau Decl. ¶¶ 8, 10; Declaration of Peter Stris (the "Stris Decl.") ¶¶ 19-23. After exercising billing judgment, Class Counsel's lodestar is approximately $6,907,647, Yau Decl. ¶¶ 8, 10, and appellate counsel's lodestar is $92,685 for a combined lodestar of approximately $7,000,332. Yau Decl. ¶¶ 8, 10; Stris Decl. ¶¶ 19-23. The requested fee award of $6.2 million therefore represents less than counsel's lodestar, reflecting ***no*** multiplier despite the exceptional result obtained for the Settlement Class. Yau Decl. ¶¶ 5, 8, 10; Stris Decl. ¶¶ 19-23.

Moreover, the lodestar reflected above includes only work performed through April 17, 2026. Class Counsel has spent additional time preparing this Motion, revising the Class Notice, and overseeing Class Notice distribution. Yau Decl. ¶¶ 8-9. Class Counsel will continue to devote substantial time to obtaining final approval of the Settlement, responding to any objections or inquiries, attending the fairness hearing, supervising the allocation and distribution of Settlement proceeds, coordinating with the Settlement Administrator and Independent Fiduciary, and completing the work necessary to implement the Settlement. *Id.* ¶ 9. Because those additional hours are not included in the lodestar calculation, the requested fee represents an even smaller percentage of the total attorney time ultimately devoted to this litigation.

The substantial time and labor devoted to this action, the absence of any lodestar multiplier, and the significant work that remains to complete the Settlement all confirm the reasonableness of the requested fee.

II. The Class Representatives' Contributions

Plaintiffs also devoted measurable personal time to fulfilling their responsibilities as Class Representatives. Mr. Lloyd estimates that he devoted approximately 33 hours to the litigation, including approximately 12.5 hours away from work, equating to approximately $375 in wages. Lloyd Decl. ¶¶ 5-8. Ms. Jenkins estimates that she devoted approximately 23 hours to the litigation, including approximately 8 hours away from work, resulting in approximately $224 in lost wages. Jenkins Decl. ¶¶ 5-8. Those hours included reviewing pleadings and other case materials, gathering and producing documents, responding to written discovery, communicating with Class Counsel, attending settlement conferences, preparing sworn trial testimony, reviewing settlement proposals, and preparing to testify at trial. Lloyd Decl. ¶¶ 5-6; Jenkins Decl. ¶¶ 5-6; Yau Decl. ¶ 21. The following table estimates the time Plaintiffs spent on various activities in support of the litigation:

Activity	Lloyd	Jenkins
Research related to the case	12.0 hrs	2.0 hrs
Calls with Class Counsel about Discovery and other matters	2.0 hrs	2.0 hrs
Discovery Requests and Collection of Documents	2.0 hrs	2.0 hrs
Travel to/from Manhattan & Attend 1st Settlement Conf.	8.0 hrs	8.0 hrs
Virtually Attend 2nd Settlement Conference	4.5 hrs	4.5 hrs
Discussions with Class Counsel for 3rd Settlement Conference	0.5 hrs	0.5 hrs
Prepare for trial cross-examination with Class Counsel	2.0 hrs	2.0 hrs
Discuss proposed Settlement terms with Class Counsel	1.8 hrs	1.8 hrs
Total	**32.8 hrs**	**22.8 hrs**

The requested service awards will compensate them for the substantial services they provided to the Settlement Class over nearly four years of litigation—not merely provide an incentive for serving as named plaintiffs.

ARGUMENT

I. Standard of Review

Rule 23(h) authorizes courts in certified class actions to "award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court "has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). Courts likewise may authorize reimbursement of "reasonable expenses of litigation" and settlement-administration costs incurred in creating and distributing the common fund. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970); *see also Henry v. Little Mint, Inc.*, 2014 WL 2199427, at *1, 17 (S.D.N.Y. May 23, 2014) (ordering settlement administration expenses to be paid from the settlement fund).

Courts within this Circuit also have discretion to approve reasonable service awards for class representatives who devote time and effort to advancing the interests of absent class members. *See, e.g.*, *Spann v. AOL Time Warner, Inc.*, 2005 WL 1330937, at *9 (S.D.N.Y. June 7, 2005) (Cote, J.); *Andrew-Berry v. Weiss*, 2025 WL 2687993, at *7 (D. Conn. Sept. 19, 2025); *Krohnengold*, No. 1:21-cv-01778, Dkt. 201.

As demonstrated below, the requested attorneys' fees, litigation expenses, settlement administration expenses, and service awards are reasonable under the governing standards and should be approved.

II. The Court Should Approve the Requested Class Counsel Fees

Courts in the Second Circuit generally calculate attorneys' fee in common fund cases using either the "percentage of the fund" method or the "lodestar" method. *See Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000). However, "[t]he trend in this Circuit is toward the percentage method, which directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (citation modified). Courts therefore frequently award a percentage of the common fund and use counsel's lodestar as a "cross-check" on the reasonableness of the requested fee. *Goldberger*, 209 F.3d at 50.

The touchstone of the analysis is reasonableness. *Id.* at 47-48. In assessing the reasonableness of attorneys' fees, courts in the Second Circuit consider the following factors:

(1) the time and labor expended by counsel;

(2) the magnitude and complexity 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.

The requested fee readily satisfies the *Goldberger* factors. Class Counsel prosecuted this action on a wholly contingent basis for four years, litigated it through the eve of trial, devoted nearly 8,700 attorney hours to the prosecution of the claims, and ultimately obtained a Settlement providing more than $22.5 million in economic value to the Settlement Class—approximately 71% of the ESOP's losses after accounting for the recovery obtained in the DOL action. Although courts in this Circuit routinely approve fee awards of one-third of the common fund, *see, e.g.*, *Rupnow v. E*TRADE Securities, LLC*, 2023 WL 6533491, at *1 (S.D.N.Y. Oct. 6, 2023) (Cote, J.), and the Class Representatives themselves agreed to a one-third contingent fee at the outset of the litigation, Class Counsel voluntarily seeks only $6.2 million, representing 27.6% of the Settlement's economic value and less than Class Counsel's lodestar. Yau Decl. ¶¶ 4-5, 8, 10; Lloyd Decl. ¶ 2;

Jenkins Decl. ¶ 2. As discussed below, the record demonstrates that each of the *Goldberger* factors supports the requested fee.

A. Class Counsel Provided High Quality Representation

The quality of Class Counsel's representation is best demonstrated by both the result achieved and the manner in which this litigation was prosecuted before the Court over the course of four years. After litigating this action through the eve of trial, Class Counsel obtained a Settlement providing more than $22.5 million in economic value to the Settlement Class—approximately 71% of the ESOP's remaining losses after accounting for the recovery obtained in the parallel DOL action. Dkt. 379 at 16-18; Dkt. 390 ¶ 10. In addition to substantial monetary recovery, the Settlement includes Liquidity Provisions that permit Settlement Class Members to monetize the increased value of their Company stock as a result of the $26 million in loan forgiveness from this Settlement and the DOL judgment. Dkt. 379 at 6-8; Dkt. 390 ¶ 11. This result was achieved only after extensive motion practice, comprehensive fact and expert discovery, contested class-certification proceedings, and substantial completion of trial preparation. Dkt. 380 ¶¶ 27-44.

The quality of Class Counsel's representation is further reflected by their role in developing the factual and expert record underlying both this action and the parallel DOL litigation. As the Court previously observed, Class Counsel assumed much of the burden of litigating issues common to both actions. *See* Dkt. 240 at 9. Among other things, Class Counsel conducted fourteen of the sixteen fact depositions, deposed each of Defendants' three expert witnesses, and litigated the case to the eve of trial. *See* Dkt. 216 at 6-7; Dkt. 380 ¶¶ 27-44.

These results are consistent with Class Counsel's substantial experience litigating complex ERISA fiduciary-breach and ESOP valuation cases. Cohen Milstein's Employee Benefits/ERISA Practice has successfully prosecuted numerous ERISA class actions, including cases involving

ESOP transactions, and was recognized by Law360 as a 2025 Benefits Group of the Year. Dkt. 380 ¶¶ 5-6; Yau Decl. Ex. 1. Lead trial counsel Michelle Yau likewise has extensive experience litigating ERISA class actions and has been recognized as an ERISA MVP by Law360 in 2021 and 2024 and as one of the Elite Women of the Plaintiffs' Bar in 2025. Dkt. 380 ¶¶ 7-8; Yau Decl. Ex. 1. Those qualifications enabled Class Counsel to prosecute this technically demanding litigation efficiently and effectively, culminating in an exceptional result for the Settlement Class.

Accordingly, the quality of Class Counsel's representation strongly supports approval of the requested fee.

B. The Risks of the Litigation Support the Requested Fee

The substantial risks Class Counsel assumed strongly support the requested fee. As the Second Circuit has recognized, "the risk of success" is "perhaps the foremost factor" in determining a reasonable award of attorneys' fees. *Goldberger*, 209 F.3d at 54 (citation omitted); *see also In re Global Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004). From the outset, Class Counsel prosecuted this action on a wholly contingent basis, advancing substantial attorney time and litigation expenses over nearly four years with no guarantee of recovery. *See* Yau Decl. ¶¶ 4-10. Throughout the litigation, Defendants vigorously contested liability and sought to defeat Plaintiffs' claims through numerous procedural and substantive challenges, including a motion to compel arbitration, opposition to class certification, discovery disputes, Daubert motions, motions *in limine*, and (two weeks before trial) a Rule 12(b)(1) motion coupled with a request for leave to file a motion for summary judgment based on the DOL settlement. *See, e.g.*, Dkts. 50, 200, 274-76, 342 & 348.

This case presented unusual procedural risks that materially increased the possibility that Class Counsel would receive no compensation despite years of successful litigation. More than two years after Plaintiffs commenced this action, the DOL initiated a parallel enforcement action arising from the same ESOP transaction. *See Su v. Argent Tr. Co.*, No. 1:24-cv-09809 (S.D.N.Y.). The DOL later resolved its claims for less than the *Lloyd* Plaintiffs would accept to release the Class's claims. *See* Consent Order & Judgment, *Su*, No. 1:24-cv-09809, Dkt. 109 (S.D.N.Y. Feb. 17, 2026); Dkt. 338 at 2 (letter from Class Counsel stating, "Plaintiffs believe that the consideration reflected in the [DOL's] proposed Consent Order is inadequate, which is why the Class intends to proceed to trial."). Defendants then sought to transform that government settlement into a complete bar to this action, filing a Rule 12(b)(1) motion and seeking leave to move for summary judgment on preclusion grounds. *See* Dkts. 342 & 348.

This risk was particularly significant because it did not arise from the merits of Plaintiffs' claims or the quality of Class Counsel's work. It arose from an intervening event entirely outside Class Counsel's control—the filing and subsequent settlement of a separate government enforcement action—and Defendants' attempt to invoke that settlement to bar claims that Plaintiffs had independently filed years earlier. By the time that risk materialized, Class Counsel had already devoted nearly 7,700 hours to the case, completed extensive fact and expert discovery, and substantially prepared the case for trial. Yau Decl. ¶ 7.

Despite this risk, Class Counsel continued to prepare their case for trial and ultimately negotiated a Settlement that provides significant relief to the Settlement Class ***in addition to*** the DOL judgment. *See* Settlement. The unique risks associated with Defendants' attempt to bar the *Lloyd* Plaintiffs' claims strongly support the reasonableness of the requested fee award under the third *Goldberger* factor.

C. The Requested Fee Is Less Than Class Counsel's Lodestar

The lodestar cross-check strongly supports the requested fee because Class Counsel seeks less than the value of the attorney-time reasonably devoted to this litigation. Through April 17, 2026—the date Plaintiffs filed their Motion for Preliminary Approval—Class Counsel devoted more than 8,678 hours to the prosecution of this action while appellate counsel devoted an additional 93.9 hours successfully defending the Court's order denying Defendants' motion to compel arbitration. Yau Decl. ¶¶ 8, 10; Stris Decl. ¶¶ 19-23. Even after exercising billing judgment to remove several time entries, the total lodestar is $7,000,332, which reflects both Class Counsel's and appellate counsel's lodestar. Yau Decl. ¶¶ 8, 10; Stris Decl. ¶¶ 19-23. The requested fee award of $6.2 million therefore represents only 89% of the value of the time reasonably devoted to this litigation. This fact strongly supports the reasonableness of the requested fee.

Courts routinely approve fee awards that reflect positive multipliers on counsel's lodestar in recognition of the risks inherent in contingent class-action litigation. *See, e.g.*, *Cates*, 2021 WL 4847890, at *4-5; *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014). Here, by contrast, Class Counsel seeks no multiplier whatsoever. Instead, they request a fee that is materially less than their lodestar despite litigating this action on a wholly contingent basis for four years, prosecuting the case through the eve of trial, and obtaining an exceptional recovery for the Settlement Class. The lodestar cross-check therefore does more than confirm the reasonableness of the requested fee—it demonstrates that the requested fee is conservative.

1. The Hours Expended Are Reasonable

The hours reflected in Class Counsel's lodestar were necessary to prosecute this action through the eve of trial. Among other things, Class Counsel litigated a contested motion to compel arbitration[4], successfully amended the complaint over Defendants' opposition, obtained class certification, reviewed more than 317,000 pages of documents, conducted fourteen fact and three

[4] Stris & Maher LLP ("Stris & Maher"), appellate counsel, handled the appellate proceedings related to whether the Plan's arbitration provision—which prospectively waived plan-wide remedies—was enforceable.

expert depositions and participated in two additional depositions, completed expert discovery, opposed Defendants' Rule 12(b)(1) motion and motion for leave to seek summary judgment, and substantially completed preparation for trial. Dkt. 380 ¶¶ 28-31.

The 8,678 hours Class Counsel expended is comparable with other complex ERISA actions, especially considering the advanced stage of the case and extensive motions practice. Courts have approved similar or substantially greater attorney hours in ERISA class actions resolved at advanced stages of the litigation. *See, e.g.*, *Cates*, 2021 WL 4847890, at *3 ("Class Counsel has spent over 13,188 hours of attorney time and 2,288 hours of non-attorney time on this matter," which was resolved before trial following a ruling on summary judgment); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *2-3 (D. Minn. July 13, 2015) ("Class Counsel spent approximately 27,991 attorney hours and 2,716 hours of non-attorney professional time" in case that settled while motion for summary judgment was pending). The hours reflected in Class Counsel's lodestar therefore are reasonable.

2. Class Counsel's Hourly Rates Are Reasonable

The hourly rates used to calculate Class Counsel's lodestar are likewise reasonable.[5] Class Counsel's rates range from $1,245 to $1,315 per hour for attorneys with more than 10 years of experience, $520 to $945 per hour for attorneys with 10 years or less experience, and $425 per hour for paralegals. *See* Yau Decl. ¶¶ 10-11. These are Cohen Milstein's actual billing rates, and the firm's hourly clients pay these 2026 rates. *Id.*

Those rates are also consistent with prevailing market rates approved in comparable complex ERISA and other class actions. *See, e.g.*, *McCutcheon*, 2026 WL 444748, at *4 (finding hourly rates of $900 to $1,150 per hour for partners and $700 to $800 per hour for senior associates

[5] Peter Stris addresses the reasonableness of Stris & Maher's billing rates in his declaration. *See* Stris Decl. ¶ 23.

to be ***below*** market); *Ford v. Takeda Pharms. U.S.A., Inc.*, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023) (observing that ERISA class actions are complicated and approving rates from $635 to $1,370 for attorneys and $425 for paralegals); *see also* Declaration, *In re Axsome Therapeutics, Inc. Sec. Litig.*, 1:22-cv-03925, Dkt. 128-5 (S.D.N.Y. Jan. 6, 2026) (moving for attorneys' fees where hourly rates ranged from $1,150 to $1,500 per partner), *approved by* 2026 WL 538412 (S.D.N.Y. Feb. 26, 2026); Declaration, *Naclerio v. DocGo Inc.*, 1:23-cv-09476, Dkt. 115-1 (S.D.N.Y. Feb. 17, 2026) (moving for attorneys' fees with hourly rates up to $1,600 for partners), *approved by* Order, Dkt. 122 (S.D.N.Y. Mar. 24, 2026).

A comparison to the rates currently charged by other ERISA practitioners likewise confirms that Class Counsel's rates are reasonable. *See* Declaration of Ron Kilgard ¶¶ 1, 13-18; *see also* Affidavit of Theodore M. Becker, *Bolton v. Inland Fresh Seafood Corp. of Am., Inc.*, No. 1:22-cv-04602, Dkt. 65-1 at 6 (N.D. Ga. Jan. 18, 2024) (noting that defense counsel's rates ranged from $633 to $1,251 for attorneys and these "rates are discounted from our standard billing rates").

In sum, Class Counsel's lodestar was calculated using customary billing rates that are consistent with prevailing market rates and the rates approved in comparable ERISA class actions. Even so, Class Counsel seeks only $6.2 million in attorneys' fees: approximately 89% of the total lodestar invested in this litigation. The lodestar cross-check therefore strongly supports approval of the requested fee.

D. The Requested Fee Is Reasonable in Relation to the Settlement

The requested fee, representing 27.6% of the Settlement's economic value, is materially ***less*** than the awards routinely approved in comparable ERISA class actions in the Second Circuit. *Cates*, 2021 WL 4847890, at *7 ("Courts in this District routinely approve fee awards of one-third of the common fund" in ERISA cases such as this.).

Here, Class Counsel seeks a materially lower percentage than is typically awarded, even though they litigated this case to the eve of trial and obtained a proposed Settlement that, with the DOL settlement, recovers 71% of the ESOP's losses. *See* Yau Decl. ¶¶ 4-11; Dkt. 379 at 16-18. Recent ERISA settlements in this District illustrate that the requested percentage is conservative.[6] *See, e.g.*, *Kohari*, 2025 WL 100898, at *11 (approving 1/3 fee in ERISA case); *Krohnengold*, No. 1:21-cv-01778, Dkt. 201 (approving 33% fee in ERISA case); *Beach*, No. 1:17-cv-00563, Dkt. 232 (same); *Jacobs*, No. 1:16-cv-01082, Dkt. 247 (same); *Andrew-Berry*, 2025 WL 2687993, at *6-7 (same); *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-00375, Dkt. 190 (W.D.N.Y. Sept. 3, 2020) (same); *McCutcheon*, 2026 WL 444748, at *1-2 (approving 29% attorneys' fee in ERISA case, in part based on empirical studies of ERISA fee awards).

Courts have reached the same conclusion when reviewing fee awards in connection with ESOP settlements nationwide. *See, e.g.*, *Ahrendsen v. Prudent Fiduciary Servs., LLC*, 2023 WL 4139151, at *7-8 (E.D. Pa. June 22, 2023) (approving 1/3 of $8.7 million ESOP settlement recovery as attorneys' fees); *Godfrey v. GreatBanc Tr. Co.*, No. 1:18-cv-07918, Dkt. 320 (N.D. Ill. Aug. 19, 2022) (seeking 1/3 of $16.5 million ERISA class action settlement as attorneys' fees) *approved by* Dkt. 324 ¶ 10 (N.D. Ill. Oct. 4, 2022); *Hensiek v. Bd. of Dirs. of Casino Queen Holding, Co., Inc.*, No. 3:20-cv-00377, Dkt. 554 at 2 (S.D. Ill. Feb. 25, 2025) (awarding 33.3% as attorneys' fees to Cohen Milstein in ERISA class action settlement).

The requested percentage is further supported by the parties' contingent-fee agreement. At the outset of the representation, Plaintiffs Lloyd and Jenkins agreed that Class Counsel would receive a contingent fee equal to one-third of any recovery obtained on behalf of the Class. *See*

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[6] The size of the Settlement here also falls squarely within the sizes of settlements where one-third fees have been approved (*e.g.*, $4.5 million in *Kohari*, 2025 WL 100898; $9 million in *Beach*, No. 1:17-cv-00563; $13 million in *Cates*, 2021 WL 4847890; $19 million in *Krohnengold*, No. 1:21-cv-01778; $20.85 million in *M&T*, No. 1:16-00375; $30 million in *Jacobs*, No. 1:16-cv-01082; $35 million in *Marsh*, 265 F.R.D. 128; and $75 million in *J.P. Morgan*, 2019 WL 4734396.).

Yau Decl. ¶ 4; Lloyd Decl. ¶ 2; Jenkins Decl. ¶ 2; *see also Devlin v. Ferrandino & Son, Inc.*, 2016 WL 7178338, at *9 (E.D. Pa. Dec. 9, 2016) ("Class Counsel . . . seeks approval of the contingent fee agreed to when this matter was initiated. This factor supports approval.").

Accordingly, the 27.6% fee request is conservative by every relevant measure. It is materially below the percentage routinely approved in comparable ERISA class actions, below the contingent fee agreed to by Plaintiffs Lloyd and Jenkins at the outset of the representation, and below Class Counsel's lodestar. This factor strongly supports approval of the requested fee.

E. The Magnitude and Complexity of the Litigation Support the Requested Fee

The magnitude and complexity of this litigation also strongly support the requested fee. This action involved a class of more than 1,600 ESOP participants and presented numerous factual and legal issues that required extensive litigation up to the week before trial. *See* Dkt. 380 ¶¶ 27-33, 41; Yau Decl. ¶¶ 6-7, 10, 18. As courts have explained, "[t]he size and difficulty of the issues in a case are [also] significant factors to be considered in making a fee award." *Viafara v. MCIZ Corp.*, 2014 WL 1777438, at *11 (S.D.N.Y. May 1, 2014) (citing *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 912 F. Supp. 97, 100 (S.D.N.Y. 1996)).

Courts have long recognized that ERISA fiduciary-breach litigation, and ESOP valuation cases in particular, present unusually complex legal and factual issues. *Krueger*, 2015 WL 4246879, at *1 ("ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation."); *see also Cates*, 2021 WL 4847890, at *4 (similar); *In re Marsh ERISA Litig.*, 265 F.R.D. at 138 ("Many courts have recognized the complexity of ERISA breach of fiduciary duty" cases.); *see also Florin v. Nationsbank of Ga., N.A.*, 60 F.3d 1245, 1248 (7th Cir. 1995) ("Very few areas of the law are as unsettled and complex as ESOP valuation.").

Successfully prosecuting this case required coordination with the DOL and Plaintiffs' valuation and fiduciary-process experts, plus review of more than 317,000 pages of documents, sixteen fact depositions, and substantial trial preparation. *See* Dkt. 379 at 13-16. The litigation also involved complex procedural issues, including a contested arbitration motion and appeal, Daubert motions, motions *in limine*, and briefing concerning the effect of the DOL's parallel enforcement action on Plaintiffs' claims. *See* Dkt. 380 ¶¶ 27-31.

By the time the Settlement was reached, Class Counsel had substantially completed preparation for a bench trial, including the preparation of direct testimony by affidavit, proposed findings of fact and conclusions of law, deposition designations, trial exhibits, and witness examinations. *Id.* ¶ 31. "Very few plaintiffs' firms possess the skill set or requisite knowledge base to litigate" class-wide, statute-based "claims for pension benefits." *Savani v. URS Prof. Sols. LLC*, 121 F. Supp. 3d 564, 573 (D.S.C. 2015). Class Counsel's specialized experience enabled them to navigate these factual, legal, and procedural complexities and ultimately secure the Settlement providing both substantial monetary relief and meaningful structural relief through the negotiated Liquidity Provisions. *See infra* at 3; *see also* Dkt. 380 ¶¶ 1-26.

F. Public Policy Supports the Requested Fee

Public policy considerations also support the requested fee. As courts in this Circuit have repeatedly recognized, when "awarding attorneys' fees in common fund cases the Second Circuit and courts in this district . . . [] 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." *Cates*, 2021 WL 4847890, at *7 (citation omitted and modified); *accord In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *17-18 (S.D.N.Y. Apr. 26, 2016) (Cote, J.) (finding that significant public policy considerations weighed in favor of approving $253 million fee because "[i]t is important to encourage top-tier litigators to pursue challenging antitrust cases" that impact the nation's economy). Indeed, to "make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding." *Hicks v. Morgan Stanley Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) (citation omitted).

These principles have particular force in ERISA litigation because "Congress passed ERISA to promote the important goals of protecting and preserving the retirement savings of American workers. The ERISA statute itself specifically encourages private enforcement." *In re Marsh ERISA Litig.*, 265 F.R.D. at 149-50. Awarding reasonable attorneys' fees in successful ERISA class actions therefore serves not only to compensate counsel for assuming substantial litigation risk, but also to ensure that experienced counsel remain willing to undertake the complex, resource-intensive litigation necessary to vindicate the rights of retirement participants. *Andrew-Berry*, 2025 WL 2687993, at *6 (awarding Cohen Milstein 33.3% fee from an ERISA class settlement due to "the importance of encouraging larger firms with specific expertise to take on cases . . . that stand to correct an injustice inflicted upon rank-and-file workers").

This case illustrates the important role that private enforcement plays in ERISA. Here, the DOL action did not eliminate the need for private litigation. Rather, this case was filed first and ultimately obtained substantial relief beyond that obtained by the DOL, including (1) a recovery with significantly greater economic value, (2) monetary relief for former employees—representing 85% of the ESOP participants—who otherwise would not have received any cash recovery under the DOL settlement, and (3) the negotiated Liquidity Provisions that permit Settlement Class members to realize the increased value of the stock in their ESOP accounts. *See* Dkt. 379 at 2-4, 6-9.

This case thus demonstrates the complementary roles that public and private enforcement play under ERISA. It also illustrates why courts award reasonable contingency fees in common-fund cases: absent experienced private counsel willing to undertake substantial litigation risk over many years, Class Members would not have obtained the significant additional monetary and structural relief achieved here. The public policy considerations underlying both ERISA and the common-fund doctrine therefore strongly support approval of the requested fee award.

III. The Court Should Approve the Requested Expenses

The requested litigation expenses, the settlement administration costs, and service awards for the Class Representatives are reasonable and consistent with awards approved in comparable class actions.

A. Class Counsel Expenses

"It is well-established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses." *In re Marsh ERISA Litig.*, 265 F.R.D. at 150. Indeed, "[c]ourts in the Second Circuit normally grant expense requests in common fund cases as a matter of course." *See In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012) (citation omitted).

The requested expenses, totaling $727,406.93, were reasonably and necessarily incurred over the course of nearly four years of litigation and are fully documented in the Declaration of Michelle C. Yau. As reflected therein, the expenses consist primarily of expert witness fees, deposition transcripts, legal research, travel, court-reporting services, and other litigation expenses routinely incurred in complex class actions. *See* Yau Decl. ¶¶ 14-15. Many of the expenditures were essential to the successful prosecution of both this case and the DOL action.[7] For example,

[7] By far the largest expense item, representing approximately 82% of the expense request, is for experts, which are deemed "critically important" and recoverable expenses. *See* Yau Decl ¶ 14; *In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d at 353-54. Critically, Class Counsel advanced the cost of a fiduciary-process expert, which rebutted Defendants' process expert, whereas the DOL did not retain a process expert. *See* Dkt. 276. Without this expense, Defendants' process expert would have gone unrebutted.

Class Counsel advanced deposition expenses (for nineteen depositions) necessary for ***both*** the private and government enforcement actions. *See id.* ¶¶ 14, 17.

The total expense amount of $727,406.93 is also reasonable in light of the advanced stage of the case and the amounts awarded in similar cases. *See, e.g.*, *Beach*, No. 1:17-cv-00563, Dkt. 232 (approving $735,657.63 in litigation expenses in ERISA case that settled after expert discovery, prior to a ruling on summary judgment); *Cates*, 2021 WL 4847890, at *9 (approving $638,367.96 in litigation expenses); *Krueger*, 2015 WL 4246879, at *3-4 (approving $782,209.69 in litigation expenses). Accordingly, these litigation expenses should be reimbursed.

Because these expenses were documented and necessary to obtain the substantial benefits conferred upon the Settlement Class, they should be reimbursed in full.

B. Settlement Administration Expenses

The requested settlement administrative expenses are likewise reasonable and should be approved. These expenses consist of (1) the costs of providing notice to the Settlement Class and administering the Settlement and (2) the cost of obtaining review of the Settlement by the Independent Fiduciary, both of which are necessary to implement the Settlement.

The requested $20,000 payment to Atticus Administration, LLC ("Atticus") covers the cost of providing the Court-approved notice to Settlement Class Members and administering the Settlement. *See* Yau Decl. ¶ 18. The reasonableness of that amount is confirmed by the competitive bidding process undertaken by Class Counsel. Counsel solicited and received seven (7) bids from experienced settlement administrators, and Atticus submitted one of the most competitive proposals. *See* Dkt. 380 ¶ 43; Yau Decl. ¶ 18. Atticus also agreed to cap its fees at $20,000, thereby providing certainty regarding the amount of the Net Cash Payment available to the Settlement Class. Yau Decl. ¶ 18. This equates to less than $13 per Settlement Class Member, substantially below the per-class-member administration costs approved in comparable ERISA class actions.

See Andrew-Berry, No. 3:23-cv-00978, Dkt. 81 (D. Conn. Sept. 19, 2025) (approving settlement administration costs of $44.69 per class member); *see also Ahrendsen*, 2023 WL 4139151, at *1, *7-8 (approving settlement administration costs of $28.78 per class member).

The requested $15,000 payment to Fiduciary Counselors Inc. ("FCI") is also reasonable. Review of the Settlement by the Independent Fiduciary is required by DOL regulations, *see* Yau Decl. ¶ 19, and is deemed to be a "critically important" benefit to plan participants. *See In re Marsh ERISA Litig.*, 265 F.R.D. at 139. Class Counsel solicited and received three bids from independent fiduciary firms ranging from $15,000 to $20,000 and selected FCI based on its competitive pricing, extensive experience with ESOP settlements, and strong reputation. Yau Decl. ¶ 20; *see, e.g.*, *Chea v. Lite Star ESOP Comm.*, 2026 WL 383318, at *11 (E.D. Cal. Feb. 11, 2026) (approving $20,000 expense for independent fiduciary); *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-cv-00375, Dkt. 190 ¶ 3 (approving $15,000 expense for independent fiduciary).

In total, Plaintiffs seek approval of $35,000 in settlement administration expenses—approximately 0.16% of the Settlement's economic value. The requested expenses reflect competitive market pricing for services that are necessary to implement the Settlement and protect the interests of the Settlement Class. They are also substantially lower than comparable expenses approved in similar ERISA class actions. *See Andrew-Berry*, 2025 WL 2687993, at *4 (approving settlement administration costs reflecting 0.55% of settlement); *see also Ahrendsen*, 2023 WL 4139151, at *7-8 (approving settlement administration costs reflecting 0.37% of settlement).

IV. The Requested Service Awards Fairly Compensate the Class Representatives for Their Significant Contributions to the Litigation

The Court should approve the requested service awards of $10,000 to each Class Representative. The awards sought here are not simply incentive payments because Mr. Lloyd and Ms. Jenkins agreed to serve as named plaintiffs. Rather, the awards will compensate them for the time, effort, and risks they undertook on behalf of absent Class Members. *Spann*, 2005 WL 1330937, at *9 (Cote, J.) (awarding $10,000 to class representatives (quoting *Dornberger v. Met. Life Ins. Co.*, 203 F.R.D. 118, 125 (S.D.N.Y. 2001)); *see also In re Marsh ERISA Litig.*, 265 F.R.D. at 150 ("Case law in this and other circuits fully supports compensating class representatives for their work on behalf of the class, which has benefited from their representation."); *Roberts v. Texaco, Inc.*, 979 F. Supp. 185, 200 (S.D.N.Y. 1997) ("[T]he courts have, with some frequency, held that a successful Class action plaintiff, may, in addition to his or her allocable share of the ultimate recovery, apply for and, in the discretion of the Court, receive an additional award, termed an incentive award.").

Mr. Lloyd and Ms. Jenkins devoted substantial time and effort to this litigation over nearly four years. They reviewed and approved pleadings filed on their behalf, gathered and produced documents, responded to written discovery under oath, communicated extensively with Class Counsel, attended multiple settlement conferences, reviewed and evaluated settlement proposals, prepared sworn trial testimony, and worked extensively with counsel in anticipation of cross-examination and trial. Yau Decl. ¶¶ 21-23; Lloyd Decl. ¶¶ 3-5; Jenkins Decl. ¶¶ 3-5. Mr. Lloyd devoted approximately 33 hours to these responsibilities, including approximately 12.5 hours away from work, while Ms. Jenkins devoted approximately 23 hours, including approximately 8 hours away from work. Lloyd Decl. ¶¶ 5-8; Jenkins Decl. ¶¶ 5-8. Both also stood ready to miss additional work and testify during the scheduled bench trial. Lloyd Decl. ¶ 4; Jenkins Decl. ¶ 4.

Mr. Lloyd's and Ms. Jenkins's contributions were particularly significant because this action was filed less than three months before the applicable limitations period expired. Yau Decl. ¶ 22. By agreeing to serve as Class Representatives and remaining committed to the litigation through the eve of trial, they enabled the private prosecution of claims that ultimately produced a

Settlement providing more than $22.5 million in economic value, including meaningful structural relief above and beyond the DOL settlement. *See* Yau Decl. ¶¶ 21-23.

The requested awards also compensate Mr. Lloyd and Ms. Jenkins for the personal burdens and risks they assumed throughout the litigation. Acting as Named Plaintiffs exposed them to reputational, financial, and employment risks, given that both remain in the workforce and suing a former employer can materially reduce employment opportunities.[8] Lloyd Decl. ¶ 9; Jenkins Decl. ¶ 9. In addition, they accepted the financial risk associated with serving as named plaintiffs in ERISA litigation, where prevailing defendants may seek attorneys' fees under 29 U.S.C. § 1132(g)(1). *See, e.g.*, *Bolton*, No. 1:22-cv-04602, Dkt. 65-1 (affidavit of defense counsel for ERISA fiduciaries seeking $436,702.40 in attorneys' fees pursuant to 29 U.S.C. § 1132(g)(1) after defendants prevailed on motion to dismiss). The risks and burdens undertaken by the Class Representatives support the requested awards.

Courts routinely approve service awards of $10,000 or substantially more in comparable ERISA class actions. *See Andrew-Berry*, 2025 WL 2687993, at *4 (approving $45,000 service award); *Krohnengold*, No. 1:21-cv-01778, Dkt. 201 (approving $10,000 service award to each class representative in ERISA case); *Jacobs*, No. 1:16-cv-01082, Dkt. 247 (approving $30,000 service award in ERISA case); *Cates*, 2021 WL 4847890, at *9 (approving $25,000 service awards in ERISA case); *Beach*, No. 1:17-cv-00563, Dkt. 232 (approving $10,000 service awards in ERISA case); *Amara v. Cigna Corp.*, 2018 WL 6242496, at *4 (D. Conn. Nov. 29, 2018) (ERISA class action approving service awards ranging from $15,000 to $50,000); *Andrus v. New York Life*

[8] Courts have noted that bringing a lawsuit against an employer relating to management of a retirement plan entails risk that the plaintiff will be viewed unfavorably by the employer or future employers. *See Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (finding service awards "particularly appropriate in the employment context" where the plaintiff has "undertaken the risk of adverse actions by the employer or co-workers"); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015).

Ins. Co., No. 1:16-cv-05698, Dkt. 83 ¶ 4 (S.D.N.Y. June 15, 2017) (approving $10,000 service award to each class representative in ERISA case); *Bd. of Trs. of AFTRA Ret. Fund v. JPMorgan Chase Bank, N.A.*, 2012 WL 2064907, at *3 (S.D.N.Y. June 7, 2012) (ERISA class action awarding $50,000 service award to each named plaintiff in ERISA case); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (same); *In re Marsh ERISA Litig.*, 265 F.R.D. at 150-51 (approving $15,000 service awards in ERISA case); *Bellifemine v. Sanofi-Aventis U.S. LLC*, 2010 WL 3119374, at *7 (S.D.N.Y. Aug. 6, 2010) (awarding service awards ranging from $25,000 to $75,000); *see also Kifafi v. Hilton Hotels Ret. Plan*, 999 F. Supp. 2d 88, 105 (D.D.C. 2013) (ERISA class action awarding $50,000 service award to lead plaintiff). The requested awards therefore fall at the low end of the range typically approved in ERISA class actions.

Given the substantial time and effort that Mr. Lloyd and Ms. Jenkins devoted to representing the Class, and the professional risks they undertook, the requested service awards should be approved.

<u>CONCLUSION</u>

For the reasons above, Plaintiffs and Class Counsel respectfully request that the Court approve the following distributions from the Settlement: (1) $6,200,000 for Class Counsel fees, (2) $727,406.93 for Class Counsel expenses, (3) $35,000 for settlement administration expenses, and (4) $10,000 each (a total of $20,000) for Class Representative Service Awards.

Respectfully Submitted,

Dated: July 2, 2026

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<u>WORD COUNT COMPLIANCE CERTIFICATION</u>

The undersigned certifies that this brief contains 7,554 words, which complies with the word limit of Local Rule 7.1(c) and Rule 4.B of this Court's Individual Practices.

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