UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
HARTFORD DIVISION

Beth Andrew-Berry, individually and as a representative of the GWA, LLC 401(k) Profit Sharing Plan and a class of similarly situated persons, Plaintiff, v. George A. Weiss and GWA, LLC, Defendants.	Case No.: 3:23−CV−00978−OAW August 24, 2025

REPLY MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND FOR ATTORNEYS' FEES, EXPENSE REIMBURSEMENTS, AND CLASS REPRESENTATIVE SERVICE AWARD, AND IN RESPONSE TO THE SOLE LIMITED OBJECTION

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INTRODUCTION

Class Counsel respectfully submits this memorandum in further support of Plaintiff Beth Andrew-Berry's motions for final approval of the class action settlement and an award of attorneys' fees and costs, settlement administrative expenses, and a class representative service award (ECF Nos. 63, 69). Plaintiff also responds to the single objection received, which opposed a portion of the attorneys' fees requested by Class Counsel.[1]

UPDATE FROM SETTLEMENT ADMINISTRATOR

Since the filing of the settlement-related motions, the Settlement Administrator, Analytics Consulting LLC ("Analytics"), has had additional communications with Class Members. As of August 21, 2025, Analytics has received a total of 43 calls to the telephone support line, 16 emails, and 1 communication via U.S. mail regarding the Settlement. Declaration of Jeff Mitchell in Further Support of Plaintiff's Motions for Final Approval and Attorneys' Fees, Expense Reimbursements, and Service Award ¶ 5.

The Settlement Administrator is not aware of any objections to the Settlement (including the requested attorneys' fees, expense reimbursements, and the class representative service award) other than the objection to attorneys' fees from Richard Lessard, discussed below. *Id.* ¶ 6. Class Counsel forwarded this objection to the Settlement Administrator. *Id.* In addition, the Settlement Administrator received 123 "rollover requests" from Class Members to deposit their settlement proceeds in a qualified retirement account. *Id.* ¶ 7. This demonstrates both the high level of Class Member engagement and the effectiveness of the Notice program. *See id.* ¶¶ 5, 7.

[1] Unless otherwise specified, all capitalized terms have the meaning assigned to them in Article 1 of the Parties' Settlement Agreement, which appears on the docket at ECF No. 52-1 (the "Settlement" or "Settlement Agreement").

Class Counsel have also fielded inquiries from Class Members, answered their questions, and assisted them with receiving individual recoveries in the form they preferred. Declaration of Michelle C. Yau in Further Support of Plaintiff's Motions for Final Approval and Attorneys' Fees, Expense Reimbursements, and Service Award ("Yau 3rd Decl.") ¶ 10. For example, Class Member Steven Kleinman requested that his recovery be rolled over into two accounts: his Traditional IRA and his Roth IRA. *Id.* Because the default security protocol allowed only one rollover per Class Member, Class Counsel worked with Analytics to ensure that Mr. Kleinman's request could be fulfilled—further underscoring Class Counsel's adequacy of representation and the responsiveness to Class Members' needs. *Id.*

RESPONSE OF THE CLASS

The response of the Class was overwhelmingly positive. The objection deadline passed on August 14, 2025, and virtually all Class Members appear to agree with the Settlement's terms and the requested disbursements from the $7.9 million common fund created by Class Counsel. More specifically:

- No Class Member objected to any term of the Settlement itself, which strongly supports final approval. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016) ("A lack of objection from any class members after members received notice of the settlement 'is an extremely strong indication' that the proposed Settlement is fair." (citation omitted)); *EB v. New York City Dep't of Educ.*, 2015 WL 13707092, at *2 (E.D.N.Y. July 24, 2015) ("No class member has objected, which demonstrates that the class approves of the settlement and supports its final approval.").
- No Class Member objected to the requested reimbursements of $193,368.37 in litigation expenses, $43,497.57 in approximate settlement administration expenses, and

a service award of $45,000. Again, this is strong support that those amounts are fair. *See Kemp-DeLisser*, 2016 WL 6542707, at *8; *New York City Dep't of Educ.*, 2015 WL 13707092, at *2.

- Even the one objection to the attorneys' fee request represents **just 0.003 of Class Members**, which evinces near-unanimous support from the Class concerning Plaintiff's request for attorneys' fees.

A. Background Concerning Mr. Lessard's Objection

Shortly after Plaintiff filed her motion for preliminary approval (in October 2024), Mr. Lessard contacted Plaintiff directly regarding the Plan of Allocation for the Settlement. Yau 3rd Decl ¶ 12. Class counsel answered his questions. *Id.* On or about August 1, 2025, Mr. Lessard again contacted Class Counsel and requested information regarding Plaintiff's request for attorneys' fees. *Id.* ¶ 13. At that time, Mr. Lessard did not articulate any particular concerns with the amount of attorneys' fees requested by Plaintiff. *Id.*

The Court's order provides that any member of the settlement class may file an objection on the docket or deliver an objection to all counsel but required that "such comment or objection must be **received** by the court or counsel on or before **August 14, 2025**." ECF No. 59 at 15 (emphasis in original and added). On August 20, 2025, Class Counsel was provided a written letter from Richard Lessard, dated and postmarked August 14, 2025. Yau 3rd Decl. ¶ 11. The written objection is included in its entirety as Exhibit 1 to the Declaration of Michelle C. Yau, filed herewith. *See* Yau 3rd Decl., Ex. 1 ("Ex. 1").

Mr. Lessard writes that his objection "appl[ies] to only myself[.]" Ex. 1 at 2. He states that he is objecting to a **portion** of the requested attorneys' fees, and that he "propose[s] that Class Counsel be awarded an amount of $450,000 in addition to any Attorney's Fees and Expenses incurred to settle this case." *Id.* That is, Mr. Lessard states Class Counsel should be entitled to the lodestar reported in their fee petition papers ($1,390,255) plus $450,000. *Id.* In his objection, Lessard agrees that Class Counsel should receive some multiplier of their lodestar to "reward[] them for the cost of money and risk incurred" for litigating this case on a contingency basis. *Id.* He also "commend[s Class Counsel] on their successful work on behalf of the Class Participants." *Id.*

In essence, Mr. Lessard's objection is limited to the multiplier that results from Plaintiff's requested fee amount, which Mr. Lessard refers to as a "return on investment" or "ROI." *See id.* at 2-3. According to Mr. Lessard, the attorneys' fees requested by Class Counsel "represents a return on investment (ROI) to the Class Counsel of 89.4%," which he believes is unreasonable and unethical. *Id.* However, when courts use a lodestar cross-check to evaluate the reasonableness of a fee, they review the "multiplier," which is the requested fee divided by the lodestar counsel expended on the action; courts do not discuss the ROI on invested lodestar. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 123 n.27 (2d Cir. 2005); *see also* ECF No. 70 at 24. As discussed below, here, the requested multiplier is **among the lowest** approved by courts in this in this Circuit and nationwide for ERISA class actions. *See infra* at 5-6.

Before responding to his objection, it is important to note that Mr. Lessard does not object to the reasonableness of Class Counsel's hourly rates. *See* Ex. 1. Perhaps this is because Plaintiff submitted a declaration of an experienced Connecticut ERISA litigator stating his opinion that Class Counsel's "hourly rates are consistent with the prevailing hourly rates charged by Connecticut law firms for ERISA litigation work in United States District Court." ECF No. 72 ¶ 5. Nor does Mr. Lessard object to the reasonableness of the hours reported by Class Counsel in litigating this matter. *See* Ex. 1. In fact, the hours Class Counsel have devoted to this Action have increased since the filing of Plaintiffs' motions and will continue to increase during the six months it takes to fully distribute recoveries to Class Members, effectuate the *cy pres* award (if necessary), and close the Settlement Fund. Yau 3rd Decl. ⁋ 9; *see* Settlement Agreement §§ 6.1, 6.6.

B. Mr. Lessard's Objection Should be Overruled Following Intra-Circuit Law

While Plaintiff appreciates that Mr. Lessard is objecting *pro se*, this Court's preliminary approval order required objecting Class Members to "include all arguments, citations, and evidence supporting the objection." ECF No. 59 at 15. Mr. Lessard's objection provides no authority to support his argument that an ROI of 89% is unreasonable and unethical. *See* Ex. 1 at 2-3. When evaluating the requested fee amount using the correct lens (*i.e.*, the multiplier), there can be little doubt that the requested fee is reasonable.

First, Mr. Lessard's objection does not appear to appreciate that Class Counsel's lodestar continues to increase. As a result, the multiplier has already **decreased** and will **continue to decrease** as Class Counsel carry out the responsibilities associated with administering the Settlement. Since July 31, 2025 (the cut off for lodestar reported in the fee petition), Class Counsel's lodestar has increased to $1,547,502.50, which results in a multiplier of just $1,547,502.50, which results in a multiplier of just **1.7**. Yau 3rd Decl. ¶ 7. Going forward, Class Counsel will expend time preparing for and attending the fairness hearing and, if final approval is granted, will also work with the Settlement Administrator to implement the Plan of Allocation and ensure that Mr. Lessard and other Class Members receive payments under the Settlement. *Id.* ¶ 9. After fully administering the individual recoveries to Class Members, ensuring all tax forms are completed, and arranging the *cy pres* payment for any residual settlement funds remaining, Class Counsel estimates that the multiplier would likely fall about 1.5. *Id.* ¶ 10.

As Plaintiff explained in her fee memorandum, "[c]ourts award lodestar multipliers of up to **eight times** the lodestar, and in some cases, even higher multipliers." *Viafara v. MCIZ Corp.*, 2014 WL 1777438, at *14 (S.D.N.Y. May 1, 2014) (emphasis added). Accordingly, the multiplier in this case (currently 1.7) falls **among the lowest** of multipliers approved in this Circuit. *See Amara v. Cigna Corp.*, 2018 WL 6242496, at *2 (D. Conn. Nov. 29, 2018) (finding that lodestar multipliers of **4.75** and **3.79** "are in line with other comparable complex ERISA cases"); *Shapiro v. JPMorgan Chase & Co.*, 2014 WL 1224666, at *24 (S.D.N.Y. Mar. 24, 2014) ("Lodestar **multipliers of nearly 5** have been deemed 'common' by courts in this District." (citation omitted) (emphasis added)); *Sewell v. Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) ("Courts commonly award lodestar multipliers between two and six."); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) (approving multiplier of 5.85); *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y. Apr. 14, 2017), ECF No. 74 at 12 (one-third fee represented a multiplier of 5), approved by Order, (S.D.N.Y. June 15, 2017), ECF No. 83.

Third, the award of a multiplier of 1.7 is consistent with the ethics rules of relevant jurisdictions, which specifically provide that a fee "may be contingent on the outcome of the matter for which the service is rendered" (unless otherwise prohibited by law, or in criminal defense cases). Conn. R. Prof. Conduct 1.5I; D.C. R. Prof. Conduct 1.5I; Model R. Prof. Conduct 1.5I. Indeed, the rules of professional conduct do not apply a specific limit to the applicable multiplier that may be awarded. *See id.* All that is required is that the contingency fee has been fully disclosed to the plaintiff and the plaintiff has executed a contingent fee agreement. *See* Conn. R. Prof. Conduct 1.5I. Here, the executed retainer between Plaintiff Andrew-Berry and Class Counsel expressly provides for attorneys' fees of one-third which are contingent on a recovery by the Class. Declaration of Michelle C. Yau in Support of Plaintiff's Motions for Final Approval and Attorneys' Fees, Expense Reimbursements, and Service Award ("Yau 2nd Decl."), ECF Nos. 65 & 71 ⁋ 21.

Fourth, Mr. Lessard asserts that Class Counsel would not have invested their time in this case "if the risk of losing was too high." Ex. 1 at 3. However, this assertion is belied by the risks present in ERISA litigation generally—as well as the unforeseen risk that arose **after** Class Counsel committed to representing Plaintiff on a contingent fee basis. To begin with, courts in this Circuit have repeatedly observed the "the significant risk of nonpayment in in [sic] this complex ERISA class action." *Cates v. Trustees of Columbia University in City of New York*, 2021 WL 4847890, at *2 (S.D.N.Y. Oct. 18, 2021). And, since Plaintiff filed her motion, there was an adverse ruling for a class of 401(k) participants who lost at trial. *McDonald v. Lab. Corp. of Am. Holdings*, No. 1:22-cv-680, 2025 WL 2325016 (M.D.N.C. Aug. 12, 2025). When Class Counsel agreed to represent Plaintiff in this litigation, there was a significant likelihood that they might recover nothing after investing substantial time and expense into the case. Yau 2nd Decl. ⁋ 22. Class Counsel was particularly concerned that the proposed Weiss Class was just 10% of the size of the other 401(k) classes they had previously represented on a contingency fee basis. *Id.* ⁋ 23.

Fifth, Mr. Lessard fails to appreciate the heightened risks presented by this case, which arose after both Defendants, GWA, LLC ("GWA") and George A Weiss, filed for bankruptcy after Plaintiff filed her action. *Id.* ⁋ 25. These unforeseen developments greatly increased the risk of non-payment as the two bankruptcies left no solvent defendant who could pay a judgment (even assuming Class Counsel prevailed despite the substantial risks associated with complex ERISA class actions). *See In re Frontier Commc'ns Corp.*, 2022 WL 4080324, at *15 (D. Conn. May 20, 2022) (finding that the first four *Goldberger* factors weighed in favor of granting requested attorneys' fees because, among other factors, defendant's bankruptcy increased the risk that the class would not obtain a remedy).

Beyond dramatically increasing the risk of non-payment, these bankruptcy filings also significantly increased the complexity of this case, and the time required for Class Counsel to obtain a recovery for the Class. For example, shortly after each bankruptcy, Class Counsel hired and worked with local bankruptcy counsel, first in the Southern District of New York and then in the Southern District of Florida to protect Class Members' interests. Yau 2nd Decl. ⁋ 25. Most critically, Class Counsel opposed a motion that would have allowed Defendants to use their fiduciary insurance policy for defense costs in this litigation, even though GWA's funds were limited. *See* Plaintiff's Limited Objection to Motion for Relief from Stay, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743 (S.D.N.Y. Bankr. June 26, 2024), ECF No. 106. Class Counsel prevailed and the bankruptcy court ruled that Defendants' insurance policy was only available for funding a recovery to the Class. Order, *In re Weiss Multi-Strategy Advisers,* LLC, No. 1:24-bk-10743 (Bankr. S.D.N.Y. July 2, 2024), ECF No. 121. This provided an important protection for the Class as the policy ultimately was the only available source of recovery. *See id.* Once Class Counsel negotiated a Class Action Settlement that would provide a substantial recovery for the Class from the insurance policy, they sought and obtained approval of both bankruptcy courts., which allowed these settlement proceedings to proceed. *See* Order, *In re Weiss Multi-Strategic Advisers LLC*, No. 1:24-bk-10743 (Bankr. S.D.N.Y. Nov. 7, 2024), ECF No. 258; Order, *In re George Allen Weiss*, 1:25-bk16349 (Bankr. S.D. Fla. July 30, 2025), ECF No. 118.

The risks associated with Defendants' bankruptcy, and the increased complexity and demands on Class Counsel—unknown at the time Class Counsel filed this action—would support an even higher multiplier than the modest 1.7 multiplier sought by Class Counsel here. *See, e.g.*, *Springer v. Code Rebel Corp.*, 2018 WL 1773137, at *4-5 (S.D.N.Y. Apr. 10, 2018) (approving one-third attorneys' fee award with a multiplier of 2.02 "given the complexity of the case and the risks involved in the litigation" where defendant entered bankruptcy proceedings).

Sixth, Mr. Lessard does not address that the Independent Fiduciary found Plaintiff's fee request reasonable. Both the Settlement Agreement and Department of Labor regulations required that the Settlement terms and the requested disbursement be reviewed by an independent fiduciary. *See* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632 (Dec. 31, 2003), as amended, 75 Fed. Reg. 33830 (June 15, 2010) (requires that a settlement be "reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone"). Here, Newport Trust Company, LLC ("Newport Trust") acted as the Independent Fiduciary to evaluate the fairness of the Settlement, including whether the requested attorneys' fee amount and other amounts paid from the Settlement funds are reasonable. *Id*.

Newport Trust, interviewed counsel for all parties and asked Class Counsel to provide a draft of its fee petition papers, including the declaration which detailed Class Counsel's total hours and lodestar. *See* Yau 2nd Decl. ⁋ 42; ECF Nos. 65-1& 71-1 at 2. After reviewing the draft fee memorandum, declarations in support and conducting interviews, the Independent Fiduciary concluded:

> [T]he amount of the attorneys' fees and other amounts paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone[.]

See ECF Nos. 65-1& 71-1 at 1.

Finally, Mr. Lessard's objection does not appreciate that "the trend in [the Second] 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*, 396 F.3d at 121 (internal quotation marks and citations omitted). His objection runs contrary to the numerous courts in the Second Circuit who "routinely approve fee awards of one-third of the common fund" in ERISA cases such as this. *See, e.g., Cates*, 2021 WL 4847890, at *7 (collecting cases).

In light of the above, this Court should follow decisions inside and out of the Second Circuit, which regularly overrule objections similar to Mr Lessard's objection. *See, e.g.*, *Moreno* *v. Deutsche Bank Am. Holding Corp.*, No. 15-cv-09936 (S.D.N.Y. Jan. 31, 2019), ECF No. 343 at 21-22, approved by Order, (S.D.N.Y. Mar. 1, 2019), ECF No. 347 at 3-4 (overruling objection to attorneys' fees and costs with prejudice); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 469 (S.D.N.Y. 2004) (overruling objection to ERISA attorneys' fees and finding that "[g]iven the novelty and the riskiness of the case, [a] multiplier [of 2.6] is certainly justified"); *In re Merrill Lynch & Co., Inc. Rsch. Reps. Sec. Litig.*, 246 F.R.D. 156, 177 (S.D.N.Y. 2007) (overruling objections to attorneys' fees because application of the *Goldberger* factors supports requested attorneys' fee amount); *see also In re Apple Inc. Device Performance Litig.*, No. 5:18-MD-02827-EJD, 2023 WL 2090981, at *19-20 (N.D. Cal. Feb. 17, 2023) (overruling several objections to attorneys' fees and finding that a 2.232 multiplier was warranted), *appeal dismissed*, No. 23-15416, 2023 WL 10447843 (9th Cir. Aug. 8, 2023).

CONCLUSION

Given that 99.7% of the class had no objection to the requested fee amount, that the current multiplier of 1.7 is among the lowest multipliers approved by courts in this Circuit, and that the Independent Fiduciary hired to represent the interest of plan participants (*i.e.*, the Class Members) found the requested fee amount to be reasonable, the Court should overrule Mr. Lessard's objection with prejudice.

Respectfully Submitted,

Dated: August 24, 2025

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