IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

RUSSELL DOVER, HENRY HORSEY, CODY RANK, and SUZETTE PERRY, on behalf of themselves and all others similarly situated, Plaintiffs -vs.- BRITISH AIRWAYS, PLC (UK), Defendant.	Case No. 1:12-cv-05567 (RJD) (CLP) Judge: Raymond J. Dearie Magistrate Judge: Cheryl L. Pollak

MEMORANDUM IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL, FEES, EXPENSES, AND SERVICE AWARDS

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Class Counsel

TABLE OF CONTENTS

Page

TABLE OF CONTENTS
(continued)

Page

TABLE OF AUTHORITIES

Page

Cases

TABLE OF AUTHORITIES
(continued)

Page

Other Authorities

Treatises

I. INTRODUCTION

Plaintiffs respectfully ask this Court to grant final approval of the proposed Settlement Agreement ("Settlement") between Plaintiffs and British Airways Plc ("BA"). Dkt. 304-1. The Settlement fully resolves this hard-fought, long-running litigation and is—as this Court found—a "remarkable" outcome for Class Members. Dkt. 307 at 19. After subtracting any attorneys' fees and expenses, it "provides Class Members compensation with a value between approximately $27 million on the low end and $63 million at the upper end," *id.*, which compares favorably to what Plaintiffs could have achieved at trial.

In this Circuit, settlements are finally approved only after a Court satisfies itself that the settlement is "fair, reasonable, and adequate" under *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974) *abrogated on other grounds, Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). As explained fully below, the Settlement is not merely "adequate," but excellent. After fees and expenses, Plaintiffs' maximum damages at trial were $104.52 million.[1] Even assuming a Plaintiffs' verdict, actual damages might well have been far less—the $104.52 million recovery assumes that a jury (and appellate panel) required BA to return *every dollar* of fuel surcharge, a difficult row for Plaintiffs to hoe given that the contract between the parties permitted BA to assess a reasonable fuel surcharge. *Cf.* Dkt. 295-2 (6/28/16 Tr.) at 68:11-69:4 (positing that BA could "reset" its fuel surcharge annually, which would result in a Plaintiffs' verdict, but sharply reduced damages).

This outstanding Settlement is the result of Class Counsel's tireless efforts over nearly six years, including a detailed pre-filing investigation, successful opposition to two rounds of

[1] This assumes $5 million in total expenses and 1/3 attorneys' fees, both of which are conservative. The Second Circuit estimated "another six to ten million dollars" in costs and fees to go from class certification through trial. Dkt. 295-1 (6/13/17 Tr.) at 10:23-11:4.

motions to dismiss, review and analysis of hundreds of thousands of pages of fact discovery, dozens of depositions, development of common theories with industry and economic experts, a detailed (and successful) class certification motion, briefing on cross-motions for summary judgment, successfully defeating BA's motions to exclude Plaintiffs' experts, briefing motions to exclude BA's experts, arguing (and defeating) BA's appeal to the Second Circuit, and multiple days of mediation and months of negotiations over the terms of a highly-detailed Settlement Agreement.

Class Counsel's hard work paid off. There are few major civil cases in which one party is essentially undefeated, but over the past six years Class Counsel defeated every one of BA's myriad substantive, evidentiary, and appellate motions. They forced BA to withdraw one of its three proposed experts—the only one with a background in statistics. Those results led to a settlement that this Court rightly called "remarkable." Dkt. 307 at 19. None of this was guaranteed. BA could have prevailed on Rule 12, Rule 23, or Rule 56, ending the case. It could have persuaded the Second Circuit to conduct a full review under Rule 23(f), slowing the litigation dramatically. BA could have significantly limited either or both of Plaintiffs' experts. And BA *did* succeed in one respect. While Plaintiffs prevailed substantively, BA successfully extended this litigation for six years in which Class Counsel invested more than ten million dollars of time and money into the case with no guarantee of *any* return. Indeed, the Second Circuit called out this type of risk specifically during oral argument. *See* Dkt. 295-1 (6/13/17 Tr.) at 10:23-11:4 (6/13/17 Hrg. Tr.) at 10:23-11:9 ("Aren't you a little nervous that … you put in another six to ten million dollars of your firm's own money … you will have lost all that …?"). The effective prosecution and resolution of this case required Plaintiffs' Counsel to devote a massive amount of time and resources, and entailed significant risk.

Class Counsel respectfully request $11,095,000 in attorneys' fees (26.44% of the $42,070,000 common fund) and reimbursement of $3,750,000 in expenses. This is well within the range commonly approved in this Circuit, in a case where Class Counsels' effort, determination, and ultimate success would justify an even higher percentage. The reasonableness of the fee request is even more apparent when considered in light of the lodestar cross-check, which strongly supports the requested award. Class Counsels' multiplier is only 1.75, which is modest given the tremendous risks Class Counsel took in this case, even without factoring in Class Counsels' remarkable results and the nearly six years of hard-fought litigation leading up to them.

Class Counsel also seek service awards of $10,000 for each of the four Class Representatives, who dedicated considerable time to support of the entire Class. Plaintiffs thus respectfully ask the Court to finally approve this settlement and award the requested fees, costs, and service awards.

II. APPLICABLE LEGAL STANDARDS.

A. The Court applies a nine factor test to determine whether to grant final approval.

This Court articulated the legal standard governing final approval in its opinion granting preliminary approval:

> When evaluating whether to grant final approval of a class action settlement, courts generally evaluate the substantive fairness of the proposed settlement by considering: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the Settlement Fund in light of the best possible recovery; and (9) the range of reasonableness of the Settlement Fund to a possible recovery in light of all the attendant risks of litigation[.]

Dkt. 307 at 18-19 (quoting and citing *Grinnell*, 495 F.2d at 463; *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001)); *see also, e.g.*, *In re Elec. Books Antitrust Litig.*, 639 F. App'x 724, 726 (2d Cir. 2016) (unpublished) (quoting same); *Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013) (quoting same). The Court applies this nine-factor test to determine whether the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

B. The Court may apply either the percentage or lodestar method to evaluate attorneys' fees, but the percentage method is preferred.

In this Circuit "a court can apply two methods to assess the reasonableness of the requested fee: the percentage method or the lodestar method." *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 242–43 (E.D.N.Y. 2010) (citations omitted). Courts generally prefer "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); *see also, e.g.*, *Babcock v. C. Tech Collections, Inc.*, No. 1:14-CV-3124, 2017 WL 1155767, at *10 (E.D.N.Y. Mar. 27, 2017) (citing same). For example, Judge Dearie upheld the use of the percentage method in another consumer class action involving airline fees. *See In re Nigeria Charter Flights Litig.*, No. 04-CV-304, 2012 WL 1886352 (E.D.N.Y. May 23, 2012).[2]

In contrast to the percentage method, the lodestar method "creates an unanticipated disincentive to early settlements, tempts lawyers to run up their hours, and compels district courts to engage in a gimlet-eyed review of line item fee audits." *Wal-Mart*, 396 F.3d at

[2] There is an exception to this practice in Fair Labor Standards Act ("FLSA") cases. *See, e.g.*, *Marshall v. Deutsche Post DHL*, No. 13-CV-1471, 2015 WL 5560541, at *7 (E.D.N.Y. Sept. 21, 2015) (Dearie, J.). FLSA "opt-in" fee proceedings are almost never adversarial, so percentage-based FLSA awards had only rarely been scrutinized. *See id.* The same concerns do not apply to Rule 23 "opt-out" proceedings, including in the specific context of a consumer class action about airline fees. *See In re Nigeria Charter Flights Litig.*, 2012 WL 1886352, at *1.

121 (internal quotation and brackets omitted). It is thus common to use the lodestar method only as a "'crosscheck'." *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000); *see also, e.g.*, *Mobley v. Five Gems Mgmt. Corp.*, No. 17 CIV. 9448 (KPF), 2018 WL 1684343, at *4 (S.D.N.Y. Apr. 6, 2018) (quoting same).

III. RELEVANT FACTUAL BACKGROUND

This is a breach of contract case about whether the fuel surcharge that British Airways imposed on its customers until early 2013 was reasonably related to the price or cost of fuel. This Court well articulated this litigation's extensive procedural history, facts, and legal disputes in its opinion granting preliminary approval. *See* Dkt. 307 at 2-11. It summarized the Settlement in that same opinion. *Id*. at 11-17.

IV. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE.

As explained above, a court may finally approve a settlement only after determining that it is "fair, reasonable, and adequate," Fed. R. Civ. P. 23(e)(2), under the nine *Grinnell* factors. As with preliminary approval, Plaintiffs respectfully submit that this is not a close call.

A. Trial would be extremely costly, and it is unlikely that the litigation would have resolved prior to 2020.

The first *Grinnell* factor considers the complexity, expense, and likely duration of the litigation. *Grinnell*, 495 F.2d at 463. And there is no real question that continued litigation would involve considerable expense. Indeed, sitting by designation in the Second Circuit, Judge Cogan specifically cautioned Plaintiffs that proceeding through trial would cost "another six to ten million dollars" in fees and expenses. Dkt. 295-1 (6/13/17 Tr.) at 10:23-11:4.

This litigation, moreover, was filed over five years ago, and it is extremely unlikely that it would have finally resolved after trial. British Airways has repeatedly stressed that it intended to appeal class certification, the *Daubert* rulings, and any adverse verdict. *See, e.g.*, Dkt. 296.

Thus, Plaintiffs' options were not between settlement today and final resolution before a jury tomorrow, but between settlement today and final resolution in two to five years after spending "another six to ten million dollars," which would have reduced the amount of any Class recovery. By reaching a favorable settlement prior to trial, Plaintiffs ensure a risk-free recovery for the Class.

B. The Class Representatives support the Settlement.

The second *Grinnell* factor considers the Class Members' responses to the settlement. *Grinnell*, 495 F.2d at 463. While it is not yet possible to weigh this factor fully because Class Members may still object to (or opt-out of) the Settlement until July 6, 2018, *see* Dkt. 307 at 22, Plaintiffs respectfully note that the settlement administrator has not yet received any objections or opt-outs. Class Representatives, sophisticated travelers and are highly familiar with the strengths and weaknesses of this case, also support the Settlement.

C. The parties fully completed discovery and major pretrial motions practice.

Under the third *Grinnell* factor, courts ask "whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004) (internal quotation marks omitted). This factor unambiguously supports settlement. Prior to settlement, the parties completed all pretrial discovery—including dozens of depositions—and had briefed, argued, and received opinions on class certification, summary judgment, and *Daubert*. The parties were thus well equipped to evaluate the strengths and weaknesses of the case; indeed, trial was the sole remaining event that would have been expected to provide the parties with significant additional information.

D. All trials carry considerable risk on liability.

The fourth *Grinnell* factor considers how likely Plaintiffs were to establish liability. *Grinnell*, 495 F.2d at 463; *cf. Velez v. Majik Cleaning Serv., Inc.*, No. 03 CIV. 8698, 2007 WL

7232783, at *6 (S.D.N.Y. June 25, 2007) ("The proposed settlement benefits each plaintiff in that he or she will recover a monetary award immediately, without having to risk that an outcome unfavorable to the plaintiffs will emerge from a trial."). Plaintiffs believe their liability case was strong for the reasons detailed in their motion for summary judgment. *See generally* Dkt. 299. BA disagrees. And while Plaintiffs liked their chances, every trial is risky, and the appellate process adds to that jeopardy. If Plaintiffs had lost at trial or on appeal, Class Members would have received nothing.

E. There was a significant chance that a jury would have awarded less than Plaintiffs' $140-161 million maximum damages amount.

Damages also posed a risk to Plaintiffs at trial. Plaintiffs sought $140-161 million in damages. While it was possible that a jury would have awarded the full amount, it is possible that the jury would have awarded a compromise number instead. For example, the jury could have decided that "rough justice" compelled BA to return half of the fuel surcharges that it collected, awarding only $70-80 million. And the District Court specifically alluded to the possibility that a jury could find that BA only needed to adjust its fuel surcharges once per year, which could have led to an even lower damages number depending how the jury implemented such a finding. *See* Dkt. 295-2 (6/28/16 Tr.) at 68:11-69:4. Considering the risks to Plaintiffs both on damages and liability, the Settlement is fair, adequate, and reasonable.

F. There was not a significant risk of losing class certification during trial or on appeal.

For the reasons articulated in the District Court's opinion granting class certification, *see* Dkt. 249, Plaintiffs likely would have been able to maintain class certification through trial and appeal, although some risk always exists of an adverse change in the law. Plaintiffs respectfully submit that the settlement value appropriately reflects this risk.

G. The range of reasonableness in light of the best possible recovery

After fees and expenses, Plaintiffs' maximum damages at trial were $104.52 million.[3] The cash value of the settlement alone (ignoring the significant amount of Avios included in the settlement) is more than 25% of this number. This also weighs strongly in favor of settlement. Indeed, the Second Circuit has noted that "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Grinnell*, 495 F.2d at 455 n.2.

H. The range of reasonableness in light of "all the attendant risks of litigation"

The final *Grinnell* factor considers the range of reasonable settlements in light of "all attendant risks of litigation." *Grinnell*, 495 F.2d at 463. There should be no question that the Settlement is not merely reasonable, but exceptional when viewed against the backdrop of litigation risk, as described above. And the Settlement provides guaranteed value to Class Members today rather than after several years.

* * *

In sum, the Settlement is not merely "fair, reasonable, and adequate" under Rule 23(e)(2), it is "remarkable," Dkt. 307 at 19.

V. NOTICE WAS REASONABLE AND APPROPRIATE.

The Court must also ensure that notice was appropriate. *See* Fed. R. Civ. P. 23(e)(1) (explaining that the Court "must direct notice in a reasonable manner to all Class Members who would be bound by the proposal"). First, "[a] notice program must provide the 'best notice practicable under the circumstances' including individual notice to all members who can be identified through reasonable effort." *In re Advanced Battery Techs., Inc. Sec. Litig*, 298 F.R.D.

[3] This reflects $5 million in total expenses and 1/3 attorneys' fees.

171, 182 (S.D.N.Y. 2014). Second, "[i]f the average class member understands 'the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings,' then the notice is adequate." *Vaccaro v. New Source Energy Partners L.P.*, No. 15 CV 8954 (KMW), 2017 WL 6398636, at *3 (S.D.N.Y. Dec. 14, 2017) (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982).

This Court found correctly on preliminary approval that notice met these requirements. The Parties e-mailed plain language notice (the "Notice") of the Settlement to all Class Members for whom BA has an active e-mail address. And a plain language postcard notice was sent via US Mail to those few Class Members for whom BA does not have a current e-mail address.[4]

VI. THIS COURT SHOULD GRANT CLASS COUNSELS' FEE REQUEST.

Courts in the Second Circuit apply a six factor test to determine whether Class Counsels' requested fees are reasonable, whether under the percentage of the fund or lodestar method. *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 436 (2d Cir. 2007) (citation omitted). These factors are: (1) counsel's time and labor; (2) the litigation's complexities and magnitude; (3) the litigation risks; (4) quality of representation; (5) the relationship of the requested fee to the settlement; and (6) considerations of public policy. *Id.*; *see also United States v. City of New York*, No. 07CV2067, 2016 WL 3417218, at *2 (E.D.N.Y. June 16, 2016) (same). All six factors support the fee award strongly. This is particularly so because the requested fee of 26.44% is well within the range approved by courts in this Circuit, and the lodestar cross-check (1.75) proves that Class Counsels' request is modest. *See, e.g.*, *In re BioScrip, Inc. Sec. Litig.*, 273 F. Supp. 3d 474 (S.D.N.Y. 2017) (collecting cases for the proposition that an award of 25-30% of a common fund is reasonable); *Sykes v. Harris*, No. 09 CIV. 8486 (DC), 2016 WL 3030156, at *16

[4] Plaintiffs will submit additional information from the Settlement Administrator after the conclusion of the claims period.

(S.D.N.Y. May 24, 2016) ("The multiplier here is 3.3, which is consistent with other cases in the Second Circuit." (collecting cases)).

A. Class Counsel invested thousands of lawyer hours and incurred nearly $4 million in expenses.

Over nearly six years, Class Counsel and those working at their direction devoted 10,687 hours and incurred $3,978,296.71 million in expenses, all devoted to prosecuting this Action and achieving an outstanding recovery for the Class. *See* Lichtman Decl. ¶ 3. During that time they answered 195 requests for production, 466 requests for admission, and 121 written interrogatories. *See id.* ¶ 4. Class Counsel reviewed 48 document productions, took and defended 42 depositions in two countries, analyzed six different productions of the key database at issue in this litigation, wrote 475 pages of briefing (in 37 briefs and two Rule 56.1 statements), and submitted eight expert reports. *See id.* The lodestar in this case thus reflects the successful efforts of a small, highly efficient team. *See id.* ¶ 5 ("I reviewed the bills using the same practices that I would apply to a client paying our hourly rates, including one client who paid my hourly rates during the pendency of this litigation."). Indeed, there was *no* incentive to perform "make-work" because this Circuit favors the percentage recovery method: Class Counsel cannot increase their compensation by performing extra work and are paid—if at all—many years after they spent the time and money litigating.

B. The litigation was highly complex.

While Plaintiffs' claim was straightforward—breach of contract—the underlying litigation and analysis was extraordinarily complex. Nowhere was this complexity more evident than in the parties' combined 14 expert reports, many of which delved into highly technical economic and statistical issues. *See, e.g.*, Dkt. 178; Dkt. 182. Plaintiffs were able to discredit one of BA's proffered experts only after Class Counsel obtained a declaration from the Nobel

Prize winning economist on whose work BA's expert ostensibly relied. *See* Dkt. 182. Rarely is litigation so complicated that it turns in part on a Nobel Laureate explaining the theory for which he won that award.

BA's alleged misconduct, moreover, is simple to explain, but complicated to understand. The primary documentary evidence in this litigation is contained in what is called the ICW database. *See* Lichtman Decl. ¶ 4. BA initially denied that such a database even existed and would later go on to produce versions of that database six different times, requiring extensive expert and legal analysis. *See id*. And as the Parties' summary judgment briefs confirmed, there were numerous thorny disputes regarding even the most seemingly basic facts. *See, e.g.*, Dkt. 234 at 2 ("BA's opposition brief asserts repeatedly that BA did not 'set its fuel surcharge based upon 2003 costs.' . . . [but] BA's own expert . . . [admits] that "consistent testimony by BA personnel indicate[d] that . . . . BA's fuel surcharge was intended to recover the increase in fuel costs over [the] 2003-2004 base year.").

BA also took an aggressive approach to the legal issues in this case, filing dozens of briefs on legal issues ranging from English Law to preemption to *Daubert*. It challenged every prong of the class certification analysis other than typicality. *Compare* Dkt. 208 at 9-30 (opposing class certification) *with* Dkt. 213 at 4-19 (addressing each of BA's arguments). And it introduced three "surprise" sur-reply expert reports and later a sur-sur-sur reply report. *See* Dkt. 182 at 1-2 (detailing the relevant procedural history).

C. <u>This litigation was very risky.</u>

Plaintiffs faced substantial (and sometimes existential) risk at nearly every stage of this litigation. Class Counsel at several points—including at summary judgment and class certification three to four years after case inception—faced the realistic possibility of losing everything, including both thousands of lawyer hours and more than $3.5 million in expenses.

By the time the parties briefed summary judgment, Plaintiffs' liability case was strong. *See generally* Dkt. 299. But this obscures the fact that Plaintiffs faced very significant hurdles to establishing liability at various points prior to summary judgment. Most significantly, BA submitted an expert report that appeared to dispose of Plaintiffs' claims entirely. Class Counsel were only able to save Plaintiffs' claims with extraordinary effort. *See* Dkt. 182 at 1 ("Dr. Hildreth claims that BA's "fuel surcharge" (the YQ Charge) is correlated with the price of fuel. . . . Nobel Laureate Robert F. Engle—the very "Engle" on whom Dr. Hildreth relies—now submits a sworn declaration to set the record straight.").

And while Class Counsel was cautiously optimistic about their chances for a positive verdict on the eve of trial, damages were still in very significant jeopardy. As this Court is aware, Plaintiffs sought $161-140 million in damages. To award $161 million, the jury would have had to return *every dollar* Plaintiffs paid to BA, notwithstanding that the at-issue contract unambiguously permitted BA to charge *some* reasonable fuel surcharge. This made it quite likely that a jury might have settled on some type of compromise damages award. The District Court specifically alluded to the possibility that a jury would find that BA only needed to adjust its fuel surcharges once per year, which could have led to a very low damages number depending on the way the jury implemented such a finding. *See* Dkt. 295-2 (6/28/16 Tr.) at 68:11-69:4. In class action litigation, moreover, a compromise damage award creates very significant appellate risk. *See, e.g., Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1050 (2016) ("Petitioner may raise a challenge to the proposed method of allocation when the case returns to the District Court for disbursal of the award.").

D. Class Counsel's representation was exemplary.

The Second Circuit has explained that "the quality of representation is best measured by results." *Goldberger*, 209 F.3d at 55. After subtracting any attorneys' fees and expenses, the

Settlement "provides Class Members compensation with a value between approximately $27 million on the low end and $63 million at the upper end." *Id.*

The Second Circuit has instructed that "results may be calculated by comparing the extent of possible recovery with the amount of actual verdict or settlement." *Goldberger*, 209 F.3d at 55. By that measure, this Settlement compares exceptionally well to others. As explained above, Plaintiffs' maximum damages at trial after fees and expenses were $104.52 million. The Settlement thus returns between 26.69% and 62.27% of the maximum possible trial damages. By contrast, for example, many class action settlements return less than 2% of damages. *See Recent Trends in Securities Class Action Litigation: 2014 Full-Year Review*, available at https://goo.gl/iFvGvM, at 33. Class Counsels' fee should reflect the exceptional result they achieved for the Class.

Class Counsel respectfully submit, moreover, that this Court's evaluation should include not only litigation uncertainties with respect to trial and appeals, but also the *certainty* of *delay*. There is very little chance that Class Members would have seen any return from a successful verdict prior to 2020. *See* Lichtman Decl. ¶ 10. And "[a] very large bird in the hand of this litigation is surely worth more than whatever birds are lurking in the bushes." *In re Chambers Dev. Sec. Litig.*, 912 F. Supp. 822, 838 (W.D. Pa. 1995).

E. <u>The requested fee is reasonable in relation to the Settlement.</u>

Class Counsel seek 26.44% of the $42,070,000 common fund as fees. This is modest, given that "in this Circuit, courts routinely award attorneys' fees that run to 30% and even a little more . . . ." *Seijas v. Republic of Argentina*, No. 04-CV-1085 (TPG), 2017 WL 1511352, at *13 (S.D.N.Y. Apr. 27, 2017) (citation omitted); *see also, e.g.*, *In re Initial Pub. Offering Sec. Litig.*, 671 F. Supp. 2d 467, 516 (S.D.N.Y. 2009) (one-third of $586 million settlement); *accord Aranda v. Caribbean Cruise Line, Inc.*, No. 12 C 4069, 2017 WL 1283447, at *6 (N.D. Ill. Apr.

6, 2017) (finding 30% common within the Seventh Circuit (collecting cases)). More to the point, though, the percentages here are justified in light of the immense amount of work and unusually high risk Class Counsel undertook to prosecute this litigation.

F. Public policy considerations support the proposed fee.

The requested fee furthers the policy goal of "providing lawyers with sufficient incentive to bring common fund cases that serve the public interest." *See Goldberger*, 209 F.3d at 51. The fee would compensate Class Counsel at a level commensurate with the benefits they have conferred on the Class, the substantial investment of time and money they devoted to litigating this case and bringing about the Settlement, and the contingent nature of their representation.

VII. CLASS COUNSEL SHOULD BE REIMBURSED FOR EXPENSES.

In this Circuit, courts "normally grant expense requests in common fund cases as a matter of course." *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-MD-1775 JG VVP, 2015 WL 5918273, at *7 (E.D.N.Y. Oct. 9, 2015) (quoting *In re Vitamin C Antitrust Litig.*, No. 06-MD-1738 BMC JO, 2012 WL 5289514, at *11 (E.D.N.Y. Oct. 23, 2012)); *In re Sinus Buster Prod. Consumer Litig.*, No. 12-CV-2429, 2014 WL 5819921, at *13 (E.D.N.Y. Nov. 10, 2014) (same). Class Counsel's request for reimbursement of $3.75 million of the more than $3.978 million incurred is reasonable. This is particularly so because the overwhelming majority of these expenses were paid to experts whose work led directly to this outstanding Settlement. *See, e.g.*, Dkt. 256 (holding that Mr. Robert Kokonis offered testimony bearing on "[t]he central question" in this litigation and that Dr. Jonathan Arnold's damages models were "exactly" the appropriate measure of damages). Class Counsel paid nearly all of these expenses "up-front" with no guarantee of repayment and ran the risk of losing all of that money if the Court had decided to side with BA on any one of several dispositive motions. *See* Lichtman Decl. ¶ 8 ("Class Counsel received no outside funding in connection with this litigation.").

VIII. THE COURT SHOULD APPROVE SERVICE AWARDS.

Courts within this Circuit "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 . . . ." *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07 CIV. 2207 JGK, 2010 WL 3119374, at *7 (S.D.N.Y. Aug. 6, 2010). For example, this Court approved service awards of $20,000 where, as here, class representatives provided more than five years of service to the class. *See Karic v. Major Auto. Companies, Inc.*, No. 09 CV 5708 (CLP), 2016 WL 1745037, at *8 (E.D.N.Y. Apr. 27, 2016) (Pollak, MJ.). Class Counsel respectfully attaches a declaration detailing the class representatives' significant involvement with this litigation. *See* Cuthbertson Decl. ¶¶ 2-3; *cf. Xiao Ling Chen v. XpresSpa at Terminal 4 JFK LLC*, No. 15 CV 1347 (CLP), 2018 WL 1633027, at *4 (E.D.N.Y. Mar. 30, 2018) (Pollak, MJ.) (holding that requests for service awards must be supported with "factual support").

In light of the foregoing, service awards are justified. Class Counsel request $10,000 for each Class Representative to defray the time and expenses incurred in connection with representing the Class over the course of this nearly six-year litigation, and to recognize these Plaintiffs' extraordinary efforts to protect the Class's interests. These awards are modest and appropriate—they total $40,000, which is %0.095 of the lowest possible valuation of this Settlement after attorneys' fees and expenses.

CONCLUSION

For the above reasons, Plaintiffs respectfully ask this Court to grant their motion for final approval of the Settlement, attorneys' fees, reimbursement of litigation expenses, and service awards to the Class Representatives.

Dated: June 15, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 15, 2018, service of this document was accomplished via ECF and that British Airways consented to such service.

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