UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ARBUCKLE FUNDING, LLC, and BRIGHTON TRUSTEES LLC, on behalf of and as Trustee for COOK STREET MASTER TRUST III, individually and on behalf of all others similarly situated, Plaintiffs, vs. TALCOTT RESOLUTION LIFE AND ANNUITY INSURANCE COMPANY and TALCOTT RESOLUTION LIFE INSURANCE COMPANY, Defendants.	)	Civil Action No. 7:23-cv-07972-CS

MEMORANDUM OF LAW IN SUPPORT OF CLASS COUNSEL'S MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES, AND INCENTIVE AWARD

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Abbreviation		Term
Plaintiffs	Arbuckle	Plaintiff Arbuckle Funding, LLC
	Brighton	Brighton Trustees LLC, on behalf of and as Trustee for Cook Street Master Trust III
Defendants	Talcott	Talcott Resolution Life and Annuity Insurance Company
	HLIC	Talcott Resolution Life Insurance Company
Class Counsel		Susman Godfrey L.L.P.

TABLE OF EXHIBITS[1]

No.	Title
1	Susman Godfrey L.L.P. Class Action Profile and Plaintiffs' Counsel's Profiles
2	Settlement Agreement
3	Pre-Motion Hearing Conference Transcript (Jul. 28, 2025)
4	Long-Form Class Notice
5	Postcard Class Notice

[1] All exhibits are attached to the accompanying Declaration of Ryan C. Kirkpatrick.

I. INTRODUCTION

After more than two and a half years of litigating complex and novel legal claims, Class Counsel settled the Premium Tax Claims for a total settlement value that exceeds **$20 million**. The settlement includes an $11 million all-cash, non-reversionary common fund, plus prospective changes to Talcott's premium-tax practices that generate an additional $9,030,549 in value to the Settlement Class and that completely eliminate the premium tax overcharges at issue. Defendants will, as a result of the Settlement and going forward, change their practices and assess premium taxes on these policies in the way Plaintiffs argued they should be assessed. The cash component alone for historical premium tax overcharges represents approximately 76% of the approximate $14.5 million in alleged past overcharges, assuming full success on class certification, liability, damages, trial, and appeals.

Class Counsel achieved this excellent result on a purely contingent basis and without the assistance of any government or regulatory investigation whatsoever. Class Counsel investigated Talcott's premium-tax practices, identified breach theories that no one had litigated in this context before, and developed each theory through discovery. Those theories were untested. At the July 28, 2025 pre-motion conference on Talcott's motion to dismiss the Premium Tax Claims, the Court described the policy language as ambiguous and found that both sides had "decent arguments." Ex. 3 (Hrg. Tr.) at 2:18–19, 11:25–12:1. Surviving Talcott's anticipated motion to dismiss was far from certain, and success at trial was even less so.

In recognition of the Settlement's outstanding result, Class Counsel respectfully applies for an award of attorneys' fees in the amount of $3,666,666.67, which is 18.3% of the gross settlement benefit (or using a less-accepted and more conservative methodology, 1/3 of the cash component of the settlement viewed in isolation), a figure well within the range approved by courts in this Circuit. Here, the requested award is warranted by the outstanding results achieved for the Class through the efforts of Class Counsel, and the enormous risks taken and overcome in litigation brought entirely on a contingency fee basis.

The requested fee of less than 19% of the gross settlement benefits is reasonable. Courts in this Circuit regularly award attorneys' fees amounting to one-third of the value of a class settlement. *See Carbone v. Ltd. Run Games, Inc.*, 2026 WL 686144, at *10–11 (E.D.N.Y. Mar. 11, 2026) (collecting cases). And courts measure that settlement value by both the monetary and non-monetary relief obtained. *See Fleisher v. Phoenix Life Ins. Co.*, 2015 WL 10847814, at *15 (S.D.N.Y. Sept. 9, 2015) ("In calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of both the monetary and non-monetary benefits conferred on the Class."); *Velez v. Novartis Pharms. Corp.*, 2010 WL 4877852, at *4, 18 (S.D.N.Y. Nov. 30, 2010) (assessing requested fees in relation to $175 million "total gross value of the settlement," including monetary and non-monetary relief, rather than using "the more conservative and less-accepted methodology of percent against monetary fund"). The Settlement Class was advised in the Notice that Class Counsel may apply for a fee award of $3,666,666.67, and, to date, no Class Member has objected to a fee award in that amount, which is itself significant support for the reasonableness of the fee request. *See* Kirkpatrick Decl. ¶ 36; Ex. 4 (Long-Form Notice); Ex. 5 (Postcard Notice). *Cf. In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 594 (S.D.N.Y. 2008) ("That only one objection to the fee request was received is powerful evidence that the requested fee is fair and reasonable."). In addition, the benefit of changing Defendants' premium-tax charges and practices going forward is easily quantifiable and does not depend on any redemption rates. An application for 1/3 of the entire $20 million in settlement benefits would be fair and reasonable in light of all the circumstances.

Despite these facts, Class Counsel has determined to only apply for a fee equal to

$3,666,666.67, an amount which equals less than 19% of the gross settlement benefits. That amount would be reasonable under the governing standards even if the Settlement did not provide for non-cash benefits in the form of a change in Defendants' premium tax practices going forward. Class Counsel also requests reimbursement of litigation expenses of $203,493.98 and an incentive award of $5,000 for Plaintiff Arbuckle to compensate it for its time and efforts in bringing this Settlement to a successful resolution.

II. BACKGROUND

A. Class Counsel Investigated the Overcharges and Filed the Complaint

Susman Godfrey performed the initial factual and legal investigation of Talcott's premium-tax charges—studying the policy forms and the premium-tax provisions in light of governing state premium-tax laws—and filed this action on September 8, 2023. The original complaint alleged two breach-of-contract claims. Count I alleged that Talcott failed to reduce cost-of-insurance rates after the Tax Cuts and Jobs Act of 2017 reduced the federal corporate income tax rate. ECF No. 1 ¶¶ 5–7, 23–31, 47–52. That cost-of-insurance claim in Count I is not part of this Settlement and remains pending.

Count II of the original complaint, relevant here, alleged that Talcott breached its contracts with New York policyholders by failing to update the premium tax charge rate applied when the policyowner's state of residence changed to a state with a different premium tax rate, and by assessing a premium tax charge rate in excess of 0.7% for New York policyowners. Arbuckle alleged that Talcott charged more than that residence-state rate, including by continuing to charge the 2.35% California rate after Arbuckle moved to New York, where Arbuckle alleged the rate was 0.7%.

B. Class Counsel Developed the Premium Tax Claims Through Extensive Discovery and Investigation

As the case progressed, Class Counsel conducted extensive discovery and investigation into the Premium Tax Claims, obtaining from Talcott and The Prudential Insurance Company of America ("Prudential")—the administrator of the policies—extensive documentation, written discovery responses, and policy-level data for the proposed Premium Tax Settlement Class. Although the parties' discovery involved both the unresolved COI claim and the Premium Tax Claims, the total figures reveal the magnitude of discovery. Plaintiffs served 65 requests for production, 15 interrogatories, and 50 requests for admission, resulting in the production of over 8,000 documents and data sets spanning over 150,000 pages, including policy-level data, actuarial information, and communications. Kirkpatrick Decl. ¶ 7. Class Counsel and its experts analyzed data for more than 60,000 policies to compare the correct premium-tax rate for each policy to what Talcott actually charged.

As discovery uncovered additional overcharge practices, Class Counsel pursued each new lead and ultimately filed four amended complaints. The Second Amended Complaint, filed in March 2024, expanded the class beyond New York to reach all policyholders overcharged after an address change—a failure that Talcott did not correct until 2025, in the middle of and as a result of this litigation. ECF No. 44. The Third Amended Complaint, filed in March 2025, added two theories that Class Counsel's persistent discovery efforts brought to light: that Talcott applied Connecticut's higher retaliatory tax rate to policyholders in fifteen states with lower statutory rates, and that Talcott failed to lower its charges when states reduced their premium-tax rates. ECF No. 62. The Fourth Amended Complaint, filed in April 2026 with Defendants' consent, added Brighton Trustees LLC as a plaintiff and Talcott's affiliate, Talcott Resolution Life Insurance Company, as a defendant, after discovery revealed that the affiliate assessed premium-tax charges in the same manner. ECF No. 116.

C. Class Counsel Negotiated the Settlement

Class Counsel reached the Settlement through extensive, good-faith, arm's-length negotiations. The parties began negotiations on April 30, 2025, nearly two years into the litigation and only after significant discovery was complete. Kirkpatrick Decl. ¶ 5. By that time, Class Counsel had thoroughly investigated the relevant law and facts, obtained and analyzed extensive policy-level data and documents, and understood the strengths and weaknesses of the Premium Tax Claims. *Id.* ¶¶ 5–6.

The negotiations unfolded over several months before the parties were able to reach agreement. Experienced counsel on both sides met in person and virtually on April 30, August 4, and September 26, 2025, and exchanged numerous offers, counteroffers, telephone calls, and emails between and after those sessions. Kirkpatrick Decl. ¶ 5. Throughout, the parties weighed the risks, uncertainties, delays, and expenses of continuing to litigate the Premium Tax Claims. *Id.* ¶¶ 5, 15. The parties reached an agreement in principle in October 2025, and then spent several months negotiating the details of the long-form Settlement Agreement. *Id.*

This Court preliminarily approved the Settlement on May 13, 2026. ECF No. 127. Since then, Class Counsel has worked with the settlement administrator to administer the Settlement, including implementing the Court-approved notice plan and preparing for distribution of settlement funds to the Premium Tax Settlement Class.

III. CLASS COUNSEL'S FEE REQUEST IS REASONABLE

A. Class Counsel Is Entitled to Fees from the Common Fund

"The Supreme Court and the Second Circuit have long recognized that attorneys whose efforts create a 'common fund' are entitled to a reasonable attorneys' fee from that fund." *Christine Asia Co. v. Yun Ma*, 2019 WL 5257534, at *16 (S.D.N.Y. Oct. 16, 2019) (citing *Boeing Co. v. Van*

Gemert, 444 U.S. 472, 478 (1980) and *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000)). This common-fund doctrine is "rooted in the courts' 'historic power of equity to permit' a person who secures a fund for the benefit of others to collect a fee directly from the fund." *See Fresno Cnty. Employees' Ret. Ass'n v. Isaacson/Weaver Fam. Tr.*, 925 F.3d 63, 68 (2d Cir. 2019) (quoting *Alyeska Pipeline Serv. Co. v. Wilderness Soc'y*, 421 U.S. 240, 257 (1975)).

This principle applies to class action settlements, including interim settlements. *See, e.g.*, *In re Air Cargo Shipping Servs. Antitrust Litig.*, 2015 WL 5918273, at *6–7 (E.D.N.Y. Oct. 9, 2015) (approving fourth interim fee award following fourth installment of settlements); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *9 (E.D.N.Y. Oct. 23, 2012) (awarding attorneys' fees from an interim partial settlement before final resolution of the litigation). The purposes of the doctrine are "to fairly and adequately compensate class counsel for services rendered;" "to ensure that all class members contribute equally towards the costs associated with litigation pursued on their behalf;" and "to encourage skilled counsel to represent those who seek redress for damages inflicted on entire classes" and thereby "discourage future alleged misconduct of a similar nature." *See City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *10–11 (S.D.N.Y. May 9, 2014) (citing *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000) and *Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005)), *aff'd sub nom. Arbuthnot v. Pierson*, 607 F. App'x 73 (2d Cir. 2015).

B. The Percentage Method Is Favored

For at least the past two decades, it has been "the trend in this Circuit" to calculate attorneys' fees using the percentage method. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005) (acknowledging trend); *Fikes Wholesale, Inc. v. HSBC Bank USA, N.A.*, 62 F.4th 704, 723 (2d Cir. 2023) (same). This approach awards attorneys' fees as a percentage of the overall settlement value, which courts have noted "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *See Cruz Guerrero v. Montefiore Health Sys. Inc.*, 2025 WL 100889, at *10 (S.D.N.Y. Jan. 15, 2025) (citation omitted); *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010) ("[A]s has often and emphatically been noted, the percentage of recovery methodology is considered the 'most efficient and logical means' for calculating attorneys' fees." (quoting *In re Telik, Inc. Sec. Litig.,* 576 F. Supp. 2d 570, 584 (S.D.N.Y.2008))); *see also In re Lloyd's Am. Tr. Fund Litig.*, 2002 WL 31663577, at *26 (S.D.N.Y. Nov. 26, 2002) (observing that "the percentage approach most closely approximates the manner in which private litigants compensate their attorneys in the marketplace contingency fee model"). The percentage approach also "spares the court and the parties the 'cumbersome, enervating, and often surrealistic process of lodestar computation.'" *In re Air Cargo Shipping Services Antitrust Litig.*, 2011 WL 2909162, at *5 (E.D.N.Y. July 15, 2011) (quoting *Goldberger*, 209 F.3d at 50 (quotation marks omitted)); *see also Goldberger*, 209 F.3d at 48–49 (explaining that "the primary source of dissatisfaction" with the lodestar method "was that it resurrected the ghost of Ebenezer Scrooge, compelling district courts to engage in a gimlet-eyed review of line-item fee audits").

Here, the percentage method is especially appropriate for two reasons. First, Class Counsel settled the Premium Tax Claims after approximately two and a half years, even though litigation of the remaining cost-of-insurance claim remains ongoing. The percentage method rewards rather than penalizes efficiency. *See Raniere v. Citigroup Inc.*, 310 F.R.D. 211, 220 (S.D.N.Y. 2015) (begrudging the lodestar method for "disincentiviz[ing] early settlements" and "tempt[ing] lawyers to run up their hours").

Second, Class Counsel's time records reflect work on both the settled Premium Tax Claims and the pending cost-of-insurance claim. A pure lodestar approach would therefore require the Court to parse counsel's time claim by claim—"at best, a time-consuming task; at worst, an impossible one." *See Flatiron Acquisition Vehicle, LLC v. CSE Mortg. LLC*, 2022 WL 413229, at *12 (S.D.N.Y. Feb. 9, 2022) (calculating attorneys' fees pursuant to contractual fee-shifting provision that applied to only some claims); *see also id.* at *13 ("[T]he Court does not expect that counsel would, as a regular matter, allocate their work on a litigation matter to a particular claim. Oftentimes that would not be possible because work would relate to more than one claim."). Unlike in the fee-shifting context in which this problem typically arises (where courts have no choice but to use the lodestar), the percentage method provides a workable alternative here by tying the fee to the value of the recovery and avoiding the claim-by-claim exercise altogether. *Cf. Henry v. Little Mint, Inc.*, 2014 WL 2199427, at *12 (S.D.N.Y. May 23, 2014) (observing that "the lodestar method is time-consuming and burdensome on the courts" and that the percentage method "'has been deemed a solution to certain problems that may arise when the lodestar method is used in common fund cases'" (citations omitted)).

C. <u>The Requested Fee of 18.3% of the Overall Settlement Value Is Fair and Reasonable</u>

Class Counsel seeks a fee of $3,666,666.67, which represents approximately 18.3% of the total benefits of this settlement—the $11 million cash fund and the prospective premium-tax relief valued at more than $9 million.

In calculating the overall value of a settlement, courts look to the value of both monetary and non-monetary benefits conferred on the class.[2] *See Sykes v. Harris*, 2016 WL 3030156, at

[2] Leading authorities endorse this approach. *See* Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges 35 (3d ed. 2010) (explaining that the primary method for calculating fees "is based on a percentage of the actual value to the class of any settlement fund

*16–17 (S.D.N.Y. May 24, 2016) (Chin, J.) (measuring the requested fee against the total settlement value, including the calculable value of the extinguishment of remaining debt plus monetary fund); *Fleisher*, 2015 WL 10847814, at *15 ("In calculating the overall settlement value for purposes of the 'percentage of the recovery' approach, Courts include the value of both the monetary and non-monetary benefits conferred on the Class."); *Velez*, 2010 WL 4877852, at *4, *18 (assessing requested fees in relation to $175 million "total gross value of the settlement," including monetary and non-monetary relief, rather than using "the more conservative and less-accepted methodology of percent against monetary fund").

Whether measured as roughly 18.3% of the total settlement benefits or as one-third of the cash fund alone and viewed in isolation (which is disfavored, *see id.*), the requested fee falls comfortably within—and, using the former measure, well below—the range that courts in this Circuit routinely approve. *See Cruz Guerrero v. Montefiore Health Sys. Inc.*, 2025 WL 100889, at *10 (S.D.N.Y. Jan. 15, 2025) ("Courts in this Circuit routinely find that a percentage of fund award is appropriate and that a one-third percentage is fair and reasonable." (collecting cases)); *In re Tenaris S.A. Sec. Litig.*, 2024 WL 1719632, at *10 (E.D.N.Y. Apr. 22, 2024) ("District courts within the Second Circuit routinely approve attorneys' fees awards of one third or 33 1/3% as reasonable."); *Pearlstein v. BlackBerry Ltd.*, 2022 WL 4554858, at *10 (S.D.N.Y. Sept. 29, 2022) (approving fee of one-third of the gross settlement as "reasonable within this circuit").

Courts approve fees amounting to one-third of settlement benefits across a wide range of fund sizes, including funds comparable to the one here. *See, e.g.*, *Kelwin Inkwel, LLC v. PNC*

plus the actual value of any nonmonetary relief"); *see also* American Law Institute, Principles of the Law of Aggregate Litigation § 3.13 (2010) ("[A] percentage-of-the-fund approach should be the method utilized in most common-fund cases, with the percentage being based on both the monetary and the nonmonetary value of the judgment or settlement.").

Merch. Servs. Co., 2022 WL 3127633, at *4 (E.D.N.Y. Apr. 12, 2022) (33.33% of $10 million settlement); *In re Payment Card Interchange Fee & Merch. Discount Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) ("[I]t is very common to see 33% contingency fees in cases with funds of less than $10 million[.]"); *Hicks v. Morgan Stanley & Co.*, 2005 WL 2757792, at *9 (S.D.N.Y. Oct. 24, 2005) (approving 30% of a $10 million fund as "consistent with fees awarded in comparable class action settlements in the Second Circuit"). And this Court, too, has awarded 33.33% fees in class action settlements of varying sizes. *See, e.g.*, *Frattarola v. Prosegur Sec. USA Inc.*, No. 7:23-CV-00137-CS, 2025 WL 1414013, at *3 (S.D.N.Y. May 15, 2025) (awarding class counsel one-third fee of $2.5 million settlement); *In re DDAVP Indirect Purchaser Antitrust Litig.*, No. 05 Civ. 2237(CS), 2011 WL 12627961, at *5 (S.D.N.Y. Nov. 28, 2011) (awarding 33.33% of $20.25 million common fund).

In further support of its fairness, the requested fee is far less than the 40% that Class Counsel would obtain in the open market under its standard contingency fee arrangement in which expenses are advanced. *See* Kirkpatrick Decl. ¶ 27. This market for contingent fee legal services provides another indicator of the requested fee's reasonableness. "[M]arket rates, where available, are the ideal proxy for . . . compensation." *Goldberger*, 209 F.3d at 52; *see also Klein ex rel. SICOR, Inc. v. Salvi*, 2004 WL 596109, at *7 (S.D.N.Y. Mar. 30, 2004) (explaining that, in class and derivative actions, "the district judge must emulate the position of a client and determine, from the perspective of a client, a reasonable method of compensation").

D. <u>A Lodestar "Cross-Check" Confirms the Request Is Reasonable</u>

The Second Circuit also permits courts to utilize a lodestar "cross check" to further test the reasonableness of a percentage-based fee. *See Goldberger*, 209 F.3d at 50. The lodestar is calculated as the product of hours counsel reasonably expended and current hourly rates, which is an approach that has been endorsed repeatedly by the Supreme Court, the Second Circuit, and district courts within this Circuit as a means of accounting for the delay in payment inherent in class actions and for inflation.[3]

The lodestar properly includes time spent on both the Premium Tax Claims and the pending cost-of-insurance claim. That is appropriate here because the lodestar serves only as a cross-check on the percentage fee, and a cross-check does not require the Court to parse counsel's time claim by claim. *See Kornell v. Haverhill Ret. Sys.*, 790 F. App'x 296, 298–99 (2d Cir. 2019) (noting that when the lodestar is used as "a mere cross-check," the hours "need not be exhaustively scrutinized," and the court may test the claimed lodestar against its "familiarity with the case" (quoting *Goldberger*, 209 F.3d at 50)). "As long as utilizing the percentage of recovery methodology does not produce an 'unwarranted windfall' to counsel, there is 'no need to compel district courts to undertake the 'cumbersome, enervating, and often surrealistic process' of lodestar computation.'" *Yang v. Focus Media Holding Ltd.*, 2014 WL 4401280, at *15 (S.D.N.Y. Sept. 4, 2014) (quoting *Goldberger*, 209 F.3d at 49–50 (alteration adopted)).

It is also common for courts to use the cumulative lodestar in cases involving serial or partial settlements, where the total work counsel performs makes each settlement possible. *See Precision Assocs., Inc. v. Panalpina World Transp. (Holding) Ltd.*, 2015 WL 6964973, at *7 (E.D.N.Y. Nov. 10, 2015) (using total lodestar from outset of case and total available settlement

[3] *See, e.g.*, *Missouri v. Jenkins*, 491 U.S. 274, 283–84 (1989) (endorsing "an appropriate adjustment for delay in payment" by applying "current" hourly rates); *Gierlinger v. Gleason*, 160 F.3d 858, 882 (2d Cir. 1998) (acknowledging that rates "should be 'current rather than historic'" "to provide adequate compensation") (citation and internal quotations omitted); *LeBlanc-Sternberg v. Fletcher*, 143 F.3d 748, 764 (2d Cir. 1998) (noting current rates "should be applied in order to compensate for the delay in payment"); *In re Union Carbide Corp. Consumer Prods. Bus. Sec. Litig.*, 724 F. Supp. 160, 163 (S.D.N.Y. 1989) (citation omitted) (observing that current rates "compensate for the delay in receiving compensation, inflationary losses, and the loss of interest"); *McCutcheon v. Colgate-Palmolive Co.*, 2026 WL 444748, at *4, n.2 (S.D.N.Y. Feb. 17, 2026) ("Courts use current rates to calculate the lodestar figure to account for the delayed payment and inflation.").

fund, including prior settlements); *In re Capacitors Antitrust Litig.*, 2018 WL 4790575, at *6 (N.D. Cal. Sept. 21, 2018) (observing that courts "typically base fee awards in subsequent settlements on all work performed in the case") (citing, *inter alia*, *Lobatz v. U.S. West Cellular of Cal., Inc.*, 222 F.3d 1142, 1149 (9th Cir. 2000)); *In re Auto. Parts Antitrust Litig.*, 2020 WL 5653257, at *3, n.5 (E.D. Mich. Sept. 23, 2020) ("In calculating the lodestar for purposes of the cross-check, it would be impractical to compartmentalize and isolate the work that [counsel] did in any particular case at any particular time because all of their work assisted in achieving all of the settlements and has provided and will continue to provide a significant benefit to all of the EPP classes.").

In this entirely contingent action, as of the date that Class Counsel moved for preliminary approval, Class Counsel spent approximately 3,041.4 hours, representing a lodestar of $3,384,660. *See* Kirkpatrick Decl. ¶ 30. Using the requested fee ($3,666,666.67), Class Counsel's aggregate lodestar yields a "crosscheck" multiplier of 1.08. This is well within the range of crosscheck multipliers awarded in this Circuit. Courts in this Circuit "regularly award lodestar multipliers ranging from 2 to 6 times lodestar"—and sometimes higher. *Fleisher*, 2015 WL 10847814, at *18 (citation omitted); *see id.* (approving 4.87); *Beckman v. KeyBank, N.A.*, 293 F.R.D. 467, 481–82 (S.D.N.Y. 2013) (approving 6.3 multiplier and noting that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers"); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 271 (S.D.N.Y. 2020) (5.85 multiplier); *Sukhnandan v. Royal Health Care of Long Island LLC*, 2014 WL 3778173, at *15 (S.D.N.Y. July 31, 2014) (2.98 multiplier, "near the lower end of the range of multipliers that courts have allowed").

The cross-check is even more reasonable considering that "after final approval there will be significant additional tasks relating to the Settlement, lowering the lodestar multiplier even further." *Pearlstein*, 2022 WL 4554858, at *10.

The hourly rates on which the lodestar is calculated are also reasonable. The rates charged by Class Counsel's attorneys and professional staff are the firm's standard hourly rates, which are regularly charged to hourly clients and paid by those clients. Kirkpatrick Decl. ¶¶ 24–27. The rates are comparable to peer plaintiff- and defense-side law firms litigating matters of similar complexity. *See id.* Courts in this District have repeatedly found Susman Godfrey's rates reasonable. *See, e.g.*, *Fleisher*, 2015 WL 10847814, at *18 (finding Susman Godfrey's rates "reasonable" and "comparable to peer plaintiffs and defense-side law firms litigating matters of similar magnitude"); *Leonard v. John Hancock Life Ins. Co. of N.Y.*, No. 1:18-cv-4994-AKH, ECF 226, at 11:7–16 (S.D.N.Y. June 3, 2022) (characterizing hourly rates for Susman Godfrey "partners and associates, contract attorneys and paralegals" as "reasonable").

E. <u>The *Goldberger* Factors Support the Fee Request</u>

"Under either the percentage-of-the-fund approach or the lodestar multiplier approach, the '*Goldberger* factors' ultimately determine the reasonableness of a common fund fee." *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *13 (S.D.N.Y. Dec. 19, 2014) (quoting *Goldberger*, 209 F.3d at 50); *see also McDaniel v. Cnty. of Schenectady*, 595 F.3d 411, 423 (2d Cir. 2010) (confirming that the "*Goldberger* factors are applicable to the court's reasonableness determination whether a percentage-of-fund or lodestar approach is used"). Those factors, which the Court weighs in its discretion, are:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50 (alteration adopted) (citation omitted). Each of these factors confirms that the requested fee is reasonable.

1. Time and Labor Expended by Counsel (Factor 1)

The time and labor that Class Counsel devoted to this case supports the requested fee. Class Counsel litigated this matter for over two and a half years, entirely on a contingency basis, with a real possibility of recovering nothing. Class Counsel devoted thousands of hours to the case before reaching a settlement in principle with Defendants. Kirkpatrick Decl. ¶ 20. Between the start of the case and settlement, Class Counsel developed the Premium Tax Claims from the ground up, drafting the original complaint and four amended complaints and adding overcharge theories that Class Counsel uncovered as the case progressed. Class Counsel retained and worked with experts to reconstruct the correct premium-tax rate for each policy and to quantify the alleged overcharges across the class. Class Counsel also engaged in arm's-length negotiations to secure the Settlement and prepared the settlement papers now before the Court.

On top of the work Class Counsel has already performed in reaching the settlement, its work continues after preliminary approval, because Class Counsel is administering the Settlement with the settlement administrator, and that ongoing and future work further supports the reasonableness of the requested fee.[4]

[4] Although courts permit the inclusion of projected settlement administration-related attorney time when calculating lodestar, s*ee, e.g.*, *Edwards v. Mid-Hudson Valley Fed. Credit Union*, 2023 WL 5806409, at *12 (N.D.N.Y. Sept. 7, 2023) (observing that lodestar included "an estimate of future hours [Class Counsel] will spend assisting the Settlement Administrator following Final Approval"), that is not a requirement nor necessary given that future work administrating a settlement such as this is obviously required. *See Chavarria v. New York Airport Serv., LLC*, 875 F. Supp. 2d 164, 178 (E.D.N.Y. 2012) (awarding 33% fee and noting that "[t]he fact that the fee sought by Class Counsel does not include compensation for time and effort they will be required to spend administering the settlement going forward also supports their fee request").

2. Magnitude and Complexity of the Litigation (Factor 2)

The second *Goldberger* factor also weighs in favor of the requested fee because this case involved complex, novel questions of contract interpretation regarding taxation of life insurance policies. The claims required analysis of four categories of alleged premium-tax overcharges across approximately 60,000 policies, implicating premium-tax laws across states. Kirkpatrick Decl. ¶ 7. At the July 28, 2025 pre-motion conference, the Court observed that the policy language at issue "sure looks ambiguous." Ex. 3 (Hrg. Tr.) at 2:18–19. Among other things, Defendants argued that (a) under state retaliatory tax statutes, the "rate assessed" by states with lower premium tax rates than Connecticut is actually Connecticut's higher rate; and (b) New York's minimum statutory tax on premiums is 1.5%, not 0.7% as Plaintiffs alleged. ECF No. 81 at 2–3. The Court concluded by noting that "both [parties] have decent arguments, which is why we'll have motion practice." Ex. 3 (Hrg. Tr.) at 11:25–12:1. These legal issues required Class Counsel to navigate the intersection of contract law and tax law across multiple jurisdictions.

The complexity is also reflected in the procedural history of these claims. As discovery uncovered additional overcharge practices, Class Counsel amended the complaint four times to capture the full scope of the misconduct, expanding the case from a single New York address-update claim into a nationwide action covering retaliatory-tax and rate-update overcharges across numerous states, as discussed above in the Background. The magnitude and complexity of this litigation support the requested fee. *See Fleisher*, 2015 WL 10847814, at *20 (noting complexity of insurance-overcharge claims supported fee award).

3. Risk of Litigation (Factor 3)

Risk "is perhaps the foremost factor to be considered in determining a reasonable fee," and here, it supports the requested fee. *Christine Asia Co.,* 2019 WL 5257534, at *18 (quoting *Goldberger*, 209 F.3d at 54) (internal quotation marks omitted and alteration adopted). Class

Counsel took this case on a pure contingency basis, which meant risking years of effort with no guarantee of any recovery. That risk was heightened because Class Counsel built this case from scratch; it is not the sort of case where counsel arrived "on the scene after some enforcement or administrative agency has made the kill." *In re Gulf Oil/Cities Serv. Tender Offer Litig.*, 142 F.R.D. 588, 597 (S.D.N.Y. 1992).

The novelty of the Premium Tax Claims—and particularly those tied to retaliatory taxes—made the case riskier still. *See, e.g.*, *In re Am. Int'l Grp., Inc. Sec. Litig.*, 2013 WL 12324362, at *4 (S.D.N.Y. Apr. 10, 2013) (observing that the "risks of litigation for Plaintiffs . . . are substantial, as the case involved novel legal issues"); *see also Millien v. Madison Square Garden Co.*, 2020 WL 4572678, at *8 (S.D.N.Y. Aug. 7, 2020) (observing that class counsel "undertook significant risk by pursuing" claims that were "untested"). The Premium Tax Claims raised contract-interpretation questions that had not been litigated before, so Class Counsel had no controlling authority to rely on. Talcott planned to move to dismiss certain Premium Tax Claims, arguing that the policy language entitled it to charge the rate "assessed" by the policyowner's state of residence, which Talcott contended was Connecticut's higher rate under retaliatory tax statutes. *See* ECF No. 81 at 1–2. At the July 28, 2025 pre-motion conference, the Court observed that both parties had "decent arguments," meaning victory was far from certain. Ex. 3 (Hrg. Tr.) at 2:18–19, 11:25–12:1. Class Counsel therefore faced a genuine risk that the Court would rule against Plaintiffs on claims related to retaliatory taxes, which would have significantly reduced the potential damages. Even if Plaintiffs survived a dismissal bid, the Premium Tax Claims remained risky. Contested class certification, summary judgment, trial, and appeal all lay ahead, and each step could span years with no guarantee of recovery. Proving damages would then have required a battle of the experts over the correct premium-tax rates and the size of the overcharges, and the result of that contest could not be predicted with confidence. *See State of W. Va. v. Chas. Pfizer & Co.*, 314 F. Supp. 710, 743–44 (S.D.N.Y. 1970) ("[N]o matter how confident one may be of the outcome of litigation, such confidence is often misplaced."), *aff'd*, 440 F.2d 1079 (2d Cir. 1971); *In re Warner Commc'ns Sec. Litig.*, 618 F. Supp. 735, 744–45 (S.D.N.Y. 1985) (observing that, in a "battle of experts," "it is virtually impossible to predict with any certainty which testimony would be credited"). Each of these risks supports the requested fee.

4. Quality of the Representation (Factor 4)

The quality of Class Counsel's representation does too. Courts measure the quality of representation primarily by the results counsel achieved, which are a "critical element in determining the appropriate fee to be awarded." *Hart v. BHH, LLC*, 2020 WL 5645984, at *11 (S.D.N.Y. Sept. 22, 2020) (quoting *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 373 (S.D.N.Y. 2002)).

The results here speak for themselves. The $11 million cash fund viewed in isolation represents approximately 76% of the alleged past premium-tax overcharges, and 56% of what Plaintiffs could recover at trial once prejudgment interest is included. Kirkpatrick Decl. ¶ 10. That recovery, on its own, compares favorably to insurance-overcharge settlements that courts in this District have praised. *See 37 Besen Parkway, LLC v. John Hancock Life Ins. Co.*, No. 15-CV-09924 (S.D.N.Y. Mar. 18, 2019), ECF No. 164 at 20:9–10 (approving a "quite extraordinary" settlement for 42% of historical cost of insurance overcharges) & ECF No. 146, ¶ 15 (source of percentage); *Fleisher*, 2015 WL 10847814, at *10–11 (approving "one of the most remunerative settlements this court has ever been asked to approve" in a prior COI overcharge case where the cash fund equaled 68.5% of the overcharges); *see also Cymbalista v. JPMorgan Chase Bank, N.A.*, 2021 WL 7906584, at *6 (E.D.N.Y. May 25, 2021) (at preliminary approval, characterizing settlement as a "substantial recovery" in consumer protection case where settlement was 53%–

65% of damages), *report and recommendation adopted*, No. 2:20-cv-456-RPK-LB, Minute Entry (Nov. 22, 2021); *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *4 (S.D.N.Y. Dec. 16, 2019) (preliminarily approving antitrust settlement where settlement was 10.9% to 21.3% of damages). Class Counsel also secured valuable prospective relief because Talcott agreed to stop applying premium-tax charge rates in excess of the statutory rates, which will result in lower premium tax charges for years to come.

Class Counsel's experience further supports the fee. Susman Godfrey has significant experience in insurance litigation and class actions. This District has appointed Susman Godfrey as class counsel in numerous life-insurance class actions, including *In re AXA Equitable Life Insurance Co. COI Litigation*, *Fleisher v. Phoenix Life Insurance Co.*, *37 Besen Parkway, LLC v. John Hancock Life Insurance Co.*, and *Kenney v. PHL Variable Insurance Co.* Kirkpatrick Decl. ¶ 3 & Ex. 1. The lawyers who litigated this case have substantial experience prosecuting large-scale class actions in the insurance arena and beyond.

"The quality of opposing counsel is also important in evaluating the quality of plaintiffs' counsels' work." *See Seijas v. Republic of Argentina*, 2017 WL 1511352, at *13 (S.D.N.Y. Apr. 27, 2017) (quoting *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 467 (S.D.N.Y. 2004)). Defendants are represented by Dentons and Willkie Farr & Gallagher, two large international law firms, whose attorneys (including the head of Dentons' US Commercial Litigation practice) vigorously litigated the Premium Tax Claims. Class Counsel obtained this result against that skilled and well-resourced opposition. Every customary measure of high-quality representation therefore supports the requested fee.

5. Requested Fee in Relation to the Settlement (Factor 5)

The fifth *Goldberger* factor, which addresses "the requested fee in relation to the settlement," also strongly supports approval of the requested fee. 209 F.3d at 50 (citation omitted).

In assessing this factor, courts in this Circuit observe that a fee of one-third of the settlement "constitutes a proportion routinely approved as reasonable." *In re N. Dynasty Mins. Ltd. Sec. Litig.*, 2024 WL 308242, at *15 (E.D.N.Y. Jan. 26, 2024); *see also Carbone*, 2026 WL 686144, at *10. As discussed above, the proposed award of 18.3% of the total settlement value is well within the range of fees awarded by courts under the percentage method.

6. Public Policy Considerations (Factor 6)

Public policy supports the requested fee too. Courts in this District have recognized that adequate fees are necessary to attract skilled counsel to complex contingency litigation, because counsel will not take on classes that could not otherwise obtain relief without the prospect of appropriate compensation. *See In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) ("In order to attract well-qualified plaintiffs' counsel who are able to take a case to trial, and who defendants understand are able and willing to do so, it is necessary to provide appropriate financial incentives."); *Blondell v. Bouton*, 2021 WL 4173679, at *4 (E.D.N.Y. Aug. 30, 2021) ("Class Counsel's fees should reflect the important public policy goal of providing lawyers with sufficient incentive to bring cases that serve the public interest."), *report and recommendation adopted*, 2021 WL 4173066 (E.D.N.Y. Sept. 14, 2021).

That policy applies with particular force here because each policyholder's premium-tax overcharge is approximately $256. Kirkpatrick Decl. ¶ 18. Few class members would have a financial incentive to pursue an individual claim, so without counsel willing to prosecute these claims on contingency, the overcharges would likely have gone unremedied. Courts encourage this kind of litigation for exactly that reason. *See Sapozhnikov v. New York Cmty. Bank*, 824 F. Supp. 3d 242, at 256 (E.D.N.Y. 2026) (concluding that public policy favored requested attorneys' fees where individual claims "would not justify the expense of separate litigation" (citation omitted)). Public policy therefore favors granting the fee application. *See In re Merrill Lynch &*

Co., Inc. Rsch. Reps. Sec. Litig., 246 F.R.D. 156, 175 (S.D.N.Y. 2007) ("To make certain that the public is represented by talented and experienced trial counsel, the remuneration should be both fair and rewarding" (citation omitted)).

7. The Reaction of the Class Supports the Requested Fee

"In addition to the criteria set forth in *Goldberger*, courts in the Second Circuit consider the reaction of the Class to the fee request in deciding how large a fee to award." *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4 (S.D.N.Y. Sept. 23, 2019) (quoting *In re Hi-Crush Partners L.P. Sec. Litig.*, 2014 WL 7323417, at *18 (S.D.N.Y. Dec. 19, 2014)). Here, the Settlement Notice informed Premium Tax Class Members that Class Counsel would move the Court for an award of attorneys' fees up to 1/3 of the Settlement Fund and that Class Members could object to this request. *See* Ex. 4 at 8–9. To date, no Premium Tax Class Member has objected to Class Counsel's proposed fee. Kirkpatrick Decl. ¶ 36. The lack of objections, at least to date, weighs in favor of the requested award. *See Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *22 (S.D.N.Y. Dec. 18, 2019) (noting that lack of objections "militates in favor of approval of the Fees as requested"). *Cf. Rodriquez v. It's Just Lunch Int'l*, 2020 WL 1030983, at *11 (S.D.N.Y. Mar. 2, 2020) ("[T]he relatively low number of objections weighs in favor of approving the attorneys' requested fees as reasonable.").

IV. <u>CLASS COUNSEL'S EXPENSES SHOULD BE REIMBURSED</u>

Class Counsel also respectfully requests reimbursement of $203,493.98 for out-of-pocket expenses reasonably and necessarily incurred. Courts in this Circuit "normally grant expense requests in common fund cases as a matter of course." *See In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2018 WL 3863445, at *1 (S.D.N.Y. Aug. 14, 2018) (citation omitted); *see also In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 ("Costs may be awarded even though the action is proceeding against other defendants."); *In re Towers Fin. Corp. Noteholders Litig.*, 1996

WL 393213, at *2 (S.D.N.Y. Feb. 28, 1996) ("Regardless of what happens in the balance of the litigation, counsel's efforts have benefitted the class, and there is no reason that part of counsel's expenses should not be reimbursed now."). Reimbursable expenses are those "typically billed by attorneys to paying clients in the marketplace" and include expert fees, computerized research, document production and storage, court fees, and travel. *In re Gen. Motors LLC Ignition Switch Litig.*, 2020 WL 7481292, at *2 (S.D.N.Y. Dec. 18, 2020).

Class Counsel requests reimbursement of only the expenses attributable to the Premium Tax Claims; the cost-of-insurance claim remains pending and expenses attributable to that claim are not included in the instant request. As described in more detail in the Kirkpatrick Declaration, certain expenses advanced both the Premium Tax Claims and the cost-of-insurance claim, so they have been allocated evenly between the two categories of claims. Kirkpatrick Decl. ¶¶ 32–33.

Expert fees amount to the largest part of the request because building the case to support the Premium Tax Claims required detailed analysis of Talcott's policy-level data to quantify the alleged overcharges. Kirkpatrick Decl. ¶ 32. That expert work was necessary to prosecute the Premium Tax Claims and to secure and establish the value of the Settlement.

Class Counsel advanced all expenses on a contingent basis for the direct benefit of the class and would have recovered nothing had the case failed. That willingness to advance costs with repayment contingent on success is strong evidence that the expenditures were reasonable and necessary. *See Fleisher*, 2015 WL 10847814, at *23 ("The fact that Class Counsel was willing to expend their own money, where reimbursement was entirely contingent on the success of this litigation, is perhaps the best indicator that the expenditures were reasonable and necessary."). The nature of the expenses points the same way because they are the ordinary costs of complex litigation. *See Carbone*, 2026 WL 686144, at *11 ("When the lion's share of expenses reflects the typical costs of complex litigation such as experts and consultants, trial consultants, litigation and trial support services, document imaging and copying, deposition costs, online legal research, and travel expenses, courts should not depart from the common practice in this Circuit of granting expense requests." (quoting *Hasemann v. Gerber Prods. Co.*, 2025 WL 2773748, at *11 (E.D.N.Y. Sept. 29, 2025))). The Court should approve the requested reimbursement.

Separate from these expenses, the Court previously authorized the use of the settlement escrow account to pay Claims Administration Expenses incurred by JND Legal Administration LLC as they come due. ECF No. 127, ¶ 9. To date, those expenses total approximately $43,919. Class Counsel seeks permission to continue paying Claims Administration Expenses from the settlement fund as they accrue.

V. AN INCENTIVE AWARD FOR CLASS REPRESENTATIVE ARBUCKLE IS APPROPRIATE

Finally, Class Counsel seeks an incentive award of $5,000 for Plaintiff Arbuckle Funding, LLC.[5] Courts in this Circuit routinely approve such awards for class representatives, which are important to "encourage class representatives to participate in class action lawsuits." *Moses v. New York Times Co.*, 79 F.4th 235, 253 (2d Cir. 2023); *see Rodriquez*, 2020 WL 1030983, at *11–12 (observing that such "awards are common in class action cases and are important to compensate lead plaintiffs for the time and effort expended in assisting the prosecution of the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained").

An incentive award for Arbuckle is appropriate given its sustained service to the class and the recovery achieved. From the outset, Arbuckle has been actively involved in prosecuting this action. Arbuckle commenced this action in September 2023 and worked closely with Class

[5] Class Counsel does not seek an incentive award for Plaintiff Brighton Trustees LLC, which joined the case in April 2026.

Counsel through multiple rounds of complaints to refine and strengthen the claims against Talcott. Unlike in many cases, the claims here evolved throughout the litigation. Arbuckle assisted in investigating Talcott's premium-tax practices, gathering information critical to establishing the factual basis for this litigation. Arbuckle also sat for a deposition and assisted in responding to Talcott's written discovery. Kirkpatrick Decl. ¶¶ 13, 35. The class notice sent to Settlement Class Members explicitly disclosed that Class Counsel may seek incentive awards equal to $50,000 total ($25,000 per representative). Ex. 5 (Postcard Notice); *see also* Ex. 4 (Long-Form Notice). To date, not a single class member has objected, and the requested $5,000 award falls well below that threshold. In short, Arbuckle's diligence and consistent engagement helped make this recovery possible.

The requested $5,000 award is reasonable in relation to awards granted in this Circuit—and modest in relation to the recovery. Courts regularly approve larger awards in comparable insurance and class cases. *See Kenney v. PHL Variable Ins. Co.*, No. 18-cv-03444 (MKV), ECF No. 297, ¶ 6 (S.D.N.Y. Dec. 20, 2023) (approving $25,000 service award); *In re LIBOR-Based Fin. Instruments Antitrust Litig.*, 2020 WL 7388493, at *6 (S.D.N.Y. Dec. 16, 2020) (approving $25,000 award for each of two class representatives); *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at *11 (approving $50,000 award for each of two class representatives); *see also Alaska Elec. Pension Fund v. Bank of Am. Corp.*, 2018 WL 6250657, at *4 (S.D.N.Y. Nov. 29, 2018) (approving awards that "amount to a minuscule portion of the settlement fund"); *Ying v. All-Ways Forwarding of N.Y. Inc.*, 2025 WL 968586, at *13 (E.D.N.Y. Mar. 31, 2025) (granting $30,000 service award that amounted to 3% of settlement fund where plaintiff's involvement included regular communication with counsel and assistance with preparation of complaint and responses to discovery requests); *Cahill v. Keurig Green Mountain, Inc.*, No. 22-cv-7507-CS, ECF No. 73

at 13 & ECF No. 86 at ¶ 15 (S.D.N.Y. Sept. 30, 2025) (awarding two class representatives $5,000 incentive awards from $950,000 settlement fund).[6] Here, the requested incentive award represents a mere 0.025% of the gross value of the settlement.

VI. CONCLUSION

For these reasons, Class Counsel respectfully requests that the Court award its requested attorneys' fees in the amount of $3,666,666.67, including a *pro rata* share of the interest earned on the Settlement Fund, reimbursement of litigation expenses of $203,493.98 and a $5,000 incentive award to Plaintiff Arbuckle.

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Respectfully submitted,

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[6] *See also, e.g.*, *Diaz v. FCI Lender Servs., Inc.*, 2020 WL 4570460, at *6 (S.D.N.Y. Aug. 7, 2020) (awarding $5,000 for efforts "expended for the benefit of the class"); *In re Nissan Radiator/Transmission Cooler Litig.*, 2013 WL 4080946, at *15 (S.D.N.Y. May 30, 2013) (awarding $5,000 where representative participated in interviews, submitted and reviewed documents, and consulted with counsel); *see also Kindle v. Dejana*, 308 F. Supp. 3d 698, 718 (E.D.N.Y. 2018) (collecting cases awarding $10,000 incentive awards); *Copley v. Bactolac Pharm., Inc.*, 2023 WL 2470683, at *10–11 (E.D.N.Y. Mar. 13, 2023) (awarding $5,000 incentive award and collecting cases).

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CERTIFICATE OF WORD COUNT

Pursuant to Local Civil Rule 7.1(c), I hereby certify that this brief contains 7,673 words and complies with the 8,750 word-count limitation.

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CERTIFICATE OF SERVICE

I hereby certify that, on August 11, 2026, I caused a true and correct copy of the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification to the attorneys of record and is available for viewing and downloading.

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