UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

GARY MARCHESE, ESTHER WEINSTEIN, and JOAN HOWARD Individually, and on Behalf of All Others Similarly Situated, Plaintiffs, vs. CABLEVISION SYSTEMS CORPORATION and CSC HOLDINGS, LLC, Defendants.	Civil Action No. 10-2190 (MCA) (MAH) *DOCUMENT FILED ELECTRONICALLY*

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR AN AWARD OF ATTORNEYS' FEES, EXPENSES AND CLASS REPRESENTATIVE SERVICE AWARDS

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I. INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(h) and 54(d)(2), and in accordance with Paragraph 18 of this Court's Order Granting Preliminary Approval of Class Action Settlement (ECF No. 203), Plaintiffs Gary Marchese, Esther Weinstein and Joan Howard ("Plaintiffs" or "Class Representatives") and Class Counsel bring this motion seeking a combined award of attorneys' fees and expenses of $9.5 million, as well as service awards for the Class Representatives of $5,000 each. This memorandum of law and the supporting declarations set forth the legal bases for these requests.[1]

The Settlement was reached only after many years of hard-fought litigation and months of arms-length negotiation and multiple settlement conferences with the Court. Through the Settlement, the 2.6 million Settlement Class members who currently subscribe to Cablevision Systems Corp. ("Cablevision") will receive services worth $27.96, regardless of whether or not they file a claim. This automatic benefit is worth over $72 million and by itself easily supports the requested fee and expense award. However, the Settlement provides much more relief. Current subscriber Class members can submit a claim for an account credit of $20-$40 or services ranging in value from $50-$143, depending on their tenure as a subscriber, making available between $78 million and $268 million in additional benefits to the Class. Former subscriber Class members can submit a claim for $20-$40, depending on their tenure as a

[1] The Court preliminarily approved the following Settlement Class (the "Class"):

> All persons in New Jersey, Connecticut, and New York who subscribed to Cablevision video services and paid a monthly fee to Cablevision to lease a Set-Top Box during the period April 30, 2004 to March 9, 2016. Excluded from the class are (i) commercial, bulk, and municipal accounts; (ii) Cablevision, its officers, directors, affiliates and subsidiaries, and counsel; and (iii) any judicial official to whom this case is or may be assigned and any members of those judicial official's immediate families, law clerk and their immediate families, and counsel for Plaintiffs.

subscriber. Additionally, and significantly, the Settlement obligates Cablevision to activate and support certain third-party set-top boxes and to provide reasonable cooperation with interested manufacturers of set-top boxes that seek to market set-top boxes that operate on Cablevision's system. This injunctive relief addresses issues that are central to Plaintiffs' claims.

The Settlement was made possible because Class Counsel have vigorously and effectively litigated this case. Class Counsel undertook this matter, in the face of long odds and significant risks, on a wholly contingent basis, expending substantial time, money and energy on behalf of the Settlement Class. Indeed, Class Counsel expended $8,656,560 worth of attorney time and incurred $1,129,169.26 in expenses litigating this action, with no guarantee of recovery. And, as discussed in more detail below, similar tying claims by subscribers against other cable companies have either failed entirely or resulted in substantially smaller settlements, demonstrating not only the significant risks and various potential pitfalls that Class Counsel faced, but also the significant achievement of Class Counsel in reaching this settlement.

The requested fee is fair and reasonable under any measure. It was negotiated by experienced counsel, after the substantive terms of the Settlement were agreed to. These market conditions -- where Class Counsel seeks to maximize its recovery, and defendant seeks to minimize its exposure -- are the best vehicle for achieving a fair and reasonable compromise. The fees, expenses and services awards are to be paid entirely by Cablevision separately from the Settlement benefits that are being made available to the Class and will not diminish such Class benefits. As will be shown, the objective benchmarks and legal standards more than substantiate the conclusion that the fee request is fair and reasonable.

In addition to Class Counsel's efforts outlined herein, the benefits made available to the Class were made possible by the Plaintiffs' willingness to diligently represent the Class by,

among other things, reviewing and authorizing the filing of the complaints, producing documents, participating in discovery, being deposed and staying abreast of the litigation. For these efforts and others, Class Representatives Gary Marchese, Esther Weinstein and Joan Howard deserve the requested service awards of $5,000 each.

Based upon the foregoing and as detailed further below, Class Counsel respectfully request that the Court grant this motion and award the requested attorneys' fees and expenses as well as the requested service awards.

II. FACTUAL BACKGROUND

A. Procedural History

Plaintiffs initiated this proceeding on April 30, 2010. The Court dismissed, without prejudice, three versions of Plaintiffs' complaint. (ECF Nos. 32, 46, and 58). Plaintiffs filed their Third Amended Complaint on August 22, 2011, alleging that Cablevision violated: (a) Section 1 of the Sherman Act, 15 U.S.C. § 1, by illegally tying Cablevision's Two Way Services ("TWS") (the tying product)[2] to the rental of a Set-Top Box[3] (the tied product) from Cablevision, thus denying Class members access to competitively priced Set-Top Boxes and allowing Cablevision to charge inflated, supra-competitive prices for their Set-Top Boxes; and (b) Section 2 of the Sherman Act, 15 U.S.C. § 2, by monopolizing the distribution of Cablevision Set-Top Boxes. (ECF No. 59). On January 9, 2012, the Court denied in part Defendant's fourth motion to dismiss directed at Plaintiffs' Third Amended Complaint. (*See* Order (ECF No. 67) (finding that Plaintiffs adequately alleged a tying claim under Section 1, but dismissing Plaintiffs' Section

[2] TWS include: (1) the interactive program guide ("IPG"); (2) the ability to order pay-per-view ("PPV") events using a remote control; (3) Video on Demand ("VOD"); and (4) iO Games.
[3] "Set-Top Box" is a digital QAM-based device.

2 claim with prejudice)).[4]

Plaintiffs served document requests and interrogatories on Cablevision. (*See* Declaration of Brett Cebulash In Support Of Plaintiffs' Motion for an Award Of Attorneys' Fees, Expenses And Class Representative Service Awards (the "Cebulash Dec.") at ¶ 17). Following letter briefing and oral argument, Magistrate Judge Hammer bifurcated discovery, with class discovery proceeding first. (*See* ECF No. 87). Despite bifurcation, because of the substantial overlap between class and merits issues, phase one discovery was quite extensive. Class Counsel engaged in numerous meet-and-confer sessions with Cablevision's counsel over the production of documents and data. (*Id.* at ¶ 20). The parties vigorously negotiated ESI search terms, document custodians and the breadth of custodial searches, and the number and length of depositions. (*Id.*). Class Counsel also served over a dozen non-party subpoenas seeking production of documents from among others, set top box manufacturers, retailers, consumer electronics manufacturers, other MVPD providers and trade groups, which required further negotiation over the scope of the subpoenas with each non-party. (*Id.* at ¶ 22).

As a result of these extensive discovery efforts, Class Counsel reviewed over 1.4 million documents produced by Cablevision and numerous non-parties (after arranging for storage on an electronically searchable database), and also collected, organized and analyzed several terabytes of data (after hiring data experts to render the data usable). (*Id.* at ¶¶ 23-24). Class Counsel deposed 11 of Cablevision's current or former employees. (*Id.* at ¶ 25). Plaintiffs also produced documents requested by Cablevision, answered Cablevision's interrogatories, and were deposed. (*Id.* at ¶ 26).

[4] The Court also found that Plaintiffs adequately alleged unjust enrichment claims. Following denial of the motion to dismiss the Section 1 claim, Plaintiffs filed a Fourth Amended Complaint (ECF No. 78) and a Fifth Amended Complaint (ECF No. 144).

On January 9, 2015, Plaintiffs moved for class certification and filed the expert reports of Dr. Justine S. Hastings in support thereof. (*See* Motion to Certify Class, ECF Nos. 172 and 196). Dr. Hastings opined that economic issues, such as market power, coercion, harm to competition, and antitrust injury could be established through common evidence, and that she could calculate class-wide overcharges based on accepted economic principles. (ECF No. 196). On January 30, 2015, Defendant moved to exclude Dr. Hastings' opinions and submitted the reports of Dr. Lauren J. Stiroh and Dr. Gerry W. Wall in support of its motion arguing, among other things, that: the tying product market that Dr. Hastings posits does not exist; she applied the wrong standard when evaluating impact; the "but-for" world she posits absent the tie is speculative; and her damage model is unreliable and would yield damage figures that, in their view, are extremely inflated. (*See* Motion to Exclude the Opinions of Dr. Justine S. Hastings, ECF Nos. 179, 180, 201). During discovery, Plaintiffs deposed Cablevision's experts, and Cablevision deposed Dr. Hastings twice. (Cebulash Dec. at ¶ 28).

B. Settlement Negotiations

The parties first met to discuss settlement in May 2014, after four years of litigation and completion of substantial fact discovery. That meeting failed to produce a settlement, so the litigation continued. (Cebulash Dec. at ¶ 30). In December 2014, after the parties completed 14 fact witness depositions (11 Cablevision witnesses and three Class representatives), exchanged expert reports, and completed expert depositions regarding class certification, the parties resumed settlement discussions. (*Id.* at ¶ 31). On January 23, 2015, this Court ordered the parties to submit letters outlining, among other things, their respective positions on settlement. (*See* ECF No. 176). On February 24, 2015, deadlines for the remaining schedule were extended to allow for settlement discussions. (*See* ECF No. 185). The parties used that time to exchange

multiple settlement demands and offers. (*Id.* at ¶ 32). To aid in the process and to move the parties closer together, the Court held settlement conferences on May 19, 2015 and again on June 25, 2015. (*See* Docket Minute Entries). The parties also participated in numerous telephone conferences with the Court regarding the status of their settlement discussions. (*Id.* at ¶ 33).

With the Court's assistance at these conferences, the parties closed the gap and reached an agreement on Class relief. The parties then turned their efforts to negotiating the form and manner of notice to the Class members. (*Id.*). It was not until after the parties reached an agreement on the substantive elements of the Settlement that the parties began negotiating attorneys' fees. (*Id.* ¶¶ 33, 39).

Thereafter, the Parties exchanged multiple drafts of a comprehensive Settlement Agreement (as well as the exhibits to the Settlement Agreement), and fully executed the Settlement Agreement on December 7, 2015. (*Id.* at ¶ 34; ECF No. 202-3). Plaintiffs then filed a motion for preliminary approval of the Settlement, which was approved on March 9, 2016. (*See* ECF Nos. 202, 203).

C. Terms of Settlement Agreement

1. <u>The Injunctive Provisions</u>

Under the terms of the Settlement Agreement, Cablevision agrees to: (a) activate any Certified Set-Top Boxes that Cablevision subscribers purchase from third-party retailers retailers (subject to certain limitations described in the Settlement Agreement) (ECF No. 202-3 at ¶ 8.1.1); (b) provide reasonable cooperation and reasonable technical assistance to interested manufacturers of Third Party Set-Top Boxes that seek to market Set-Top Boxes that operate on Cablevision's system and that seek certification, (*id.* at ¶ 8.1.3); and (c) notify customers of their right to use of Certified Set-Top Boxes by making additional disclosures on its website and in its

annual customer notices (*id.* at ¶ 8.1.4).

2. The Compensatory Provisions

In addition to injunctive relief, the Settlement provides substantial compensation to Current and Former Subscribers. Depending on a Current Subscriber's Tenure with Cablevision, a Current Subscriber who files a valid claim will have the option of receiving an account credit, Multi-Room DVR service, free lease of an additional Set-Top Box, or additional content programming. If the Current Subscriber's Tenure is 36 months or less, the Claimant may choose to receive one of the following: (i) a $20 account credit; (ii) five free months of Multi-Room DVR service (an estimated value of $64.75); (iii) the free lease of an additional Set-Top Box from Cablevision for eight months (an estimated value of $63.60); or (iv) a three month subscription to Starz/Encore (an estimated value of $50.70). (*Id.* at ¶ 8.2.1). If the Current Subscriber's Tenure is greater than 36 months and up to 72 months, the Claimant may choose to receive one of the following: (i) a $30 account credit; (ii) eight free months of Multi-Room DVR service (an estimated $103.60 value); (iii) the lease of an additional Set-Top Box from Cablevision for free for thirteen months (an estimated $103.35 value); or (iv) a three month subscription to Starz/Encore and Showtime, including Starz on Demand, Encore on Demand, and Showtime on Demand (an estimated $101.40 value). (*Id.* at ¶ 8.2.2). If the Current Subscriber's Tenure is greater than 72 months, the Claimant may choose to receive one of the following: (i) a $40 account credit; (ii) eleven free months of Multi-Room DVR service (an estimated $142.45 value); (iii) the rental of an additional Set-Top Box from Cablevision for free for eighteen months (an estimated $142.10 value); or (iv) a three month subscription to Starz/Encore and Showtime, including Starz on Demand, Encore on Demand, and Showtime on Demand, and four (4) months of Optimum SportsPak (an estimated $143.10 value). (*Id.* at ¶ 8.2.3). For the options

other than an account credit, Current Subscribers are only eligible for such option if they do not already receive the offered service. (*Id.* at ¶ 8.2.4). All Current Subscribers will also receive access to a free four month subscription to the Internet-delivered SundanceNow service from AMC (an estimated $27.96 value), regardless of whether they file a claim. (*Id.* at ¶ 8.2).

A Former Subscriber Claimant who submits a valid claim form will be entitled to a cash payment of: (i) $20 if the Former Subscriber's Tenure was 36 months or less; (ii) $30 if the Former Subscriber's Tenure was more than 36 months and up to 72 months; or (iii) $40 if the Former Subscriber's Tenure was greater than 72 months. (*Id.* at ¶ 8.3). All Former Subscribers who submit a valid claim will also receive access to a free four-month subscription to the Internet-delivered SundanceNow service from AMC (a $27.96 value). (*Id.*).

3. <u>The Notice Provisions</u>

The Settlement provides for an extensive notice program with a streamlined claims process that allows class members to make claims by providing a minimal amount of information either online or through the mail. In total, four different forms of notice which advised Class members of the amount of the requested fee and expense award that Class Counsel would seek were published or sent directly to Settlement Class members: (1) the Paper Bill Notice was included in current Cablevision subscribers' bills for those subscribers who receive their bills by mail; (2) the Electronic Notice was emailed to current Cablevision subscribers who receive their bills electronically and to former Cablevision subscribers for whom Cablevision has email information; (3) the Long Form Notice was posted to the settlement website; and (4) the Publication Notice was published in twenty-seven (27) print newspapers, newspaper websites, in advertisement network banners targeting Connecticut, New Jersey, and New York periodicals, and on the settlement website. (*See* ECF No. 202-3 at ¶ 5). Class Counsel has conferred with

Cablevision's counsel who confirmed that the Paper Bill Notice, Electronic Notice, and Publication Notice were mailed, emailed, or published as directed by the Court in its March 9, 2016 Preliminary Approval Order. (Cebulash Dec. at ¶¶ 38, 48).

4. Attorneys' Fees and Expenses and Class Representative Service Awards

Cablevision and Class Counsel did not discuss the provisions regarding attorneys' fees and expenses or Class Representative service awards until after the parties agreed upon the substantive elements of the Settlement. (ECF No. 202-3 at ¶ 10.1; Cebulash Dec. at ¶¶ 33, 39). Under the terms of the Settlement Agreement, Cablevision agreed to pay attorneys' fees and expenses in an amount approved by the Court not to exceed $9.5 million, as well as Class Representative service awards not to exceed $5,000 per Class Representative. (ECF No. 202-3 at ¶ 10.3). The Settlement is not contingent upon Class Counsel receiving a minimum sum of attorneys' fees and expenses, nor is it dependent upon the Class Representatives receiving a minimum sum of incentive awards. (*See id.* at ¶ 10.6).

D. Settlement Administration and Response to Class Notice

Since this Court preliminarily approved the Settlement, Class Counsel have worked to ensure that the notice and claims process set out in the Court's preliminary approval order has been followed. Class Counsel have communicated with Defendants' counsel regarding the administration process, reviewed the language and content of the official settlement website (*www.cableboxsettlement.com*), and reviewed and edited information for call center representatives. (Cebulash Dec. at ¶ 49). In addition, Class Counsel have been fielding inquiries from Class members, some of whom have contacted Class Counsel directly and some of whom have been forwarded to Class Counsel by the Claims Administrator. (*Id.* at ¶ 50). Moreover, it is anticipated that Class Counsel will continue to devote significant resources to

monitoring the claims administration process, responding to inquiries from Class Members, moving for final approval, appearing at the final approval hearing, and other tasks going forward. (*Id.* at ¶ 62). The deadline for Class members to opt out or object to the settlement is August 24, 2016. (ECF No. 203 at ¶ 20). Eight objections to the Settlement (out of approximately 2.6 million current subscriber Class members) have been filed to date, and only one of the objections vaguely references attorneys' fees and expenses. (*Id.* at ¶ 51).

III. ARGUMENT

A. Legal Standards Governing Fee Applications

1. The Parties' Fee Agreement Supports Approval of the Requested Fee Amount

Federal courts at all levels encourage litigants to resolve fee issues by agreement whenever possible. As the United States Supreme Court explains, "[a] request for attorney's fees should not result in a second major litigation. Ideally, of course, litigants will settle the amount of a fee." *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983); *see also M. Berenson Co., Inc. v. Faneuil Hall Marketplace, Inc.*, 671 F. Supp. 819, 829 (D. Mass. 1987) ("Whether a defendant is required by statute or agrees as part of the settlement of a class action to pay the plaintiffs' attorneys' fees, ideally the parties will settle the amount of the fee between themselves.").

In light of these principles, courts regularly approve agreed-upon attorneys' fees awards paid by the defendant, rather than the class members, especially where that amount is independent of and will not reduce class benefits. *See e.g., Pro v. Hertz Equipment Rental Corp.*, Civil Act. No. 06-3830 (DMC), 2013 WL 3167736 (D.N.J. June 20, 2013) (approving agreed-upon $11.5 million fee award and noting "Courts routinely approve agreed-upon attorneys' fees, particularly when the amount is independent of and does not impact the benefit obtained for the class."); *Rossi v. Procter & Gamble, Co.*, Civil Act. No. 11-7238 (JLL), 2013

WL 5523098 (D.N.J. Oct. 3, 2013) (approving agreed upon fee award and noting "courts routinely approve agreed-upon attorneys' fees awards paid by the defendant, rather than class members, especially where that amount is independent of the benefit obtained by the class."); *In re LG/Zenith Rear Projection Television Class Action Litig.*, Civil Act. No. 06¬5609 (JLL), 2009 WL 455513, at *8-9 (D.N.J. Feb. 18, 2009) (approving agreed upon attorneys' fee award that did not diminish the settlement fund); *In re Ins. Brokerage Antitrust Litig.*, MDL Docket No. 1663, 2007 WL 1652303, at *1, *4 (D.N.J. June 5, 2007), aff'd, 579 F.3d 241 (3d Cir. 2009) (same); *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 106 F. Supp. 2d 721, 732 (D.N.J. 2000) (finding it significant that attorneys' fees would not diminish settlement fund); *see also McBean v. City of N.Y.*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006) (granting class counsel full amount of fees agreed to by defendant where the attorneys' fees were separate from the class settlement and did not diminish the class settlement).

Here, Cablevision has agreed to pay up to $9.5 million in attorneys' fees and reimbursement of costs and expenses in connection with the Settlement Agreement, subject to the Court's approval. Any award of attorneys' fees and costs is completely separate and apart from the relief to the Settlement Class, which will not be reduced as a result of these payments. Indeed, the amount of attorneys' fees was not discussed until after agreement was reached between the parties on all other substantive terms of the Settlement. (Cebulash Dec. at ¶¶ 33, 39). Moreover, the requested attorney's fees include reimbursement to Class Counsel of over $1.1 million in costs expended litigating this case from 2010. (*Id*. at ¶ 68).

The fee arrangement was negotiated under the best of market conditions - an arm's-length negotiation - a process which the courts have encouraged. *Matter of Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 568-70 (7th Cir. 1992) (market factors, best known by the negotiating parties

themselves, should determine the quantum of attorney' fees). The virtue of a fee negotiated by the parties at arm's-length is that it is, essentially, a market-set price. Defendant has an interest in minimizing the fee; Class Counsel have an interest in maximizing the fee to compensate themselves (as the case law encourages) for their risk, innovation, and creativity during six and a half years of contentious litigation; and the negotiations are informed by the parties' knowledge of the work done and result achieved and their views on what the Court may award if the attorneys' fees award were litigated. Because the fee arrangement in this case was negotiated by experienced counsel at arm's-length, judicial deference to the parties' fee agreement is warranted. *See, e.g.*, *Hertz Equipment Rental Corp.*, 2013 WL 3167736, at *6 (giving weight to the fact that "the fee represents a market rate compromise negotiated by sophisticated counsel familiar with complex and class action litigation"); *Rossi*, 2013 WL 5523098, at *9 ("the benefit of a fee negotiated by the parties at arm's length is that it is essentially a market-set price"); *In re AXA Fin., Inc.*, No. 18268, 2002 WL 1283674, at *1, *7 (Del. Ch. May 22, 2002) ("Where, as here, the fee is negotiated after the parties have reached an agreement in principle on settlement terms and is paid in addition to the benefit to be realized by the class, this court will also give weight to the agreement reached by the parties in relation to fees."). Indeed, "[i]f the Court were to reduce Class Counsel's fee, that would not confer a greater benefit on the class, but instead would benefit only [Cablevision]." *Prudential*, 106 F. Supp. 2d at 732.

In short, the agreed amount of attorneys' fees was negotiated by sophisticated counsel familiar with complex and class action litigation and will not diminish Class benefits. Class Counsel's requested award of $9.5 million is objectively fair and reasonable and the Court should grant Class Counsel the requested award.

2. Application of Other Applicable Legal Standards Supports Approval of the Agreed-Upon Fee Amount

The reasonableness of the requested fee award is also supported by an analysis of legal standards that courts consider when deciding fee awards, including those announced in *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000) and *In re Prudential Ins. Co. Sales Practices Litig.*, 148 F.3d 283, 338-40 (3d Cir. 1998).

a. The Common Benefit Doctrine Supports the Fee Award

Where class counsel's efforts in litigating a case results in "a substantial benefit on members of an ascertainable class," attorneys' fee awards are supported by the common benefit doctrine. *In re Diet Drugs Prods. Liab.*, 582 F.3d 524, 546 (3d Cir. 2009) (citation and internal quotations omitted). Here, the common benefit doctrine is clearly applicable. As discussed herein, the Settlement provides significant pecuniary and non-pecuniary benefits to Class members who allegedly paid inflated amounts to rent their set-top box from Cablevision. As such, the Settlement confers a substantial benefit on a Class that is easily ascertainable.

Having established that an award of fees is supported by the common benefit doctrine, the Court must next determine how to calculate whether the agreed-to fee award is reasonable, deciding between the "percentage-of-recovery" method and the lodestar method. It has been noted that "[e]ach has distinct attributes suiting it to particular types of cases." *In re Ins. Brokerage Antitrust Litig.*, 2009 WL 411856, at *4 (D.N.J. Feb. 17, 2009) (citing *Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 249 (D.N.J. 2005)). In particular, the percentage-of-recovery method is used in instances where a class benefits from a common fund or benefit because otherwise "class members would be unjustly enriched if they did not adequately compensate counsel responsible for generating the fund." *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005); *In re Ins. Brokerage Antitrust Litig.*, 2009 WL 411856, at *4

(D.N.J. Feb. 17, 2009).

The percentage-of-recovery method has also been used in cases like this, where the source of funding for class relief and attorneys' fees are the same, even if not in a single common fund. *See Dewey v. Volkswagen Aktiengesellschaft*, 558 F. App'x 191, 198 (3d Cir. 2014) (explaining that "where the reality is that the fund and the fee are paid from the same source--in this case, [defendant]--the arrangement is, for practical purposes, a constructive common fund, and courts may still apply the percent-of-fund analysis in calculating attorney's fees") (quotations omitted); *Mirakay v. Dakota Growers Pasta Co.*, 2014 WL 5358987, at *11 (D.N.J. Oct. 20, 2014) (holding that "[a]lthough the settlement here is not strictly a common fund because the fees were separately negotiated and will be paid apart from money awarded to the class, courts apply many of the same principles as are applied when analyzing a common fund . . . As such, the Court will analyze common fund factors to determine the reasonableness of the fees requested herein.").

In contrast, the lodestar method is more commonly used when fees are awarded pursuant to a fee-shifting statute, where the fees are paid by defendants, contrary to the traditional "American Rule" where parties bear their own expenses. *Serrano v. Sterling Testing Sys., Inc.*, 711 F. Supp. 2d 402, 418 (E.D. Pa. 2010).

After selecting the method for awarding attorneys' fees, the court should primarily be guided by the seven factors listed in *Gunter*, 223 F.3d at 195, n.1:

> 1) The size of the fund and the number of persons benefited; 2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; 3) the skill and efficiency of the attorneys involved; 4) the complexity and duration of the litigation; 5) the risk of nonpayment; 6) the amount of time devoted to the case by plaintiffs' counsel; and 7) the awards in similar cases.

These factors "need not be applied in a formulaic way... and in certain cases, one factor may

outweigh the rest." *Rite Aid*, 396 F.3d at 301. Whichever method is chosen, the use of the other "to cross-check the initial fee calculation" is recommended. *Id.* The Third Circuit also suggests (but does not require) consideration of three additional factors as set forth in *Prudential*:

- the value of benefits accruing to class members attributable to the efforts of class counsel, as opposed to the efforts of other groups, such as government agencies conducting investigations;
- the percentage fee that would have been negotiated had the case been subject to a private contingent fee agreement at the time counsel was retained; and
- any "innovative" terms of settlement.

In re Prudential Ins. Co. Sales Practices Litig., 148 F.3d at 338-40.

As shown below, the *Gunter* and *Prudential* factors support approval of the agreed-upon fee whether considered under either the percent-of-recovery method (which is most appropriate here) or the lodestar method.

b. The *Gunter* Factors Support the Requested Fee Award

i. The Size of the Fund and Number of Persons Benefited Support the Requested Award

Both the size of the fund and the number of persons benefitted support the requested fees and expenses. For the approximately 2.6 million current subscriber Class members, the median value made available is $78 million for account credits ($30 median value x 2.6 million) to $267.8 million for account services ($103 median value x 2.6 million), plus, $72.7 million for the free four month subscription to SundanceNow ($27.96 value x 2.6 million). (Cebulash Dec. at ¶ 6 n.1). Moreover, because attorneys' fees and expenses will be paid separately and additionally by Defendants (and will not be deducted from payments to Class members), it is also appropriate to add to the settlement value the agreed-upon amount of attorneys' fees and expenses ($9.5 million). *See Lake Forest Partners, L.P. v. Sprint Commc'ns Co., L.P.*, 2013 WL 3048919, at *2 (W.D. Pa. June 17, 2013). As a result, the median value range of settlement benefits available to

current subscriber Class members is between $160 million for the account credit option and $350 million for the account services option.[5] *Id.*

In addition to the significant monetary benefits, Class members also benefit from practice changes under the Settlement, including Cablevision's commitment to activate any Certified Set-Top Boxes that Cablevision subscribers purchase from third-party retailers (subject to certain limitations described in the Settlement Agreement) and to provide reasonable cooperation and reasonable technical assistance to interested manufacturers of Third Party Set-Top Boxes that seek to market Set-Top Boxes that operate on Cablevision's system. This injunctive relief should also be considered in evaluating the reasonableness of the requested award. *See In re Diet Drugs*, 553 F. Supp. 2d 442, 468 (E.D. Pa. 2008), *aff'd* 582 F.3d 524 (3d Cir. 2009) ("the court must look to all benefits, tangible and intangible, as a whole when calculating the value of the Settlement Agreement and the appropriate award therewith.").

Class Counsel has created very substantial and direct benefits for millions of Class members, particularly in light of the risks Class Counsel faced in the litigation (as discussed in more detail below). The first *Gunter* factor therefore weighs heavily in favor of the requested fees and expenses.

ii. The Dearth of Objections Weighs in Favor of the Requested Award

To date, there have been eight objections to the Settlement – an infinitesimal amount of the 2.6 million current subscriber Class members. Of those, only one even vaguely mentions the fee and expense award. (ECF No. 208). The tiny number of objections supports granting this Motion. *See In re Diet Drugs*, 582 F.3d at 542 (explaining that "dearth of objections throughout the settlement and fee adjudication process" weighed in favor of approval); *In re Rite Aid Corp.*

[5] The former subscriber Class members are entitled to a benefit of $20-$40 per claim, along with an additional value of $27.96 per claim for SundanceNow.

Sec. Litig., 396 F.3d at 305 (holding that where only two class members objected out of a class of 300,000, this fact weighed in favor of the requested fee award); *In re Lucent Tech. Sec. Litig.*, 327 F. Supp.2d 426, 435 (D.N.J. 2004) ("the lack of a significant number of objections is strong evidence that the fee request is reasonable.").

Indeed, the miniscule number of objections is particularly compelling here because the number of Class members is very large (approximately 2.6 million current subscribers alone) and the Class Notice explicitly advised Class members of the amount of the requested fees and expenses. (Cebulash Dec. at ¶ 38). This factor supports approval of the fee request.

iii. The Skill and Efficiency of the Attorneys Involved Weighs in Favor of the Requested Award

The third *Gunter* factor - the skill and efficiency of the attorneys involved - also weighs in favor of the requested fees and expenses. In evaluating the skill and efficiency of the attorneys involved, courts look to "the quality of the result achieved, the difficulties faced, the speed and efficiency of the recovery, the standing, experience and expertise of the counsel, the skill and professionalism with which counsel prosecuted the case and the performance and quality of opposing counsel." *Alexander v Washington Mutual, Inc.*, 2012 WL 6021103, at *3 (E.D.Pa. Dec. 4, 2012) (citing *In re Ikon Office Solutions, Inc.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000)). As courts have noted, "[t]he result achieved is the clearest reflection of petitioners' skill and expertise." *In re Linerboard Antitrust Litig.*, 2004 WL 1221350, at *5 (E.D. Pa. June 2, 2004); *McGee v. Continental Tire N.A. Inc.*, 2009 WL 539893, at *14 (D.N.J. Mar. 4, 2009) ("The substantial Settlement amount negotiated by Class Counsel further evidence their competence."). Here, as noted above (and discussed more fully below in the risks section), Class Counsel successfully shepherded a set top box tying case to class-wide resolution while other cases challenging similar conduct against other cable companies faltered.

Further, as other courts have acknowledged, the quality of opposing counsel is one measure of the skill of an advocate. *See Lucent*, 327 F. Supp.2d at 437; *McGee*, 2009 WL 539893, at *14; *In re Ins. Brokerage Antitrust Litig.*, 2009 WL 411856, at *5 (D.N.J. Feb. 17, 2009). As this Court is well-aware, Cablevision engaged Ropes & Gray, LLP and the Saiber Firm who have extensive skill and experience in complex litigation, including antitrust litigation, and could draw on substantial resources. Class Counsel faced worthy adversaries and significant factual and legal obstacles (discussed below) in pursuing this complex antitrust litigation, yet produced this outstanding result through their legal skill and expertise. Accordingly, the third *Gunter* factor strongly favors award of the requested fee.

iv. The Complexity and Duration of the Litigation Weighs in Favor of the Requested Award

The fourth *Gunter* factor - the complexity and duration of the litigation - also weighs in favor of the requested fees. Antitrust class actions are "arguably the most complex action(s) to prosecute. The legal and factual issues involved are always numerous and uncertain in outcome." *Linerboard*, 292 F.Supp.2d at 639.

The claims in this action involved complex legal and factual issues including, for example, market definition, market power, the appropriate measure of damages in tying claims and the technical ability and incentives of third party box manufacturers to come to market absent the alleged tie. The intricacy of these and other thorny issues amply supports the requested award, particularly in light of the skillful and efficient manner in which Class Counsel handled those issues and brought the case to a successful resolution on behalf of the Class.

The duration of this case further supports the requested attorneys' fees and expenses and is a testament to the complexity and depth of the factual, legal and economic issues involved. Class counsel fought hard-fought, litigating this case for over five years before reaching the

Settlement. This is not a case where the parties rushed to the settlement table or hastily negotiated a deal. Rather, it was only after the parties completed phase one discovery and prepared and submitted class expert reports, Plaintiffs moved for class certification and Defendants moved to exclude Plaintiffs' expert, and the parties attended multiple settlement conferences with the Court, that the parties were able to reach a comprehensive written settlement agreement that they could present to the Court for preliminary approval (on December 11, 2015).

The difficulties and complexities posed by this litigation and its duration demanded exceptional work if Class Counsel hoped to achieve relief for the Class. As the court in *Gunter* noted: "The complexity and duration of the litigation is the first factor a district court can and should consider in awarding fees." *Gunter*, 223 F.3d at 195 n.1, 197. This factor strongly favors the requested fee. *See, e.g.*, *Lucent*, 327 F.Supp. 2d at 454.

v. The Risk of Nonpayment Was Substantial and Supports the Requested Fee

The fifth *Gunter* factor - the risk of nonpayment - strongly supports the requested award. Although the Court ultimately denied Cablevision's motions to dismiss on the Section 1 claim (but granted it with prejudice on Plaintiffs' Section 2 claim), it is uncertain whether Plaintiffs would have prevailed on the merits of those claims.

Notably, nearly every case that has challenged set top box tying practices against other cable companies has ended up either being dismissed outright or having class certification denied by district courts. These results, described as follows, clearly demonstrate the substantial difficulties faced in successfully prosecuting this type of case:

- the case against Time Warner was dismissed, *In re Set-Top Cable Television Box Antitrust Litig.* No. 08 MD 1995, 08 Civ. 7616-PKC, 2011 WL 1432036 (S.D.N.Y. April 8, 2011);
- class certification was denied in the nationwide case against Cox and the nationwide case

was dismissed, *In re Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litig.*, No 09-ML-2048-C, 2011 WL 6826813, (W.D. Okla. Dec. 28, 2011), and denying 23(f) petition, *Gelder, et al v. CoxCom Inc., et al*, 696 F.3d 966 (10th Cir. 2012);

- the case against Charter was voluntarily dismissed the day after Charter submitted to the court as supplemental authority the Tenth Circuit's denial of 23(f) review of the nationwide class certification denial in *Cox, Bodet v. Charter Communications*, No. 09 Civ. 3068-JTM, [ECF No. 118] (E.D. La. Sept. 6, 2012);

- the case against Insight was dismissed on summary judgement, *Jarrett v. Insight Communications Co.*, No. 09 Civ. 00093-JHM, 2014 WL 3735193 (W.D.Ky. July 29, 2014);

- among the regional cases that were filed against Cox after the nationwide case was dismissed, a number of those cases were ordered to individual arbitration and the court enforced class action waivers, eliminating the possibility of class-wide relief, *In re Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litig.*, No 12-ML-2048-C, 2014 WL 7338914 (W.D. Okla. Dec. 22, 2014);

- the regional case for Cox subscribers in the Oklahoma City market went to trial, the jury reduced plaintiff's damages by over 90% (to $6 million) and the court overturned the jury verdict in its entirety and entered judgment in Cox's favor, *In re Cox Enterprises, Inc. Set-Top Cable Television Box Antitrust Litig.*, No 12-ML-2048-C, 2015 WL 7076418 (W.D. Okla. Nov. 12, 2015), resulting in no recovery for any class of Cox subscribers;

- nearly all of the cases against Comcast were dismissed due to the arbitration provisions, and what remained was settled but preliminary settlement approval was denied based on ascertainability issues that do not exist here, *In re Comcast Corp. Set Top Cable Television Box Antitrust Litig.*, 311 F.R.D. 145 (E.D. Pa. Nov. 5, 2015)[6]; and

- the case against Brighthouse settled on a classwide basis but for significantly less than Class Counsel made available for Class members here. In Brighthouse, current subscribers who put in claims were only entitled to choose $30 worth of services (there was no credit option) and former subscribers who put in claims were only entitled to $20 cash. Here, by contrast, current subscribers can receive over five times the recovery made available to Brighthouse current subscribers. Moreover, former subscribers can receive up to over three times the recovery made available in Brighthouse. *See* Settlement Agreement in *Parson v. Brighthouse Networks*, LLC, No. 09-cv-267-AKK

[6] The Comcast court denied preliminary approval of the settlement because, unlike here, class membership could not be established through Comcast's records. The proposed Comcast settlement provided for much less in benefits for class members there than class members here, and, unlike here where the benefits are uncapped, the benefits were capped in Comcast at $15.5 million. Here the SundanceNow benefit alone is worth $72 million to current class members and the *median* credit or service benefits made available to current class members alone range between an additional $78 million to $268 million, all on an uncapped basis.

(N.D. Ala.) D.E. 92-1.

The lack of success of these other set-top box cases highlights the substantial challenges associated with pursuing and successfully recovering damages in this case. (Cebulash Dec. ¶ 44).

In addition, throughout this litigation, Defendants raised and maintained numerous factual and legal defenses to Plaintiffs' claims and led to, without limitation, the risk that Cablevision would successfully establish that a competitive set-top box market did not exist because of business decisions made by set-top box manufacturers as opposed to Cablevision's alleged tying practices or prevail on a legal defense, such as the "filed rate doctrine" or the arbitration defense, nullifying the claims of large portions of the Class. (*Id.* at ¶¶ 43, 45).

As a result, although Class Counsel had confidence in their retained experts and facts developed through discovery, they nevertheless faced the real risk of nonpayment, either because Defendants would prevail on its challenges to class certification and/or on its motion to exclude expert testimony or because the case would be lost on the merits at summary judgment, trial or appeal, in whole or in large part – results that actually came to pass in the other set-top box cases highlighted above.

In sum, it is only because Class Counsel agreed to accept these risks of non-payment that they were able to achieve a favorable Settlement for the Class after litigating this case for six years. *See e.g., In re Diet Drugs*, 553 F. Supp. 2d at 479 ("At the inception, and throughout this litigation, there was a substantial risk that the efforts of the Joint Fee Applicants would not be successful."); *In re America Investors Life Ins. Co. Sales Practice Litig.*, 263 F.R.D. 226, 244 (E.D.Pa. 2009) (fee request reasonable where class counsel "undertook representation on a contingency basis [,]... advanced hundreds of thousands of dollars in expenses" and prosecuted

the case "without any guarantee of payment"); *McGee*, 2009 WL 539893, at *15 ("Class Counsel accepted the responsibility of prosecuting this class action on a contingent fee basis and without any guarantee of success or award."); *In re Ins. Brokerage*, 2009 WL 411856, at *5 (same). Accordingly, this factor also weighs heavily in favor of the requested award.

vi. Class Counsel's Devotion of Substantial Time, Effort and Expense Supports the Requested Fee

The sixth *Gunter* factor also strongly supports the requested award, as Class Counsel have invested significant time, effort and expense on behalf of the Class in this action.[7] Nearly 15,000 hours of contingent work by Class Counsel since 2010 were expended for the common benefit of the Class, resulting in a lodestar of $8,656,560. (Cebulash Dec. at ¶¶ 63-64).

Specifically, in connection with the present action, Class Counsel, *inter alia*, investigated the facts and law relating to the tying claims before initiating this action; engaged in extensive briefing practice on Defendants' motions to dismiss; obtained and analyzed over 1.4 million documents and terabytes of data from Defendants and third parties; deposed 11 fact witnesses; retained and worked with economic and technical experts; defended depositions; moved for class certification; and negotiated the Settlement. (*See generally* Cebulash Dec. at ¶¶ 13-29). Class Counsel will also devote further time and effort to preparing a motion for final approval of the Settlement, appearing at the final approval hearing, responding to inquiries from Class members going forward, and monitoring claims processing and distribution of settlement payments by the Claims Administrator. (*Id.* ¶ 62).

Finally, in addition to the large amount of time and effort devoted to this litigation, Class Counsel also incurred substantial expenses, in the amount of $1,129,169.29, with no guarantee of recovering those expenses. (*Id.* at ¶ 68).

[7] Class Counsel's lodestar is discussed more fully in the Lodestar Cross Check analysis below.

In sum, Class Counsel's combined amount of time, effort and expense dedicated to this litigation amply support the requested award in this case.

vii. The Requested Award Is Reasonable in Comparison to the Amounts Typically Awarded in Other Class Cases

Finally, the seventh *Gunter* factor - awards in similar cases - also supports the requested award. As discussed above, the baseline median value of the benefits available to current subscriber class members is approximately $160 million based on account credit benefit. (Cebulash Dec. at ¶ 6, n. 1). Thus, the requested fee award represents less than 5.3% of the median account credits benefits provided by the Settlement ($8,370,830 / $160,000,000 = 0.523).[8] By any measure, at less than 5.3% of the baseline value of the benefits being made available, the requested attorneys' fees are well within the range of reasonable percentage-fee awards in this Circuit. *See Rite Aid*, 396 F.3d at 303 (discussing with approval three studies of attorneys' fees awarded in class-action settlements finding that "an average percentage fee recovery of 31%; . . . a median percentage recovery range of 27-30%; . . . and . . . recoveries in the 25-30% range were fairly standard.") (internal quotation marks and citation omitted); *Esslinger v. HSBC Bank Nevada, N.A.*, 2012 WL 5866074, at *14 (E.D. Pa. Nov. 20, 2012) ("In the Third Circuit, fee awards in common fund cases generally range from 19% to 45% of the fund") (collecting cases); *Mirakay*, 2014 WL 5358987, at *12 (noting that "[a]ttorneys' fees in the 30% range are not uncommonly awarded in the Third Circuit, and courts in this Circuit have awarded fees of more than 30%."). As a result, this factor strongly supports the requested award.

[8] This value is conservative and if using the value of the service benefit of $350 million being made available to the Class, the requested fee would be 2.4% of that amount. (Cebulash Dec. at ¶ 6, n.1). Adding the cost of notice and administration, also paid by Cablevision, would reduce the percentage further.

c. Application of the *Prudential* Factors Also Supports the Requested Award.

In addition to the *Gunter* factors discussed above, courts often consider the factors articulated by the Third Circuit in *In re Prudential Ins. Co. of Am. Sales Practice Litig.*, 148 F.3d at 283. These factors are (1) whether the benefits accruing to the class are attributable to the efforts of class counsel or other groups, such as government agencies; (2) whether the fee is comparable to the fee that would have been negotiated had the case been subject to a contingent fee agreement; and (3) whether the settlement agreement contains innovative terms and conditions.

First, there was no government investigation regarding Cablevision's alleged tying conduct that Plaintiffs relied on in bringing this suit.[9] Rather, Class Counsel undertook an independent investigation that led to the filing of this action and independently prosecuted this case, ultimately reaching this Settlement. The benefits achieved for the Class are the direct and exclusive result of the efforts of Class Counsel.

Second, the requested award is far ***less*** than would have been negotiated in a typical contingent fee arrangement. As discussed above, Class Counsel's requested award is less than 5.3% of the value of the benefits made available to the Class when simply valuing the average credit amount option for current subscriber class members because a standard contingent fee arrangement is typically around 33%. *See, e.g.*, *Ikon*, 194 F.R.D. at 194 ("[I]n private contingency fee cases, particularly in tort matters, plaintiffs' counsel routinely negotiate agreements providing for between thirty and forty percent of any recovery."). Because the

[9] In 2016, the FCC announced that it would seek to achieve for the entire Multichannel Video Programming Distributors ("MVPD") market what this suit sought on behalf of Cablevision subscribers – to open competition for third-party set top boxes. However, in response to the FCC proposal, there has been substantial opposition from both sides of the aisle and the outcome of the FCC's efforts remains uncertain. (Cebulash Dec. at ¶ 45, n.4).

requested fee percentage is far below the range of standard contingency fees, this factor strongly supports the requested fee award here.

Third, the injunctive provisions and practice changes designed to alleviate the challenged conduct are innovative terms beneficial to Class members. Thus, the *Prudential* factors support the requested award.

d. The Lodestar Cross-Check Supports the Requested Award.

As noted by the Third Circuit in *Rite Aid*, 396 F.3d at 305, "[i]n addition to the percentage-of-recovery approach, we have suggested it is 'sensible' for district courts to 'cross-check' the percentage fee award against the 'lodestar' method." The Third Circuit stated that "[a] court determines the lodestar by multiplying the number of hours counsel reasonably worked on a client's case by a reasonable hourly billing rate for such services in a given geographical area provided by a lawyer of comparable experience." *Gunter*, 223 F.3d at 199. The court also noted that "the lodestar cross-check need entail neither mathematical precision nor bean counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records." *Id*. at 306-07.[10]

Class Counsel have included with this application a collective summary of the time and expenses spent by each of the law firms which contributed to this case. (*See* Cebulash Dec. at ¶ 63; and Declarations of Paul O. Paradis, Keith S. Dubanevich, Daniel C. Hedlund, Peter Kohn, Michael S. Weinstein, David F. Sorensen, Jay P. Saltzman and James V. Bashian filed herewith). In this case, the lodestar "cross-check" confirms the propriety of the fee sought. Class Counsel

[10] *In re Diet Drugs*, 582 F.3d at 541, n.35 ("A request for attorneys' fees should not result in a second major litigation") (quoting *Rite Aid*, 396 F.3d at 306-07); *Linerboard*, 2004 WL 1221350, at *48 ("While the Court adopts the percentage of recovery method, the Court will also subject petitioners' proposed fee to a cross-check using the lodestar method").

have reported a total lodestar value of $8,656,560. (*Id.* at ¶ 64). The hours worked are reasonable and reflect the challenging nature of this large and complex litigation. (*Id.* at ¶ 64). The current hourly billable rates of Class Counsel used to calculate lodestar values are consistent with the hourly rates approved by this Court in complex class action litigation matters. *See, e.g.*, *In re Merck & Co. Vytorin ERISA Litig.*, No. 08–CV–285-DMC, 2010 WL 547613 (D.N.J. Feb. 9, 2010) (approving rates between $250 and $850 per hour); *Saint v. BMW of North America, LLC*, No. 12–6105-CCC, 2015 WL 2448846 (D.N.J. 2015) (stating same). Thus, the requested fee award of $8.37 million, in compensation of Class Counsel's hours on this case, results in a multiplier of approximately .97.

In *Prudential*, the Third Circuit recognized, based on a review of common fund cases, that, "[m]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied." *Prudential*, 148 F.3d at 341 (quoting 3 Newberg & Conte, Newberg on Class Actions, §14.03 at 14-5 (3d ed. 1992)). This reasoning has not diminished over time. *See In re Diet Drugs*, 582 F.3d at 545, n.42 (same); *In re Safety Components, Inc. Sec. Litig.*, 166 F. Supp. 2d 72, 104 (D.N.J. 2001) (multiplier of one to four is the norm); *In re Am. Investors*, 2009 WL 4912164, at *19 (E.D.Pa. Dec. 18, 2009) (noting that within the Third Circuit multiples ranging from one to four are frequently awarded and approving a multiplier of 2.3).

The requested percentage fee multiplier of .97 is lower than the lowest end of the range, even though Class Counsel here, based on the extensive and risky litigation and the excellent result, meet the criterion for an award in the upper portion of the one to four range. The lodestar cross-check in this case corroborates the reasonableness of the requested fee.

3. The Requested Expenses are Reasonable and Should be Awarded

Attorneys who create a common benefit for a class are entitled to reimbursement of

reasonable litigation expenses and costs. *See Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court's equity power to award costs from a common fund). In the Third Circuit, requests by counsel for reimbursement of expenses (in addition to attorneys' fees) in class cases are commonly granted as a matter of course. *See, e.g., In re Flonase Antitrust Litig.*, 291 F.R.D. 93, 106 (E.D. Pa. 2013) (awarding costs incurred by class counsel); *Mirakay*, 2014 WL 5358987, at *14 (same); *In re Safety Components Sec. Litig.*, 166 F. Supp. 2d 72, 108 (D.N.J. 2001) ("Counsel for a class action is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the class action.") (citing *Abrams v. Lightolier, Inc.*, 50 F.3d 1204, 1225 (3d Cir. 1995)); *Ins. Broker Litig*, 2009 WL 411856, at *9.

Here, Class Counsel have incurred $1,129,169.26 of expenses as of the date of this motion. All of the expenses incurred by Class Counsel were fully contingent on a successful outcome. The majority of the expenses are attributable to economic and industry experts and consultants. Additional expenses were attributable to, among other things, computerized research, the creation and maintenance of an electronic document database, copying costs and travel. (*See* Cebulash Dec. at ¶ 68).

These expenses are standard expenses directly related to the prosecution of this complex class litigation. *See* H. Newberg, Attorney Fee Awards § 2.19 at 69 (1986). This amount is unquestionably reasonable in light of the complex economic and technical issues involved in this case. Accordingly, reimbursement of costs in this amount should be approved.

4. The Court Should Award the Requested Service Awards for Plaintiffs

It is routine to grant service awards to Class Representatives because of their additional efforts in zealously prosecuting the case. *See Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 333, n.65 (3d Cir. 2011) ("The purpose of these payments is to compensate named plaintiffs for

the services they provided and the risks they incurred during the court of the class action litigation" and "to reward the public service of contributing to the enforcement of mandatory laws.") (quoting *Bredbenner v. Liberty Travel, Inc.*, No. 09-905, 2011 WL 1344745, at *22 (D.N.J. Apr. 8, 2011)). "Awards to class representatives lie within the discretion of the Court and may be awarded for the benefit conferred on the class. Factors courts examine when assessing such awards include the risks to the representative, his involvement in the litigation, and the degree to which he benefitted as a class member." *Cosgrove*, 2011 WL 3740809, at *10.

Here, a service award of $5,000 for each Representative Plaintiff is appropriate. Each Representative Plaintiff participated and willingly undertook the responsibilities and risks attendant with bringing this Action as a class action, thereby helping to effectuate the policies underlying antitrust laws and bring about the Settlement. (Cebulash Dec. at ¶ 75). Each Representative Plaintiff spent considerable time: (a) reviewing and providing information and input regarding the complaints; (b) overseeing prosecution of the litigation; (c) consulting with counsel; (d) searching their records to provide relevant documents and information responsive to Cablevision's discovery requests; (e) providing answers to Cablevision's interrogatories; and (f) preparing for and sitting for depositions. (*Id.*). At the same time, the Representative Plaintiffs publicly placed their names on the lawsuit and opened themselves up to scrutiny and attention from both the media and their cable services provider. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 601(N.D. Ill. 2011) ("Class Representatives' willingness to publicly place their names on this suit and open themselves up to scrutiny and attention is certainly worth some remuneration."); *American Investors*, 263 F.R.D. at 245 (finding incentive awards of between $5,000 and $10,500 "reasonable compensation considering the extent of the named plaintiffs' involvement and the sacrifice of their anonymity"); *Henderson v. Volvo Cars of N.A.*, No. 09 Civ

4146-CCC, 2013 WL 1192479 (D.N.J. March 22, 2013) (awarding incentive awards of $5,000 and $6,000). Accordingly, the Court should award Class Representatives Gary Marchese, Esther Weinstein and Joan Howard service awards of $5,000 each for their service to the Class.

IV. CONCLUSION

For the reasons set forth above, Plaintiffs and Class Counsel respectfully request that the Court grant their motion, and award attorneys' fees and expenses to Class Counsel in the amount of $9,500,000, and service awards to Class Representatives, as provided by the Settlement Agreement.

Respectfully submitted,

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