

COMMONWEALTH OF MASSACHUSETTS

WORCESTER, ss.

SUPERIOR COURT  
C.A. NO. 1785CV02005B

JANICE MAGLIACANE, on behalf of herself  
and others similarly situated,

Plaintiff,

v.

CITY OF GARDNER,

Defendant/Third Party  
Plaintiff,

v.

SUEZ WATER ENVIRONMENTAL  
SERVICES, INC. (formerly known as  
United Water Environmental Services, Inc.),

Third Party Defendant.

**PLAINTIFF’S COUNSEL, SHAPIRO HABER & URMY LLP’S APPLICATION OF AN  
AWARD FOR ATTORNEY’S FEES AND EXPENSES**

Plaintiff Janice Magliacane (“Plaintiff”)’s and Plaintiff’s and Class Counsel Shapiro Haber & Urmey LLP (“Plaintiff’s counsel” or “Shapiro Haber”) respectfully submits this application for an order awarding Shapiro Haber the sum of \$129,936 to be paid out of the \$325,000 common fund established as part of the proposed class action settlement in this matter. Shapiro Haber is requesting 33% of that amount, or \$107,250, in attorney’s fees to compensate Plaintiff’s counsel for the time they expended in the case, and an additional \$22,686 to reimburse Plaintiff’s counsel

for expenses they incurred. In support, Plaintiff contemporaneously files the Affidavit of Ian J. McLoughlin (“McLoughlin Aff.”).

As detailed in the contemporaneously filed memorandum in support of Plaintiff’s Assented-To Motion for Final Approval, under the proposed settlement, the Defendant City of Gardner (“Defendant” or “City”) and Third Party Defendant SUEZ Water Environmental Services, Inc., now known as Veolia Water Contract Operations USA, Inc. (“SUEZ”), have agreed to pay a total sum of \$325,000 to settle Plaintiff and the Class’s claims for negligence, gross negligence and nuisance relating to the City and SUEZ’s supply of water to Gardner residents, property owners and businesses, which Plaintiff alleged caused copper heating coils in tankless hot water heating systems in Gardner to fail. The proposed settlement represents an excellent result after almost eight years of hard-fought litigation, which included a successful appeal to Supreme Judicial Court, *Magliacane v. City of Gardner*, 483 Mass. 842 (2020), in which Plaintiff and the Class will recover a considerable percentage of their damages.

As set forth below, Plaintiff’s request for an award of attorney’s fees and expenses to her counsel in the amount of \$129,936 is reasonable and indeed represents less than 10% of Shapiro Haber & Urmy’s lodestar in prosecuting this litigation on behalf of Plaintiff and the Class. For the reasons set forth herein, Plaintiff’s application for an award for attorney’s fees and expenses should be granted.

**I. BACKGROUND: SUMMARY OF PROCEEDINGS, MEDIATION AND SETTLEMENT**

On December 13, 2017, Plaintiff filed a class action complaint against the City and its private water system operators, SUEZ and its predecessor AECOM Technical Services, Inc. (“AECOM”), asserting, *inter alia*, claims for negligence, gross negligence and nuisance relating to their supply of water to Gardner residents, property owners and businesses, which Plaintiff

alleged caused copper heating coils in tankless hot water heating systems in Gardner to fail. Dkt. #1. On June 27, 2018, the Court dismissed the claims against the City. Dkt. #22. On July 18, 2018, Plaintiff appealed the dismissal of her claims against the City. Dkt. #24.

On August 14, 2018, the Court dismissed the claims against AECOM, but sustained negligence, gross negligence, nuisance and G.L. c. 93A claims against SUEZ. The Court also struck the class allegations as pled in the original complaint against SUEZ. Dkt. #25. On April 29, 2019, Plaintiff and SUEZ stipulated to the dismissal of Plaintiff's individual claims against SUEZ, and the stipulation expressly provided that it "would in no way affect[], impact[] or preclude[] Plaintiff's claims against Defendant City of Gardner" which were then pending on appeal. Dkt. #39.

On January 22, 2020, the Supreme Judicial Court, on direct appellate review, reversed and remanded the Court's dismissal of Plaintiff's claims against the City. *Magliacane v. City of Gardner*, 483 Mass. 842 (2020).

On March 2, 2020, Plaintiff filed an amended complaint against the City, continuing to assert claims for negligence, gross negligence and nuisance. Dkt. #46. On May 14, 2020, the City answered the amended complaint, denying Plaintiff's allegations, and asserted third-party claims of breach of contract, indemnity and contribution against SUEZ. Dkt. #46. On July 24, 2020, SUEZ answered the City's third-party complaint, denying the City's allegations. Dkt. #50. The parties then continued to engage in discovery.

On September 21, 2022, the City and SUEZ filed a motion to preclude class certification, along with Plaintiff's opposition to the motion to preclude class certification and Plaintiff's cross-motion for class certification. Dkt. #'s 61-62. On December 30, 2022, the Court denied the motion to preclude class certification, granted the motion for class certification and certified a class

consisting of all Gardner residents, property owners and businesses who were supplied water by the City and whose copper heating coils in their tankless hot water heating systems failed and had to be replaced (the “Class”). Dkt. # 63.

The parties thereafter continued to engage in discovery and in efforts to resolve the case through a settlement. These efforts included a full-day mediation session with experienced neutral Attorney John Ryan on March 29, 2024 and additional settlement negotiations over the next several months through Attorney Ryan following the mediation. The Parties’ mediation efforts ultimately resulted in settlement, the terms of which are memorialized in the Stipulation and Agreement of Settlement dated July 2025 between the parties (the “Stipulation” or “Settlement”), which is attached as Exhibit A to Plaintiffs’ Motion for Final Approval of Class Action Settlement. McLoughlin Aff. ¶ 4.

On September 23, 2025, this Court entered a Preliminary Approval Order (the “Preliminary Approval Order”), which (a) preliminarily approved the Settlement; (b) approved the Parties’ proposed form and method for disseminating notice of the proposed settlement to the Class; and (c) scheduled a hearing at which, following notice and an opportunity for Class members to be heard, the Court will consider whether to grant final approval to the proposed settlement set forth in the Stipulation. Dkt. #80.

**II. ARGUMENT: THE COURT SHOULD AWARD SHAPIRO HABER ITS REQUESTED ATTORNEY’S FEES AND EXPENSES.**

**A. Shapiro Haber is Entitled to a Fee from the Common Fund.**

For over a century, the U.S. Supreme Court has recognized the “common fund” exception to the general rule that a litigant bears his or her own attorneys’ fees. *See Trustees v. Greenough*,

105 U.S. 527 (1882).<sup>1</sup> The Supreme Court has explained the rationale for awarding attorneys' fees from common funds as follows:

[T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole . . . . Jurisdiction over the fund involved in the litigation allows a court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

*Boeing Co. v. Van Gernert*, 444 U.S. 472, 478 (1980).

The SJC has recognized the same.

*See Sutton v. Jordan's Furniture, Inc.*, 493 Mass. 728, 743 (2024) ("Common fund cases are those in which 'a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole'"); *see also In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir. 1995); *In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 265 (D.N.H. 2007). Awards of reasonable attorneys' fees from a "common fund" provide compensation that "encourages capable plaintiffs' attorneys to aggressively litigate complex, risky cases like this one" and spread the costs of the litigation "proportionately among those benefited by the suit." *Tyco*, 535 F. Supp. 2d at 265.

Courts have long recognized that fee awards in successful cases like this encourage the prosecution of other actions on behalf of individuals with valid claims, and thereby promote private

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<sup>1</sup> The Supreme Judicial Court has looked to Federal law on class action settlements and found it to be persuasive. *Sniffin v. Prudential Ins. Co.*, 395 Mass. 415, 420-21 (1985) ("The standard applied by the [trial] Court in its order is similar to that adopted by the Federal courts when reviewing proposed settlements of class actions under Fed. R. Civ. P. 23(e), the Federal provision analogous to Mass. R. Civ. P. 23(c)."). For this reason, Plaintiff also cites to federal cases with respect to the standards to be applied by the Court in considering whether to grant this application.

enforcement of, and compliance with, important areas of federal and state law. *See, e.g., Ressler v. Jacobson*, 149 F.R.D. 651, 657 (M.D. Fla. 1992) (“Attorneys who bring class actions are acting as ‘private attorneys general’ and are vital to the enforcement of the securities laws. Accordingly, public policy favors the granting of counsel fees sufficient to reward counsel for bringing these actions and to encourage them to bring additional such actions.”); *Goldberger v. Integrated Resources, Inc.*, 209 F.3d 43, 51 (2d Cir. 2000) (“[t]here is also commendable sentiment in favor of providing lawyers to bring common fund cases that serve the public interest”). “In order to attract well-qualified plaintiffs’ counsel who are able to take a case to trial, and who defendants understand and are able and willing to do so, it is necessary to provide appropriate financial incentives.” *In re Worldcom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005).

The Supreme Court has endorsed the percentage-of-the-recovery method, stating that “under the ‘common fund doctrine’ . . . a reasonable fee is based on a percentage of the fund bestowed on the class.” *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). The First Circuit has also approved of the percentage method in common fund cases, noting that it is the prevailing method and that it “offers significant structural advantages in common fund cases, including ease of administration, efficiency, and a close approximation of the marketplace.” *In re Thirteen Appeals Arising Out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 308 (1st Cir. 1995). Additionally, the percentage method “appropriately aligns the interests of the class with the interests of the class counsel.” *Duhaime v. John Hancock Mut. Life Ins. Co.*, 989 F. Supp. 375, 377 (D. Mass. 1997). For these reasons, courts assessing fee awards in class actions generally apply the percentage method, with or without consideration of lodestar as a “cross-check.” *See, e.g., Hill v. State St. Corp.*, 2014 U.S. Dist. LEXIS 179702, at \*43-44 (D. Mass. Nov. 26, 2014) (noting that

lodestar cross-check is sometimes used but would not be “particularly helpful or appropriate” to assess fees in that securities fraud action).

The requested fee and expense award of 33% of the Settlement Amount<sup>2</sup> is well within the typical range of fees awarded by courts in class actions. “[N]early two-thirds of class action fee awards based on the percentage method were between 25% and 35% of the common fund.” *Harden Mfg. v. Pfizer, Inc (In re Neurontin Mktg. & Sales Practices Litig.)*, 58 F. Supp. 3d 167, 172 (D. Mass. 2014). In fact, awards of 30%-33 1/3% are common. *See Rowe v. Datarobot, Inc.*, 2023 Mass. Super. LEXIS 1961, \*71 (Feb. 15, 2023) (awarding class counsel 33 1/3% of the total settlement amount for attorneys’ fees, plus reimbursement of expenses, from total settlement amount); *Crane v. Sexy Hair Concepts, LLC*, 2019 U.S. Dist. LEXIS 85472, \*6 (D. Mass. May 14, 2019) (awarding Shapiro Haber attorney’s fees of 32.2% of gross settlement amount plus expenses); *Crandall v. PTC Inc.*, No. 16-cv-10471-WGY, 2017 U.S. Dist. LEXIS 217581, at \*16 (D. Mass. July 14, 2017) (awarding 33 1/3%); *Roberts v. TJX Cos., Inc.*, No. 13-CV-13142-ADB, 2016 U.S. Dist. LEXIS 136987, at \*45 (D. Mass. Sept. 30, 2016) (awarding 33 1/3%); *Courtney v. Avid Tech., Inc.*, No. 1:13-cv-10686-WGY, 2015 U.S. Dist. LEXIS 67952, at \*3 (D. Mass. May 12, 2015) (awarding 30%); *In re Moduslink Global Sols. Inc. Sec. Litig.*, No. 1:12-CV-11044, slip op. at 7 (D. Mass. Mar. 11, 2015), ECF No. 79 (awarding 33 1/3%); *In re Satcon Tech. Corp. Sec. Litig.*, No. 1:11-cv-11270-DPW, slip op. at 1 (D. Mass. May 19, 2014), ECF No. 127 (awarding 30%); *Medoff v. CVS Caremark Corp.*, No. 09-cv-554-JNL, 2016 U.S. Dist. LEXIS 19135, at \*26-29 (D.R.I. Feb. 17, 2016) (awarding 30%).

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<sup>2</sup> Defined terms have the same meaning herein as in the Stipulation.

**B. Plaintiff's Request for Attorney's Fees is Reasonable Given the Time Expended by Plaintiff's Counsel to Recover the Settlement on a Fully Contingent Basis.**

An award of attorneys' fees is measured by "the standard of reasonableness." *Heller v. Silverbranch Constr. Corp.*, 376 Mass. 621, 629 (1978). "What constitutes a reasonable fee is a question that is committed to the sound discretion of the judge." *Berman v. Linnane*, 434 Mass. 301, 302-03 (2001) "A fair market rate for time reasonably spent preparing and litigating a case is the basic measure of a reasonable attorneys' fee under State law . . ." *Fontaine v. Ebtec Corp.*, 415 Mass. 309, 326 (1993). The typical starting point for the analysis involves "multiplying the number of hours reasonably spent on the case times a reasonable hourly rate." *Id.* at 324.

Under the lodestar method, attorneys' fees are calculated by "determining the number of hours productively spent on the litigation and multiplying those hours by reasonable hourly rates." *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 305 (1st Cir.1995). The resulting figure can then be enhanced through the application of a multiplier to account for the contingent nature of the action or other factors. *See, e.g., Boston & Maine Corp. v. Sheehan, Phinney, Bass & Green, P.A.*, 778 F.2d 890, 894 (1st Cir.1985). *See also* 4 NEWBERG ON CLASS ACTIONS § 13:80 (4th ed.2008).

*In re TJX Companies Retail Sec. Breach Litig.*, 584 F. Supp. 2d 395, 398 (D. Mass. 2008).

Shapiro Haber's summary lodestar information is set forth in the Affidavit of Ian J. McLoughlin filed herewith. As set forth in that Affidavit, Shapiro Haber's total lodestar fees in this case through January 20, 2026, is \$1,572,389, along with out-of-pocket expenses of \$22,686.19. The time and expenses were expended on a fully contingent basis over the past eight plus years of litigation. McLoughlin Aff. ¶¶ 8-11.

In class action litigation, the courts generally approve of a lodestar enhancement in awarding attorneys' fees to compensate Shapiro Haber for, among other things, the risk inherent in contingency cases and the results achieved for the class. *See, e.g., In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 165 (D. Mass. 2015) (awarding a multiplier of two

based on multifactor assessment of nature of the litigation); *In re Amicas, Inc. Shareholder Litig.*, 2010 Mass. Super. LEXIS 325 at \*10 (Mass. Super. Ct. Dec. 4, 2010) (applying a multiplier of five to compensate for “risk of nonpayment, and of significant financial loss”); *Walsh v. Carney Hosp. Corp.*, 1998 Mass. Super. LEXIS 89, at \*8-9 (Mass. Super. Ct. June 10, 1998) (awarding 20% enhancement in light of the “legal and factual complexity of the case,” “the strength” of the opponent, and the risk that “the entire effort would be for naught”); *Comput. Sys. Eng’g, Inc. v. Qantel Corp.*, 740 F.2d 59, 70-71 (1st Cir. 1984) (finding that the district court did not err in awarding a “multiplier of 1.25 for ‘exceptionally meritorious’ representation” on c. 93A claim) *TJX*, 584 F. Supp. at 408-09 (awarding multiplier of 1.97); *In re Tyco Int’l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 271 (D.N.H. 2007) (applying lodestar multiplier of 2.697); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 82 (D. Mass. 2005) (“A multiplier of 2.02 is appropriate.”); *Krausz ex rel. Principal Protection Fund VI*, 2008 WL 217102, \*1 (D. Mass. Jan. 23, 2008) (“court will apply a multiplier of two (2) times the lodestar”); *In re Lupron Marketing and Sales Practices Litig.*, 2005 WL 2006833, \*6 (D. Mass. Aug. 17, 2005) (“multiplier of 1.41, [was] a reasonable bonus justified by the satisfactory outcome”).

Here, however, the requested fee and expense award of \$129,936 not only does not include any multiplier, it in fact considerably less than Shapiro Haber’s \$1,572,389 total lodestar and out of pocket expenses. Indeed, the requested fee and expense award only compensates Class Counsel for less than 10% of the lodestar and expenses they have expended to date. And there will be additional work involved in connection with overseeing the administration of the Settlement.

“To determine what is a reasonable number of hours and a reasonable hourly fee, courts apply the factors outlined in *Linthicum v. Archambault*, 379 Mass. 381, 388-89, 398 N.E.2d 482 (1979).” *Evans v. Lorillard Tobacco Co.*, 2011 Mass. Super. LEXIS 293, at \*5, 29 Mass. L. Rep.

226 (2011). A judge considering a request for award of statutory fees should consider:

- [1] the nature of the case and the issues presented,
- [2] the time and labor required,
- [3] the amount of damages involved,
- [4] the result obtained,
- [5] the experience, reputation, and ability of the attorney,
- [6] the usual price charged for similar services by other attorneys in the same area; and
- [7] the amount of awards in similar cases.

*Twin Fires Inv., LLC v. Morgan Stanley Dean Witter & Co.*, 445 Mass. 411, 430 (2005) (quoting *Linthicum*, 379 Mass. at 388-89); see also *Berman*, 434 Mass. at 303; *In re Amicas, Inc. S'holder Litig.*, 2010 Mass. Super. LEXIS 325, at \*7, 27 Mass. L. Rep. 568 (2010). These same factors apply in the context of reviewing a fee application submitted in connection with a class action settlement. See, e.g., *Commonwealth Care Alliance v. AstraZeneca Pharms. L.P.*, 2013 Mass. Super. LEXIS 145, at \*2-4, 31 Mass. L. Rep. 516 (2013); *Reniere v. Alpha Mgmt. Corp.*, 2014 Mass. Super. LEXIS 184, at \*7-8, 32 Mass. L. Rep. 410 (2014)

Under the process laid out by the SJC in *Linthicum*, “[t]he determination of what constitutes ‘reasonable’ attorneys’ fees in any given case is more art than science.” *Anderson v. Am. Int’l Grp., Inc.*, 2014 Mass. Super. LEXIS 81, at \*12, 32 Mass. L. Rep. 280 (2014). No single factor is determinative of a reasonable fee, “and a factor-by-factor analysis, although helpful, is not required.” *Berman*, 434 Mass. at 303. When reviewing a request for attorneys’ fees, the judge is not “required to review and allow or disallow each individual item in the bill”; rather, the judge may “consider the bill as a whole.” *Id.* An analysis of the *Linthicum* factors, discussed below, supports Plaintiff’s fee and expense request.

### **1. The Nature of the Case and the Issues Presented**

In evaluating a fee request, the Court should consider both the factual and legal complexities of the case. See *Mongeon v. Arbella Mut. Ins. Co.*, 2004 Mass. Super. LEXIS 329, at

\*8, 18 Mass. L. Rep. 249 (2004) (observing that “the plaintiff faced both factual and legal complexities and a defendant which mounted a strong opposition”); *Arthur D. Little Int’l v. Dooyang Corp.*, 995 F. Supp. 217, 221 (D. Mass. 1998).

Here, Plaintiff’s Counsel conducted an extensive investigation prior to filing and then litigated this complex case on behalf of Plaintiff and the class for close to a decade, facing a vigorous defense mounted by Gardner and SUEZ’s respective attorneys. Plaintiff’s counsel litigated motions to dismiss, both at the trial court and Supreme Judicial Court level, as well as multiple motions relating to class certification, conducted detailed discovery, responded to numerous discovery requests and litigated discovery motions.

The SJC ruling reflects that the case involved complex and novel issues. The SJC held that Plaintiff had presented her claims in a timely manner because she had sufficiently alleged that the City had fraudulently concealed the claims by issuing public statements that disclaimed responsibility for the corrosion issue and blaming it on the natural state of the water. *Magliacane v. City of Gardner*, 483 Mass. 842, 850-53 (2020). The SJC also ruled in a case of first impression that a class action could be brought against the City under the Massachusetts Tort Claims Act (“MTCA”) and that the MTCA does not require that each class member provide written notice of their claim, a novel issue of law. *Magliacane*, 483 Mass. at 853-58. The SJC decided that Plaintiff satisfied the presentment requirement under the MTCA by providing notice on behalf of herself and all similarly situated individuals since her notice sufficiently described the conduct at issue and the harm alleged to the members of the Class to enable the City to investigate. *Id.*<sup>3</sup> The novelty

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<sup>3</sup> The SJC also examined two exceptions to liability under the MTCA. The SJC held that the public duty exception is inapplicable because the City was the original source of the corrosive water that led to the copper coil failures. *Id.* at 858-59. The SJC also held that “the determination whether the city made a discretionary policy decision not to add orthophosphate to its water or simply failed

and complexity of the legal issues weighs in favor of the fee request. *See Haddad*, 455 Mass. at 1024 (observing that the “case was complex and involved several novel or unresolved issues of law, some of which were considered by the United States Supreme Court during the course of the appellate proceedings”).

In addition, Shapiro Haber extensively investigated the case and then undertook discovery involving complex technical and scientific issues relating to the corrosiveness of the City’s water supply. *See, e.g., V Mark Software v. Emc Corp.*, 1995 Mass. Super. LEXIS 615, at \*6 (Mass. Super. Ct. Apr. 11, 1995) (recognizing that “the litigation required a substantial commitment of time and labor throughout the pre-trial, discovery and trial stages of the case” and “involved complex and technical subject matter”).

The complexity, difficulty, and novelty of the legal and factual issues and the required mastery of highly technical subject matter all strongly support Plaintiff’s Counsel’s application for attorneys’ fees.

## **2. The Time and Labor Expended was Reasonable and Necessary.**

Plaintiff’s Counsel have expended a total of 2,326.6 hours in representing the Plaintiff and the Class in this action. At the hourly billing rates set forth below, those hours produce a total lodestar of \$1,572,389. *McLoughlin Aff.* ¶¶ 9-10.

The City and SUEZ’s counsel defended this action at every turn, with tenacity and vigor, moving to dismiss, litigating an appeal of the motion to dismiss ruling, moving to strike Plaintiffs’ class allegations, aggressively litigating various discovery issues, requesting and responding to discovery including taking the Plaintiff’s deposition and then moving to preclude, and opposing

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to implement its policy decision to do so is too fact-intensive to be decided on a motion to dismiss.” *Id.* at 859-61.

Plaintiff's motion for, class certification. Plaintiff persevered, ultimately reversing the dismissal of claims against the City and achieving Class certification. The total amount of time and labor expended by Plaintiff's Counsel was more than reasonable given Defendant's "fight-everything-at-any-cost approach to this lawsuit." *Reniere*, 2014 Mass. Super. LEXIS 184 at \*16.

Class Counsel have spent further time negotiating the Settlement, preparing the settlement papers, drafting the preliminary and final approval papers, overseeing the Class notice program, and administering the Settlement in coordination with the Settlement Administrator. Class Counsel will expend additional time on the settlement administration in the coming months. *McLoughlin Aff.* ¶ 9, n. 1.

Thus, the time and effort spent by Plaintiff's Counsel was entirely reasonable and necessary to litigate the claims in this case to a successful conclusion.

### **3. The Amount of Damages Involved**

Plaintiff sought damages for the City's negligence, gross negligence and nuisance relating to the City and SUEZ's supply of water to Gardner residents, property owners and businesses, which caused copper heating coils in tankless hot water heating systems in Gardner to fail. Such damages could include the cost of replacing such copper coils. Discovery revealed that the cost to replace a copper coil ranges from approximately \$600 to \$800, and many Class members had to replace coils on multiple occasions. While Plaintiff was not certain how many Gardner residents, property owners and businesses were affected, the record shows that Gardner received complaints from hundreds of households. Plaintiff estimates that the number of coils that needed to be replaced was approximately 2,000. In light of the foregoing, it was more than "reasonable" for Plaintiff's counsel to pursue such damages, even if it turned out later had "reasonably valued the case as having greater potential than the result actually achieved. Under such circumstances, it was

reasonable for her ‘to have expended effort in the litigation commensurate with that potential.’” *Kherlop v. Domos*, 2011 Mass. Super. LEXIS 72, at \*14-15, 28 Mass. L. Rep. 254 (2011) (citation omitted). *See also Long Bay*, 2013 Mass. Super. LEXIS 193, at \*16 (\$325,000 lodestar was reasonable where “case began as a challenge to legal bills totaling \$2.6 million” and ended with “a treble-damage judgment of just under \$200,000 before interest”).

#### **4. The Results Obtained**

As noted above, the vigorous and sustained efforts of Plaintiff’s counsel culminated in a favorable decision from the SJC that: (1) Plaintiff had presented her claims in a timely manner because she had sufficiently alleged that the City had fraudulently concealed the claims by issuing public statements that disclaimed responsibility for the corrosion issue and blaming it on the natural state of the water; and (2) a class action could be brought against the City under the MTCA and that the MTCA does not require that each class member provide written notice of their claim. This paved the way on remand for Plaintiff’s successful motion to certify the Class. And then Plaintiff’s counsel negotiated a successful Settlement in which the Class will recover a considerable percentage of the damages they sustained.

“The amount recovered is one factor in determining what fee is reasonable..., but is by no means ‘the fundamental factor.’” *Haddad Motor Grp., Inc. v. Karp, Ackerman, Skabowski & Hogan, P.C.*, 603 F.3d 1, 10 (1st Cir. 2010) (quoting *Homsy v. C. H. Babb Co.*, 10 Mass. App. Ct. 474, 481 (Mass. App. Ct. 1980)); *see also Peckham v. Cont’l Cas. Ins. Co.*, 895 F.2d 830, 841 (1st Cir. 1990). As the First Circuit held in *Joyce v. Dennis*, when it found, applying Massachusetts law, that the district court had abused its discretion when it reduced an award of attorneys’ fees from more than \$170,000 to \$30,000 based upon the fact that the plaintiff obtained only \$15,000 in damages:

Consistent with this broad notion of the lawsuit's outcome, Massachusetts precedent emphasizes the need to consider, inter alia, "the interests that the statute in question is designed to protect and the public interest in allowing claims under that statute to proceed with competent counsel."

*Joyce*, 720 F.3d at 27 (quoting *Haddad*, 455 Mass. at 1025). Thus, "when a plaintiff's victory, although 'de minimis as to the extent of relief ... represent[s] a significant legal conclusion serving an important public purpose,' the fee award need not be proportionate to the damages recovered."

*Killeen v. Westban Hotel Venture, LP*, 69 Mass. App. Ct. 784, 792 (2007) (citations omitted).

The reaction of the Class to date has been favorable; to date, no objection has been filed to the proposed Settlement. McLoughlin Aff. ¶ 13. The successful results obtained by Class Counsel fully support Plaintiff's fee request.

#### **5. The Experience, Reputation, and Ability of Plaintiff's Counsel**

The experience, reputation, and ability of Plaintiff's Counsel further support the fee request. The Class was represented by highly qualified attorneys who have substantial experience in litigating complex class actions and have an excellent reputation in the Boston legal community. See McLoughlin Aff. ¶¶ 6-7 and Ex. A. Shapiro Haber & Urmy has "a national reputation for litigating a variety of national class actions." *Davis v. Footbridge Eng'g Servs., LLC*, 2011 U.S. Dist. LEXIS 93645, at \*8 (D. Mass. Aug. 22, 2011). Judges have widely praised Shapiro Haber's experience, skills, excellent lawyering, and high quality and zealous representation. See McLoughlin Aff. ¶¶ 6-7 and Ex. A. Shapiro Haber & Urmy's abilities were reflected in excellent results it achieved on behalf of the Class here, as described above and in the accompanying Memorandum in Support of Motion for Final Approval. Accordingly, the experience, reputation and ability of Plaintiff's counsel support Plaintiff's counsel's fee request.

## **6. The Usual Price Charged for Similar Services by Attorneys in the Same Area**

“A determination of a reasonable hourly rate begins with ‘the average rates in the attorney’s community for similar work done by attorneys of the same years’ experience.’” *Haddad*, 455 Mass. at 1025-26 (quoting *Stratos*, 387 Mass. at 323). As the First Circuit recognized in *Grendel’s Den, Inc. v. Larkin*, 749 F.2d 945, 950-51 (1st Cir. 1984), in setting such a rate the court should consider “the type of work performed, who performed it, the expertise that it required, and when it was undertaken.” Thus, “the type of litigation at issue is relevant to this court’s establishment of a reasonable hourly rate.” *Meagher v. Andover Sch. Comm.*, 2016 U.S. Dist. LEXIS 1100, at \*17 (D. Mass. Jan. 6, 2016).

Shapiro Haber’s hourly rates are set forth in the accompanying Affidavit of Ian J. McLoughlin and are in line with market rates. McLoughlin Aff. ¶¶ 9-10. Courts have regularly applied the hourly rates in effect at the time of the fee application, recognizing this as a equitable way of compensating attorneys who have litigated cases for long periods of time without receiving any compensation for their work. As the Supreme Court held in *Missouri v. Jenkins*, 491 U.S. 274 (1989), in discussing a federal fee shifting statute:

Our cases have repeatedly stressed that attorney’s fees awarded under this statute are to be based on market rates for the services rendered. ... Clearly, compensation received several years after the services were rendered ... is not equivalent to the same dollar amount received reasonably promptly as the legal services are performed, as would normally be the case with private billings. We agree, therefore, that an appropriate adjustment for delay in payment -- whether by the application of current rather than historic hourly rates or otherwise -- is within the contemplation of the statute.

*Id.* at 283-84.

Plaintiff's Counsel's current hourly rates are commensurate with hourly rates in complex class actions that have been approved by courts in Massachusetts.<sup>4</sup> See *Geanacopolous v. Philip Morris USA*, Final Order and Judgment (Suffolk Super. Ct. Sept. 30, 2016) (awarding Shapiro Haber & Urmy attorneys' fees at then current hourly rates); *In re Volkswagen*, 89 F. Supp. 3d at 183 (awarding Shapiro Haber & Urmy attorneys' fees (with a multiplier of two) in a multi-district class action using then current rates for Shapiro Haber & Urmy); *Davis*, 2011 U.S. Dist. LEXIS 93645, at \*10 (finding Shapiro Haber & Urmy's then current hourly rates to be reasonable and observing that "the overhead and transaction costs of a class action litigation practice, particularly a national practice" are comparable to those of large firms). The Superior Court has approved hourly billing rates at similar levels for complex cases. See *Specialized Tech. Res., Inc. v. JPS Elastomerics Corp.*, 2011 Mass. Super. LEXIS 33, at \*28-36, 28 Mass. L. Rptr. 163 (2011) (finding that comparable rates were reasonable for cases of this complexity and in keeping with the hourly rates charged by lawyers of comparable expertise in Boston).

Here, Plaintiff's Counsel have so far waited for almost a decade to receive any compensation for the extensive work they have done in this case. An award of attorneys' fees based on current hourly rates is entirely appropriate.

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<sup>4</sup> Most large fee applications are reviewed in federal court; as Judge Sanders observed in *AstraZeneca*, it is not common for the Superior Court to address sizable fee applications in class actions like this one, because in 2005, Congress "changed the diversity rules for federal jurisdiction in class actions, with the result that cases like this one are now invariably filed only in federal court." 2013 Mass. Super. LEXIS 145, at \*2, n.1.

\* \* \*

Thus, as demonstrated above, the *Linthicum* factors as applied to the facts of this case all support the reasonableness of Plaintiff's Counsel's lodestar in this case.

**C. Plaintiff's Counsel are Entitled to Reimbursement of their Expenses.**

Plaintiff's Counsel have incurred \$22,686 in expenses litigating this action for the benefit of the Class. McLoughlin Aff. ¶ 11. Those expenses, including without limitation maintaining a database for the review of discovery documents, deposition transcripts, service fees and the costs of mediation, were all reasonable and necessary to advance the interests of the Class in this case. *Id.* The requested \$129,936 fee and expense award would, if approved by the Court, reimburse Plaintiff's Counsel for all of those expenses.

**III. CONCLUSION**

For the forgoing reasons, the Court should order the requested attorney's fee and expense award to Class Counsel of \$129,936 to be paid from the Settlement Fund.

Dated: January 26, 2026

SHAPIRO HABER & URMY LLP

/s/ Ian J. McLoughlin

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**Certificate of Service**

I hereby certify that a true copy of the above document was served upon counsel of record for Defendant and Third-Party Defendant by e-mail on January 26, 2026.

/s/ Ian J. McLoughlin

Ian J. McLoughlin