UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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KAILA GONZALEZ, individually and as a representative of a class of similarly situated persons, on behalf of the NORTHWELL HEALTH 403(B) PLAN,

Plaintiff,

-against-

NORTHWELL HEALTH, INC.,

Defendant.

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REPORT AND RECOMMENDATION
20-CV-3256 (RPK) (TAM)

TARYN A. MERKL, United States Magistrate Judge:

This is a putative class action originally brought against Defendants Northwell Health, Inc. ("Northwell"), the Northwell Health 403(b) Plan Committee, and Does No. 1–10 (collectively, "Defendants").[1] (Compl., ECF No. 1; *see also* Second Am. Compl., ECF No. 72.) Plaintiff Kaila Gonzalez initiated this action in her capacity as a participant of the Northwell Health 403(b) Plan (the "Plan") under 29 U.S.C. § 1132 for breaches of Defendants' fiduciary duties under the Employment Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, *et seq.* (Compl., ECF No. 1, ¶ 1.)

Currently pending before the Court is Plaintiff's unopposed motion for preliminary settlement approval, which the Honorable Rachel P. Kovner referred to the undersigned Magistrate Judge for a report and recommendation. The Court respectfully recommends granting Plaintiff's motion.

[1] As reflected in the case caption and discussed in Section II, Procedural History, *infra*, Defendant Northwell is the only remaining defendant in the action.

FACTUAL BACKGROUND AND PROCEDURAL HISTORY

I. Factual Background[2]

The Plan is a single-employer 403(b) defined contribution retirement savings plan utilized by employees and former employees of Northwell. (*See* Second Am. Compl., ECF No. 72, ¶¶ 2, 17.) As of December 31, 2018, the Plan had 56,289 participants with account balances and assets totaling over $5.6 billion.[3] (*Id.* ¶ 4.) Under the Plan, "[t]he available investment options for participants of the Plan include various mutual funds and a fixed interest separate account." (*Id.* ¶ 17.) Additionally, "substantially all administrative expenses [related to the Plan] are paid by participants as a reduction of investment income." (*Id.*) Defendants "maintain the Plan, and are responsible for selecting, monitoring, and retaining the service provider(s) that provide investment, recordkeeping, and other services" for the Plan. (*Id.* ¶ 5.)

Plaintiff is a former employee of Northwell and a participant in the Plan. (*Id.* ¶ 9.) Plaintiff alleges that beginning six years before the date the initial complaint was filed and continuing until the date of judgment (the "Class Period"), Defendants have breached their fiduciary duties to the Plan by (1) "allow[ing] unreasonable recordkeeping and administrative expenses to be charged to the Plan," and (2) selecting, retaining, and ratifying "unsuitable," imprudent investments, rather than "offering readily available alternative investments." (*Id.* ¶¶ 1, 6.) More specifically, as to the first

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[2] The Court recites the facts as alleged in the second amended class action complaint. *See, e.g.*, *Mikhlin v. Oasmia Pharm. AB*, No. 19-CV-4349 (NGG) (RER), 2021 WL 1259559, at *1 (E.D.N.Y. Jan. 6, 2021). Remaining Defendant, Northwell Health, Inc., denies these allegations and disputes liability. (*See* Settlement Agreement, ECF No. 88-1, at ECF pp. 21–22.)

[3] More recently, as of January 1, 2023, there were over 65,374 participants in the Plan. (Berin Decl., ECF No. 88, ¶ 4.)

claimed breach of Defendants' fiduciary duties, the complaint asserts that during the Class Period, the Plan's recordkeeping and administrative fees "far exceeded the reasonable market rate," ranging from $37 to $60 per participant. (*Id.* ¶¶ 45, 61.) In Plaintiff's view, failure to take action in regard to these fees constituted a breach of fiduciary duty. (*Id.*) As to the second asserted breach, based on a claim of imprudent retention, Plaintiff alleges that because Defendants had discretion to select the investments made available to the Plan participants and Defendants failed to act in the face of persistent underperformance of one of the funds, Defendants' breaches are the direct cause of losses suffered by the Plan and its participants. (*Id.* ¶¶ 6, 72.) More specifically, Plaintiff contends that the Lazard Emerging Markets Fund Institutional Class (the "Lazard Fund"), one of the funds available under the Plan, "has substantially and repeatedly underperformed" and should have been replaced by Defendants with a better performing alternative. (*Id.* ¶¶ 69, 72.) Plaintiff asserts that Defendants' failure to act was a breach of fiduciary duty. (*Id.*) During the Class Period, Plaintiff has "maintained an investment through the Plan in the Lazard Emerging Markets Fund and was subject to the excessive recordkeeping and administrative costs alleged." (*Id.* ¶ 9.)

The proposed settlement agreement currently pending before this Court seeks to fully resolve these claims for $2,750,000 in monetary relief. (Mem., ECF No. 87, at 1.) This sum will be paid "into a Qualified Settlement Fund to be allocated to Current

Participants, Former Participants, Beneficiaries, and Alternate Payees of the Plan through a Plan of Allocation."[4] (*Id.* at 3–4.)

II. Procedural History

Plaintiff initiated this putative class action on July 21, 2020. (Compl., ECF No. 1.) Defendants first moved to dismiss on December 18, 2020; Plaintiff filed an opposition to the motion to dismiss, and then filed an amended complaint on August 16, 2021, before a ruling on the motion. (Mot. to Dismiss, ECF No. 18; Mem. in Opp'n, ECF No. 20; Am. Compl., ECF No. 30.) On December 1, 2021, the parties filed briefing on Defendants' renewed motion to dismiss the amended complaint. (Mot. to Dismiss, ECF No. 35; Mem. in Opp'n, ECF No. 39; Reply, ECF No. 40.) Judge Kovner granted Defendants' motion to dismiss on September 30, 2022, and directed Plaintiff that any motion seeking leave to file a second amended complaint must be filed by October 31, 2022. (Mem. & Order, ECF No. 51; Sept. 30, 2022 ECF Order.)

Plaintiff filed her motion seeking leave to amend by the October 31, 2022 deadline. (Mot. for Leave to File, ECF No. 52.) Defendants filed their opposition on November 22, 2022, and Plaintiff filed her reply on December 9, 2022. (Mem. in Opp'n,

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[4] The proposed "Settlement Class" is defined as follows:

> All persons who participated in the Plan at any time during the Class Period (July 21, 2014, through the date the Preliminary Approval Order is entered by the Court), including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendant [Northwell Health, Inc.], the Retirement Committees (as defined in the Settlement Agreement), the Board of Trustees of Northwell Health (including its individual members), and their Beneficiaries [(the "Settlement Class" or "Class Members")].

(Proposed Order, Ex. C to Settlement Agreement, ECF No. 88-1, at ECF p. 49.)

ECF No. 54; Reply, ECF No. 56.) On March 26, 2024, Judge Kovner granted in part and denied in part Plaintiff's motion. (Mem. & Order, ECF No. 71.) More specifically, Judge Kovner denied leave to amend Plaintiff's imprudent-retention claims regarding two of the Plan's investment options, the Large Value Option and Causeway/BNY Mellon Option, but granted leave to amend Plaintiff's imprudent-retention claim concerning the Lazard Emerging Markets Fund, recordkeeping-fees claim, and failure-to-monitor, co-fiduciary-breach, and knowing-participation claims. (*See id.* at 1.)

On April 9, 2024, Plaintiff filed her second amended complaint. (Second Am. Compl., ECF No. 72.) Defendants filed an answer on May 23, 2024. (Answer, ECF No. 74.) The parties subsequently proceeded to discovery. (*See* July 22, 2024 ECF Min. Entry & Order (setting discovery schedule).) On October 16, 2024, the parties filed a stipulation agreeing to dismiss Defendant Northwell Health 403(b) Plan Committee and the individual members of the Committee (referred to as Does No. 1–10 in the pleadings), which was so-ordered on October 21, 2024. (Stipulation, ECF No. 81; Oct. 21, 2024 ECF Order Dismissing Parties.) Following the dismissal of these parties, the only defendant remaining is Defendant Northwell Health, Inc. ("Defendant").

On January 6, 2025, the remaining parties moved to stay case deadlines while the parties attended mediation. (Mot. to Stay, ECF No. 82.) The Court granted the motion and directed the parties to file a joint status letter by May 21, 2025. (Jan. 7, 2025 ECF Order.) On May 21, 2025, the parties filed a letter representing that they had attended a private mediation session and, as a result of the mediation, the parties had reached a settlement in principle. (Letter, ECF No. 83.) The Court directed the parties to file their motion for preliminary settlement approval. (May 22, 2025 ECF Order.)

Following several extension requests, the parties filed their unopposed motion for preliminary settlement approval on August 19, 2025. (Mot. for Settlement ("Mot."),

ECF No. 86.) The motion was referred to the undersigned Magistrate Judge for a report and recommendation; following referral, the Court scheduled a fairness hearing to take place on November 4, 2025. (Aug. 20, 2025 ECF Order Referring Mot.; Oct. 15, 2025 ECF Scheduling Order.)

The Court held a fairness hearing on November 4, 2025. (*See* Nov. 4, 2025 ECF Min. Entry & Order; Tr. of Nov. 4, 2025 Preliminary Fairness Hearing ("Fairness Hearing"), ECF No. 91.) The Court heard argument regarding Plaintiff's unopposed pending motion, including the likelihood of final settlement approval and class certification, as well as the parties' proposed notice procedures. (*See generally* Fairness Hearing, ECF No. 91.) The Court directed the parties to make specific corrections to the proposed notice to be provided to the putative Class Members ("Notice") and further requested that the parties provide in the Notice an estimate for the administrative costs to be charged by the settlement administrator. (*See id.*, at 23:9–29:5.) Moreover, the Court inquired about the proposed Class Action Fairness Act Notice's (the "CAFA Notice") compliance with 28 U.S.C. § 1715(b)(7) because the proposed CAFA Notice did not include an estimated proportionate share of the claims for each state. (*See id.* at 43:5–47:21.) Accordingly, the Court directed the parties to submit a revised Notice and propose timing for the submission of a supplemental CAFA Notice. (*See* Nov. 4, 2025 ECF Min. Entry & Order.) The Court took the pending motion under advisement. (*Id.*)

On November 18, 2025, Plaintiff filed a supplemental letter that included proposed timing for the submission of a supplemental CAFA Notice, which would include the estimated proportionate share of the claims for each state. (*See* Pl.'s Letter, ECF No. 92, at 1.) Along with this letter, Plaintiff also filed a revised Notice. (Revised Notice, ECF No. 92-1.)

DISCUSSION

Plaintiff requests that the Court (1) preliminarily approve the settlement agreement; (2) preliminarily certify the Settlement Class; (3) approve the proposed notice plan ("Notice Plan"); and (4) schedule a fairness hearing to consider final approval of the settlement. (Mot., ECF No. 86, at 1.) Plaintiff also requests to have Miller Shah appointed as class counsel. (Mem., ECF No. 87, at 14–15.)

Under Federal Rule of Civil Procedure 23(e), "[t]he claims, issues, or defenses of a certified class — or a class proposed to be certified for purposes of settlement — may be settled, voluntarily dismissed, or compromised only with the court's approval." Fed. R. Civ. P. 23(e). "At the preliminary approval stage, a court makes an initial evaluation of fairness prior to notifying the class . . . ." *Rosenfeld v. Lenich*, No. 18-CV-6720 (NGG) (PK), 2021 WL 508339, at *3 (E.D.N.Y. Feb. 11, 2021).

Preliminary approval is guided by a "likelihood standard," *i.e.*, "whether the parties have shown that the court will likely be able to grant final approval and certify the class." *In re Payment Card Interchange Fee & Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 28 n.21 (E.D.N.Y. 2019) (hereinafter "*Payment Card*"); *see also* Fed. R. Civ. P. 23(e)(1)(B)(i)–(ii). "If the court determines that notice to class members is 'justified by the parties' showing'" as to the likelihood of final approval and class certification, "it 'must direct notice in a reasonable manner to all class members who [would] be bound by the proposal.'" *Rosenfeld*, 2021 WL 508339, at *4 (quoting Fed. R. Civ. P. 23(e)(1)(B)). The court must also appoint class counsel for purposes of settlement. *Payment Card*, 330 F.R.D. at 58.

The Court begins with an analysis of the likelihood of final settlement approval and class certification, then assesses the proposed form and manner of notice, and concludes with appointment of class counsel.

I. Likelihood of Final Settlement Approval

A. Legal Standards

In assessing the likelihood of final approval, courts "look[] to the factors contained in the text of Rule 23(e)(2)." *Payment Card*, 330 F.R.D. at 28. Under Rule 23(e)(2), courts must consider whether:

> (A) the class representatives and class counsel have adequately represented the class;
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> (B) the proposal was negotiated at arm's length;
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> (C) the relief provided for the class is adequate, taking into account:
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> > (i) the costs, risks, and delay of trial and appeal;
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> > (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
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> > (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
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> > (iv) any agreement required to be identified under Rule 23(e)(3); and
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> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). "[P]aragraphs (A) and (B) are 'procedural' factors that address 'the conduct of the litigation and of the negotiations leading up to the proposed settlement,' whereas . . . paragraphs (C) and (D) are 'substantive' factors that address the 'relief that the settlement is expected to provide to class members.'" *Rosenfeld*, 2021 WL 508339, at *3 (quoting Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment).

The substantive factors are supplemented by the nine *Grinnell* factors, which "courts in this Circuit have traditionally considered" when "evaluating the fairness, reasonableness, and adequacy of the proposed settlement." *Id.* (citing *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v.*

Integrated Res., Inc., 209 F.3d 43 (2d Cir. 2000)); *Payment Card*, 330 F.R.D. at 29 (noting the "significant overlap" between the *Grinnell* and substantive factors). The *Grinnell* factors include:

> (1) the expense, complexity, and likely duration of the litigation; (2) the class's reaction to the settlement; (3) the stage of the proceedings and amount of discovery completed; (4) the risks of establishing damages; (5) the risks of establishing liability; (6) the risks of maintaining the class throughout the litigation; (7) defendants' ability to withstand greater judgment; (8) the range of reasonableness of the settlement amount considering the best possible recovery; and (9) the range of reasonableness of the settlement amount given the risks of litigation.

Rosenfeld, 2021 WL 508339, at *3 (citing *Grinnell*, 495 F.2d at 463).

B. Analysis

1. *Procedural Factors*

a. Adequate Representation

"In determining the adequacy of class representatives and counsel, courts consider 'whether (1) plaintiff[s'] interests are antagonistic to the interests of other members of the class and (2) plaintiff[s'] attorneys are qualified, experienced[,] and able to conduct the litigation.'" *Rosenfeld*, 2021 WL 508339, at *4 (quoting *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007)); *see Payment Card*, 330 F.R.D. at 30 n.25 (explaining that "Rule 23(a)(4) case law . . . guide[s]" the Rule 23(e)(2)(A) analysis). Class representatives "'must be part of the class and possess the same interest and suffer the same injury as the [other] class members.'" *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011) (quoting *E. Tex. Motor Freight Sys., Inc. v. Rodriguez*, 431 U.S. 395, 403 (1977) (internal quotation marks omitted)); *see also Payment Card*, 330 F.R.D. at 31 (explaining that the Due Process Clause requires adequate representation). As for class counsel, "[a] court reviewing a proposed settlement must pay close attention to the negotiating process, to ensure that . . . counsel have possessed

the experience and ability, and have engaged in the discovery[] necessary to effective representation of the class's interests." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (quotation marks omitted); *see also* Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment ("For example, the nature and amount of discovery in this or other cases . . . may indicate whether counsel negotiating on behalf of the class had an adequate information base.").

Here, the record illustrates that Plaintiff's interests are aligned with those of the proposed Settlement Class. Plaintiff seeks to recover damages and equitable relief on behalf of Class Members after Defendant allegedly breached fiduciary duties owed to the Plan participants, beneficiaries, and alternate payees; therefore, "[a]ll participants seek the same make-whole relief claimed by the named plaintiff[] for . . . breach of fiduciary duties." *Becher v. Long Island Lighting Co.*, 164 F.R.D. 144, 152 (E.D.N.Y. 1996) (quotation marks omitted), *amended*, 172 F.R.D. 28 (E.D.N.Y. 1997). Additionally, counsel has represented that Plaintiff "has been actively involved in every stage of the litigation." (Mem., ECF No. 87, at 10, 17.) At the Fairness Hearing, counsel noted that Plaintiff "was really instrumental to us in building out the initial pleadings in this action, in providing documents and responding to discovery requests, in communicating with us about what her experience as a plan participant was . . . [, and] took seriously her responsibility to represent the other members of the plan and act on their behalf." (Fairness Hearing, ECF No. 91, at 32:11–22.) Plaintiff is also not aware of any conflicts between herself and any other Class Members. (Mem., ECF No. 87, at 17; *see* Fairness Hearing, ECF No. 91, at 36:18–37:19 (counsel for Plaintiff and Defendant confirming that they have no concern about Plaintiff's ability to represent all Class Members).) Absent any indication that Plaintiff's interests in this action "are antagonistic to the interest[s] of other members of the class," the record demonstrates

that Plaintiff is well positioned to represent the proposed Settlement Class. *Cordes*, 502 F.3d at 99.

The Court similarly finds that Plaintiff is adequately represented by her attorneys (herein referred to as "Lead Counsel"). The Court observes that Lead Counsel have substantial experience litigating and overseeing the administration of settlements in ERISA fiduciary breach cases, and have served as lead counsel in numerous significant ERISA cases prosecuted on behalf of retirement plan participants. (Berin Decl., ECF No. 88, ¶ 5; Mem., ECF No. 87, at 14–15.) Both the pleadings and motion papers demonstrate a thorough investigation by Lead Counsel into the underlying facts and applicable law. (*See generally* Pl.'s Mem. in Opp'n to Mot. to Dismiss., ECF No. 39; Mot. for Leave to Amend, ECF No. 52; Second Am. Compl., ECF No. 72.) Plaintiff also represents that, in addition to the "filing of multiple detailed and comprehensive pleadings, briefing and litigating of" motions, Lead Counsel has pursued "substantial discovery efforts" and undertook mediation and the negotiation of this settlement, all of which supports the conclusion that Lead Counsel has adequately represented the interests of the proposed class. (Mem., ECF No. 87, at 11, 14; *see* Fairness Hearing, ECF No. 91, at 6:5–7:10; *see also* Mediation Status Letter, ECF No. 83.) In light of Lead Counsel's experience and efforts in this case to investigate and substantiate the alleged violations, the Court finds that Plaintiff is being represented by "qualified, experienced" legal counsel. *Cordes*, 502 F.3d at 99.

b. Arm's Length Negotiation

"A class settlement reached through arm's-length negotiations between experienced, capable counsel knowledgeable in complex class litigation is entitled to a presumption of fairness." *Rosenfeld*, 2021 WL 508339, at *5 (quotation marks omitted). Likewise, a mediator's involvement "in pre-certification settlement negotiations helps

to ensure that the proceedings were free of collusion and undue pressure." *D'Amato*, 236 F.3d at 85.

Here, the Court notes that the parties settled through private mediation after significant discovery. (Mem., ECF No. 87, at 17.) Plaintiff posits that the mediator, Robert A. Meyer, Esq. of JAMS,[5] is "one of the most highly respected, sought after, and experienced mediators in the country in complex financial disputes and has significant experience mediating ERISA actions." (Berin Decl., ECF No. 88, ¶ 7; *see also* Fairness Hearing, ECF No. 91, at 6:25–7:10, 11:18–12:10.) In fact, several courts in this Circuit have held that Mr. Meyer's involvement has supported a finding that settlement negotiations were at arm's length. *See, e.g.*, *In re N. Dynasty Mins. Ltd. Sec. Litig.*, No. 20-CV-5917 (TAM), 2023 WL 5511513, at *3 n.5 (E.D.N.Y. Aug. 24, 2023) (collecting cases); *Snitzer v. Bd. of Trs. of Am. Fed'n of Musicians & Employers' Pension Fund*, No. 17-CV-5361 (VEC), 2020 WL 2508849, at *3 (S.D.N.Y. May 14, 2020). Based on the record in this case, as well as the parties' representations during the Fairness Hearing, there is no "'evidence or indicia suggesting that the negotiations were collusive.'" *Gordon v. Vanda Pharm. Inc.*, No. 19-CV-1108 (FB) (LB), 2022 WL 4296092, at *4 (E.D.N.Y. Sept. 15, 2022) (quoting *Simerlein v. Toyota Motor Corp.*, No. 17-CV-1091 (VAB), 2019 WL 1435055, at *13

[5] JAMS, previously known as Judicial Arbitration and Mediation Services, Inc., represents itself to be "the premier provider of alternative dispute resolution (ADR) services" in the world. *About Us*, JAMS, https://www.jamsadr.com/about/ (last visited Dec. 20, 2025). It is further represented that Mr. Meyer has been a mediator for more than 12 years, with experience in "cases arising under ERISA." *Robert A. Meyer, Esq.*, JAMS, https://www.jamsadr.com/meyer/ (last visited Dec. 20, 2025). Courts in this circuit have observed Mr. Meyer to be "an experienced professional mediator." *Snitzer v. Bd. of Trs. of Am. Fed'n of Musicians & Employers' Pension Fund*, No. 17-CV-5361 (VEC), 2020 WL 2508849, at *3 (S.D.N.Y. May 14, 2020); *see also In re N. Dynasty Mins. Ltd. Sec. Litig.*, No. 20-CV-5917 (TAM), 2023 WL 5511513, at *3 n.5 (E.D.N.Y. Aug. 24, 2023) (collecting cases).

(D. Conn. Jan. 14, 2019)). The Court therefore finds that the parties' proposed settlement was the result of arm's length negotiations.

2. *Substantive Factors*

a. Adequate Relief

i. Costs, Risks, and Delay of Trial and Appeal

The first factor in assessing whether the proposed settlement provides adequate relief for the putative class is an evaluation of the "costs, risks, and delay of trial and appeal." Fed. R. Civ. P. 23(e)(2)(C)(i). This factor "'subsumes several *Grinnell* factors,' including the complexity, expense and likely duration of litigation, the risks of establishing liability, the risks of establishing damages, and the risks of maintaining the class through trial" (factors 1, 4, 5, and 6). *Rosenfeld*, 2021 WL 508339, at *5 (quoting *Payment Card*, 330 F.R.D. at 36). Put simply, courts must assess whether the proposed settlement "'results in substantial and tangible present recovery, without the attendant risk and delay of trial.'" *Id.* (quoting *Payment Card*, 330 F.R.D. at 36).

The parties have submitted their proposed settlement agreement, which indicates that the settlement amount is $2,750,000. (*See* Settlement Agreement, ECF No. 88-1, ¶ 1.28.) Plaintiff represents that without approval of the settlement agreement, "vigorous litigation" would resume, including possible dispositive and trial motions. (Mem., ECF No. 87, at 19.) The parties agree that litigation would be extremely costly and time-intensive. (*See* Fairness Hearing, ECF No. 91, at 8:17–21, 19:6–20:12.) As to the "substantial risk" of continued litigation, Plaintiff contends that ERISA breach of fiduciary duty actions are difficult to prosecute as they "'involve a complex and rapidly evolving area of law,'" in which "[n]ew case theories are frequently filed and evolving precedents are frequently issued." (Mem., ECF No. 87, at 19 (quoting *In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08–1432 (DMC) (JAD), 2012 WL 1964451, at *5

(D.N.J. May 31, 2012)). In addition, at the Fairness Hearing, Plaintiff represented that "the damages that we think would have been reasonably the best possible outcome [at trial, assuming success on the investment claim only,] would have been somewhere between [$]3.9 and 5.6 million." (Fairness Hearing, ECF No. 91, at 15:14–16.)[6] Accordingly, the proposed settlement of $2,750,000 represents 49 to 70% of Plaintiff's estimated maximum recovery after trial. The difficulty of prosecuting this action and the concomitant litigation risks further support settlement, when weighed against the substantial recovery offered by the settlement.

The Court concludes that the costs, risks, and likely duration of continuing to litigate this matter are significant and that the proposed settlement would result in a significant, tangible present recovery. This factor therefore weighs strongly in favor of preliminary approval of the parties' proposed settlement.

ii. Effectiveness of Proposed Method of Distributing Relief

The Court next evaluates the parties' "proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii). "An allocation formula need only have a reasonable, rational basis" and "need not be perfect." *Payment Card*, 330 F.R.D. at 40 (quotation marks omitted). As to claims processing, the proposed method should "'deter or defeat unjustified claims'

[6] At the Fairness Hearing, Plaintiff indicated that "the best possible recovery would have been somewhere between [$]10 and []13 million," with "the recordkeeping portion of that itself amount[ing] to about [$]6.5 million." (Fairness Hearing, ECF No. 91, at 15:9–12.) However, Plaintiff went on to acknowledge that the recordkeeping claim "was the claim that we felt we would have a more difficult time proving at trial." (*Id.* at 15:12–13.) Therefore, Plaintiff ultimately represented that "reasonably," "the best possible outcome would have been somewhere between [$]3.9 and 5.6 million." (*Id.* at 15:15–16.)

without imposing an undue demand on class members." *Rosenfeld*, 2021 WL 508339, at *6 (quoting Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment).

The Settlement Agreement contains a Plan of Allocation, which outlines the notice and claims process of distributing relief to members of the Settlement Class. (Plan of Allocation, Ex. B to Settlement Agreement, ECF No. 88-1, at ECF pp. 40–46.) As discussed above, members of the class must be "a Current Participant, Former Participant, Beneficiary, or Alternate Payee." (*Id.* at ECF p. 41.) The net settlement amount "will be divided 50/50 between the investment claims and the recordkeeping claims." (Fairness Hearing, ECF No. 91, at 21:3–5.) *Pro rata* payments shall be calculated by determining an "Investments Score" and a "Recordkeeping Score" for each member. (*Id.* at ECF pp. 41–42.) This way, the Plan of Allocation "would provide *pro rata* recovery relative to the average size and strength of the categories of claims." (Mem., ECF No. 87, at 20; *see* Fairness Hearing, ECF No. 91, at 21:5–23 (explaining how distributions will be calculated for the Settlement Class).) In short, for the investment claim, the *pro rata* share will be calculated by looking at what the participant's "year-end balance in the Lazard [F]und was," which will then be divided by "what the [P]lan's total year-end balance in that fund was" such that the Class Member will "get their proportional share of their investment in that fund for each year in the [C]lass [P]eriod that they were invested in that fund." (Fairness Hearing, ECF No. 91, at 21:10–15.) Likewise, for the recordkeeping claim, "the settlement administrator will look to see who paid a recordkeeping fee in each year of the [C]lass [P]eriod"; those individuals will then "get their *pro rata* share of whatever the net settlement amount is based on how many people paid the recordkeeping fee that year." (*Id.* at 21:16–23.) Plaintiff also notes that, because the proposed Settlement Class is comprised of participants, former participants, beneficiaries, and alternate payees of the Plan, the data needed to administer the

settlement is already largely in the possession of the Plan's recordkeepers. (Mem., ECF No. 87, at 19.)

"This allocation plan appears to be rational and fair, as it treats class members equitably while taking into account variations in the magnitude of their injuries." *Rosenfeld*, 2021 WL 508339, at *6. Likewise, it appears that the claims processing method imposes a minimal burden on claimants. The Court therefore finds that the proposed methods of processing claims and distributing relief are rational and fair.

iii. Proposed Award of Attorneys' Fees

The third factor in the evaluation of whether the settlement provides adequate relief is an assessment of "the terms of any proposed award of attorneys' fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). "Courts may award attorneys' fees in common fund cases under either the 'lodestar' method or the 'percentage of the fund' method." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005), (hereinafter "*Visa U.S.A.*") (quoting *Goldberger*, 209 F.3d at 50).

Here, Lead Counsel anticipates requesting feed and costs "in an amount not to exceed one-third of the Gross Settlement Amount (*i.e.*, $916,666.67)." (Mem., ECF No. 87, at 20.) Counsel notes that the settlement is not conditioned upon the award of any such fees. (*Id.*)

"Courts in this Circuit routinely find that requests for attorney's fees totaling one-third of the settlement fund are well within the range of reasonableness," particularly "in cases with funds of less than $10 million." *Rosenfeld*, 2021 WL 508339, at *6 (quotation marks omitted). Assuming that Lead Counsel's request for litigation fees

and expenses is documented and substantiated, the Court finds that the requested award for attorneys' fees will likely be found to be reasonable.[7]

iv. Other Agreements

The fourth factor requires courts to consider "any agreement required to be identified under Rule 23(e)(3)," *i.e.*, "any agreement made in connection with the proposal." Fed. R. Civ. P. 23(e)(2)(C)(iv), (e)(3). Rule 23(e)(3) is aimed at revealing "undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others," namely, the representative plaintiffs or their attorneys. Fed. R. Civ. P. 23 advisory committee's note to 2003 amendment; *see also* David F. Herr, Annotated Manual for Complex Litigation § 21.631 (4th ed., Aug. 2025 Update) ("Requiring the parties to file the complete agreement might elicit comments from class members and facilitate judicial review.").

Here, Lead Counsel represent that they "are not aware of any agreements required to be disclosed under Rule 23(e)(3)." (Mem., ECF No. 87, at 20.) The parties further confirmed at the Fairness Hearing that there are no other agreements amongst the parties. (Fairness Hearing, ECF No. 91, at 32:4–33:13.)

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[7] The Court notes that Lead Counsel's requested award is, of course, subject to modification at final settlement approval. *See Rosenfeld v. Lenich*, No. 18-CV-6720 (NGG) (PK), 2021 WL 508339, at *7 (E.D.N.Y. Feb. 11, 2021). Lead Counsel should be prepared to submit contemporaneous time records to facilitate a cross-check against the lodestar. *See In re PPDAI Grp. Inc. Secs. Litig.*, No. 18-CV-6716 (TAM), 2022 WL 198491, at *14–17 (E.D.N.Y. Jan. 21, 2022); *see also Marion S. Mishkin L. Off. v. Lopalo*, 767 F.3d 144, 148–49 (2d Cir. 2014) (discussing the "strict rule" that any request for attorneys' fees must be "accompanied by contemporaneous time records" (quotation marks omitted)).

b. Equitable Treatment

The proposed settlement must "treat[] class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). In making this assessment, "the court may weigh 'whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.'" *Rosenfeld*, 2021 WL 508339, at *7 (quoting Fed. R. Civ. P. 23 advisory committee's note to 2018 amendment). As explained above, the Settlement Agreement provides for disbursement to Class Members on a *pro rata* basis, relative to each Class Member's damages for each claim. "In this way, the agreement appropriately and fairly accounts for . . . point[s] of differentiation among class members' claims." *Id.*

The Court further notes that the proposed settlement agreement contemplates a Case Contribution Award to Plaintiff. (*See* Settlement Agreement, ECF No. 88-1, § 1.10; Mem., ECF No. 87, at 20.) Specifically, the Settlement Agreement provides that "Plaintiff, through Class Counsel, may seek an amount not exceeding $10,000.00 payable from the Gross Settlement Amount," and that "[a]ny such Case Contribution Award shall be subject to the approval of the Court." (Settlement Agreement, ECF No. 88-1, § 1.10.) "Incentive awards are not uncommon in class action cases and are within the discretion of the court." *Torres v. Toback, Bernstein & Reiss LLP*, No. 11-CV-1368 (NGG) (VVP), 2014 WL 1330957, at *3 (E.D.N.Y. Mar. 31, 2014) (quotation marks omitted). At this juncture, given the size of the settlement fund, the Court finds it unlikely that a requested award of up to $10,000 total will preclude final settlement

approval, assuming that Plaintiff demonstrates "special circumstances" for such an award.[8] *Id*. (quotation marks omitted).

c. Stage of Proceedings and Amount of Discovery Completed (*Grinnell* Factor 3)[9]

"This [*Grinnell*] factor requires the Court to consider whether the parties have adequate information about their claims." *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 198 (S.D.N.Y. 2012). "To approve a proposed settlement," however, "the Court need not find that the parties have engaged in extensive discovery." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000). The Court need only ensure that the parties have sufficiently investigated the facts such that the settlement is fair and reasonable. *See id.*

Here, the parties have engaged in dispositive motion practice, as well as discovery, which involved the production of documents and information. (Mem., ECF No. 87, at 3.) Additionally, the parties exchanged detailed mediation statements and exhibits in advance of mediation. (*Id.*) Plaintiff represents that the parties' "thorough investigation" has "afforded them extensive knowledge and information about the

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[8] Special circumstances include "the personal risk (if any) incurred by the plaintiff-applicant in becoming and continuing as a litigant, the time and effort expended by that plaintiff in assisting in the prosecution of the litigation or in bringing to bear added value (e.g., factual expertise)," as well as "any other burdens sustained by that plaintiff in lending himself or herself to the prosecution of the claim, and of course, the ultimate recovery." *Torres v. Toback, Bernstein & Reiss LLP*, No. 11-CV-1368 (NGG) (VVP), 2014 WL 1330957, at *3 (E.D.N.Y. Mar. 31, 2014) (quotation marks omitted). The reasonableness and amount of the incentive award may also depend on the average amount ultimately paid to similarly situated individual claimants out of the settlement fund. *Cf. id.* at *4 (reducing proposed incentive award based, in part, on estimated compensation to be paid to other class members). Plaintiff is "encouraged to be mindful of [these] concerns when" making any future request for an incentive award. *Id.*

[9] The second *Grinnell* factor, "the class's reaction to the settlement," cannot be assessed at this time. *Rosenfeld*, 2021 WL 508339, at *3; *see id.* at *4 n.2 (declining to assess this factor at the preliminary approval stage because the factor "cannot be considered until after notice has been provided to the class").

claims and defenses relevant to this action." (*Id.* at 18.) Accordingly, the Court finds that the parties were adequately informed about the claims prior to reaching a proposed settlement.

d. Defendant's Ability to Withstand a Greater Judgment (*Grinnell* Factor 7)

"Under the *Grinnell* analysis, the court also considers Defendant's ability to withstand a greater judgment than that provided for in the proposed settlement." *Rosenfeld*, 2021 WL 508339, at *7. Neither party has claimed that the proposed settlement amount approaches the upper limit of Defendant's ability to pay. (Fairness Hearing, ECF No. 91, at 34:17–35:24.) As Plaintiff notes, however, a defendant's "ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair." *Pinnacle Grp.*, 874 F. Supp. 2d at 201 (quotation marks omitted). (*See* Mem., ECF No. 87, at 21–22 (quoting *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 696 (S.D.N.Y. 2019) (observing that while a defendant entity "is likely to be able to withstand a more substantial judgment, [] against the weight of the remaining factors, this fact alone does not undermine the reasonableness" of a settlement)).) Rather, "[t]his factor must be weighed in conjunction" with the others. *In re AOL Time Warner, Inc.*, No. 02-CV-5575, 2006 WL 903236 (SWK), at *12 (S.D.N.Y. Apr. 6, 2006).

Accordingly, although the proposed $2,750,000 settlement may be less than Defendant's theoretical capacity to pay, the Court finds that this factor is not likely to preclude settlement approval given that the settlement amount represents a substantial percentage of the estimated damages.

e. Range of Reasonableness of Settlement Fund (*Grinnell* Factors 8 and 9)

The Court next considers "the range of reasonableness of the settlement fund in light of [both] the best possible recovery" and "the attendant risks of litigation." *Charron v. Wiener*, 731 F.3d 241, 247 (2d Cir. 2013) (quotation marks omitted); *see Payment Card*,

330 F.R.D. at 47–48 (noting that these "two *Grinnell* factors . . . are often combined for the purposes of analysis"). To calculate the best possible recovery, courts "assume complete victory on both liability and damages as to all class members on every claim asserted against each defendant in the [a]ction." *Payment Card*, 330 F.R.D. at 48 (quotation marks omitted). The risks of litigation include "the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Visa U.S.A.*, 396 F.3d at 119 (quotation marks omitted).

Here, as discussed above, Plaintiff avers that the settlement amount "represents a substantial percentage of the Plan's recoverable losses." (Mem., ECF No. 87, at 23; Fairness Hearing, ECF No. 91, at 15:8–16.) That said, it is well established that although "a proposed settlement may only amount to a fraction of the potential recovery," that does not "mean that the proposed settlement is grossly inadequate and should be disapproved." *Grinnell*, 495 F.2d at 455. "[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *Id.* at 455 n.2. This is because the "best possible recovery" may not be "a realistic" one. *Cagan v. Anchor Sav. Bank FSB*, No. 88-CV-3024 (CPS), 1990 WL 73423, at *13 (E.D.N.Y. May 22, 1990). Accordingly, it remains important to evaluate the settlement amount "in light of the strengths and weaknesses of [the] plaintiffs' case." *Rodriguez v. CPI Aerostructures, Inc.*, No. 20-CV-982 (ENV) (CLP), 2023 WL 2184496, at *16 (E.D.N.Y. Feb. 16, 2023) (quotation marks omitted). Given the risks of litigation described above, including the risk of an adverse outcome for Plaintiff in light of the complexity of the claims and applicable law, the Court finds that the parties' settlement amount, which is estimated at approximately 49 to 70% of Plaintiff's "best

possible outcome" after trial, falls well within a reasonable range. (Fairness Hearing, ECF No. 91, at 15:15.)

* * * * *

On balance, the Court concludes that an evaluation of both the procedural and substantive factors set forth in Rule 23 and *Grinnell* indicates that the parties' proposed settlement is fair and reasonable.

II. Likelihood of Class Certification

A. Legal Standards

"In order to conclude that giving notice to the putative class is justified, the court must also determine that it will likely be able to certify the class for purposes of judgment on the proposal" under Rule 23(a) and (b). *Rosenfeld*, 2021 WL 508339, at *8. It is the burden of the party seeking class certification to "affirmatively demonstrate" compliance with these rules. *In re Am. Int'l Grp., Inc. Secs. Litig.*, 689 F.3d 229, 237 (2d Cir. 2012) (quotation marks omitted).

Rule 23(a) sets forth the familiar "four prerequisites for class certification": (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *Rosenfeld*, 2021 WL 508339, at *8; *see* Fed. R. Civ. P. 23(a). "In addition to the explicit requirements of Rule 23(a), the class must satisfy the implied requirement of ascertainability." *Payment Card*, 330 F.R.D. at 50 (citing *In re Petrobras Secs.*, 862 F.3d 250, 266 (2d Cir. 2017)).

Rule 23(b) "lays out three alternative 'types' of class actions that may be maintained." *Rosenfeld*, 2021 WL 508339, at *9. Relevant here, Plaintiff seeks certification under Rule 23(b)(1). (*See* Mem., ECF No. 87, at 11–14.) Plaintiff must therefore satisfy at least one subsection of Rule 23(b)(1), which requires that Plaintiff demonstrate that the prosecution of separate actions would create either (A) the risk of "inconsistent or

varying adjudications with respect to individual class members," or (B) the risk of "adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests." Fed. R. Civ. P. 23(b)(1)(A)–(B).

B. Analysis

1. *Rule 23(a) Requirements*

a. Numerosity

"The numerosity requirement mandates that the class be 'so numerous that joinder of all members is impracticable.'" *In re Sadia, S.A. Secs. Litig.*, 269 F.R.D. 298, 304 (S.D.N.Y. 2010) (quoting Fed. R. Civ. P. 23(a)(1)). The "inquiry is not strictly mathematical but must take into account the context of the particular case." *Penn. Pub. Sch. Emps.' Ret. Sys. v. Morgan Stanley & Co.*, 772 F.3d 111, 120 (2d Cir. 2014); *see also id.* (listing factors to consider). As a general rule, when a class consists of 40 or more members, numerosity is presumed. *Consol. Rail Corp. v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995).

Here, Plaintiff represents that there are more than 50,000 proposed Class Members who participated in or benefitted from the Plan over the course of the proposed Class Period. (*See* Mem., ECF No. 87, at 6; Berin Decl., ECF No. 88, ¶ 4 ("[T]here were over 65,374 participants in the Plan as of January 1, 2023.").) Defendant does not dispute that the numerosity requirement is likely to be met. (*Cf.* Fairness Hearing, ECF No. 91, at 36:8 (the Court observing that "[n]umerosity [is] clearly not a concern here").) The Second Circuit recognizes that numerosity may be found where the proposed class is "obviously numerous." *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d

Cir. 1997). Plaintiff has thus established a high likelihood that the numerosity requirement will be satisfied at the time of final settlement approval.

b. Commonality

"Commonality requires a showing that common issues of fact or law affect all class members." *In re Sadia*, 269 F.R.D. at 304 (citing Fed. R. Civ. P. 23(a)(2)). It "requires the plaintiff to demonstrate that the class members 'have suffered the same injury,'" not "merely that they have all suffered a violation of the same provision of law." *Dukes*, 564 U.S. at 349–50 (quoting *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982)). "In other words, the relevant inquiry is whether a classwide proceeding is capable of 'generat[ing] common *answers* apt to drive the resolution of the litigation.'" *Jacob v. Duane Reade, Inc.*, 602 F. App'x 3, 6 (2d Cir. 2015) (alteration and emphasis in original) (quoting *Dukes*, 564 U.S. at 350 (internal quotation marks omitted)).

Given that this case centers on "legal and factual questions that inherently affect all participants and beneficiaries in the Plan," and courts commonly find that ERISA breach of fiduciary duty claims satisfy commonality, the Court concludes that the pleadings clearly allege that the class members have suffered the same injury. (Mem., ECF No. 87, at 7.) *See, e.g.*, *Cunningham v. Cornell Univ.*, No. 16-CV-6525 (PKC), 2019 WL 275827, at *5 (S.D.N.Y. Jan. 22, 2019) ("Because the fiduciary duties are owed to the Plans, not to individual accounts, common questions of law and fact are central to the case."). Commonality is present.

c. Typicality

"[T]he typicality requirement[] is satisfied by a showing that 'each class member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability.'" *In re Deutsche Bank AG Secs. Litig.*, 328 F.R.D. 71, 80 (S.D.N.Y. 2018) (quoting *In re Flag Telecom Holdings, Ltd. Secs.*

Litig., 574 F.3d 29, 35 (2d Cir. 2009) (internal quotation marks omitted)). It "is usually met" where "the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented." *Robidoux v. Celani*, 987 F.2d 931, 936–37 (2d Cir. 1993). In this case, each Class Member's claim is typical, given that allegations of breach of fiduciary duty affect each member and every member "is asserting the Plan's claim." (Mem., ECF No. 87, at 9.) The Court finds that Plaintiff has demonstrated the typicality requirement in this case.

d. Adequacy of Representation

To satisfy the adequacy requirement, "[p]laintiffs must meet two standards — that 'class counsel . . . be qualified, experienced[,] and generally able to conduct the litigation,' and that 'the class members . . . not have interests that are antagonistic to one another.'" *Balestra v. ATBCOIN LLC*, No. 17-CV-10001 (VSB), 2022 WL 950953, at *4 (S.D.N.Y. Mar. 29, 2022) (quoting *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)). Based on the Court's determinations *supra* regarding the parallel requirements under Rule 23(e)(2), the Court finds that the proposed class is adequately represented by Plaintiff and Lead Counsel, and that adequacy of representation will likely be found at the time of final settlement approval and judgment.

e. Ascertainability

"[A] class is ascertainable if it is defined using objective criteria that establish a membership with definite boundaries." *In re Petrobras Secs.*, 862 F.3d at 257. Here, "the Settlement Class is defined using the objective criterion of status as a participant or beneficiary of the Plan during the proposed Class Period" and therefore is readily ascertainable. (Mem., ECF No. 87, at 5.) Moreover, the full class can be ascertained from the Plan's records, as discussed above. (*Id.*) *See, e.g.*, *Douglin v. GreatBanc Tr. Co.*, 115 F. Supp. 3d 404, 409 (S.D.N.Y. 2015) (finding class ascertainable); *Beach v. JPMorgan Chase*

Bank, Nat'l Ass'n, No. 17-CV-563 (JMF), 2019 WL 2428631, at *8 (S.D.N.Y. June 11, 2019) (finding class ascertainable because class members could be identified through the plan's records during the relevant period). Under these circumstances, the Court finds that the class is ascertainable.

2. *Rule 23(b)(1) Requirements*

Plaintiff must also satisfy at least one subsection of Rule 23(b)(1) in addition to the requirements of Rule 23(a). Namely, Plaintiff must show that the prosecution of separate actions would create either (A) the risk of "inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class," Fed. R. Civ. P. 23(b)(1)(A), or (B) the risk of "adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests," Fed. R. Civ. P. 23(b)(1)(B). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997).

Courts in this Circuit have routinely found that "claims for breach of fiduciary duty brought under ERISA . . . are well suited to Rule 23(b)(1)." *Douglin*, 115 F. Supp. 3d at 412. Framed another way, "'ERISA litigation of this nature presents a paradigmatic example of a [Rule 23](b)(1) class.'" *In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 78 (S.D.N.Y. 2006) (quoting *Kolar v. Rite Aid Corp.*, No. CIV.A 01–1229, 2003 WL 1257272, at *3 (E.D. Pa. Mar. 11, 2003)).

Here, because the allegations involve claims of misconduct in the management of the Plan as a whole, all participants and beneficiaries in the settlement class could be impacted by the resolution of the claims. In these circumstances, disparate lawsuits by separate individuals would necessarily create the risk of "inconsistent or varying

adjudications." Fed. R. Civ. P. 23(b)(1)(A). Relatedly, multiple actions, which would each seek the same relief from Defendant on behalf of the Plan, would potentially harm individual class members and could create "incompatible standards of conduct" for Defendant. *Id.* Indeed, it has been observed that the risk of inconsistent adjudications and incompatible standards contemplated by Rule 23(b)(1)(A) "speaks directly to ERISA suits," in light of an ERISA defendant's "statutory obligation[and] fiduciary responsibility[] to treat the members of the class alike." *In re Citigroup Pension Plan ERISA Litig.*, 241 F.R.D. 172, 179 (S.D.N.Y. 2006). Accordingly, the Court finds that Plaintiff will almost certainly be able to show that Rule 23(b)(1)(A) is met here.

Rule 23(b)(1)(B) is also very likely to be satisfied here. The "structure of ERISA favors the principles enumerated under Rule 23(b)(1)(B), since the statute creates a 'shared' set of rights among the plan participants by imposing duties on the fiduciaries relative to the plan, and it even structures relief in terms of the plan and its accounts, rather than directly for the individual participants." *Douglin*, 115 F. Supp. 3d at 412 (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999)). Rule 23(b)(1)(B) is also applicable in the context of ERISA because individual actions would create the risk of adjudicating the interests of non-parties. After all, "'a breach of fiduciary duty claim brought by one member of a retirement plan necessarily affects the rights of the rest of the plan members to assert that claim, as the plan member seeks recovery on behalf of the plan as an entity.'" *Kindle v. Dejana*, 315 F.R.D. 7, 12 (E.D.N.Y. 2016) (quoting *In re AOL Time Warner ERISA Litig.*, No. 02-CV-8853 (SWK), 2006 WL 2789862, at *4 (S.D.N.Y. Sept. 27, 2006)); *see also* Fed. R. Civ. P. 23(b)(1)(B) advisory committee's note to 1966 amendment (stating that certification under 23(b)(1)(B) is appropriate in cases charging breach of trust by a fiduciary affecting a large class of beneficiaries).

For these reasons, the Court concludes that certification is highly likely to be found appropriate under Rule 23(b)(1).

* * * * *

The Court finds that Plaintiff has demonstrated a very good likelihood of class certification. Having concluded that Plaintiff has also demonstrated a likelihood of final settlement approval, the Court respectfully recommends granting preliminary settlement approval and finding that notice to "all class members who would be bound by the proposal" is justified. Fed. R. Civ. P. 23(e)(1)(B).

III. Notice

Rule 23 also establishes notice requirements. Rule 23(c) describes the notice requirements for when a court certifies a class, while Rule 23(e) describes the notice requirements to class members when a court is approving a settlement, voluntary dismissal, or compromise. *See* Fed. R. Civ. P. 23(c), (e). Here, because Plaintiff seeks certification of the settlement class as well as approval of the proposed settlement, "the elements of Rule 23(c) notice (for class certification) are combined with the elements of Rule 23(e) notice (for settlement or dismissal)." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 448 (S.D.N.Y. 2004). For this inquiry, courts generally focus on Rule 23(c)'s requirements as they are more specific than Rule 23(e)'s guidelines. *See, e.g.*, *id.* For mandatory class action cases, including ERISA actions like this one, in which there is no opportunity for class members to opt out of the class, Rule 23 mandates "appropriate notice to the class" as the "court may direct." Fed. R. Civ. P. 23(c)(2)(A). Notably, due process requires "'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Glob. Crossing*, 225 F.R.D. at 448 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)); *see also Harry*

M. v. Penn. Dep't of Pub. Welfare, No. 1:10-cv-922 (YK), 2013 WL 1386286, at *2 (M.D. Pa. Apr. 4, 2013) ("Adequate notice is essential to securing due process of law for the class members, whom are bound by the judgment entered in the action.") (citing *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 378–79 (1996)).

A. The Notice Plan

Plaintiff proposes a notice plan designed to reach as many class members as possible. The notice will be first sent via email and/or first-class mail to the last known address of each member, in advance of the final fairness hearing. (Mem., ECF No. 87, at 23–24.) For any notices returned as undeliverable, the Plan recordkeeper will use the information it has available to update those addresses. (*Id.* at 24.) In addition, the notice, settlement agreement and exhibits, and other litigation documents, including a list of frequently asked questions, will be posted on a website established by the settlement administrator, Strategic Claims Services.[10] (*Id.*)

B. Notice Content

Plaintiff has submitted a notice for the Court's review. (*See* Notice, Ex. A to Settlement Agreement, ECF No. 88-1, at ECF pp. 32–39; Revised Notice, ECF No. 92-1.) The notice sets forth an extensive description of the action and claims process, and includes information regarding how individuals may raise objections. As noted by Plaintiff, the proposed notice "plainly describes: (i) the terms and operation of the Settlement; (ii) the nature and extent of the released claims; (iii) the maximum

[10] During the Fairness Hearing, Lead Counsel detailed the qualifications of the settlement administrator, Strategic Claims Services. Lead Counsel attested that they have worked with Strategic Claims Services in "the majority [of] these ERISA cases that have settled" and represented that Strategic Claims Services is capable of adequately managing the administration of the Plan. (Fairness Hearing, ECF No. 91, at 22:13–23:8.)

attorneys' fees, expenses, and case contribution awards that may be sought; (iv) the procedure and timing for objecting to the settlement; and (v) subject to the Court's schedule, the date and location of the Fairness Hearing." (Mem., ECF No. 87, at 24.) The proposed notice also provides contact information for class counsel and explains that the settlement administrator will establish and monitor a phone number for any inquiries. (*Id.* at 24.) Having carefully reviewed the parties' filings, the Court finds that the proposed notice contains the information required by Rule 23 and due process. Fed. R. Civ. P. 23(c)(2)(A). (*See* Revised Notice, ECF No. 92-1.)

Plaintiff has also submitted the following proposed schedule of events:

Event	**Deadline for Compliance**
Distribute Settlement Notice	Within 30 calendar days of entry of Preliminary Approval (Proposed Order, Ex. C to Settlement Agreement, ECF No. 88-1, ¶ 8(a))
Settlement Administrator to establish website and toll-free phone number	Within 30 calendar days of entry of Preliminary Approval (*Id.* ¶ 8(b))
Filing of Motion for Final Approval and fee request	45 calendar days before the Fairness Hearing (*Id.* ¶¶ 10, 11)
Filing of Independent Fiduciary Report	Not later than 45 calendar days before the Fairness Hearing (Settlement Agreement, ECF No. 88-1, ¶ 2.1.2)
Filing of objections	At least 30 calendar days before the Fairness Hearing (Proposed Order, Ex. C to Settlement Agreement, ECF No. 88-1, ¶ 12)

Event	Deadline for Compliance
Supplemental CAFA Notice[11]	Filed and served on the appropriate parties thirty (30) days before the Fairness Hearing, if feasible, or as soon as practicable thereafter
Filing of responses to objections or additional papers in support of settlement	Not later than 7 calendar days before the Fairness Hearing (*Id.* ¶¶ 12, 13)
Fairness Hearing	No sooner than 140 calendar days after filing of the Preliminary Approval Order (*Id.* ¶ 6)

(*See* Mem., ECF No. 87, at 4; Pl.'s Letter, ECF No. 92, at 1.)

The Court finds that Plaintiff's proposed schedule and manner of notice comply with Rule 23 and adequately afford due process. Notice should be ordered as proposed by the parties.

IV. Appointment of Class Counsel

"When a district court certifies a class, it must appoint class counsel." *Payment Card*, 330 F.R.D. at 58. Under Rule 23(g)(1)(A), the Court "must consider: (i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the

[11] Plaintiff also provided a CAFA Notice along with their proposed settlement materials. (*See* CAFA Notice, Ex. E to Settlement Agreement, ECF No. 88-1, at ECF pp. 69–72.) As the Court noted during the Fairness Hearing, the CAFA Notice did not comply with the requirement under 28 U.S.C. § 1715(b)(7) to provide, "if feasible, the names of class members who reside in each State and the estimated proportionate share of the claims of such members to the entire settlement to that State's appropriate State official" or, if that is not feasible, "a reasonable estimate of the number of class members residing in each State and the estimated proportionate share of the claims of such members to the entire settlement[.]" 28 U.S.C. § 1715(b)(7). (*See* Fairness Hearing, ECF No. 91, at 43:5–47:25.) Accordingly, the parties agreed to file a supplemental CAFA Notice that would include the estimated proportionate share of the claims for each state, to comply with 28 U.S.C. § 1715(b)(7), before the Final Fairness Hearing. (*See* Fairness Hearing, ECF No. 91, at 50:3–51:3; *see also* Pl.'s Letter, ECF No. 92, at 1.)

types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A). The Court may also "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). "The adequacy of counsel requirement is [ordinarily] satisfied where the class attorneys are experienced in the field or have demonstrated professional competence in other ways, such as by the quality of the briefs and the arguments during the early stages of the case." *Mendez v. MCSS Rest. Corp.*, No. 16-CV-2746 (NGG) (RLM), 2019 WL 2504613, at *13 (E.D.N.Y. June 17, 2019) (quotation marks omitted).

As discussed above, the filings in this case show that Lead Counsel has engaged in significant investigation of the underlying claims, that they are experienced in ERISA class action litigation and are knowledgeable in the applicable area of law, and that they have the resources necessary to represent the class. The Court therefore respectfully recommends appointment of Lead Counsel as class counsel for the purposes of settlement.

CONCLUSION

For the foregoing reasons, the Court respectfully recommends (1) granting Plaintiff's motion for preliminary settlement approval (Mot., ECF No. 86); (2) entering an order preliminarily approving the class action settlement consistent with the parties' proposed order[12] (*see* Proposed Order, Ex. C to Settlement Agreement, ECF No. 88-1, at

[12] The Court notes that the order may require minor revisions to reflect the correct dates, refer to the updated, revised proposed notice, and similar. The Court further notes that paragraph cross-references may need to be updated, including the reference in paragraph 14, which should refer to paragraph 12, not 11. (*See* Proposed Order, Ex. C to Settlement Agreement, ECF No. 88-1, at ECF pp. 56–58.)

ECF pp. 47–59); (3) directing the parties to issue notice as proposed, consistent with the revised submissions (*see* Revised Notice, ECF No. 92-1); (4) appointing Plaintiff Kaila Gonzalez as class representative for the Settlement Class and Miller Shah LLP as class counsel for the purposes of settlement; and (5) scheduling a fairness hearing[13] to consider final approval of the settlement, to be held no sooner than 140 calendar days after the filing of the Preliminary Approval Order (*see* Mot., ECF No. 86, at 1).

* * * * *

This report and recommendation will be filed electronically. Objections to this report and recommendation must be filed, with a courtesy copy sent to the Honorable Rachel P. Kovner at 225 Cadman Plaza East, Brooklyn, New York 11201, within fourteen (14) days of filing. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(a) (providing the method for computing time). Failure to file objections within the specified time waives the right to appeal both before the district court and appellate courts. *See, e.g.*, *Caidor v. Onondaga County*, 517 F.3d 601, 604 (2d Cir. 2008) (explaining that "failure to object timely to a . . . report [and recommendation] operates as a waiver of any further judicial review of the magistrate[judge's] decision" (quotation marks omitted)).

SO ORDERED.

Dated: Brooklyn, New York
December 22, 2025

Taryn A. Merkl
TARYN A. MERKL
UNITED STATES MAGISTRATE JUDGE

[13] Alternatively, the undersigned Magistrate Judge respectfully recommends referring the parties to this Court for scheduling of the final approval hearing.