UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ROBERT HUMPHRIES, and DENNIS MOWRY, Individually and On Behalf of All Others Similarly Situated, Plaintiffs, v. MITSUBISHI CHEMICAL AMERICA, INC., MITSUBISHI CHEMICAL AMERICA EMPLOYEES' SAVINGS PLAN ADMINISTRATIVE COMMITTEE, TRAVIS BAYNE, SHINICHIRO IGUCHI, ROSE MARCHEK, PATRICIA SAUNDERS, TOM WELSH, TOM SKINTA, ATSUHIKO SATO, DEBORAH MOORER, KAREN ZORUMSKI, DANNETTE GRANT, DORIS FOSTER, BETH CASEY, DAN MICHALAK, KELLY EDWARDS, KEN SOUCY, and KITTY ANTWINE, Defendants.	**Case No. 1:23-cv-06214 (JLR)**

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT

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Plaintiffs Robert Humphries and Dennis Mowry ("Plaintiffs"), individually and on behalf of the Settlement Class, respectfully submit this memorandum in support of their unopposed motion seeking: (i) preliminary approval of the proposed Settlement presented in the Settlement Agreement; (ii) certification of the proposed Settlement Class, for settlement purposes only; (iii) appointment of Plaintiffs as Class Representatives, for settlement purposes only; (iv) appointment of Pomerantz LLP as Class Counsel, for settlement purposes only; (v) a date for a Final Approval Hearing (the "Final Approval Hearing"); (vi) appointment of Strategic Claims Services as Settlement Administrator; (vii) approval of the form and manner of giving notice of the proposed Settlement to the Settlement Class Members; and (viii) deadlines for the dissemination of notice to the Settlement Class, for Settlement Class Member objections, for the filing of Plaintiffs' motion for Final Approval, and for the filing of Class Counsel's application for an award of Attorneys' Fees and Costs and Case Contribution Awards to Plaintiffs (the "Motion").[1]

INTRODUCTION

The proposed Settlement consists of two categories of consideration designed to address the conduct alleged in the Complaint. First, Defendants[2] and/or their insurers will pay $190,000 (the "Settlement Amount") for the benefit of the Settlement Class, representing approximately 21% of Plaintiffs' estimated total maximum damages on the sole remaining claim in the Action.

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[1] A copy of the Settlement Agreement is attached as Exhibit 1 to the accompanying Declaration of Samuel J. Adams in Support of the Motion (the "Adams Decl.") The Proposed Preliminary Approval order is attached as Exhibit D to the Settlement Agreement. Unless otherwise specified herein, all capitalized terms have the meaning assigned to them in Article 2 of the Settlement Agreement.

[2] Defendants are Mitsubishi Chemical America, Inc. ("Mitsubishi Chemical"), Mitsubishi Chemical America Employees' Savings Plan Administrative Committee (the "Administrative Committee"), Travis Bayne, Shinichiro Iguchi, Rose Marchek, Patricia Saunders, Tom Welsh, Tom Skinta, Atsuhiko Sato, Deborah Moorer, Karen Zorumski, Dannette Grant, Doris Foster, Beth Casey, Dan Michalak, Kelly Edwards, Ken Soucy, and Kitty Antwine (collectively, the "Defendants"). The "Parties" are Plaintiffs and Defendants.

Second, the proposed Settlement requires the Administrative Committee to continue and/or implement additional management terms for a period of three (3) years, including terms tailored to address the specific conduct alleged in the Action. The Settlement follows more than three years of substantial litigation efforts, including litigating a motion to stay discovery, two motions to dismiss, and significant document discovery. These efforts ultimately resulted in the Settlement now presented to the Court for preliminary approval.

The Action arose under the Employee Retirement Income Security Act of 1974, as amended, 29 U.S.C. §§ 1001-1461 ("ERISA"), alleging that Defendants breached their fiduciary duties by including expensive share classes in the Plan. Plaintiffs had also asserted claims challenging the Plan's stable value fund and recordkeeping and administrative fees, which were subsequently dismissed.

Plaintiffs submit that the Settlement is appropriate in light of the significant risk that continued litigation would entail. Plaintiffs would have to prevail at class certification, summary judgment, trial, and any appeals, a process that could take years. ERISA fiduciary-breach cases also typically involve complex questions of liability and damages, and Plaintiffs would face risks in establishing and proving their losses on the remaining share class claim. Against those risks, the Settlement provides Plaintiffs and the Settlement Class with an immediate and certain recovery of 21% of Plaintiffs' maximum recoverable damages, together with three years of Plan-management terms. Based on the relief provided by the Settlement and the risks of continued litigation, Plaintiffs and Class Counsel believe the Settlement is fair, reasonable, adequate, and in the best interests of the Settlement Class, and, therefore, warrants preliminary approval.

For these reasons, and those discussed further below, Plaintiffs respectfully submit that the proposed Settlement meets the standard for preliminary approval and is in the best interests of the Settlement Class.

I. BACKGROUND

A. Pleadings and Defendants' Motions to Dismiss

On July 19, 2023, plaintiff Robert Humphries filed the initial complaint in this Action, which alleged that Mitsubishi Chemical, its board of directors, the Administrative Committee and Kitty Antwine breached their ERISA fiduciary duties by (1) offering and maintaining higher cost share classes when identical lower cost share classes of the same mutual funds were available; (2) failing to appropriately select and monitor the Plan's stable value fund; and (3) failing to appropriately monitor the Plan's recordkeeping and administrative fees. ECF No. 1; Adams Decl. ¶3. On November 7, 2024, the Court dismissed Plaintiffs' claims in their entirety without prejudice. ECF No. 55; Adams Decl. ¶3.

Plaintiffs amended their complaint on December 6, 2024 ("Amended Complaint") to add plaintiff Dennis Mowry as an additional plaintiff and also to include additional allegations regarding Plaintiffs' standing and recordkeeping fee claim. ECF No. 56; Adams Decl. ¶4. Plaintiffs did not reassert their stable value fund claim or add Kitty Antwine as a defendant following their earlier dismissal. ECF No. 56; Adams Decl. ¶4. On August 19, 2025, the Court denied in part and granted in part Defendant's motion to dismiss, dismissing Plaintiffs' recordkeeping fee claim while permitting the share class claim to proceed. ECF No. 65; Adams Decl. ¶4. The Court also dismissed Plaintiffs' claims against Mitsubishi Chemical's board of directors. ECF No. 65; Adams Decl. ¶4.

On May 28, 2026, the Court granted Plaintiffs' motion to add individual members of the Administrative Committee as defendants to the Action. ECF No. 98; Adams Decl. ¶6. Accordingly, on June 1, 2026, Plaintiffs filed a Second Amended Complaint naming the individual members of the Administrative Committee, including the previously dismissed defendant Kitty Antwine, as defendants in this action ("Second Amended Complaint"). ECF No. 99; Adams Decl. ¶6.

B. Discovery and Settlement

On October 24, 2023, Defendants filed a letter motion to stay discovery while their motion to dismiss was pending. ECF No. 34; Adams Decl. ¶5. The Court granted the stay on October 27, 2023. ECF No. 36; Adams Decl. ¶5. The stay was lifted after the Court permitted Plaintiffs' share class claim to proceed on August 19, 2025. ECF No. 65; Adams Decl. ¶5.

Once the stay was lifted, the Parties engaged in substantial discovery. Adams Decl. ¶7. Parties served multiple requests for production, interrogatories and requests for admissions, and Defendants produced approximately 7,700 pages of documents, which Plaintiffs reviewed and analyzed. *Id.* The parties also engaged in extensive discovery negotiations concerning ESI discovery, including identifying custodians. Had the parties been unable to reach a Settlement, fact discovery was set to conclude on July 28, 2026. ECF No. 94.

While discovery was ongoing, the Parties also attempted mediation before the court appointed mediator, Evan J. Spelfogel of Phillips Nizer LLP. Adams Decl. ¶8. The Parties submitted mediation statements and participated in an in-person mediation on March 12, 2026, followed by a virtual mediation session on March 31, 2026. ECF No. 96; Adams Decl. ¶8. Although the Parties did not reach a settlement during those sessions, they continued settlement discussions while simultaneously proceeding with discovery and actively litigating the case. Adams Decl. ¶8. After additional negotiations, the Parties agreed to settle the case and notified the Court of the settlement on June 29, 2026. ECF No. 102; Adams Decl. ¶9.

C. Plaintiffs' Services to the Class Members and the Plan

Plaintiffs were participants in the Plan during the Class Period. They have been involved throughout the litigation and have contributed to the investigation, discovery, and settlement of the Class claims. Adams Decl. ¶11. They agreed to serve as Class Representatives and dedicated significant time to the case over the course of the litigation, performing actions that benefited the Class at large, including: furnishing their account statements to Class Counsel; diligently reviewing all court filings; providing written discovery responses and assisting Class Counsel with review of discovery requests; participating in numerous phone calls with Class Counsel regarding the lawsuit and settlement discussions; and approving the Settlement. *Id*. Plaintiffs understand and fulfilled their responsibilities as the representatives of the Settlement Class. *Id*.

II. SUMMARY OF THE KEY TERMS OF THE PROPOSED SETTLEMENT

A. Monetary Relief

Under the Settlement, Defendants and/or their insurers will pay, or cause to be paid, $190,000 into the Settlement Fund. Pursuant to the Plan of Allocation, the Net Settlement Amount will be distributed to Class Members according to the Plan of Allocation following deductions for Court-approved (a) Attorneys' Fees and Costs; (b) Case Contribution Awards; and (c) Administrative Expenses, including taxes and tax expenses and the costs of the Settlement Administrator, Recordkeeper, and Independent Fiduciary, as well as the establishment of a contingency reserve for Administrative Expenses incurred but not yet paid and other specified contingencies. *See* Settlement Agreement Ex. C.

B. Additional Terms

Defendants have also agreed, for a period of three (3) years from the Settlement Effective Date, to continue certain Plan management practices, including negotiating recordkeeping and administrative fees on a per-participant or per-account basis, rebating certain excess revenue sharing to Plan participants, and annually reviewing the Plan's share-class selections. Settlement Agreement ¶9.

C. Review by Independent Fiduciary

Defendants will select and retain an Independent Fiduciary, on behalf of the Plan, to review the Settlement to determine whether to approve and authorize Plaintiffs' Released Claims. Settlement Agreement ¶3.2. The Parties will provide the Independent Fiduciary with sufficient information to support the Independent Fiduciary's review and evaluation. *Id*. ¶3.2.4. The Independent Fiduciary will issue its report no later than thirty (30) days before the Final Approval Hearing. *Id*. ¶3.2.2.

D. Class Notice and Settlement Administration

Class Members will receive a Short Form Postcard Settlement Notice by first class mail. *Id*. ¶3.5. The Settlement Administrator will also establish a Settlement Website containing the Settlement Notices and Agreement, relevant motions and Court orders, and any amendments or other Settlement-related documents. *Id*. ¶2.45.

E. Plan of Allocation

The Plan of Allocation provides that the Net Settlement Amount will be allocated to Class Members, who are all Plan participants during the Class Period.[3] The Settlement Administrator shall allocate the Net Settlement Amount on a *pro rata* basis based on each Class Member's Plan account balances relative to the aggregate balances of all Class Members during the Class Period. Each Class Member's share of the Net Settlement Amount shall be referred to as the "Final Entitlement Amount."[4] *See* Settlement Agreement Ex. C, ¶4. Current Plan Participants will receive their Final Entitlement Amount by deposit into their Plan account. *Id*. ¶5. Former Participants and Beneficiaries or Alternate Payees shall be paid directly by check (or

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[3] The Plan of Allocation is detailed in Ex. C to the Settlement Agreement.

[4] Actual recoveries will vary based on each Class Member's balances during the Class Period, as provided in the Plan of Allocation.

rollover, if elected). *Id*. ¶6.

F. Release of Claims

In exchange for the relief provided by the Settlement, the Settlement Class will release Defendants and affiliated persons and entities ("Released Parties") from all claims:

> "Released Claims" means any and all actual or potential claims (including, but not limited to, claims for any and all losses, damages, unjust enrichment, disgorgement, surcharge, interest, attorneys' fees, litigation costs, injunction, reformation, accounting, declaration, contribution, indemnification, or any other type of legal, equitable or remedial relief), actions, suits, demands, rights, obligations, liabilities, damages, attorneys' fees, expenses, costs, and causes of action that any Class Member ever had, now has, or will have in the future whether arising under federal, state, or local law, whether by statute, regulation, contract, or equity, whether brought directly or indirectly, in an individual or representative capacity, whether accrued or not, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, actual or contingent, liquidated or unliquidated, based in whole or in part on acts or failures to act through the date of the Final Order that:
>
> - [a]re, were or could have been asserted in the Action, arising under ERISA, or any other local, state, or federal statute, or law (or any rule or regulation associated therewith or promulgated thereunder) or the common law, that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, or could have been alleged based on the same nucleus of operative facts, to have occurred during the Class Period; and/or
> - [a]rise out of, relate in any way to, are based on, or have any connection with (a) the selection, oversight, retention, monitoring, compensation, fees, performance, or removal of the Plan's investment options, investment share classes, or investment providers; (b) the fees, costs, or expenses that are or were charged to, paid by, or reimbursed by the Plan or any Class Member; (c) the fees, costs, compensation, or expenses associated with the Plan's recordkeeping and administrative services, including the reallocation of funds collected but not used to defray Plan expenses; (d) Plan sponsor or Plan fiduciary decisions to pay or not pay certain Plan fees; (e) disclosures or failures to disclose information regarding the Plan's service providers, fees, or investment options; (f) the compensation received by the Plan's service providers; (g) the services provided to the Plan or the costs of those services; (h) the selection, nomination, appointment, retention, monitoring, and removal of the Plan's fiduciaries; (i) the management, oversight or administration of the Plan or its fiduciaries; or (j) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions under ERISA; and/or
> - [w]ould be barred by the principles of *res judicata* or collateral estoppel had the claims asserted been fully litigated and resulted in a Final judgment; and/or
> - [r]elate to any tax liability, including penalties and interest, related in any way

to payments under the Settlement Agreement; and/or

- [r]elate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Settlement Fund to the Plan or any Class Member in accordance with the Plan of Allocation; or
- [r]elate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone; and/or
- [r]elate to the Settlement Administrator's work or any acts or omissions by the Settlement Administrator, unless brought against the Settlement Administrator alone.
- [f]or the avoidance of doubt, "Released Claims" do not include any claims for vested benefits that may be asserted against the Plan that the Class Representatives or any member of the Settlement Class has or may have arising solely under ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B), to the extent such claims do not relate to the Released Claims in Section 2.38. However, other claims that were asserted, or which could have been asserted, in this action for breaches of fiduciary duty under ERISA § 502(a)(2), 29 U.S.C. § 1132(a)(2), or ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), are included within the definition of "Released Claims." "Released Claims" shall not include claims to enforce the Settlement.

Settlement Agreement ¶2.38.

G. Attorneys' Fees and Administrative Expenses

Class Counsel will apply for attorneys' fees consisting of $10,000 for obtaining the additional Plan management terms and up to one-fourth of the remaining Gross Settlement Amount after the initial $10,000 has been deducted, in an amount not to exceed a total of $55,000. *Id.* ¶7.1. The additional Plan management terms provide meaningful relief to the Settlement Class by requiring Defendants to maintain and implement certain fiduciary practices, including annual review of share classes, for a period of three years. These terms provide benefits separate and independent of the monetary relief secured by the Settlement. Class Counsel will also apply for reimbursement of their litigation expenses, in an amount not to exceed $45,000. *Id*. Subject to Court approval, Class Counsel's fees and expenses shall be paid from the Settlement Fund. *Id*. In addition, the Settlement also provides for recovery of Administrative Expenses related to the Settlement, and for Case Contribution Awards from the Settlement

Amount. *Id.* ¶¶2.3, 7.1. Class Counsel intends to request a Case Contribution Award of $1,500 for each plaintiff. *Id.* ¶7.1. The Settlement is not conditioned on the Court's approval of any requested attorneys' fees, costs, or Case Contribution Awards, and the denial or modification of any such request will not affect or terminate the Settlement. *Id.* ¶14.4.

H. Proposed Schedule of Events

Plaintiffs propose the following schedule of events in connection with the Final Approval Hearing, as set forth in the Proposed Preliminary Approval Order filed herewith:

Event	Proposed Deadline for Compliance
Distribute Settlement Notice	Within 51 calendar days of entry of the Preliminary Approval Order (21 days after entry of the Preliminary Approval Order for Defendants and the Recordkeeper to provide Class Member information, followed by 30 days after such information is provided for the Settlement Administrator to distribute the Settlement Notice)
Settlement Administrator to establish Settlement Website	Within 30 calendar days of entry of the Preliminary Approval Order
Filing of Motion for Final Approval and Attorneys' Fees and Cost award, and the Case Contributory Award	45 calendar days before the Final Approval Hearing
Filing of objections	At least 30 calendar days before the Final Approval Hearing
Filing of Notice of Intention to Appear at the Final Approval Hearing	Not later than 15 calendar days before the Final Approval Hearing
Submission of Former Participant Rollover Form	Not later than 14 calendar days before the Final Approval Hearing
Filing of responses to objections or additional papers in support of Settlement	Not later than 7 calendar days before the Final Approval Hearing

III. THE COURT SHOULD GRANT PRELIMINARY APPROVAL

A. Legal Standard

In the Second Circuit, there is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A. Inc.*, 396 F.3d 96, 116-17 (2d Cir. 2005), *superseded on other grounds*, Fed. R. Civ. P. 23(e)(2), *as recognized in Moses v. N.Y. Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023).[5]

Rule 23(e)(2)—which governs final approval—requires courts to consider the following questions in determining whether a proposed settlement is "fair, reasonable, and adequate":

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

See Fed. R. Civ. P. 23(e)(2).

These Rule 23(e)(2) factors do "not displace our traditional *Grinnell* factors, which

5 Unless otherwise indicated, all emphasis is added and all internal citations and quotation marks are omitted.

remain a useful framework for considering the substantive fairness of a settlement." *Moses*, 79 F.4th at 243. The following factors that the Second Circuit set out in *City of Detroit v. Grinnell Corp.* to evaluate class action settlements (some of which overlap with Rule 23(e)(2)) are thus still relevant:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement;[6] (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

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).

B. The Settlement Meets the Standard for Preliminary Approval

As set forth below, the Settlement satisfies the criteria for preliminary approval under the Rule 23(e)(2) factors and the *Grinnell* factors.

1. The Class Is Adequately Represented

Rule 23(e)(2)(A) requires the Court to consider whether the "class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). In assessing adequacy, "the primary factors are whether the class representatives have any 'interests antagonistic to the interests of other class members' and whether the representatives 'have an interest in vigorously pursuing the claims of the class.'" *In re Patriot Nat'l, Inc. Sec. Litig.*, 828 F. App'x 760, 764 (2d Cir. Oct. 2, 2020) (citing cases).

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[6] The Court does not yet have the benefit of the Settlement Class's reaction because notice of the proposed Settlement has not yet been sent. Class Counsel and Plaintiffs will update the Court as to the Settlement Class's reaction in connection with their motion for final approval of the Settlement.

Plaintiffs and Class Counsel satisfy these criteria. *First*, Plaintiffs, like Settlement Class Members, were participants in the Plan during the Class Period and suffered losses as a result of Defendants' allegedly imprudent management of the Plan. Plaintiffs and Class Counsel "share the common goal of maximizing recovery" for the Settlement Class, so "there is no conflict of interest." *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006).

Second, as explained above in Section II, Plaintiffs and Class Counsel vigorously litigated this case. Adams Decl. ¶¶3-10, 15-16. Plaintiffs also retained counsel that are highly experienced in class action litigation. *See id.* ¶¶13-14 & Ex. 2. Class Counsel vigorously prosecuted the Settlement Class's claims and were acutely aware of the strengths and weaknesses of the case before settling the action. Adams Decl. ¶¶16-17; *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 474 (S.D.N.Y. 1998) ("great weight" given to counsel's recommendation).

In short, there can be no doubt that the Plaintiffs and Class Counsel vigorously and zealously represented the Classes' interests in this case.

2. The Proposed Settlement Was Negotiated at Arm's Length

Rule 23(e)(2)(B) requires procedural fairness: that "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). Although the fact that a settlement is negotiated at arm's length no longer gives rise to a presumption of fairness, it does support a settlement's approval. *Moses*, 79 F.4th at 243. A settlement is the product of arm's length negotiations where parties are "represented by experienced counsel" in those negotiations, counsel participating in the negotiations are informed of the strength of the case through "extensive pre-negotiation discovery," and the parties are "aided in their negotiations by an experienced mediator." *Reyes v. Summit Health Mgmt., LLC*, 2024 WL 472841, at *3 (S.D.N.Y. Feb. 6, 2024). That describes what happened here.

Here, the parties engaged in two mediation sessions. Adams Decl. ¶8. Although the mediation sessions did not result in an immediate settlement, the parties continued their arm's length negotiations while litigation proceeded. While negotiating ESI discovery, the parties ultimately reached a settlement. *Id*. ¶¶7-8. The parties continued negotiations following mediation, against the backdrop of substantial discovery and with the benefit of the mediator-assisted process, support a finding that the Settlement is fair and free from collusion.

3. The Settlement Provides Significant Relief to Class Members that Is Fair and Adequate Based on All Relevant Considerations

The proposed Settlement provides an excellent result and immediate recovery for the Class, and is fair, reasonable, and adequate considering "the costs, risks, and delay of trial and appeal" and other relevant factors. Fed. R. Civ. P. 23(e)(2)(C)(i). The Settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *In re "Agent Orange" Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984), *aff'd*, 818 F.2d 145 (2d Cir. 1987). Each factor supports preliminary approval.

a. The Costs, Risks, and Delay of Further Litigation Support Approval[7]

In the absence of a settlement, Plaintiffs would have faced potentially significant litigation risks. "ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation." *Krueger v. Ameriprise Fin., Inc*., 2015 WL 4246879, at *1 (D. Minn. July 13, 2015). *In re Schering-Plough Corp. Enhance ERISA Litig*., 2012 WL 1964451, at *5 (D.N.J. May 31, 2012) ("ERISA class actions based on the same theories as the present

[7] This factor overlaps with the following *Grinnell* factors: the complexity, expense, and duration of litigation (first factor) and the risk of establishing liability and damages (fourth and fifth factors).

matter involve a complex and rapidly evolving area of law. This uncertainty, combined with the risks associated with a potential trial and the need to overcome likely summary judgment motions, indicates that Plaintiff faced significant risks in establishing liability and damages if the matter proceeded to trial. This factor therefore weighs in favor of approval."). Moreover, claims of fiduciary breach under ERISA, even if ultimately successful, can drag on for a decade or more. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017) (remanding in part a judgment obtained at trial for a second time in a case filed in 2006); *Tibble v. Edison Int'l*, 575 U.S. 523, 531 (2015) (vacating judgment obtained at trial and remanding case filed in 2007).

Here, there was a risk that the Court might have dismissed the remaining claim later on a motion for summary judgment. And, if the case proceeded to trial, Defendants still might have prevailed. *See, e.g.*, *Sacerdote v. N.Y. Univ.*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018), *aff'd in part*, *rev'd in part*, 9 F.4th 95 (2d Cir. 2021). Finally, even if Plaintiffs prevailed on liability, issues regarding proof of loss would have remained. *See Tussey v. ABB, Inc.*, 2019 WL 3859763, at *1 (W.D. Mo. Aug. 16, 2019).

None of this is to say that Plaintiffs lacked confidence in their claims. But continuing the litigation would have resulted in complex and costly proceedings, and it would have delayed any relief to the Class, even if Plaintiffs ultimately prevailed. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 693 (S.D.N.Y. 2019) ("Courts favor settlement when litigation is likely to be complex, expensive, or drawn out.").

b. The Other Rule 23(e)(2)(C) Factors Support Approval

Rule 23(e)(2)(C) states that adequacy should be assessed in light of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," "the terms of any proposed award of attorney's fees, including timing of payment," and "any agreement required to be identified under Rule 23(e)(3)." Fed. R. Civ. P.

23(e)(2)(C)(ii)-(iv). Each of these factors supports approval here.

First, the proposed method for distributing the Net Settlement Fund is fair and reasonable. *In re EVCI Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at *11 (S.D.N.Y. July 27, 2007) ("[A] plan of allocation need not be perfect."). Here, Class Counsel proposes the retention of a highly qualified administrator. Class Counsel selected Strategic Claims Services ("SCS") through a competitive RFP process involving three experienced settlement administrators. Adams Decl. ¶19. SCS submitted one of the lowest-cost proposals, and Pomerantz's prior experience with SCS demonstrates that it has the requisite experience and capacity to administer the Settlement. *Id.* As explained above in Section II, the method of distribution is effective and efficient. Any uncashed checks will be transferred to the Plan for the benefit of the Plan participants. *See* Settlement Agreement ¶6.6. This reversion is reasonable and consistent with ERISA's remedial purpose of restoring losses to the Plan and avoids the complications of a cy pres distribution. Moreover, "the amount of the Settlement Fund that reverts due to uncashed checks is typically so small that dividing it pro rata among Class Members is not administratively feasible," nor cost-effective. *Nado v. John Muir Health*, 2025 WL 1725001, at *5 (N.D. Cal. June 20, 2025).

Second, as disclosed in the Notice, Class Counsel will be applying for $10,000 in attorneys' fees for obtaining the additional Plan management terms and one-fourth of the remaining Gross Settlement Amount (after deducting the $10,000) as compensation for the services rendered on behalf of the Settlement Class. As discussed above, the additional Plan management terms provide added value to the Settlement by requiring Defendants to maintain and implement certain fiduciary practices for a period of three years. This relief is separate from and in addition to the monetary relief secured by the Settlement. The attorneys' fee request is reasonable and well within the range of fee awards in this Circuit. "In similar ERISA excessive fee cases, and in particular those brought by Class Counsel, district courts have consistently recognized that a one-third fee is the market rate." *Cates v. Trs. of Columbia Univ.*, 2021 WL 4847890, at *7 (S.D.N.Y. Oct. 18, 2021) (collecting cases); *Rosenfeld v. Lenich*, 2021 WL 508339, at *6 (E.D.N.Y. Feb. 11, 2021). Notably, approval of the requested attorneys' fee is separate from approval of the Settlement.

Third, as the Settlement Agreement states in Article 16.19, there are no separate agreements bearing on the adequacy of relief to the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv).

4. The Settlement Treats Class Members Equitably

Finally, Rule 23(e)(2)(D) requires courts to evaluate whether the Settlement treats Class Members equitably relative to one another. Fed. R. Civ. P. 23(e)(2)(D). The Settlement easily satisfies this standard. The Settlement Agreement provides for disbursement to Class Members on a *pro rata* basis based on each Class Member's Plan account balances relative to the aggregate balances of all Class Members during the Class Period. Settlement Agreement Ex. C, ¶4. In this way, the Settlement appropriately and fairly accounts for differences among Class Members' balances. This further supports approval of the Settlement.

The Short Form Postcard Settlement Notice (Settlement Agreement Ex. A) and Long Form Settlement Notice (Settlement Agreement Ex. B) advise Settlement Class Members that Class Counsel intends to request compensatory awards to Plaintiffs not to exceed $1,500 per Plaintiff. "Courts in this Circuit routinely award such costs and expenses both to reimburse the named plaintiffs for expenses incurred through their involvement with the action and lost wages, as well as to provide an incentive . . . to remain involved in the litigation and to incur such expenses in the first place." *In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 165-66 (S.D.N.Y. 2011) (awarding $10,000 each to three lead plaintiffs and $5,400 to a fourth lead plaintiff). *See also In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 354 (S.D.N.Y. 2014) (awarding $5,000 to each plaintiff).

5. The Remaining *Grinnell* Factors Support Preliminary Approval

First, the stage of the proceedings favors approval. This factor assesses "whether the parties had adequate information about their claims such that their counsel can intelligently evaluate the merits of plaintiff's claims, the strengths of the defenses asserted by defendants, and the value of plaintiffs' causes of action for purposes of settlement." *In re Bear Stearns Cos. Sec., Deriv., & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012). As discussed above, Plaintiffs and Class Counsel engaged in substantial discovery. Thus, Plaintiffs and Class Counsel are well-equipped to evaluate Plaintiffs' claims.

Second, while there is no evidence that Defendants could not withstand a greater judgment, "Courts have recognized that the defendant's ability to pay is much less important than other factors, especially where the other *Grinnell* factors weigh heavily in favor of settlement approval." *In re Metlife Demutualization Litig.*, 689 F. Supp. 2d 297, 339 (E.D.N.Y. 2010). The Court need not find that Defendant could not withstand a greater judgment to conclude the Settlement warrants preliminary approval.

Third, the Settlement Amount is reasonable relative to the maximum possible recovery.[8]

[8] Plaintiffs estimated potential Plan losses of approximately $900,000. The Settlement represents approximately 21% of Plaintiffs' estimated recovery if they prevailed. This substantial recovery compares favorably to settlements approved in similar ERISA fiduciary-breach actions. *See, e.g.*, *Beach v. JPMorgan Chase Bank, Nat'l Ass'n*, No. 17-cv-00563, ECF No. 223 at 4 (S.D.N.Y. Aug. 21, 2020), *approved by*, 2020 WL 6114545, at *2 (S.D.N.Y. Oct. 7, 2020) (requesting and approving settlement amount of 16% of potential damages); *Goldstein v. Mut. of Am. Life Ins. Co.*, No. 22-CV-07862, ECF No. 71 at 11 (S.D.N.Y. Sep. 20, 2023), *approved by*, ECF No. 77 (S.D.N.Y. Oct. 5, 2023) (requesting and approving settlement that represented approximately 26% of alleged losses); *Kohari v. MetLife Grp.*, 2025 WL 100898, at *10 (S.D.N.Y. Jan. 15, 2025) (approving settlement that requested 19% to 27% of the total estimated losses).

The adequacy of the amount offered in settlement must be judged "not in comparison with the possible recovery in the best of all possible worlds, but rather in light of the strengths and weaknesses of plaintiffs' case." *Agent Orange*, 597 F. Supp. at 762. The Settlement provides an all-cash payment of $190,000 and additional Plan management terms that will remain in effect for a period of 3 years, for the benefit of the Settlement Class. This is a significant recovery in light of the risks of continued litigation described herein, including the risks that Plaintiffs may not prevail on the merits, obtain class certification, or establish damages, as well as the possibility that any recovery could be reduced or eliminated through further litigation or appeal.

IV. THE CLASS NOTICE PLAN IS REASONABLE AND SHOULD BE APPROVED

Class notice of a settlement must meet the requirements of Rules 23(c)(2) and 23(e) and due process. 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." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 448 (S.D.N.Y. 2004) (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)).

Here, the Proposed Preliminary Approval Order requires Class Counsel to provide notice of the Settlement by mailing the Short Form Postcard Notice by first-class mail to all Settlement Class Members and by publishing the Long Form Settlement Notice on the Settlement Website. Settlement Agreement Ex. D, ¶¶7-9. The Short Form Postcard Settlement Notice provides information concerning: (1) the Settlement Class; (2) the Settlement; (3) the date of the Final Approval Hearing; (4) the Attorneys' Fees and Costs to be sought by Class Counsel and the Case

Contribution Awards for Plaintiffs; (5) the Settlement Website, where Settlement Class Members can access additional information and documents concerning the Settlement, including the Long Form Settlement Notice; (6) contact information for the Settlement Administrator and Class Counsel; and (7) the deadline for objection to the Settlement. *See* Settlement Agreement Ex. A. Thus, the Short Form Postcard Settlement Notice provides key information about the Settlement and directs Class Members to the Settlement Website, where Class Members can find the Complaint, Settlement Agreement and its Exhibits, Long Form and Short Form Postcard Settlement Notices, Plaintiffs' Motion for Attorneys' Fees and Costs and Class Representatives' Case Contribution Awards, Plaintiffs' Motion for Final Approval of the Settlement, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Parties. Settlement Agreement ¶2.45.

The Long Form Settlement Notice provides more detailed information concerning: (1) the proposed Settlement; (2) the rights of Settlement Class Members, including the procedures for objecting to the Settlement; (3) the nature, history, and progress of the Action; (4) the Plan of Allocation; (5) the attorneys' fees and litigation expenses to be sought by Class Counsel and the Case Contribution Awards for Plaintiffs; and (6) information necessary to access and review the Court's records. *See* Settlement Agreement Ex. B.

This notice process has been previously approved by Courts both in this District and in others. *See In re Advanced Battery Techs., Inc. Sec. Litig.*, 298 F.R.D. 171, 182 n.3 (S.D.N.Y. 2014) ("The use of a combination of a mailed post card directing class members to a more detailed online notice has been approved by courts."). Accordingly, this proposed program for dissemination of notice is "reasonably calculated . . . to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane*, 339 U.S. at

314.

The content of the notices is also reasonable. The notices include all relevant information, and "fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings." *Lomeli v. Sec. & Inv. Co. Bahr.*, 546 F. App'x 37, 41 (2d Cir. 2013). *See* Settlement Agreement Exs. A & B. The notices will also be supplemented through the Settlement Website and telephone support line.

V. THE PROPOSED CLASS SHOULD BE CERTIFIED FOR SETTLEMENT PURPOSES

The Second Circuit has long acknowledged the propriety of certifying a class solely for purposes of settlement. *See Weinberger v. Kendrick,* 698 F.2d 61, 73 (2d Cir. 1982). A settlement class, like other certified classes, must satisfy the requirements of Fed. R. Civ. P. 23(a) and (b). *See Denney v. Deutsche Bank AG*, 443 F.3d 253, 270 (2d Cir. 2006). The manageability concerns of Rule 23(b)(3), however, are not at issue for a settlement class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problems is not a consideration when settlement-only certification is requested.").

Here, the Parties have stipulated to the certification of the Settlement Class for settlement purposes only. Settlement Agreement ¶3.1. Plaintiffs request that the Court certify the Settlement Class defined in the Settlement Agreement for settlement purposes. The Settlement Class comprises "all persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the Plan, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan, at any time during the Class Period." *Id.* ¶2.43. As set forth below, the proposed Settlement Class satisfies all applicable requirements of Rule 23(a) and 23(b)(1).

A. The Proposed Settlement Class Satisfies Rule 23(a)

Numerosity: The numerosity element requires that a putative class must be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Impracticability does not equate to impossibility but merely means that the difficulty or inconvenience of joining all class members makes the use of the class action device appropriate. *See Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 244-45 (2d Cir. 2007). When a class consists of forty or more members, numerosity is presumed. *Scott v. Quay*, 338 F.R.D. 178, 187 (E.D.N.Y. 2021). Here, the Settlement Class is estimated to be around 9,728 members. This fact more than satisfies the numerosity requirement.

Commonality: The commonality factor requires "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). Commonality involves "the capacity of a class-wide proceeding to generate common answers apt to drive the resolution of the litigation." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). This occurs when there is at least one common question, the determination of which "will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id.* Commonality "is considered a minimal burden for a party to shoulder," *Parker v. Time Warner Ent. Co.*, 239 F.R.D. 318, 329 (E.D.N.Y. 2007). "In general, the question of defendants' liability for ERISA violations is common to all class members because a breach of a fiduciary duty affects all participants and beneficiaries." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 143 (S.D.N.Y. 2010). This case is no exception. This lawsuit raises numerous common questions, including: (1) Whether Defendants are Plan fiduciaries; (2) Whether Defendants breached their fiduciary duties by selecting and retaining expensive share classes; and (3) The proper calculation of monetary relief.

Typicality: Typicality is established where "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." *Merck-Medco*, 504 F.3d at 245. Plaintiffs' claims are typical of the Settlement Class because they are based on the same set of alleged misconduct that apply to the Settlement Class as a whole. *See Sacerdote v. N.Y. Univ.*, 2018 WL 840364, at *3 (S.D.N.Y. Feb. 13, 2018) ("*Sacerdote I*").

Adequacy: The adequacy inquiry is a two-step process as to "whether: 1) plaintiff's interests are antagonistic to the interest of other members of the class and 2) plaintiff's attorneys are qualified, experienced and able to conduct the litigation." *Baffa v. Donaldson, Lufkin & Jenrette Sec. Corp*., 222 F.3d 52, 60 (2d Cir. 2000). As to the first prong of Rule 23(a)(4), there is no conflict of interest between Plaintiffs and Class Members. Plaintiffs seek to recover damages and equitable relief on behalf of all Class Members after Defendants allegedly breached fiduciary duties owed to the Plan participants. *Gonzalez v. Northwell Health, Inc*., 2025 WL 5265118, at *5 (E.D.N.Y. Dec. 22, 2025). *See also Becher v. Long Island Lighting Co.*, 164 F.R.D. 144, 152 (E.D.N.Y. 1996) (finding Rule 23(a)(4) satisfied when "[a]ll participants seek the same 'make-whole' relief claimed by the named plaintiffs for misrepresentation and breach of fiduciary duties"), *amended on other grounds*, 172 F.R.D. 28 (E.D.N.Y. 1997). As to the second prong, Class Counsel has substantial experience and has demonstrated competency. *Advanced Battery*, 298 F.R.D. at 181 ("Pomerantz LLP has extensive experience and a stellar reputation in the field of class action and securities litigation.")

B. The Proposed Class Satisfies Rule 23(b)(1)

Under Rule 23(b)(1), a class may be certified if prosecution of separate actions by individual class members would create a risk of:

A. inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or

B. 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).

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)." *Gonzalez*, 2025 WL 5265118, at *12 (quoting *Douglin v. GreatBanc Tr. Co*., 115 F. Supp. 3d 404, 412 (S.D.N.Y. 2015)). Framed another way, "ERISA litigation of this nature presents a paradigmatic example of a Rule 23(b)(1) class." *Polaroid*, 240 F.R.D. at 78 (quoting *Kolar v. Rite Aid Corp*., 2003 WL 1257272, at *3 (E.D. Pa. Mar. 11, 2003)). *See also Sacerdote I*, 2018 WL 840364, at *6.

Certification of the class under Rule 23(b)(1)(A) is proper because Settlement Class Members have all allegedly suffered the same injuries and are entitled to the same forms of relief, and separate actions risk inconsistent adjudications and incompatible standards. Indeed, courts have found that "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). "Any ruling with respect to one plaintiffs' claims for breach of fiduciary duties may dictate defendants' investment procedures and management methods going forward that would not only impact other Plan participants but would risk incompatible judgments if separate actions required different remedial or equitable actions. Moreover, allowing multiple individual cases risks incompatible results and issues of administration of the Plans that may have inconsistent effects across all plaintiffs." *Cunningham v. Cornell Univ.*, 2019 WL 275827, at *8 (S.D.N.Y. Jan. 22, 2019)

Certification is also proper under Rule 23(b)(1)(B). Plaintiffs have alleged that

Defendants' fiduciary breaches in the form of the alleged mismanagement of the Plan were breaches "as to all" participants and beneficiaries in the Settlement Class. *Sacerdote I*, 2018 WL 840364, at *6. Thus, "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. Rule 23(b)(1)(B) is also applicable in the context of ERISA because "adjudicating Plaintiffs' claims, as a practical matter, would dispose of the interests of the other participants or substantially impair or impede their ability to protect their interests." *Moreno v. Deutsche Bank Ams. Holding Corp.*, 2017 WL 3868803, at *8 (S.D.N.Y. Sep. 5, 2017).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant the Motion and enter the accompanying Preliminary Approval Order.

DATED: August 31, 2026

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing document complies with the word limit provided in Local Civil Rule 7.1(c) and in Rule 3(C) of the Court's Individual Practice Rules because it contains 7,450 words.

/s/ Samuel J. Adams
Samuel J. Adams

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2026, the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's website.

/s/ Samuel J. Adams
Samuel J. Adams