REESE LLP
Michael R. Reese
mreese@reesellp.com
George V. Granade
ggranade@reesellp.com
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Facsimile: (212) 253-4272

CENTER FOR SCIENCE IN THE PUBLIC INTEREST
Maia Kats
mkats@cspinet.org
1220 L Street, Northwest, Suite 300
Washington, District of Columbia 20005
Telephone: (202) 777-8381
Facsimile: (202) 265-4954

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
Deborah Clark-Weintraub
dweintraub@scott-scott.com
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, New York 10174
Telephone: (212) 223-6444
Facsimile: (212) 223-6334

Counsel for Plaintiffs and the Settlement Class

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

IN RE: GLACEAU VITAMINWATER MARKETING AND SALES PRACTICE LITIGATION (NO. II)	Case No. 1:11-md-02215-DLI-RML
BATSHEVA ACKERMAN, et al., Plaintiffs, v. COCA-COLA COMPANY and ENERGY BRANDS INC. (d/b/a GLACEAU), Defendants.	Case No. 1:09-cv-00395-DLI-RML **PLAINTIFFS' MEMORANDUM OF LAW IN OPPOSITION TO TRUTH IN ADVERTISING, INC.'S MOTION TO FILE BRIEF AS *AMICUS CURIAE* IN OPPOSITION TO PROPOSED SETTLEMENT**
JULIANA FORD, Plaintiff, v. THE COCA-COLA COMPANY and ENERGY BRANDS INC., Defendants.	Case No. 1:11-cv-02355-DLI-RML

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I. PRELIMINARY STATEMENT

Plaintiffs[1] Batsheva Ackerman, Ruslan Antonov, James Koh, and Juliana Ford respectfully submit this memorandum of law in opposition to the motion of Truth in Advertising, Inc. ("TINA") for leave to file a brief as *amicus curiae* in opposition to the proposed Settlement. (*See* Mot. File Br. *Amicus Curiae* Opp'n Proposed Settlement, ECF No. 155 ("Mot." or the "Motion").)

TINA fails to meet the requisite *amicus curiae* standards. Courts allow the submission of an *amicus* brief when a party is not represented competently or is not represented at all or when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. *United States v. Gotti*, 755 F. Supp. 1157, 1159 (E.D.N.Y. 1991). This Court already found that Plaintiffs and Class Counsel adequately represent the interests of the Settlement Class Members when the Court granted Preliminary Approval and appointed Plaintiffs as representatives of the Settlement Class. (*See* Order, Oct. 7, 2015.) *See also Ackerman v. Coca-Cola Co.*, No. 09 CV 395 DLI RML, 2013 WL 7044866, at *12 (E.D.N.Y. July 18, 2013) ("Here, there is no question that class counsel are qualified to conduct the litigation."). Moreover, because Class Counsel in this case include the Center for Science in the Public Interest ("CSPI"), the views of another consumer advocacy group provide no unique information or perspective.

Like TINA, CSPI is a consumer advocacy organization. Unlike TINA, CSPI engaged in seven years of hard-fought litigation against Defendants to obtain the proposed Settlement before the Court. CSPI has an active litigation department, which participates in *all* aspects of class

[1] Capitalized terms shall have the meaning the Settlement Agreement ascribes to them. (*See generally* Settlement Agreement & Release, ECF No. 167-2.)

actions from development and prosecution through resolution—and has for decades. TINA does not have this capacity. As a result, CSPI, not TINA, is uniquely positioned to assist the Court in understanding the strengths and weaknesses of the consumer claims asserted in this case, which is critical to evaluating whether the proposed Settlement is fair, reasonable, and adequate and should be approved. For all of the reasons stated in Plaintiffs' motion for final approval of the Settlement, it is CSPI's considered view that the Settlement warrants this Court's approval.

TINA seeks leave of Court to file an *amicus curiae* brief in order to object to the proposed settlement because TINA does not have proper standing to object.[2] In any event, TINA's objections to the Settlement are meritless in substance. Whether the Settlement is fair, reasonable, and adequate must be judged in light of the factors identified by the Second Circuit in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974) ("*Grinnell*"), not whether the Settlement provides all of the relief Plaintiffs and Class Counsel hoped to obtain when they first filed suit. Indeed, TINA's arguments are fanciful in that they utterly disregard the particular challenges of this litigation, including (i) Judge Gleeson's dismissal of Plaintiffs' claim that the express and implied health claims used to market **vitamin**water were misleading due to its sugar content;[3] (ii) this Court's denial of Plaintiffs' motion for class certification pursuant to Federal

[2] Even if the Court were to grant TINA leave to file its brief in opposition to the Settlement Agreement, some courts have noted that "an amicus curiae is not a party to the litigation and technically has no standing to object to the settlement." *See*, *e.g.*, *San Francisco NAACP v. San Francisco Unified Sch. Dist.*, 59 F. Supp.2d 1021, 1033 (N.D. Cal. 1999); *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 923 (S.D.N.Y. 1991) (noting that only class members have standing to object to the settlement of a class action), *aff'd*, 960 F.2d 285 (2d Cir. 1992); *Wyatt by and through Rawlins v. Hanan*, 868 F. Supp. 1356, 1358–59 (M.D. Ala. 1994) (*amicus curiae* have no standing to oppose a settlement).

[3] *See Ackerman v. Coca-Cola Co.*, No. CV–09–0395 (JG)(RML), 2010 WL 2925955, at *8 (E.D.N.Y. Jul. 21, 2010).

Rule of Civil Procedure 23(b)(3);[4] and (iii) the settlement of the tag-along, copy cat cases in the United States District Court for the Southern District of Ohio, over TINA's objection, which threatened to undermine this action.[5] TINA relegates to a footnote that it objected to the Ohio settlement and that its objection was denied.[6] As TINA's appearance as *amicus curiae* would not assist the Court and, instead, would needlessly increase the expense, duration, and complexity of this litigation, the Court should deny TINA's Motion.

II. ARGUMENT

A. The Legal Standard for Allowing an *Amicus* Brief Is Not Satisfied Here

"Since an amicus is not a party to the litigation, but participates only to assist the court, the extent to which, if at all, an amicus should be permitted to participate lies solely within the discretion of the court." *Gotti*, 755 F. Supp. at 1158 (*citing Alexander v. Hall*, 64 F.R.D. 152, 155 (D.S.C. 1974)). Courts have used the following test set forth in the Seventh Circuit's decision in *Ryan v. Commodity Futures Trading Commission*, 125 F.3d 1062 (7th Cir. 1997), in determining whether to grant leave:

> An *amicus* brief should normally be allowed when a party is not represented competently or is not represented at all, when the *amicus* has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the *amicus* to intervene and become a party in the present case), or when the *amicus* has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide. ***Otherwise, leave to file an amicus curiae brief should be denied.***

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[4] *See Ackerman v. Coca-Cola Co.*, No. CV–09–0395 (DLI)(RML), 2013 WL 7044866, at *21 (E.D.N.Y. Jul. 18, 2013)

[5] *See* Final Approval Order and Judgment of Dismissal With Prejudice, *Volz v. The Coca-Cola Co.*, No. 1:10cv879 (S.D. Ohio Mar. 30, 2015), ECF No. 70.

[6] *Id.* at 3–5.

Ryan, 125 F.3d at 1063 (citations omitted).[7] This standard is simply not satisfied here, and neither party to this litigation supports the filing of the *amicus* brief. *See Gotti*, 755 F. Supp. at 1159 ("[I]t 'may be thought particularly questionable' for the court to accept an *amicus* when it appears that the parties are well represented and that their counsel do not need supplemental assistance and where the joint consent of the parties to the submission by the *amicus* is lacking.").

As this Court held in recommending certification of a Rule 23(b)(2) class and again in granting preliminary approval, Plaintiffs and Class Counsel adequately represent the Settlement Class Members (Order, Oct. 7, 2015), and TINA cannot demonstrate otherwise. *See Ackerman*, 2013 WL 7044866, at *12 ("The combined experience of class counsel in class action litigation and consumer advocacy is more than sufficient for them to act on behalf of the classes in this litigation."). Class Counsel include nationally-recognized law firms and a leading nutrition advocacy non-profit organization, which all have extensive experience litigating class actions and advocating on behalf of consumers throughout the country. (*See, e.g.*, Decl. Reese Supp. Pls.' Mot. Final Approval & Pls.' Mot. Attorneys' Fees ¶¶ 30–33, ECF No. 170-2 (discussing qualifications of Reese LLP, Scott+Scott, Attorneys at Law, LLP, and the Center for Science in the Public Interest).)

Because Class Counsel more than adequately represent the Settlement Class, the Court has no need to grant TINA a role in representing the Settlement Class Members' interests. *Esther Sadowsky Testamentary Trust Derivatively ex rel. Home Loan Mortgage Corp.*, No. 08–

[7] *See Lehman XS Trust, Series 2006-GP2 v. Greenpoint Mortgage Funding, Inc.*, No. 12 CIV. 7935 ALC, 2014 WL 265784, at *2 (S.D.N.Y. Jan. 23, 2014) (citing *Ryan* and denying leave); *Jamaica Hosp. Med. Ctr., Inc. v. United Health Grp., Inc.*, 584 F. Supp. 2d 489, 497 (E.D.N.Y. 2008) (same).

CV–5221 (BSJ), 2009 WL 1285982, at *3 (S.D.N.Y. May 6, 2009) (denying motion for leave to file *amicus* brief in part because "all parties [were] adequately represented by counsel"); *United States v. Ahmed*, 788 F. Supp. 196, 198 n.1 (S.D.N.Y. 1992) (same), *aff'd*, 980 F.2d 161 (2d Cir. 1992). TINA's argument that it should be permitted to file an *amicus* brief because the Parties have agreed to a settlement and "no longer have an adversarial relationship"[8] would justify the filing of an *amicus* brief in every class action case, contrary to well-settled law.[9]

Nor does TINA have unique information or perspective that can assist the Court. To the contrary, this Court, which has overseen discovery, class certification proceedings, and settlement negotiations in this matter, is fully capable of determining whether the Settlement meets the "fair, reasonable and adequate" standard based upon the lengthy history of this case and the detailed record before it.

While it might be helpful in another context, TINA's purported expertise as a consumer advocacy organization is unnecessary here given CSPI's role as Co-Lead Class Counsel. CSPI

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[8] Plaintiffs do not understand TINA to be arguing that the Settlement may be the product of collusion, and such an argument would be meritless, in any event. The Settlement was negotiated with the assistance of this Court and a highly-respected private mediator, Hon. Richard J. Holwell (Ret.). It is well settled that participation of a highly qualified mediator in settlement negotiations "strongly supports [the] finding that negotiations were conducted at arm's length and without collusion." *Yang v. Focus Media Holding Ltd.*, No. 11-Civ. 9051 (CM) (GWG), 2014 WL 4401280, at *5 (S.D.N.Y. Sept. 4, 2014); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (a mediator's involvement in settlement negotiations "helps to ensure that the proceedings were free of collusion and undue pressure").

[9] TINA's argument that an *amicus* brief should be permitted "because the class members in this case will not receive any monetary compensation from this settlement [and, therefore,] there is no economic incentive for any of them to object to the proposed agreement, regardless of whether or not they think the terms are unfair" (Mot. 3, ECF No. 155) fails for the same reason and ignores that in this case a motion for certification of a damages class under Rule 23(b)(3) was denied by this Court. Moreover, the settlement does not release any monetary claims, but is solely for injunctive relief under Rule 23(b)(2). The fact that TINA's argument can be made in any case involving a Rule 23(b)(2) settlement underscores its lack of merit, as it runs counter to the spirit and letter of Rule 23(b)(2).

shares TINA's interest in protecting consumers from deceptive marketing and labeling. Such similarity of interests and objectives between Class Counsel and TINA weighs against admission of TINA as an *amicus*. *Sierra Club v. Fed. Emergency Mgmt. Agency*, No. CIV.A. H-07-0608, 2007 WL 3472851, at *3 (S.D. Tex. Nov. 14, 2007) (denying motion for leave to file *amicus* brief where "[the proposed *amicus*] has the same interests and policy objectives as [the plaintiff]").[10] Moreover, CSPI's views on the proposed Settlement will be of more assistance to this Court than TINA's given CSPI's broad litigation expertise in the field of consumer protection and its active participation in this complex, extended litigation. Simply stated, CSPI has a unique understanding of the strengths and weaknesses of Plaintiffs' claims, something TINA's objections do not even address.

B. Truth in Advertising, Inc.'s Objections to the Settlement Agreement Are Meritless

TINA is not a Settlement Class Member and, therefore, lacks standing to object. *See Cent. States Se. & Sw. Areas Health & Welfare Fund v. Merck-Medco Managed Care, L.L.C.*, 504 F.3d 229, 244 (2d Cir. 2007). Nevertheless, TINA's objections to the proposed Settlement are meritless.

[10] In contrast, in the cases cited by TINA, the *amici* offered unique insights concerning the subject matter of the litigation not otherwise available to the court. *See C & A Carbone, Inc. v. County of Rockland, NY*, No. 08-CV-6459-ER, 2014 WL 1202699 (S.D.N.Y. Mar. 24, 2014) (*amici* offered "insights into the market for recyclables"); *Automobile Club of New York, Inc. v. Port Authority of New York & New Jersey*, No. 11 CIV. 6746 RJH, 2011 WL 5865296, at *1, *2 (S.D.N.Y. Nov. 22, 2011) (legislators granted leave to file *amicus* brief "to ensure that Staten Islanders' unique financial and transit needs [were] included in the discourse of [the] litigation"); *Andersen v. Leavitt*, No. 03-CV-6115 DRHARL, 2007 WL 2343672, at *6 (E.D.N.Y. Aug. 13, 2007) ("[T]he County [offered] an insight not available from the Plaintiffs or Defendants, namely, the Defendants' implementation of the challenged [] program [had] potential economic and social implications on not just the County's senior population, but its entire population."). In *Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128 (3d Cir. 2002), the proposed *amici* claimed factual and legal determinations made in the resolution of the appeal could have direct effects on their interests in a related action. *Neonatology Associates, P.A.*, 293 F.3d at 130.

First, TINA argues the Settlement is not substantively fair because (i) the Settlement does not require permanent injunctive relief (Mot., Ex. 2, at 5–7, ECF No. 155-2); and (ii) the injunctive relief provided by the Settlement does not "eradicate the deception" (*id.* at 7).

This amounts to an objection that the Settlement could have been better. However, "complaining that the settlement should be 'better' . . . is not a valid objection." *Browning v. Yahoo! Inc.*, No. C04–01463 HRL, 2007 WL 4105971, at *5 (N.D. Cal. Nov. 16, 2007). The fact that TINA would prefer a longer period of injunctive relief "has no bearing on whether the terms of the Settlement Agreement itself are fair and reasonable." *Hall v. AT&T Mobility LLC*, No. 07-5325(JLL), 2010 WL 4053547, at *8 (D.N.J. Oct. 13, 2010). The latter determination must be made based on the *Grinnell* factors,[11] which are not even addressed in TINA's proposed *amicus* brief. *See Sullivan v. DB Investments, Inc.*, No. CIV.A. 04-2819 SRC, 2008 WL 8747721, at *24 (D.N.J. May 22, 2008) (rejecting objection concerning duration of injunctive relief in class action settlement because other considerations cumulatively weighed in favor of final approval of settlement). As Plaintiffs detailed in their papers in support of final approval, the *Grinnell* factors overwhelmingly favor approval of the Settlement in this case.[12] (Mem. Supp. Pls.' Mot. Final Approval Settlement 10–14, ECF No. 170-1.)

While TINA bemoans the fact that certain potential relief was not obtained, it ignores that there was no guarantee that Plaintiffs and the Settlement Class Members could ever obtain any of this relief even had the litigation continued. The Settlement eliminates the substantial

[11] *See Grinnell*, 495 F.2d at 463.

[12] Additionally, only one individual attempted to object to the Settlement. (*See* Pls.' Mem. in Opp'n to Steven Helfand's Obj. to Final Approval of Settlement & Pls.' Counsel's Mot. for Award of Att'ys' Fees (filed concurrently herewith).) That individual, however, does not have standing as he is not a class member. (*Id.*) No actual Settlement Class Members are complaining about the Settlement, an important consideration in analysis under *Grinnell*. (*Id.*)

uncertainties of continued litigation while putting in place meaningful labeling changes. As even TINA concedes, the addition of the "with sweeteners" language will go a long way toward helping to inform consumers that **vitamin**water is more than just nutrients and water. (Mot., Ex. 2, at 5, ECF No. 155-2.) By considering only the length of time that the Settlement requires Defendants to make changes to its label and marketing, TINA ignores that it is more important that the Settlement Class Members receive some relief than possibly "yet more" relief. *Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 201 (S.D.N.Y. 2012).

Furthermore, TINA's view of the Settlement regarding duration of the injunctive relief is overly pessimistic and misplaced. Indeed, similar challenges to the duration of injunctive relief obtained to settle class action claims have been rejected. For example, in *Sullivan v. DB Investments, Inc.*, the court rejected objections to the duration of the injunction obtained, stating:

> [T]he Court first notes that the injunction is the result of a settlement, and therefore, by its nature, it is a negotiated compromise. Like any compromise, the best recovery possible is ceded for other considerations. Because of this, the injunctive relief being weaker or shorter in duration than absolutely possible does not render the injunction "inadequate." . . . [T]he cumulative result of settlement must only be fair and reasonable. . . . The objectors ignore what the injunction does do—it, for the first time, subjects [the defendant] to the jurisdiction of a United States Court with the undisputed power to sanction [the defendant] if it engages in conduct that allegedly had been at the heart of its prior [activities at issue]. In short, despite the objections filed, the injunctive relief is reasonable.

Sullivan, 2008 WL 8747721, at *24 (internal citation omitted). The court's reasoning in *Sullivan* applies with equal force here. While the injunction's duration is not perpetual, the Settlement is nevertheless fair, reasonable, and adequate in light of the *Grinnell* factors.

For all of these reasons, the argument in TINA's proposed *amicus* brief that the "with sweeteners" label change does not last long enough does not demonstrate that the Settlement is

substantively unfair, and it does not provide unique information or perspective to the Court that the Parties' lawyers are unable to provide.[13]

TINA also argues that the Settlement Agreement only necessarily requires the "with sweeteners" language to be on the **vitamin**water label for one year (Mot., Ex. 2, at 5, 5–6 n.5, ECF No. 155-2), but the idea that "with sweeteners" will in fact only be on the label for a single year is implausible. The Settlement Agreement states that Defendants "shall begin to implement the Injunctive Relief within three (3) months" and does not permit them to wait to until the last day of the 24-month period to put the statement on the label. (*See* Settlement Agreement & Release ¶ 34, ECF No. 167-2.)

[13] TINA cites *Pearson v. NBTY, Inc.*, 772 F.3d 778 (7th Cir. 2014), but *Pearson* does not support a finding that the Settlement is substantively unfair. (*See* Mot., Ex. 2, at 6–7, ECF No. 155-2.) It is true that the Seventh Circuit's opinion in *Pearson* criticized the injunctive provisions of the settlement in that case, including the temporary nature of the injunctive relief. *Pearson*, 772 F.3d at 784–86. The Seventh Circuit's critique of the injunction in *Pearson*, however, was only part of a laundry list of problems with the settlement, including a needlessly complicated claims process for a Rule 23(b)(3) settlement. *See generally id.* Also, the settlement agreement specifically allowed the defendant to replace enjoined label statements with practically identical label statements, leading to the court's concern that the new (but practically identical) label statements would have "judicial imprimatur." *Id.* at 785–86. Contrary to TINA's suggestion (Mot., Ex. 2, at 6, ECF No. 155-2), *Pearson* does not mandate denial of approval of all injunctive-relief-only settlements in which the injunction is not perpetual, especially where, as here, the Parties have agreed to substantive clarifying label changes and the cumulative result of evaluation of the *Grinnell* factors strongly supports final approval. The decision in *Vassalle v. Midland Funding LLC*, 708 F.3d 747 (6th Cir. 2013), is also off point. (*See* Mot., Ex. 2, at 6, ECF No. 155-2.) In *Vassalle*, the United States Court of Appeals for the Sixth Circuit reversed the district court's approval of a settlement because "the named plaintiffs receive[d] 'preferential treatment,' while the relief provided to the unnamed class members [was] 'perfunctory.'" *Vassalle*, 708 F.3d at 755–56. Relatedly, while the debts of the unnamed class members at issue likely involved "thousands or at least hundreds of dollars," the award per unnamed class member was a mere $17.38. *Id.* at 756. Thus, the Sixth Circuit's discussion of the injunction in *Vassalle* was in the context of its discussion of significant problems with the relief the settlement provided to the unnamed class members, including the fact that the unnamed class members' relief stood in stark contrast to the greater relief provided to the named plaintiffs. *Id.* at 755 ("[T]he disparity in the relief afforded under the settlement to the named plaintiffs, on the one hand, and the unnamed class members, on the other hand, made the settlement unfair."). TINA has not argued Plaintiffs benefit from the Settlement more than the Settlement Class Members.

Furthermore, contrary to TINA's contention, the Settlement's benefits are not illusory. The Settlement requires the removal from **vitamin**water's advertising and labeling of numerous statements that Plaintiffs contended were false and misleading. And, insofar as Defendants make future false and misleading statements on future packaging of **vitamin**water that are different from the statements Plaintiffs challenged in the Actions, the Settlement does not prohibit the Settlement Class Members from bringing cases against Defendants challenging those future statements. *Nat'l Super Spuds, Inc. v. New York Mercantile Exch.*, 660 F.2d 9, 18 (2d Cir. 1981); *Deylii v. Novartis Pharm. Corp.*, No. 13-CV-06669 NSR, 2014 WL 2757470, at *5–6 (S.D.N.Y. June 16, 2014); *In re Lehman Bros. Sec. & Erisa Litig.*, No. 08 CIV. 5523 LAK GWG, 2012 WL 2478483, at *6–8 (S.D.N.Y. June 29, 2012).

Second, TINA argues that the notice to the class members was "fatally flawed" because Settlement Class Members were not informed that the injunctive relief was temporary. (Mot., Ex. 2, at 9, ECF No. 155-2.) Again, TINA is wrong. "The standard for the adequacy of a settlement notice in a class action under either the Due Process Clause or the Federal Rules is measured by reasonableness." *Wal-Mart Stores, Inc. v. VISA U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005). "There are no rigid rules to determine whether a settlement notice to the class satisfies constitutional or Rule 23(e) requirements; the settlement notice must '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.'" *Id.*, 396 F.3d at 114 (quoting *Weinberger v. Kendrick*, 698 F.2d 61, 70 (2d Cir. 1982)).

The Notice Plan satisfied both due process and Rule 23, as it reasonably conveyed the required information as well as afforded a reasonable time for those interested to make their appearance. *McReynolds v. Richards-Cantave*, 588 F.3d 790, 804 (2d Cir. 2009); *In re Marsh*

ERISA Litig., 265 F.R.D. 128, 144–45 (S.D.N.Y. 2010). Both the Summary Notice and the Long Form Notice directed Settlement Class Members to the Settlement Website, which contained a complete copy of the Settlement Agreement, including the duration of the injunctive relief. This is legally sufficient. *See In re Independent Energy Holdings PLC Sec. Litig.*, 302 F. Supp. 2d 180, 184 (S.D.N.Y. 2003).

Because Class Counsel adequately represent the Settlement Class, TINA does not have an interest in another case that the decision in this case may affect, and TINA does not offer unique information or perspective that can help the Court, the Court should deny TINA's Motion. *Ryan*, 125 F.3d at 1063; *see United States v. Yaroshenko*, 86 F. Supp. 3d 289, 290–91 (S.D.N.Y. 2015). Denial also will conserve the resources of the litigating parties and the Court in a case that already has taken seven years and thousands of pages of briefing by competent, expert counsel. *See Wildearth Guardians v. Lane*, No. CIV 12-118 LFG/KBM, 2012 WL 10028647, at *4 (D.N.M. June 20, 2012) (denying motion for leave to file *amicus* brief, in part to avoid "[imposing] the burden and costs of responding to an *amicus* brief on other litigating parties"); *see also Voices for Choices v. Illinois Bell Tel. Co.*, 339 F.3d 542, 544 (7th Cir. 2003) (the reasons for limiting admission of *amicus* briefs are several, including "judges have heavy caseloads and therefore need to minimize extraneous reading" and "the time and other resources required for the preparation and study of, and response to, *amicus* briefs drive up the cost of litigation"); *Nat'l Org. for Women, Inc. v. Scheidler*, 223 F.3d 615, 616 (7th Cir. 2000) ("[T]he filing of an *amicus* brief imposes a burden of study and the preparation of a possible response on the parties.").

III. CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court deny TINA's motion for leave to file a brief as *amicus curiae* in opposition to the proposed Settlement.

Date: February 19, 2016

Respectfully submitted,

By: */s/ Michael R. Reese*

Michael R. Reese
mreese@reesellp.com
George V. Granade
ggranade@reesellp.com
REESE LLP
100 West 93rd Street, 16th Floor
New York, New York 10025
Telephone: (212) 643-0500
Facsimile: (212) 253-4272

Maia Kats
mkats@cspinet.org
CENTER FOR SCIENCE IN THE PUBLIC INTEREST
1220 L Street, Northwest, Suite 300
Washington, District of Columbia 20005
Telephone: (202) 777-8381
Facsimile: (202) 265-4954

SCOTT+SCOTT, ATTORNEYS AT LAW, LLP
Deborah Clark-Weintraub
dweintraub@scott-scott.com
The Chrysler Building
405 Lexington Avenue, 40th Floor
New York, New York 10174
Telephone: (212) 223-6444
Facsimile: (212) 223-6334

Counsel for Plaintiffs and the Settlement Class