UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Nancy Calchi, individually and on behalf of all others similarly situated, Plaintiff, v. GlaxoSmithKline Consumer Healthcare Holdings (US) LLC, and GSK Consumer Health, Inc., Defendants.	Lead Case No. 7:22-cv-01341-KMK
Stacey Papalia, on behalf of herself and all others similarly situated, Plaintiff, v. GlaxoSmithKline Consumer Healthcare Holdings (US) LLC, Defendant.	Case No. 7:22-cv-02630-KMK

Memorandum of Points and Authorities in support of Plaintiffs' Unopposed Motion for Settlement Class Certification and Preliminary Approval of Class Action Settlement

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In this putative class action, Plaintiffs allege that Robitussin "Non-Drowsy" cough medicine is misleadingly labeled because the medicines allegedly cause drowsiness. The Parties have reached a classwide settlement on behalf of a nationwide Settlement Class of consumers who purchased the accused Robitussin medicines.[1] The settlement provides $4.5 million in non-reversionary cash to the Settlement Class. It also delivers significant relief to the Settlement Class through the removal of the challenged "Non-Drowsy" claim from the product packaging and marketing. The settlement is an excellent result for the Settlement Class, particularly given that the Court previously dismissed all claims on preemption grounds (and similar claims were dismissed by another court in this District). The settlement meets all criteria for preliminary approval.

I. Background.

A. Plaintiffs' allegations and claims.

Haleon[2] makes, markets, and distributes Robitussin over-the-counter cough and flu medicines. Consolidated Complaint (ECF No. 31) ("Compl.") ¶ 1. Plaintiffs allege that many Robitussin products contain the active ingredient Dextromethorphan Hydrobromide ("DXM"), a drug known to cause drowsiness. *Id.* ¶¶ 1, 16, 21-32. Plaintiffs assert that Haleon nevertheless misleadingly marketed these DXM products as "Non-Drowsy." *Id.* ¶¶ 17-18.

Plaintiffs Nancy Calchi and Stacey Papalia bought "Non-Drowsy" Robitussin. *Id.* ¶¶ 46-47. Both purchased the medicine because it claimed to be non-drowsy. *Id.* ¶¶ 46, 47. Plaintiffs allege that, had they known the products could cause drowsiness, they would not have bought the product or would have paid less for it. *Id.* ¶¶ 46-47. Plaintiffs further allege that the "Non-Drowsy" label and

[1] Unless otherwise stated, defined terms have the meaning from the Settlement Agreement. The Settlement Class and Covered Products are described below in Section I.D.

[2] "Haleon" includes both defendants GlaxoSmithKline Consumer Healthcare Holdings (US) LLC (now known as Haleon US Holdings LLC) and GSK Consumer Health, Inc. (now known as Haleon US Inc.).

marketing artificially inflated the price of the product for all consumers, thereby causing consumers to overpay. *Id.* ¶¶ 42-46, 66.

Plaintiffs' Consolidated Complaint asserted: (1) express warranty claims for a Nationwide Class of Robitussin purchasers (Count IV); (2) New York, California, Connecticut, Washington D.C., Illinois, Maryland, Missouri, and Washington consumer protection law claims for a multi-state Consumer Protection Subclass (Count I); and (3) New York consumer protection claims (GBL § 349 and § 350) for a New York Subclass (Counts II and III); *see* Compl. ¶¶ 60-62 (class definitions).

B. The Court granted Haleon's motion to dismiss. Plaintiffs appealed.

Haleon filed a motion to dismiss contending (among other grounds) that Plaintiffs' claims were preempted by the Food, Drug, and Cosmetic Act. ECF Nos. 34, 35. The Court granted the motion and dismissed all Plaintiffs' claims on preemption grounds. ECF No. 45. The Court adopted the reasoning of another court in this District—from a similar case against Walmart's generic cough medicines—which found similar claims preempted. *See id.* (adopting *Goldstein v. Walmart, Inc.*, 637 F. Supp. 3d 95 (S.D.N.Y. 2022)). Plaintiffs appealed to the Second Circuit. ECF No. 48. The parties fully briefed the appeal and oral argument was set for December 2023.

C. The parties mediated and reached a classwide settlement.

While the parties litigated the appeal, they spent several months conceptually discussing a potential classwide resolution. Before oral argument, the Parties then held a full-day mediation with Bruce Friedman at JAMS. Mr. Friedman has extensive experience mediating consumer class actions. Jacobson decl. ¶ 2; Agreement at p. 4.

The Parties submitted mediation statements and exchanged information necessary to evaluate their respective settlement positions. Jacobson decl. ¶ 3; Agreement at p. 4. Settlement negotiations were arms-length, contentious, and well-informed. *Id.*; Agreement at p. 4. And because

the appeal was fully briefed, the parties could assess the strength of the appellate arguments on either side. Jacobson decl. ¶ 3

The mediation was successful and resulted in the terms of a classwide settlement. Jacobson decl. ¶ 4. The parties jointly moved the Second Circuit to hold the appeal in abeyance in light of the settlement and anticipated approval proceedings, which the Court granted. *Id.* The parties then spent months negotiating the long-form agreement and supporting documents, soliciting bids from settlement administrators, and working with the proposed settlement administrator to develop a comprehensive Notice Plan. *Id.*

D. The Settlement Agreement.

The executed Settlement Agreement ("Agreement") is attached as Exhibit 1 to the Jacobson Declaration.

1. The Settlement Class.

The Settlement Class consists of all individual consumers who purchased any of the Covered Products from February 16, 2016, to the time the Court enters the proposed Preliminary Approval Order. Agreement § A.1.ll. The Covered Products include any flavor Robitussin product containing DXM and marketed as non-drowsy. Agreement § A.1.k[3]

Specifically excluded from the Settlement Class are (i) Haleon, its officers, directors, affiliates, legal representatives, employees, successors, and assigns, and entities in which Haleon has a controlling interest; (ii) judges presiding over the Litigation; (iii) local, municipal, state, and federal governmental entities; (iv) counsel of record for the Parties; and (v) all Persons who validly opt-out in a timely manner. Agreement § A.1.ll.

2. Benefits.

Money**.** Haleon will contribute a non-reversionary common fund of $4,500,000. Agreement

[3] A specific list of the covered products is at Agreement § A.1.k.

§§ A.1.q, C.1. This common fund will be used to pay Settlement Class Members who submit a timely and valid Claim, to pay reasonable notice and administration costs, and to pay attorneys' fees, costs, and service awards as approved by the Court. *Id.* §§ A.1.q, C.2, G.1.c. Each eligible Settlement Class Member who submits a timely and valid Claim will receive a pro rata, cash distribution (based on the total number of timely and valid Claims) from the Settlement Fund. Agreement § C.4. Settlement Class members may submit one Claim per household without proof of purchase and up to three Claims per household with proof of purchase. *Id.* Settlement Class Members can file Claims electronically (on the settlement website) or by mail. Agreement §§ C.5, D.6.c.

The pro rata payment will depend on the number of timely and valid Claims. Based on experience with past settlements, it is projected that each Claim could be worth between $1.50 and $4.75 (an appreciable percentage of the typical retail price of the Covered Products). Jacobson decl. ¶ 7 (example of Covered Product retailing for $11.99). These estimates could increase or decrease depending on actual Claim activity, and the actual figure will not be known until all Claims are validated.

Labeling change**.** As part of the settlement, Haleon will cease including the "Non-Drowsy" claim on the Covered Product packaging and will exclude the "Non-Drowsy" statement from any related future marketing or advertisements.[4] Agreement § C.9.a.

3. Release.

The Settlement Agreement includes a reasonably-tailored release of only those claims that were or could have been asserted in this litigation based on, relating to or arising from Haleon's assertion, representation, or suggestion that the Covered Product are "Non-Drowsy" (and any

[4] This relief is prospective from the Effective Date; Haleon will not be required to recall any Covered Products or advertisements distributed before that date. Agreement § C.9.a.

related derivative statements) during the Class Period. Agreement § F.1. The release excludes any claims for personal injury. *Id.* §§ F.1, F.2.

4. Attorneys' fees, costs, and service awards.

At the mediation, and only after the Parties agreed to the material terms of the classwide relief, they discussed attorneys' fees and service awards under the supervision of the mediator. Jacobson decl. ¶ 5; Agreement § G.1. The settlement is not contingent on the Court granting service awards or attorneys' fees. *Id.* §§ G.1.b, G.1.d.

Service awards. The settlement permits each Class Representative to apply for a service award of $2,000. Agreement § G.1.b.

Attorneys' fees. The settlement permits Plaintiffs' counsel to apply to the Court for reasonable attorneys' fees (not to exceed one-third of the Gross Settlement Fund) and reasonable litigation costs. Agreement § G.1.a.

5. Notice and administration.

The parties selected Angeion Group to administer the settlement, after soliciting bids from four reputable administrators. Jacobson decl. ¶ 8; Agreement §§ A.1.hh, D.3. Angeion is a highly-experienced administration firm, with sound procedures. Angeion decl. ¶¶ 1-12. Angeion has agreed to a "not to exceed" price of $550,000 for providing notice and administering Claims, which will help maximize payments to eligible Settlement Class Members. Angeion decl. ¶ 59.

Angeion will implement a nationwide, media Notice Plan to reach at least 70 percent of the Settlement Class (a well-accepted benchmark). Angeion decl. ¶¶ 57-58, 30. Haleon will also provide Angeion with reasonably available, direct notice information for those likely Settlement Class members for which Haleon has contact information. Agreement § D.6.a & b; Angeion decl. ¶¶ 22-29. The Notice Plan will provide reasonable and best practicable notice to Settlement Class members. Agreement § B.3.d.; Angeion decl. ¶¶ 60-61.

Angeion will also create a comprehensive Settlement Website. Agreement § D.6.c; Angeion decl. ¶¶ 46-47. The Settlement Website will provide members of the Settlement Class the information needed to evaluate the settlement and exercise their rights, including: general information about the settlement, relevant Court and settlement-related documents, and important settlement deadlines. *Id.* The Settlement Website will also feature a portal for the electronic submission of Claim Forms. *Id.*

The Settlement Administrator will also set up a toll-free number for Settlement Class members to receive additional information about the settlement. Agreement § D.6.c.; Angeion decl. ¶ 48. The toll-free number will use Voice Response technology to provide general information concerning, among other things, deadlines for filing a Claim Form, opting out, or objecting. Agreement § D.6.d.; Angeion decl. ¶ 48.

A copy of the Parties' proposed Notice documents (short forms and long form) and Claim Form for the Court's review and approval are attached as Exhibit 2 to the Jacobson Declaration.

II. The settlement should be preliminarily approved.

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 (2d Cir. 2005). When reviewing a proposed settlement, courts consider four Rule 23 factors: (1) the adequacy of representation (by counsel and class representatives); (2) the existence of arm's-length negotiations; (3) the adequacy of the relief (taking into account case-specific circumstances); and (4) the equitable treatment of class members. Fed. R. Civ. P. 23(e)(2). The first two Rule 23(e)(2) factors address procedural fairness, while the remaining two address substantive concerns.

Courts also consider the nine *Grinnell* factors. *See Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). These are: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (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 trial; (7) the ability of the defendant to withstand 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 the litigation. *Id.* at 463.[5] The *Grinnell* factors largely "overlap" with Rule 23(e)(2)(C)-(D) (the substantive fairness factors). *Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*, 2023 U.S. Dist. LEXIS 95908, 2023 WL 3749996, at *4 (S.D.N.Y. June 1, 2023).

A. The settlement is procedurally fair.

i. Plaintiffs and Class Counsel are adequate.

This analysis mirrors the adequacy required for certification under Rule 23(a)(4). *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019) (applying the Rule 23(a) adequacy test for a Rule 23(e)(2)(A) analysis).

Class representatives are adequate if they "have an interest in vigorously pursuing the claims of the class, and . . . have no interests antagonistic to the interests of other class members." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 827 F.3d 223, 231 (2d Cir. 2016). "To assure vigorous prosecution, courts consider whether the class representative has adequate incentive to pursue the class's claim and whether some difference between the class representative and some class members might undermine that incentive." *Id.*

Plaintiffs have no interests that are antagonistic to putative class members. "[T]he fact that plaintiffs' claims are typical of the class is strong evidence that their interests are not antagonistic to those of the class." *In re Kind LLC "Healthy & All Nat." Litig.*, 337 F.R.D. 581, 596 (S.D.N.Y. 2021).

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[5] Not every *Grinnell* factor need support the settlement for the settlement to be approved. *See*, *e.g., Charron v. Wiener*, 731 F.3d 241, 249 (2d Cir. 2013). And the "Court does not consider … the 'reaction of the class to the settlement,' … because consideration of this factor is premature at the preliminary approval stage." *Soler v. Fresh Direct, LLC*, 2023 U.S. Dist. LEXIS 42647, 2023 WL 2492977, at *5 n. 3 (S.D.N.Y. Mar. 14, 2023).

As explained above (Section I.A), Plaintiffs have the same claims as the members of the proposed Settlement Class, allowing them to vigorously represent those individuals without presenting any "'fundamental' conflict[s] that go[] 'to the very heart of the litigation." *In re Payment Card Interchange Fee*, 827 F.3d 223, 231. They, like all members of the Settlement Class, allegedly were exposed to the label claim that the Covered Products are "Non-Drowsy" and likewise allegedly suffered the same economic injury when they purchased the Covered Products (overpayment). *See* Compl. ¶¶ 46-47; 66; Calchi decl. ¶2; Papalia decl. ¶2. Plaintiffs therefore have the same interest in recovering damages and in remedying Haleon's allegedly misleading advertising. And because the "Non-Drowsy" representations are uniform, there is no difference between Plaintiffs and class members that might undermine Plaintiffs' ability to represent the class.

Plaintiffs' adequacy is also demonstrated through their involvement in the case. *See de Lacour v. Colgate-Palmolive Co.*, 338 F.R.D. 324, 339 (S.D.N.Y. 2021). Here, Plaintiffs assisted counsel in the factual investigation necessary to file the Complaint, reviewed the Complaint, stayed updated on key litigation events, and evaluated and agreed to the terms of the settlement. *See* Calchi decl. ¶3; Papalia decl. ¶3. Plaintiffs are willing to serve as class representatives and understand their duty to represent the interests of the Settlement Class. *Id.*

In sum, Plaintiffs are adequate representatives for the Settlement Class.

Turning to Class Counsel, counsel are adequate if they are "qualified, experienced and able to conduct the litigation." *Cordes & Co. Fin. Servs. v. A.G. Edwards & Sons, Inc.*, 502 F.3d 91, 99 (2d Cir. 2007). The Court previously appointed Dovel & Luner as interim class counsel because it found the adequacy requirement satisfied. ECF No. 29. It remains satisfied.

Dovel & Luner has been appointed lead counsel in multiple other cases and have successfully resolved—both through settlement and trial—consumer class actions. Jacobson decl. ¶ 11. The firm has significant experience litigating class actions, as well as substantial experience

litigating cases addressing products containing DXM yet marketed as "Non-Drowsy." *Id.* ¶ 12. Counsel diligently litigated this case through the motion to dismiss, fully briefed the appeal, and achieved substantial relief for the class despite the adverse ruling on the motion to dismiss and the risk of affirmance on appeal. Dovel & Luner is adequate to represent the Settlement Class.

ii. Negotiations were arm's-length.

As addressed above (Section I.C), the settlement resulted from arm's-length negotiation between experienced counsel facilitated by an experienced class action mediator. And because the appeal was fully briefed, the Parties could assess the strength of the appellate arguments on either side. In these circumstances, courts find classwide settlement agreements to be arm's-length. *Nichols v. Noom, Inc.*, 2022 U.S. Dist. LEXIS 123146, 2022 WL 2705354, at *22 (S.D.N.Y. July 12, 2022) (finding a settlement arm's-length that was reached after "full-day mediations with [a] neutral third-party mediator"); *Reyes v. Summit Health Mgmt., LLC*, 2024 U.S. Dist. LEXIS 21061, 2024 WL 472841, at *8 (S.D.N.Y. Feb. 6, 2024) (finding a settlement arm's-length when the parties were "aided … by an experienced mediator.").

B. The settlement is substantively fair.

1. The relief is excellent in light of the risks.

Rule 23(e)(2)(D) looks to whether the relief provided to the proposed class is 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 proposed class; (iii) the terms of any proposed award of attorney's fees; and (iv) any other agreements made in connection with the proposed settlement. Here, all factors favor approval.

i. The costs, risks, and delay of further litigation are substantial.

This Rule 23(e) factor overlaps with the *Grinnell* factors that consider: (1) the complexity, expense, and likely duration of the litigation … (4) the risks of establishing liability; (5) the risks of

establishing damages; (6) the risks of maintaining the class action through trial; (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 the litigation. *Grinnell*, 495 F.2d at 463. The bottom-line question is whether the settlement provides fair relief, in light of the risks.

Here, Haleon already persuaded the Court to dismiss Plaintiffs' claims on preemption grounds. Another court in this district also dismissed comparable claims on preemption grounds. *See, e.g.*, *Goldstein v. Walmart, Inc.*, 2022 U.S. Dist. LEXIS 196743 (S.D.N.Y. Oct. 28, 2022). The settlement was achieved in the face of the risk that the Second Circuit would affirm these decisions, leaving Plaintiffs and the proposed Settlement Class with zero relief.

And even if Plaintiffs prevailed on appeal and the litigation went forward, there would be substantial delay, costs, and further risks. A successful appeal would only return the case to the motion to dismiss stage for the Court to address the additional dispositive arguments raised in Haleon's motion to dismiss. If claims survived on the pleadings, Haleon still strongly contests liability and would present vigorous defenses. *See* Agreement at p. 3. Continued litigation would involve lengthy fact discovery and a battle of the experts over whether the products were appropriately labeled "Non-Drowsy" and whether DXM does cause drowsiness. This case is still a long way from proceedings to potentially certify a litigation class. *See Okla. Firefighters Pension & Ret. Sys. v. Lexmark Int'l, Inc.*, 2021 U.S. Dist. LEXIS 2807, 2021 WL 76328, at *7 (S.D.N.Y. Jan. 7, 2021) ("that Lead Plaintiff's motion for class certification had not been fully briefed—let alone decided—presented additional risks to Lead Plaintiff and the proposed class."). And even a positive certification ruling in Plaintiffs' favor could be challenged by a decertification motion, appeal, or both.

In sum, "litigation of this matter . . . through trial would be complex, costly and long." *Manley v. Midan Rest. Inc.*, 2016 U.S. Dist. LEXIS 43571, at *23 (S.D.N.Y. Mar. 30, 2016). "The settlement eliminates [the] costs and risks" associated with further litigation. *Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 663 (S.D.N.Y. 2015). "It also obtains for the class prompt [] compensation for prior [] injuries." *Id.*

Given these risks, the settlement is excellent. Courts do not ask "whether the settlement represents the highest recovery possible . . . but whether it represents a reasonable one in light of the many uncertainties the class faces." *Bodon v. Domino's Pizza, LLC*, 2015 U.S. Dist. LEXIS 17358, 2015 WL 588656, at *17 (E.D.N.Y. Jan. 16, 2015) (internal quotes omitted); *Copley v. Bactolac Pharm., Inc.*, 2023 U.S. Dist. LEXIS 41936, 2023 WL 2470683, at *23 (E.D.N.Y. Mar. 13, 2023) ("[E]ven a fraction of the potential recovery does not render a proposed settlement inadequate" because the settlement "must be viewed in the context of all [the risks of litigation]"). Here, based on estimated claim rates, it is estimated that Eligible Claimants may receive between approximately $1.50 and $4.75 per Claim. Jacobson decl. ¶ 7. Though this is an estimate, with the potential for a lower or higher payment depending on Claims activity, the potential range represents an appreciable portion of the price of a Covered Product. *Id.*

Importantly, Haleon also has agreed to make significant changes to the labeling, advertising, and marketing of the Covered Products to cure the allegedly deceptive practice at the core of this case. This is a substantial additional benefit for the proposed Settlement Class. *See Nichols v. Noom, Inc.*, 2022 U.S. Dist. LEXIS 123146, 2022 WL 2705354, at *8 (S.D.N.Y. July 12, 2022) ("The settlement also provides robust business practice changes that will prevent Class Members' future unintended purchases and provides additional safeguards …); *Jermyn v. Best Buy Stores, L. P.*, 2012 U.S. Dist. LEXIS 90289, 2012 WL 2505644, at *30 (S.D.N.Y. June 27, 2012) (the settlement "provides substantial and immediate benefits to Best Buy customers, mandating

important changes to how Best Buy deals with price matching within the company and in its stores"). This conduct-oriented relief not only benefits the Settlement Class but all future potential purchasers of a Covered Product, thereby satisfying the so-called tenth *Grinnell* factor: "social utility." *Berkson v. Gogo, LLC*, 147 F. Supp. 3d 123, 131 (E.D.N.Y. 2015); *id.* at 133 (finding social utility achieved by a change in defendant's website disclosures).

At bottom, the settlement is an excellent result in light of the risks of continued litigation. This factor strongly weighs in favor of approval.

ii. The method of distributing relief is efficient and reasonable.

Settlement Class Members can efficiently obtain relief through submission of a simple Claim Form. Agreement §§ C.5, D.6.c; Jacobson Decl. Ex. 2 (Claim Form). The Claim Form can be submitted online through the Settlement Website or by mail. And Settlement Class Members can receive payment by electronic means, as well as by check if that is their preference. The pro rata distribution is a "reasonable, rational basis," given Plaintiffs' theory of harm: that the misleading non-drowsy label equally inflated the price of each bottle. *See In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 694 (S.D.N.Y. 2019). The method of distributing relief is efficient and reasonable.

iii. The terms of the proposed attorneys' fees are reasonable.

The Settlement Agreement contemplates Plaintiffs' Counsel will seek up to 1/3 of the Settlement Fund for attorneys' fees and costs, subject to Court approval, which is in line with federal benchmarks. In the Second Circuit, courts "favor the 'percentage of the fund' method of determining attorneys' fees because it best aligns with the interests of the class and counsel." *Medina v. NYC Harlem Foods Inc.*, 2024 U.S. Dist. LEXIS 10892, 2024 WL 230745, at *14 (S.D.N.Y. Jan 22, 2024) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 121 (2d Cir. 2005)). And an award of attorneys' fees of 33 percent "constitutes a proportion routinely approved as reasonable." *In re Northern Dynasty Mins. Ltd. Sec. Litig.*, 2024 U.S. Dist. LEXIS 14438, 2024 WL 308242, at *41

(E.D.N.Y. Jan. 26, 2024); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 991 F. Supp. 2d 437, 445 (E.D.N.Y. 2014) ("[I]t is very common to see 33% contingency fees in cases with funds of less than $10 million . . . ."); *Burns v. Falconstor Software, Inc.*, 2014 U.S. Dist. LEXIS 203061, 2014 WL 12917621, at *21-22 (E.D.N.Y.) (collecting cases).

Further, there are no "red flags" or signs of collusion. *See Medina v. NYC Harlem Foods Inc.*, 2022 U.S. Dist. LEXIS 73263, 2022 WL 1184260, at *25 (S.D.N.Y. Apr. 21, 2022). The Parties agreed to the relief for the Settlement Class before discussing an appropriate attorneys' fee or service award. Agreement § G.1; Jacobson decl. ¶ 5. The Settlement Fund is non-reversionary. Agreement § A.1.q. The settlement is not contingent on the Court granting counsel's request for fees. Agreement § G.1.d. And the Settlement Agreement has no "clear sailing" clause (where a defendant agrees not to object to attorney fees). *See id.* At this preliminary stage, the terms of the proposed attorneys' fees are reasonable.

iv. There are no side agreements.

There are no other agreements between the parties made in connection with the Settlement Agreement. Jacobson decl. ¶ 9.

2. The Settlement Agreement treats members of the Settlement Class equitably.

Courts find that pro rata distribution schemes, like the one called for here, are "sufficiently equitable." *E.g., Sonterra Capital Master Fund, Ltd. v. Barclays Bank PLC*, 2023 U.S. Dist. LEXIS 95908, 2023 WL 3749996, at *11 (S.D.N.Y. June 1, 2023); *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 330 F.R.D. 11, 47 (E.D.N.Y. 2019); *Meredith Corp. v. SESAC, LLC*, 87 F.Supp.3d 650, 667 (S.D.N.Y. 2015). This is especially true here, given Plaintiffs' theory of harm: that the allegedly misleading "Non-Drowsy" label inflated the cost of the Covered Products. Each Settlement Class Member is eligible to submit a Claim, even without proof of purchase. Also, Settlement Class Members who have proof of purchasing more Covered Products within the limitations period (up to

three purchases) may submit additional Claims and receive a correspondingly larger share. Agreement § C.4.

Service Awards. The Second Circuit has recognized that service awards for settlement class representatives "fit snugly into the requirement of Rule 23(e)(2)(D)" so long as they are not "excessive compared to the service provided by the class representative or . . . unfair to the absent class members." *Moses v. New York Times*, 79 F.4th 235, 245 (2d Cir. 2023) (quoting *Murray v. Grocery Delivery E-Servs. USA Inc.*, 55 F.4th 340, 353 (1st Cir. 2022)). Absent a service award, class representatives "have a fair argument that the settlement is not treating *them* equitably relative to the absent class members." *Id.* (emphasis added) (quoting 5 Newberg and Rubenstein on Class Actions §§ 17:3-4). In recognition of these principles, "[c]ourts in this District have regularly approved service awards for individual representative plaintiffs ranging from $1,000 to $10,000." *Reyes v. Summit Health Mgmt., LLC*, 2024 U.S. Dist. LEXIS 21061, 2024 WL 472841, at *14 n.5 (gathering cases).

Here, Plaintiffs at the appropriate time will request service awards of $2,000 per Plaintiff. Agreement § G.1.b. Plaintiffs helped counsel with the factual investigation necessary to file the Complaint; reviewed the Complaint and consulted with counsel as to its contents; kept apprised of key litigation events; and evaluated and agreed to the terms of the settlement. *See* Calchi decl. ¶ 3; Papalia decl. ¶ 3. Compensating Plaintiffs $2,000 for their time and effort is not "excessive" and does not render the Settlement Agreement unfair to absent class members.

3. Additional *Grinnell* factors support approval.

Under *Grinnell* factor three, the "pertinent question is 'whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Capsolas v. Pasta Res., Inc.*, 2012 U.S. Dist. LEXIS 144651, 2012 WL 4760910, at *16 (S.D.N.Y. Oct. 5, 2012). This factor does not require "formal discovery" or even "extensive discovery"; "informal discovery" will do so long as "the

parties . . . engaged in sufficient investigation of the facts." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 167 (S.D.N.Y. 2000). Here, the Parties "had an adequate appreciation of the merits of the case" both through the extensive legal briefing completed before settlement negotiations began and through informal discovery leading up to the mediation. Jacobson decl. ¶ 3.

Grinnell factor seven considers whether Haleon likely could withstand a greater judgment. But "the ability of defendants to withstand greater judgment does not alone suggest the settlement is unfair or unreasonable." *In re Facebook, Inc. IPO Sec. & Derivative Litig*, 2015 U.S. Dist. LEXIS 152668, 2015 WL 6971424, at *15 (S.D.N.Y. Nov. 9, 2015). "[T]his factor, standing alone, does not suggest that the settlement is unfair." *D'Amato v. Deutsche Bank*, 236 F.3d 78, 86 (2d Cir. 2001); *Sonterra Capital Master Fund, Ltd. V. Barclays Bank PLC*, 2023 U.S. Dist. LEXIS 95908, 2023 WL 3749996, at *12 (S.D.N.Y. June 1, 2023) (approving settlement against Deutsche Bank "despite the fact that Deutsche Bank could potentially withstand a greater judgment than the proposed Settlement Amount").

In sum, the Settlement Agreement is procedurally and substantively fair. The Court should grant preliminary approval.

III. The Court should conditionally certify the Settlement Class.

To approve a classwide settlement, the "Court must also find that it will likely be able to certify the class for purposes of judgment on the proposal. A court may certify a class for settlement purposes where the proposed settlement class meets the requirements for Rule 23(a) class certification, as well as one of the three subsections of Rule 23(b)." *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 699-700 (S.D.N.Y. 2019) (internal cites omitted). This standard is met here.

A. The Settlement Class satisfies Rule 23(a).

1. The Settlement Class is numerous.

Rule 23(a)(1) is satisfied when the class is "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). "Although precise calculation of the number of class members is not required, numerosity is generally presumed when the prospective class consists of 40 members of more." *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 174 (S.D.N.Y. 2014) (internal quotes omitted). The Second Circuit has found numerosity met where a proposed class is "obviously numerous." *Marisol A. by Forbes v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997). Here, the Covered Products at issue were sold nationwide and there are at least hundreds of thousands of Settlement Class Members. Compl. ¶ 64; Jacobson decl. ¶ 10. This element easily is met.

2. There are common questions of law and fact.

Rule 23(a)(2) requires questions of law or fact common to the proposed class. "Claims for relief need not be identical for them to be common." *Johnson v. Nextel Commc'ns Inc.*, 780 F.3d 128, 137-138 (2d Cir. 2015). Rather, commonality requires only that "there be issues whose resolution will affect all or a significant number of the putative class members." *Id.* That is why "[w]here the same conduct or practice by the same defendant gives rise to the same kind of claim from all class members, there is a common question." *Id.* (quotation marks and citation omitted). In other words, commonality is satisfied if class members allege the same injury from the same conduct. *de Lacour v. Colgate-Palmolive Co.*, 338 F.R.D. 324, 337 (S.D.N.Y. 2021) (finding commonality in false advertising case when "[t]he alleged injuries to class members . . . flow[ed] from the same alleged misrepresentation"). And "even a single common question will do." *Elisa W. v. City of New York*, 82 F. 4th 115, 127 (2d Cir. 2023) (internal quotes omitted).

Here, all Settlement Class Members purchased a "Non-Drowsy" Robitussin product. Agreement A.1.ll. All Settlement Class members allege the same alleged harm (overpayment) from

the same alleged misrepresentation (the allegedly misleading "Non-Drowsy" claim). Compl. ¶¶ 1-3. A core, common factual question is whether the Covered Products cause drowsiness because they are made with DXM, such that the "Non-Drowsy" claim is false and misleading. There are common questions associated with each cause of action asserted in the operative Complaint.

Nationwide warranty class. Plaintiffs assert a breach of express warranty claim on behalf of all members of the Settlement Class (Compl. Count IV). Central, common legal questions include: (1) whether the "Non-Drowsy" claim constitutes an express warranty about the product and (2) whether this warranty was breached because the products allegedly cause drowsiness. *See In re Sinus Buster Prods. Consumer Litig.*, U.S. Dist. LEXIS 158415, 2014 WL 5819921, at *10 (E.D.N.Y. Nov. 10, 2014) (for warranty claims, sufficient common issues include whether defendant "advertised or marketed the … in a way that was false or misleading" and whether the products "did not conform to their stated representations"); *In re Nissan Radiator/Transmission Cooler Litig.,* 2013 U.S. Dist. LEXIS 116720, 2013 WL 4080946, at *53 (S.D.N.Y. May 30, 2013) (commonality is satisfied when products allegedly failed to perform in line with the warranty); *In re Sony SXRD Rear Projection Television Class Action Litig.*, 2008 U.S. Dist. LEXIS 36093, 2008 WL 1956267, at *13-14 (S.D.N.Y. May 1, 2008) (same); *In re Skechers Toning Shoe Prods. Liab. Litig.,* U.S. Dist. LEXIS 113641, 2012 WL 3312668, at *9-10 (W.D. Ky. Aug. 13, 2012) (common question of fact is "whether wearing Skechers Toning Shoes provided the benefits promised in Skechers's advertising and marketing materials" and "[c]ommon questions of law are …whether Skechers breached the terms of an express warranty").

Consumer protection subclasses. Plaintiffs assert consumer protection claims on behalf of multiple subclasses. Compl. Count I (multi-state consumer protection class that includes California, Connecticut, Washington D.C., Illinois, Maryland, Missouri, New York, and Washington); Count II (New York GBL § 349); Count III (New York GBL § 350). For these claims, a core common legal

question is whether the "Non-Drowsy" label is misleading to reasonable consumers. *See, e.g.*, *Sharpe v. A&W Concentrate Co.*, 2021 U.S. Dist. LEXIS 160177, 2021 WL 3721392, at *9 (E.D.N.Y. July 23, 2021) (GBL § 349 and § 350 require "an objective standard" of materiality and therefore "typically 'can be proved through evidence common to the class' and presents 'a common question'"); *Chester v. TJX Cos.*, 2017 U.S. Dist. LEXIS 201121, 2017 WL 6205788, at *14 (C.D. Cal. Dec. 5, 2017) (certifying a class asserting California UCL, FAL, and CLRA claims in part because "there is a common question of whether Defendant's . . . advertising . . . w[as] likely to deceive a reasonable consumer").[6]

3. Plaintiffs are typical.

Rule 23(a)(3) requires the class representatives' claims or defenses be "typical of the claims or defenses of the class." This requirement is satisfied when "each member's claim arises from the same course of events and each class member makes similar legal arguments to prove the defendant's liability." *Elisa W. v. City of New York*, 82 F.4th 115, 128 (2d Cir. 2023). Where, as here, "the claims of a class stem from a single course of conduct, 'the commonality and typicality requirements of Rule 23(a) tend to merge." *Id.* (quoting *Wal-Mart, Inc. v. Dukes*, 564 U.S. 338, 349 n.5 (2011)). In the false advertising context, the typicality requirement is satisfied when each class member's claim arises from the same alleged misrepresentations. *See de Lacour v. Colgate-Palmolive Co.*, 338 F.R.D. 324, 337 (S.D.N.Y. 2021).

Plaintiffs' claims arise from the same alleged misrepresentation as the claims of all members of the Settlement Class: the allegedly misleading "Non-Drowsy" label. Compl. ¶¶ 46-47, 66; Calchi

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[6] *Concannon v. Lego Sys.,* 2023 U.S. Dist. LEXIS 43329, 2023 WL 2526637, *61-62 (D. Conn. Mar. 15, 2023) (Connecticut "reasonable consumer" test); *Beyond Pesticides v. Monsanto Co.*, 311 F. Supp. 3d 82, 89 (D.D.C. 2018) (same for Washington, D.C.); *Bell v. Publix Super Mkts., Inc.*, 982 F.3d 468, 474-75 (7th Cir. 2020) (same for Illinois); *Sager v. Hous. Comm'n*, 855 F. Supp. 2d 524, 558 (D. Md. 2012) (same for Maryland); *Early v. Henry Thayer Co.*, 2021 U.S. Dist. LEXIS 136746, 2021 WL 3089025, *40-41 (E.D. Mo. July 22, 2021) (same for Missouri); *Young v. Toyota Motor Sales, U.S.A.*, 196 Wash. 2d 310, 317 (2020) (same for Washington).

decl. ¶ 2; Papalia decl. ¶ 2. And Plaintiffs suffered the same alleged economic injury: overpayment based on the misleading label. *Id.* So Plaintiffs are typical.

4. Plaintiffs and Dovel & Luner have fairly and adequately represented the Settlement Class.

Rule 23(a)(4) is satisfied if "the representative parties will fairly and adequately protect the interests of the class." This analysis mirrors the adequacy required under Rule 23(e)(2)(A), for evaluating the fairness of a settlement addressed above (Section II.A.i). Both Plaintiffs and Class Counsel (Dovel & Luner) meet this requirement.

B. The Settlement Class satisfies Rule 23(b)(3).

Rule 23(b)(3) asks whether (1) "questions of law or fact common to the members of the class predominate over any questions affecting only individual members"; and (2) "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." The proposed Settlement Class meets both requirements.

1. Common questions predominate.

In general, to "satisfy predominance, a plaintiff must show that those issues in the proposed action that are subject to generalized proof outweigh those issues that are subject to individualized proof." *In re Sinus Buster Prods. Consumer Litig.*, 2014 U.S. Dist. LEXIS 158415, 2014 WL 5819921, at *13 (E.D.N.Y. Nov. 10, 2014) (internal quotes omitted). "The Supreme Court has noted that this test is readily met in certain cases alleging consumer … fraud." *Id.* (internal quotes omitted); *In re Sony SXRD Rear Projection TV Class Action Litig.*, 2008 U.S. Dist. LEXIS 36093, 2008 WL 1956267, at *38 (S.D.N.Y. May 1, 2008) (same). And the "Second Circuit [has] noted that that 'the predominance inquiry will sometimes be easier to satisfy in the settlement context" because there is no need to deal with individualized issues at trial. *Tart v. Lions Gate Entm't Corp.*, 2015 U.S. Dist. LEXIS 139266, 2015 WL 5945846**,** at *10 (S.D.N.Y. Oct. 13, 2015) (quoting *In re AIG Sec. Litig.*, 689 F.3d 229, 240 (2d Cir. 2012)).

a. <u>Nationwide warranty class</u>

As discussed above, all Settlement Class members allege the same harm (overpayment) from the same breach of the same alleged warranty (the allegedly misleading "Non-Drowsy" claim). In circumstances like these, courts in this Circuit and others find express warranty claims sufficiently cohesive to certify a nationwide settlement class. For example, in *Sinus Buster*, the common question of whether "Defendants misrepresented the effectiveness and quality of the Sinus Buster products sold in the United States" predominated over individualized issues. *In re Sinus Buster*, 2014 U.S. Dist. LEXIS 158415, 2014 WL 5819921, at *14 (certifying a nationwide warranty class in a false advertising case). And in *Sony,* common questions concerning whether the products failed to perform as promised predominated over any individualized issues. *In re Sony SXRD Rear Projection TV Class Action Litig.*, 2008 U.S. Dist. LEXIS 36093, 2008 WL 1956267, at *39 (S.D.N.Y. May 1, 2008) (certifying a nationwide warranty class in a product defect case); *In re Nissan Radiator/Transmission Cooler Litig.,* 2013 U.S. Dist. LEXIS 116720, 2013 WL 4080946, at *21 (S.D.N.Y. May 30, 2013) (same). Courts in other districts likewise routinely certify nationwide warranty classes for settlement purposes. S*ee In re Sketchers Toning Shoe Prods. Liab. Litig.*, 2012 U.S. Dist. LEXIS 113641, 2012 WL 3312668 (W.D. Ky. Aug. 13, 2012) (certifying a nationwide warranty class in a false advertising case); *Date v. Sony Elecs., Inc.*, 2013 U.S. Dist. LEXIS 108095, 2013 WL 3945981, at *3 (E.D. Mich. July 31, 2013) (same); *Hanson v. MGM Resorts Int'l*, 2018 U.S. Dist. LEXIS 128718, 2018 WL 3630284 (W.D.W.A July 31, 2018) (same); *Burgos v. Sunvalleytek Int'l, Inc.*, 2020 U.S. Dist. LEXIS 233611, 2020 WL 7319354, at *14 (N.D. Cal. Dec. 11, 2020) (same); *In re M3 Power Razor Sys. Mktg. & Sales Practice Litig.*, 270 F.R.D. 45, 56 (D. Mass. 2010) (same).

And while this Court has declined to "adopt a blanket rule" that variations among state law are irrelevant to settlement classes, it has found legal claims sufficiently cohesive for certification of a nationwide settlement class when state laws share "fundamental elements." *Rapoport-Hecht v. Seventh*

Generation, Inc., 2017 U.S. Dist. LEXIS 218781, 2017 WL 5508915, at *10 (S.D.N.Y. Apr. 28, 2017) (analyzing unjust enrichment claims and finally approving nationwide settlement class). This is true for warranty claims (which share the same fundamental U.C.C. approach); [7]*see also Rapoport-Hecht* at *11 (citing with approval *In re Nissan* and *In re Sony*, both of which also approved nationwide warranty classes). And this Court has recognized that "the availability of subclasses vitiates any [] concerns" regarding "overbreadth or lack of cohesion." *Id.* (explaining that, for settlements, there are not the same trial manageability concerns associated with subclasses); *see In re LIBOR-Based Fin. Instruments Antitrust Litig.,* 299 F. Supp. 3d 430, 601 n.183 (S.D.N.Y. 2018) ("In the context of a settlement class, concerns about whether individual issues would create intractable management problems at trial--such as issues presented by variations in governing law -- drop out of the predominance analysis because the proposal is that there be no trial.") (citing *Rapoport* with approval, internal quotes omitted)

In sum, the nationwide warranty class is sufficiently cohesive to warrant certification for settlement purposes.

b. Consumer protection subclasses

As addressed above, the asserted consumer protection claims all turn on the objective "reasonable consumer" standard. And they are all based on the same core facts: the allegedly

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[7] Any "variations in . . . 'breaches of express and implied warrant[y laws] across the states d[o] not defeat predominance" when certifying a settlement class "because 'there [are] sufficient common issues to warrant a class action." *Jabbari v. Farmer*, 965 F.3d 1001, 1006 (9th Cir. 2020). The "vast majority" of states have adopted the warranty requirements of the Uniform Commercial Code (UCC), ensuring that warranty claims are sufficiently cohesive for settlement classes. *Hawes v. Macy's Inc.*, 2023 U.S. Dist. LEXIS 226617, 2023 WL 8811499, at *17 (S.D. Ohio Dec. 20, 2023); *In re Goody's Family Clothing, Inc.*, 401 B.R. 131, 134 (Bankr. D. Del. 2009) (recognizing the "near unanimous nationwide adoption of Article 2 of the UCC"). For example, under the near-universal U.C.C. approach, a warranty is an "affirmation of fact or promise made by the seller to the buyer which relates to the goods and becomes part of the basis of the bargain." U.C.C. § 2-313; *see, e.g., Lojewski v. Grp. Solar USA, LLC*, 2023 U.S. Dist. LEXIS 227806, at *42 (S.D.N.Y. Dec. 21, 2023) (same for Section 2-313 of the New York Uniform Commercial Code). So whether a particular statement—such as "Non-Drowsy"—meets this test is a core, common issue across state laws.

misleading "non-drowsy" label. In this situation, courts find predominance satisfied. *See In re Sinus Buster*, 2014 U.S. Dist. LEXIS 158415, 2014 WL 5819921, at *14 (predominance satisfied for multi-state consumer protection settlement class in a false advertising case); *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022-1023 (9th Cir. 1998) ("idiosyncratic differences between state consumer protection laws are not sufficiently substantive to predominate over the shared claims"); *Sharpe v. A&W Concentrate Co.*, 2021 U.S. Dist. LEXIS 160177, 2021 WL 3721392, at *14 (E.D.N.Y. July 23, 2021) (finding predominance satisfied for GBL litigation classes).

2. A classwide settlement is superior.

The superiority requirement asks whether a class action is "superior to other available methods of fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). Courts consider: "(A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; [and] (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum."[8] *Id.* "Because 'proceeding individually would be prohibitive for class members with small claims,' a class action is 'frequently superior to individual actions.'" *de Lacour v. Colgate-Palmolive Co.*, 338 F.R.D. 324, 345-46 (S.D.N.Y. 2021) (quoting *Seijas v. Republic of Argentina*, 606 F.3d 53, 58 (2d Cir. 2010)).

Here, individual claims are small, even for a full refund. *See* Compl. ¶ 44; Jacobson decl. ¶ 7. This means that it does not make sense for class members to bring individual claims, and instead claims should be concentrated in a class action. *See In re Kind LLC "Healthy & All Nat." Litig.*, 337

[8] Rule 23(b)(3) also asks courts to consider "the likely difficulties in managing a class action." Fed. R. Civ. P. 23(b)(3)(D). But courts need not consider the difficulties of managing a class action when determining whether to certify a settlement class because there will be no further litigation. *See Rapoport-Hecht,* 2017 U.S. Dist. LEXIS 218781, 2017 WL 5508915, at *10.

F.R.D. 581, 608 (E.D.N.Y. 2021). And counsel is not aware of any other pending related cases against Haleon. A class action is the superior mechanism for resolving class members' claims.

C. The Settlement Class is ascertainable.

In addition to the Rule 23 requirements, some courts have recognized "ascertainability" as "an implied element of class certification." *Lizondro-Garcia v. Kefi LLC*, 300 F.R.D. 169, 176 (S.D.N.Y. 2014). "Membership [in a class] should not be based on subjective determinations, such as the subjective state of mind of a prospective class member, but rather on objective criteria that are administratively feasible from the Court to rely on to determine whether a particular individual is a member of the class." *Id.* (internal quotes omitted). This "modest" requirement is *not* an "administrative feasibility" test and it "does not directly concern itself with the plaintiffs' ability to offer *proof of membership* under a given class definition." *In re Petrobras Sec. Litig.*, 862 F.3d 250, 269 (2d Cir. 2017) (emphasis in original). Rather, the ascertainability requirement "will only preclude certification if a proposed class is indeterminate in some fundamental way"—the Court must know "who is suing about what." *Id.*

Here, Settlement Class members are not identified by their "subjective state of mind" or other indeterminate characteristic, but rather objective criteria: whether they purchased one of the identified Covered Products within the Class Period. *See* Agreement §§ 1.h (defining Class Period), 1.k (defining Covered Products), 1.ll (defining Settlement Class). Class membership is ascertainable.

IV. The Court should approve the proposed Notice Plan and appoint the proposed Settlement Administrator.

Under Rule 23(e)(1), "[t]he court must direct notice in a reasonable manner to all class members who would be bound by" a proposed settlement. Here, the proposed Notice Plan developed in close coordination with an experienced administrator is the "best notice that is practicable under the circumstances" and should be approved. Fed. R. Civ. P. 23(b)(2)(B).

As addressed above (Section I.D.5) Angeion has significant experience administering class action settlements and anticipates that the proposed Notice Plan will provide the best notice practicable to members of the Settlement Class. Angeion will implement a media notice plan designed to hit the benchmark of 70% reach. In addition, Haleon will provide Angeion with available class member contact information to supplement the media notice with direct notice.

Angeion will also establish a Settlement Website, where members of the Settlement Class can review relevant documents, dates, and deadlines, and can submit a Claim. Angeion will also create a toll-free hotline for additional case information.

The notice forms are drafted in plain English and provide all relevant information about the case, the settlement, and Settlement Class Members' rights. Jacobson Decl. Ex. 2.

In whole, the notice plan provides best practicable notice under the circumstances.

V. The Court should enter the following settlement-related deadlines.

Subject to Court approval, the Parties agreed on the following settlement-related deadlines. Agreement § I. This schedule provides reasonable and sufficient time for notice, claims and objections:

Commence Notice Plan ("Notice Commencement Date")	21 days from the Preliminary Approval Date.
Claim Deadline	90 days from the Notice Commencement Date
Objection and Opt-Out Deadline	60 days from the Notice Commencement Date
Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards	30 days from the Notice Commencement Date (and 30 days prior to the Objection and Opt-Out Deadline)
Motion for Final Approval and Party Responses to any Objections	21 days prior to the Final Approval Hearing
Settlement Administrator must file or cause to be filed, if necessary, a supplemental declaration with the Court	5 days prior to the Final Approval Hearing
Final Approval Hearing	No earlier than 135 days from the Preliminary Approval Date (subject to Court availability)

Agreement § I. The deadlines are keyed off the date the Court enters Preliminary Approval. To illustrate, if Preliminary Approval is granted on August 2, and the Court is available for the Final Approval hearing on December 19, the deadlines could be:

Commence Notice Plan	August 23, 2024
Claim Deadline	November 21, 2024
Objection and Opt-Out Deadline	October 22, 2024
Plaintiffs' Motion for Attorneys' Fees, Costs, and Service Awards	September 23, 2024
Motion for Final Approval and Party Responses to any Objections	November 26, 2024
Settlement Administrator must file or cause to be filed, if necessary, a supplemental declaration with the Court	December 13, 2024
Final Approval Hearing	December 19, 2024

* * *

The settlement meets all criteria for preliminary approval under Rule 23 and Second Circuit law. The Court should: (1) preliminarily approve the settlement; (2) certify the Settlement Class; (3) appoint Dovel & Luner LLP as Class Counsel and Plaintiffs Nancy Calchi and Stacey Papalia as class representatives; (4) appoint Angeion as the Settlement Administrator and approve the Notice Plan; and (5) schedule a Final Approval Hearing and stay all proceedings except those necessary to effectuate the settlement pending Final Approval. A detailed proposed order is attached.

Dated: July 22, 2024

Respectfully submitted,

By: */s/ Jonas Jacobson*

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