**UNITED STATES DISTRICT COURT**
**SOUTHERN DISTRICT OF NEW YORK**
**WHITE PLAINS DIVISION**

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| JUSTIN GEORGE, ARIENNE PATZELT, MELISSA ZUBER, and TSU HAN POH-GRACIA, as representatives of a class of similarly situated persons, and on behalf of the Garnet Health Medical Center 403(b) Retirement Savings Plan and Garnet Health Medical Center - Catskills 403(b) Retirement Savings Plan,<br><br>Plaintiffs,<br><br>v.<br><br>GARNET HEALTH MEDICAL CENTER,<br><br>Defendant. | Case No. 7:24-cv-6422-PMH |

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

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## INTRODUCTION

On December 2, 2025, this Court preliminarily approved the Parties' Class Action Settlement, which resolves Plaintiffs' claims against Defendant under the Employee Retirement Income Security Act ("ERISA") relating to the Garnet Health Medical Center 403(b) Retirement Savings Plan and each of its predecessor plans that were merged and/or acquired, individually and collectively, and any trust created under such plan (the "Plan"). Dkt. 71. The Court found on a preliminary basis that the Settlement is "fair, reasonable, and adequate" and approved the distribution of Notice of Settlement as described in the Settlement Agreement. *Id.* ¶¶ 1, 5. Since then, the appointed Settlement Administrator distributed notice to the Settlement Class and so far, no Class Members have objected. Declaration of Jennifer K. Lee in Support of Final Approval ("Third Lee Decl.") ¶ 3. The Independent Fiduciary has also confirmed that the Settlement terms are reasonable. *See id.*, Ex. A ("IF Report"). Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement. As parties to the Settlement, Defendant does not oppose this request.

## BACKGROUND[1]

### I. PROCEDURAL HISTORY

On August 26, 2024, Plaintiffs filed a Class Action Complaint asserting Defendant's breaches of fiduciary duties based on Defendant's failure to monitor the Plan's stable value investment option, other proprietary investments furnished by the Plan's recordkeeper, and the cost of the Plan's administrative services. Dkt. 1. On December 13, 2024, Plaintiffs amended their Complaint. Dkt. 32 ("FAC"). On February 10, 2025, Defendant moved to dismiss Plaintiffs' FAC. Dkts. 40, 41. Briefing on that motion was completed March 26, 2025, and that

[1] Unless specified, all capitalized terms have the meaning assigned in the Settlement Agreement, Dkt. 64-1.

motion remained pending at the time of settlement. Dkts. 42, 44. Defendant disputes the allegations in the Complaint and FAC.

While Defendant's motion was pending, the Parties engaged in substantial discovery. Plaintiffs deposed all members of the Garnet Health Medical Center Retirement Plan Committee, which was the fiduciary committee tasked with overseeing the Plan. Dkt. 64 ("First Lee Dec.") ¶ 11. Plaintiffs also received nearly 15,000 pages of documents and electronically stored information, written responses to interrogatories and requests for admission. *Id.*

On September 16, 2025, the Parties engaged in a private, in-person mediation facilitated by experienced JAMS mediator Robert A. Meyer, Esq. *Id.* ¶ 12. That mediation resulted in the settlement that was preliminarily approved on December 2, 2025, and is now the subject of this motion. *Id.*, Dkt. 71.

## II. OVERVIEW OF SETTLEMENT TERMS

### A. Settlement Class

In granting preliminary approval of the Settlement, the Court preliminarily certified the following Settlement Class:

> All persons who were participants in or beneficiaries of the Plan at any time from August 26, 2018, through December 2, 2025, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period, excluding fiduciaries of the Plan.

Dkt. 71 ¶ 2. There are 5,240 Settlement Class members. Declaration of Bryn Bridley ("Bridley Decl.") ¶ 4.

### B. Relief

Under the terms of the Settlement, a Gross Settlement Amount of $4.6 million will be paid to resolve the claims of the Settlement Class Members. Dkt. 64-1 ("Settlement") § 1.28. After accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Case

Contribution Awards approved by the Court, the Net Settlement Amount will be distributed to Class Members in accordance with the Plan of Allocation in the Settlement. *Id.* §§ 1.31, 5.1. Class Members who are current participants in the Plan will automatically receive their Settlement distribution in their Plan accounts. *Id.* § 5.4.1. Class members who are no longer in the Plan have the opportunity to submit a Rollover Form allowing them to have their distribution rolled over into an individual retirement account or other eligible employer plan. *Id.* § 5.4.2. Class Members who do not timely submit a Rollover Form will be sent a check. *Id.* § 5.4.4. Under the Plan of Allocation, each Class Member will receive their *pro rata* share of the Net Settlement Amount based on their quarterly account balances during the Class Period. *Id.* § 5.1.

In addition, within three years after the Settlement Effective Date, if the Plan's fiduciaries have not already done so, the Plan's fiduciaries will conduct a request for proposal relating to the Plan's investment advisor and recordkeeping services. *Id.* §§ 12.1, 12.2. This prospective equitable relief will provide additional relief to Plan participants.

**C. Release of Claims**

In exchange for this relief, the Settlement Class will release Defendant and other Released Parties from all claims arising prior to the end of the Class Period:

- That were asserted or could have been asserted in the Class Action, or 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, asserted, or set forth in the operative First Amended Complaint or in any complaint previously filed against Defendant; or
- That arise out of, relate in any way to, are based on, or have any connection with (a) the selection, oversight, retention, monitoring, compensation related to, fees, or performance of the Plan's investment options or service providers; (b) disclosures or failures to disclose information regarding the Plan's investment options, fees, or service providers; (c) the management, oversight or administration of the Plan or its fiduciaries; or (d) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions under ERISA with respect to the supervision or management of the Plan; and (e) all calculations that are part of the allocation and distribution process of the Settlement; or

- That would be barred by *res judicata* based on entry of the Final Order; or
- That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any Class Member in accordance with the Plan of Allocation; or
- That relate to the approval by the Independent Fiduciary of the Settlement, unless brought against the Independent Fiduciary alone.

*Id.* § 1.41. The Released Claims do not include claims to enforce the Settlement or claims for vested benefits that do not relate to the released claims. *Id.* § 1.41.6

**D. Class Notice and Settlement Administrator**

Pursuant to the Court's Preliminary Approval Order, Atticus Administration ("Atticus"), the Court-appointed Settlement Administrator, mailed the Court-approved Settlement Notices to each Settlement Class member. *See* Bridley Decl. ¶ 6. In total, 5,240 were mailed, and Atticus also included a Rollover Form for former participant Settlement Class members. *Id*. ¶¶ 6–7. Prior to sending Settlement Notices, Atticus cross-referenced the addresses on the Settlement Class list with the United States Postal Service National Change of Address Database and updated addresses as needed. *Id.* ¶ 5. If Settlement Notices were returned, Atticus re-mailed them to any forwarded address provided and utilized a professional service for address tracing in an attempt to determine a valid address for the Settlement Class member in the absence of a forwarding address. *Id.* ¶ 7. The Notice program was very effective. Of the 5,240 Settlement Notices that were mailed, only 33 (0.6%) were ultimately undeliverable despite these efforts. *Id.*

The Notice provided a variety of crucial information to the Settlement Class regarding, among other things: (1) the nature of the claims; (2) the terms of the Settlement; (3) the scope of the Settlement Class; (4) Settlement Class members' right to object and the deadline for doing so; (5) the Settlement Class release; (6) the amount of the proposed Case Contribution Awards; (7) the identity of Class Counsel and the amount they intend to seek in compensation in relation

to the Settlement; (8) the date, time, and location of the Fairness Hearing; and (9) Settlement Class members' right to appear at the Fairness Hearing.

Atticus further established a Settlement Website with a Frequently Asked Questions page providing essential case information; an Important Dates page providing notice of applicable deadlines; a Settlement Documents page that includes the Operative Complaint, Settlement Agreement and Exhibits, Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, Plaintiffs' Motion for Attorneys' Fees and Costs, Administrative Expenses, and Case Contribution Awards, the Court's Preliminary Approval Order, and copies of the Class Notice and Rollover Form. *Id.* ¶ 8. The Settlement Administrator also established a toll-free telephone line as a resource for Settlement Class members seeking information about the Settlement. *Id.* ¶ 9. This telephone number also appears on the Settlement Website. *Id.*

The deadline to submit objections to the Settlement is March 30, 2026. Although the deadline has not passed, Class Counsel and Atticus are not aware of any objections to the Settlement. Third Lee Decl. ¶ 3; Bridley Decl. ¶ 10.

**E. Review by Independent Fiduciary**

As required under applicable ERISA regulations[2] and Section 2.1 of the Settlement Agreement, an Independent Fiduciary (Fiduciary Counselors, Inc.) reviewed the Settlement following the Court's Preliminary Approval Order. After reviewing the Settlement and other case documents, and interviewing counsel for each of the Parties, the Independent Fiduciary concluded on behalf of the Plan, *inter alia*:

- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.

[2] *See* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

- The terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.
- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption ("PTE") 76-1.

IF Report at 1.

**STANDARD OF REVIEW**

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any settlement agreement that will bind absent class members. After notice to class members and a hearing, a court may approve a settlement if it is "fair, adequate, and reasonable, and not a product of collusion." *Joel A v. Giuliani*, 218 F.3d 132, 138-39 (2d Cir. 2000). This involves a two-step process. *Nnebe v. Daus*, No. 06-CV-4991 (RJS), 2025 WL 1333425, at *2 (S.D.N.Y. May 7, 2025).

The decision whether to approve a proposed class action settlement is a matter of judicial discretion. *See Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995). However, there is a "strong judicial policy in favor of settlements, particularly in the class action context." *Guevoura Fund Ltd. v. Sillerman*, No. 1:15-CV-07192-CM, 2019 WL 6889901, at *5 (S.D.N.Y. Dec. 18, 2019) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)); *see also In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998); 4 NEWBERG ON CLASS ACTIONS ("NEWBERG") § 11:41 (4th ed. 2002). "Class action suits readily lend themselves to compromise because of the difficulties of proof, the uncertainties of the outcome, and the typical length of the litigation." *Guevoura Fund*, 2019 WL 6889901, at *5 (citing *In re Luxottica Group S.p.A. Sec. Litig*., 233 F.R.D. 306, 310 (E.D.N.Y. 2006)); *see also Weinberger v. Kendrick*, 698 F.2d 61, 73 (2d Cir. 1982) ("There are weighty

justifications, such as the reduction of litigation and related expenses, for the general policy favoring the settlement of litigation."). As a result, "courts should give proper deference to the private consensual decision of the parties … [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation[.]" *Clark v. Ecolab, Inc.*, Nos. 07 Civ. 8623(PAC), 04 Civ. 4488(PAC), 06 Civ. 5672(PAC), 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (citations omitted).

A court "must stop short of the detailed and thorough investigation that it would undertake if it were actually trying the case" because "[s]uch procedure would emasculate the very purpose for which settlements are made." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974), *abrogated on other grounds*, *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). "The determination whether a settlement is reasonable does not involve the use of a mathematical equation yielding a particularized sum." *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) (internal quotation marks and citations omitted). "Instead, there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Id.*

## ARGUMENT

### I. THE SETTLEMENT MEETS THE STANDARD FOR FINAL APPROVAL.

Under Rule 23(e)(2), The Court considers four factors in approving a settlement: (1) adequacy of representation; (2) existence of arm's-length negotiations; (3) adequacy of relief; and (4) equitableness of treatment of class members. Fed. R. Civ. P. 23(e)(2). As explained below, these factors are satisfied here.[3]

[3] The Rule 23(e) factors "supplement rather than displace the[] '*Grinnell*' factors" previously applied in this circuit. *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *1 (S.D.N.Y. Dec. 16, 2019). The nine *Grinnell* factors are

**A. The Class is Adequately Represented.**

Rule 23(e)(2)(A) requires a court to find that "the class representatives and class counsel have adequately represented the class." This standard is easily met here.

The named Plaintiffs have adequately represented the Settlement Class. They committed to carry out their duties as class representatives, and each of them sought to fulfill those duties through the duration of this lawsuit. *See* Dkts. 66–69 ("Plaintiffs' Declarations") ¶¶ 3-4. Among other things, Plaintiffs: (1) provided information to Class Counsel to support the case; (2) reviewed the pleadings, provided feedback, and asked questions; (3) prepared for and consulted with Class Counsel regarding mediation; (4) was available during mediation; and (5) reviewed the Settlement Agreement and are fully informed of its terms. *Id.* ¶¶ 4, 7. Plaintiffs are members of the Settlement Class and further are not aware of any conflicts between themselves and the Settlement Class. *Id.* ¶¶ 5, 8. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 625 (1997) (adequacy inquiry looks for "conflicts of interest between named parties and the class they seek to represent"); *In re Global Crossing Secs. & ERISA Litig.*, 225 F.R.D. 436, 452 (S.D.N.Y. 2004) (finding class representatives adequate where their claims arose from the same alleged course of conduct and were based on the same legal theories as the class members).

Class Counsel is also more than adequate. Engstrom Lee attorneys are experienced ERISA practitioners and complex litigators who have been appointed as class counsel in more than a dozen ERISA class actions. First Lee Decl. ¶ 21, Ex. 2. James White LLC is also experienced and qualified to represent the Settlement Class. Dkt. 65, Declaration of James White

(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 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; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell Corp.*, 495 F.2d at 463. Consistent with the intent of the 2018 amendments, only those *Grinnell* factors that are relevant to this Settlement are addressed here.

¶ 3. Together, Plaintiffs' Counsel prosecuted this action through its investigation, motion practice, discovery, and mediation. First Lee Decl. ¶ 22. At all times, Plaintiffs' Counsel have vigorously represented the interests of the Class in this litigation. *Id.* Plaintiffs' Counsel is therefore adequate. *See Global Crossing*, 225 F.R.D. at 453 (finding class counsel adequate where they had "extensive experience" in ERISA litigation and federal class actions).

**B. The Settlement Was Negotiated at Arm's-Length After Extensive Discovery.**

The second Rule 23(e) factor asks whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). "A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *Soler v. Fresh Direct, LLC*, No. 20 CIV. 3431 (AT), 2023 WL 2492977, at *3 (S.D.N.Y. Mar. 14, 2023) (citing *Wal-Mart Stores*, 396 F.3d at 116). Similarly, the involvement of an experienced mediator is a "strong indicator of procedural fairness." *Hesse v. Godiva Chocolatier, Inc.*, No. 1:19-CV-0972-AJN, 2021 WL 11706821, at *2 (S.D.N.Y. Oct. 26, 2021) (quoting *Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012)). That is exactly the situation here.

Class Counsel and Defendant's counsel, Jackson Lewis P.C., are experienced and knowledgeable in complex class actions such as this. *See supra* at 8–9; ERISA Complex Litigation Jackson Lewis, *available at* https://tinyurl.com/yjduefk4. The Settlement was preceded by a thorough investigation, motion practice, and substantial discovery. *See supra* at 1–2. Settlement negotiations were then conducted at arm's length and were facilitated by an experienced mediator, Robert A. Meyer. First Lee Dec. ¶ 12. Thus, this factor is satisfied. *See In re Excess Value Ins. Coverage Litig.*, No. M-21-84RMB, 2004 WL 1724980, at *10 (S.D.N.Y. July 30, 2004); *Hesse*, 2021 WL 11706821, at *2; *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466, Dkt. 94 at ¶ 1.A (S.D.N.Y. Sept. 18, 2020).

### C. The Settlement Provides Significant Relief that is Fair and Adequate Based on All Relevant Considerations.

The Parties' negotiations resulted in a Settlement providing significant relief to the Settlement Class. The $4.6 million settlement represents a significant portion of the alleged losses sustained by the Plan. Specifically, prior to mediation Class Counsel estimated that the total losses associated with Plaintiffs' claims were approximately $21.2 million. First Lee Decl. ¶ 14.[4] Based on this estimate, the $4.6 million recovery represents approximately 22% of the total estimated losses. Plaintiffs' strongest claim concerned the retention of the PFIGO stable value fund, which Class Counsel estimates caused approximately $8.4 million in losses, meaning the Plan's recovery represents more than half of the losses on this claim alone. First Lee Decl. ¶¶ 14, 16. Under either lens, Plaintiffs' percentage of recovery is on par with numerous other ERISA class actions across the country and in this District. *See e.g., Kohari v. MetLife Group, Inc.*, No. 1:21-cv-06146, Dkt. 110 at 11 (S.D.N.Y. Nov. 20, 2023) (ERISA settlement involving proprietary funds represented 19% of plaintiffs' highest measure and 27% of lowest measure of damages); *Jacobs v. Verizon Commc'ns. Inc.*, No. 1:16- cv-01082, Dkt. 234 at 20 (July 7, 2023) (settlement represented approximately 13% - 29.2% of alleged losses to plan), *approved* Dkt. 247 (S.D.N.Y. Nov. 21, 2023); *Bhatia v. McKinsey & Co.*, No. 1:19-cv-01466, Dkt. 101 at 15 (Feb. 3, 2021) (settlement represented 21-22% of disputed fees paid to McKinsey affiliate), *approved* Dkt. 110 (S.D.N.Y. Feb. 17, 2021); *Gamino v. KPC Healthcare*, No. 5:20-cv-1126, Dkt. 452, at *5 (C.D. Cal. Oct. 21, 2023) (approving ERISA settlement amounting to 10% recovery, citing cases); *Johnson v. Fujitsu Tech. & Business of Am., Inc.*, No. 16-cv-03698-NC, 2018 WL 2183253, at *6-7 (N.D. Cal. May 11, 2018) (approving ERISA settlement that represented "just under 10% of the Plaintiffs' most aggressive 'all in' measure of damages").

[4] Defendant disputes Plaintiffs' loss calculations and would have vigorously contested them if litigation continued.

The subfactors enumerated in Rule 23(e)(2)(C) further support approval of the Settlement. These include: (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 attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C). Each of these factors are briefly discussed below.

**1. The Risks, Costs, and Delay of Trial and Appeal.**

Plaintiffs faced numerous potential risks in the absence of a settlement. ERISA class actions are "notoriously complex cases" that "often lead[ ] to lengthy litigation." *Foster v. Adams & Assocs., Inc.*, No. 18-cv-02723-JSC, 2021 WL 4924849, at *6 (N.D. Cal. Oct. 21, 2021) (first quotation); *Krueger v. Ameriprise Fin., Inc.*, No. 11–CV–02781 (SRN/JSM), 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) (second quotation) ("*Krueger II*"). These cases can extend for over a decade before resolution and may go through multiple appeals. *See e.g.*, *Sacerdote v. New York Univ.*, No. 1:16-cv-06284 (S.D.N.Y.) (ERISA class action that was filed August 9, 2016 and remains pending after an appeal and remand before the Second Circuit and denial of *certiorari*); *Tussey v. ABB, Inc.*, 850 F.3d 951 (8th Cir. 2017) (recounting 11-year procedural history); *Tibble v. Edison Int'l*, No. CV 07-5359 SVW (AGRx), 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit filed).

If this case were to proceed to expert discovery, the Parties likely would have retained several experts to offer opinions regarding the different investment products and fees challenged. First Lee Decl. ¶ 17. Further, Plaintiffs may have faced a motion for summary judgment from Defendant. *See Falberg v. Goldman Sachs Grp., Inc.*, 2024 WL 619297 (2d Cir. Feb. 14, 2024) (summary judgment granted in defendant's favor in ERISA class action). Even if they were to prevail at summary judgment, Plaintiffs would have had to succeed at trial and over any possible

appeals. *See, e.g., Iannone v. Autozone, Inc.*, No. 2:19-cv-02779-MSN-tmp, 2025 WL 2797074, at *17 (W.D. Tenn. Sept. 30, 2025) (bench trial order in favor of the defendants in a case challenging the retention of a stable value product, following denial of the defendants' motion for summary judgment); *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018) (bench trial ruling in favor of defendants), *aff'd in part, vacated in part*, 9 F.4th 95 (2d Cir. 2021); *Vellali v. Yale Univ.*, No. 3:16-cv-1345, Dkt. 622 (D. Conn. July 13, 2023) (jury verdict in favor of defendants). Even then, issues regarding proof of loss would have remained. *See* Restatement (Third) of Trusts, § 100 cmt. b(1) (2012) (determination of losses in breach of fiduciary duty cases is "difficult").

The Settlement avoids lengthy and costly litigation and provides immediate relief to the Settlement Class. This weighs in favor of Settlement's approval. *See Velez v. Novartis Pharm. Corp.*, No. 04 Civ. 09194(CM), 2010 WL 4877852, at *14 (S.D.N.Y. Nov. 30, 2010) ("As federal courts in this Circuit have consistently recognized, litigation inherently involves risks, and the purpose of settlement is to avoid uncertainty.").

**2. The Proposed Method of Distributing Relief to the Class is Effective.**

The proposed method of distributing the Settlement proceeds is fair and reasonable. Current Participants in the Plan will have their accounts automatically credited with their share of the Settlement Fund. Settlement § 5.4.1. Former Participants who wish to have their distribution rolled over into a qualifying retirement account will have the option to do so. *Id.* § 5.4.2. Former Participants who do nothing will automatically receive a check in the amount of their distribution amount. *Id.* § 5.4.4. This method of distribution is consistent with numerous other ERISA class action settlements that have received court approval, including the *Deutsche Bank* and *New York Life* settlements in this District. *See Moreno v. Deutsche Bank Americas Holding Corp.*, No. 15 Civ. 9936 (LGS), Dkt. 322-1 at ¶¶ 6.5, 6.6 (S.D.N.Y. Aug. 14, 2018);

*Andrus v. New York Life Ins. Co*., No. 2:16-cv-05698, Dkt. 66-1 at ¶¶ 6.5, 6.6 (Feb. 14, 2017).[5] No monies will revert to Defendant, and any uncashed checks will be used to defray Plan administrative fees and expenses that would otherwise be borne by participants. *See* Settlement §§ 5.4.1, 5.9.

**3. The Settlement Terms Regarding Attorneys' Fees are Reasonable.**

As set forth in Plaintiffs' Motion for Attorneys' Fees, Dkt. 73, the Settlement terms regarding attorneys' fees are also fair and reasonable. Class Counsel have agreed to limit any request for attorneys' fees to one-third of the Gross Settlement Amount. Settlement § 6.1. The amount of any fee award is reserved to the Court in its discretion. *Id.* § 13.3. This is consistent with the amounts approved in other ERISA cases in this District. *See, e.g.*, *Chabak v. Somnia, Inc.*, No. 7:22-CV-09341, Dkt. 87, at *2 (S.D.N.Y. April 28, 2025) (Halpern, J.) (citing cases); *Beach v. JPMorgan Chase Bank, N.A*, No. 1:17-cv-00563, Dkt. 232 (S.D.N.Y. Oct. 7, 2020) (approving 33% attorneys' fee award); *Jacobs v. Verizon Commc'ns. Inc.*, No. 1:16-cv-01082, Dkt. 247 at 7 (S.D.N.Y. Nov. 21, 2023) (approving one-third fee in ERISA case); *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4 (S.D.N.Y. Sept. 23, 2019) (same); *Carver v. Bank of New York Mellon*, No. 17-10231, Dkt. 11 at 1 (S.D.N.Y. May 23, 2019) (same); *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 149 (S.D.N.Y. 2010) (same); *Leber v. The Citigroup 401(k) Pension Plan Inv. Comm.*, No. 07-9329, Dkt. 294 (S.D.N.Y. Jan. 3, 2019) (same); *Osberg v. Foot Locker, Inc*., No. 07-1358, Dkt. 423 at 3 (S.D.N.Y. June 8, 2018) (same); *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698, Dkt. 83 (S.D.N.Y. June 15, 2017) (same). Moreover, with respect to the timing of payment, any attorneys' fees will be paid at same time

[5] *See also, e.g.*, *Velazquez v. Mass. Fin. Servs. Co.*, No. 1:17-CV-11249, Dkt. 91-1, ¶¶ 6.5-6.6 (D. Mass. June 14, 2019); *Urakhchin v. Allianz Asset Mgmt. of Am., LP*, No. 8:15-cv-01614, Dkt. 174-3 at ¶ 6.4 (C.D. Cal. Dec. 26, 2017); *Sims v. BB&T Corp.*, No. 1:15-cv-732, Dkt. 436-2 at ¶ 6.4 (M.D.N.C. Nov. 30, 2018).

funds to the class are distributed. *See* Settlement § 5.3. These factors support the reasonableness of the Settlement's terms regarding attorneys' fees. *See also* Dkt. 73.

**4. There are No Separate Agreements.**

The Settlement Agreement expressly states that "[t]his Settlement Agreement and the exhibits attached thereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto." Settlement § 15.22. Accordingly, there are no separate agreements bearing on the adequacy of relief to the Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv).

**5. The Settlement Treats Class Members Equitably.**

Finally, the Settlement treats all Settlement Class members equitably. The same plan of allocation—which will award Settlement Class members their *pro rata* share of the Net Settlement Amount—is used to calculate settlement payments for all Settlement Class members (both Current Participants and Former Participants) and all Settlement Class members will be subject to the same release. *See* Settlement §§ 1.41, 5.1. This is equitable and consistent with the manner of allocation this Court has previously approved. *See Beach*, No. 1:17-cv-00563, Dkt. 211 at 22 ("Based on the loss calculations of Plaintiffs' damages expert, the Net Settlement Amount will be allocated among all eligible Class members on a pro rata basis in proportion to their respective portion of damages based on their holdings in each of the Disputed Investments."), *approved* 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020); *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 698 (S.D.N.Y. 2019) (finding equitable treatment of class members where the same plan of allocation awarding class members a *pro rata* allocation of the settlement fund would be applied to all class members, who would all be subject to the same release); *Meredith Corp. v. SESAC, LLC*, 87 F.Supp.3d 650, 667 (S.D.N.Y. 2015) (finding that a *pro rata*

allocation plan "appear[ed] to treat the class members equitably ... and has the benefit of simplicity").

### D. The Independent Fiduciary and Settlement Class Members Support the Settlement.

The Independent Fiduciary and Settlement Class members' responses further support the Settlement. After completing the review required by the Settlement Agreement and applicable law, *see supra* at 5–6, the Independent Fiduciary found the "Settlement Amount is a fair and reasonable recovery given the potential recovery, the defenses the Defendant would have asserted, the risks involved in proceeding to trial, the possibility of reversal on appeal of any favorable judgment, and the additional costs and delay involved in continued litigation." IF Report at 9–10. It then "authorize[d] the Settlement in accordance with PTE 2003-39" and "[gave] a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan" and "determined not to object to any aspect of the Settlement." *Id.* at 11.

Moreover, thus far the Settlement has received unanimous approval from the Settlement Class and all four named Plaintiffs submitted declarations in support of the Settlement. Third Lee Decl. ¶ 3; Plaintiffs' Declarations. No class member has objected to the proposed Settlement. *Id.* The Court may infer from this that the overwhelming majority of Settlement Class members believe the Settlement is fair, reasonable, and adequate. *See Belton v. GE Cap. Consumer Lending, Inc.*, 2022 WL 407404, at *4 (S.D.N.Y. Feb. 10, 2022) ("[T]he lack of objections from such a large settlement class attests to the fairness of the proposed settlement."); *EB v. New York City Dep't of Educ.*, 2015 WL 13707092, at *2 (E.D.N.Y. July 24, 2015) ("No class member has objected, which demonstrates that the class approves of the settlement and supports its final approval."); *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("[T]he lack of objections may well evidence the fairness of the Settlement."). This "absence of

substantial opposition is indicative of class approval[.]" *Wal-Mart Stores*, 396 F.3d at 118.

## II. THE CLASS NOTICE PLAN WAS REASONABLE.

The Notice program was also reasonable and satisfied the requirements of Due Process and Rule 23. *See* Fed. R. Civ. P. 23(e)(1)(B). The "best notice" practicable under the circumstances includes individual notice via United States mail to all class members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice here. Settlement §§ 2.4, 2.2.4.

As discussed, the Settlement Administrator mailed the Court-approved Settlement Notices to Settlement Class members via U.S. Mail. *See supra* at 4. This type of notice is presumptively reasonable and the notice plan was demonstrably effective. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). The content of the Settlement Notices was also reasonable. The Notices included all relevant information, *see supra* at 4–5, 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. Bahrain*, 546 Fed. App'x 37, 41 (2d Cir. 2013) (quoting *Masters v. Wilhelmina Model Agency, Inc.*, 473 F.3d 423, 438 (2d Cir. 2007)); *see also In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (class notice "need only describe the terms of the settlement generally"). Further, the Settlement Notices have been supplemented through the Settlement Website and toll-free telephone line. *See supra* at 5.

## III. THE COURT SHOULD AFFIRM ITS CERTIFICATION OF THE SETTLEMENT CLASS FOR FINAL APPROVAL.

In its Preliminary Approval Order, the Court preliminary certified the following Settlement Class:

> All persons who were participants in or beneficiaries of the Plan at any time from August 26, 2018, through December 2, 2025, and any

> Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period, excluding fiduciaries of the Plan.

Dkt. 71 ¶ 2.

In support of preliminary approval, Plaintiffs established: (1) the class was sufficiently numerous; (2) Plaintiffs raised common issues in the operative Complaint; (3) Plaintiffs' claims are typical of other class members' claims; (4) Plaintiffs are adequate class representatives; (5) Class Counsel is experienced and competent; (6) class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) due to the risk of inconsistent adjudications; and (7) class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(B) because any individual adjudication would be dispositive of the interests of other class members. Dkt. 63 at 7-12. There have been no changes since the Court preliminarily certified the Settlement Class. Accordingly, the Court should reaffirm its certification of the Settlement Class for purposes of final approval.

## CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an order granting final approval of the Settlement.

Respectfully Submitted,

Dated: March 20, 2026

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