Exhibit B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

ABIGAIL BACON, ARCADIA LEE, JEANNINE DEVRIES, LISA GEARY, RICHARD ALEXANDER, YVONNE WHEELER, and GEORGE DAVIDSON, on behalf of themselves and the putative class, Plaintiffs, vs. AVIS BUDGET GROUP, INC. and PAYLESS CAR RENTAL, INC. Defendants.	Civil Action Case No.: 2:16-cv-05939(MCA)(JBC)

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

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INTRODUCTION

Plaintiffs have reached a nationwide class action settlement with Avis Budget Group, Inc. ("ABG"), and Payless Car Rental, Inc. ("Payless") (ABG and Payless together herein referred to as "Defendants") for a $19,000,000 common fund to fully and finally resolve all claims alleged or that could have been alleged in connection with this matter.[1]

The settlement provides significant relief to Settlement Class Members and satisfies each of the factors under Rule 23(e)(2), *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975), and the other applicable requirements. Accordingly, the Parties request that the Court preliminarily approve the settlement, direct notice to all Settlement Class Members in the reasonable manner outlined below, set deadlines for exclusions, objections, and briefing on Plaintiffs' motion for final approval and application for an award of attorneys' fees and expenses, and set a date for the Final Fairness Hearing.

Plaintiffs submit herewith the Declaration of Greg M. Kohn in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement ("Kohn Decl.") which includes The Class Action Settlement Agreement ("Settlement

[1] All capitalized terms and phrases used in this Memorandum of Law that are otherwise not defined shall have the same meaning as set forth in the Settlement Agreement.

Agreement") as Exhibit 1. The Declaration of Frank E. Ballard Regarding Settlement Notice Plan ("Ballard Decl."), submitted on behalf of Kroll Settlement Administration, the proposed Settlement Administrator is submitted herewith as well.

BACKGROUND

A. History of the Litigation

On September 26, 2016, Plaintiffs commenced this lawsuit by filing a complaint against Defendants in the United States District Court for the District of New Jersey in which Plaintiffs alleged, among other things, that Defendants imposed unauthorized and specifically declined charges on the credit and debit cards of Payless rental customers across the Country. Defendants denied, and continue to deny, each claim in the Complaint and all allegations of wrongdoing asserted against them and believe that the claims asserted against them are without merit.

In the almost 10-years since the filing of the Action, Plaintiffs and Defendants have investigated, advanced, and defended their respective positions vigorously. At the outset of the case, Defendants filed a motion to compel arbitration. This was denied and the Court ordered that the parties conduct discovery related to Defendants' arbitration claim. After discovery relating to the arbitrability was completed, the parties filed motions for summary judgment. The Court denied Defendants' motion for summary judgment to compel arbitration. Defendants then

appealed to the Third Circuit. The Third Circuit affirmed the District Court's ruling. *See Bacon v. Avis Budget Grp., Inc.*, 959 F.3d 590 (3d Cir. 2020). After that, each side has conducted a thorough examination and investigation of the facts and law relating to the matters set forth in the Complaint; and has conducted significant discovery, including: (a) Plaintiffs and Defendants serving and responding to each side's numerous document requests and written interrogatories; (b) Defendants' production and Plaintiffs' receipt and review of tens of thousands of documents constituting several gigabytes of data; (c) Plaintiffs' receipt and analysis of Defendants' rental transaction databases; (d) the taking and defending of numerous depositions of fact witnesses by both Plaintiffs and Defendants; and (e) extensive damages discovery.

In addition, the Parties participated in multiple mediation and settlement sessions prior to arriving at a successful resolution. On September 27, 2023, the Parties attended mediation before The Honorable Maurice J. Gallipoli for a one-day mediation session. On January 10, 2024, the Parties attended a second mediation session with Judge Gallipoli which was unsuccessful. On March 6, 2024, the Parties attended a settlement conference before The Honorable Madeline Cox Arleo. The Parties appeared again in front of Judge Cox Arleo on December 19, 2024 for another Settlement Conference at which time a settlement was agreed upon. The

parties appeared for another conference on June 26, 2025. The result of those intensive negotiations is now memorialized in the Settlement Agreement.

B. Summary of Settlement Terms

The Parties have agreed that, subject to Court approval, Payless will pay $19,000,000 (the "Gross Settlement Amount") for settlement of all claims against Defendants, which shall be deemed a common fund settlement. The Gross Settlement Amount includes and covers all administration costs (including the costs of implementing and effectuating class notice and payments), all attorneys' fees and attorneys' costs/expenses of litigation, and any service awards to the Plaintiffs.

The Class is defined as "All U.S. and Canada residents who (1) rented from Payless in the U.S. during the Class Period and, (2) in connection with that rental, paid Payless for GSO and/or RSP Charges." Excluded from the Class are the following categories of customers: (1) Persons who were employed by the Defendants at any time from January 1, 2016 through the present; (2) legal representatives of the Defendants; and (3) judges who have presided over this case and their immediate families.

In order to effectuate the settlement, Defendants will provide the Settlement Administrator and Class Counsel with a Settlement Database containing information necessary for disseminating notice, including contact information (phone number, email, physical address), rental transaction data, and GSO and/or RSP Charges for

each Class Member, to the extent Defendants have such information available at that time.

The Net Settlement Amount (calculated after cost of notice and administration, aggregated fess and costs and Class Representative Service Awards have been subtracted) will be allocated as follows: Forty-eight percent (48%) of the Net Settlement Amount shall be allocated to payments for Class Members with GSO Charges and the remaining fifty-two percent (52%) of the Net Settlement Amount shall be allocated to payments for Class Members with RSP Charges.

The Net Settlement Amount shall be distributed in two phases:

First Phase - Each eligible Class Member will receive their pro rata share of the settlement to be calculated by dividing the number of rental transactions for each class (i.e. GSO and RSP) by the Net Settlement Amount. Each eligible Class Member will receive a payment in an amount up to $20.00 (twenty dollars) for GSO charges and up to $12.00 (twelve dollars) for RSP charges, per transaction.

Second Phase - Any unredeemed/uncashed payments from the First Phase shall be known as Unaccepted Payments. The Unaccepted Payments shall be redistributed, pro rata, to all Class Members who redeemed/cashed the payments they received in the First Phase. However, the amount of the second payment shall not exceed twenty dollars ($20) for GSO or twelve dollars ($12) for RSP per rental transaction.

Payments shall be made by digital payments to Class Members who elected a digital payment pursuant to the Email or Mail notice or if the Class Member makes no election through the best possible means of payment to the remaining Class Members. For digital payments, if the Class Member does not make an election, the class members are screened against the Zelle database, with those in that database being sent their payment via Zelle. For all remaining class members, a text or email will be sent request them to accept a payment via Venmo. If they accept, the money will be sent to them. For all remaining class members, those with members with an email address will receive an e-check, and those without a valid email will receive a hard copy check. For the second round, class members would receive the second distribution (if any) in the same fashion they received the first distribution. Any digital payments or checks issued by the Settlement Administrator to Class Members shall remain valid for 90 days. Any digital payment or check sent to a Class Member that is not redeemed/cashed within 90 days shall be void.

Any Net Settlement Amount that remains after the above payments are made will be distributed as follows: The First $1,000,000 in Residual Settlement Funds from the amount allocated to payments for Class Members with GSO Charges shall revert to Payless. The First $1,000,000 in Residual Settlement Funds from the amount allocated to payments for Class Members with RSP Charges shall also revert

to Payless. Any remaining Residual Settlement Funds shall go to one or more *cy pres* recipient(s) selected by Nagel Rice, LLP.

In addition, Payless has agreed and acknowledged that the filing of the Action by Class Counsel led to changes and modifications being made to Payless' Rental Agreement, which were implemented on or around March 1, 2021. As a result of Plaintiffs' challenge to the enforceability of Payless' arbitration provision as contained in the Payless Rental Jacket's Terms and Conditions, and after extensive discovery and motion practice, the Honorable Kevin McNulty, by Order and Opinion dated December 18, 2018, ruled that Payless' arbitration provision was unenforceable (ECF 111-112). Although Defendants immediately filed a Notice of Appeal to the Third Circuit (ECF 113-114), the Third Circuit ultimately affirmed on May 18, 2020 (Case No. 18-3780); *Bacon v. Avis Budget Grp., Inc.*, 959 F.3d 590, 596 (3d Cir. 2020). As a result of those decisions and ultimate outcome, Payless has made material changes and modifications to the Rental Agreement pertaining to its arbitration provision. In addition, Payless has changed its sales process for the sale of ancillary products to preclude the use of assumptive sales techniques.

C. Scope of the Release

Plaintiffs and Settlement Class Members who do not opt-out of the settlement agree to fully, finally, and forever release, relinquish and discharge the Class-Related Released Parties from any and all of the Class Released Claims.

D. The Notice and Administration Plans

Notification to the Settlement Class shall be given via Email Notice to Class Members at the email addresses provided in the Settlement Database. *See* Ballard Decl. at ¶¶6-15. In the event the Settlement Administrator determines that Email Notice was not delivered to a Class Member, the Settlement Administrator will send by US Mail the Summary Notice to that Class Member after using the National Change of Address Databank maintained by the United States Postal Service to update the mailing addresses of Class Members. *See Id*. For any Summary Notice mailing that is returned to the Settlement Administrator with a forwarding address, the Settlement Administrator shall forward the Summary Notice to that address. *See Id*. For any Summary Notice mailing that is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall conduct a name and address search using a professional location provider, such as Experian or LexisNexis, to determine whether a current address is available, and if so, forward the Summary Notice to the current address obtained through such a search. *See Id*. In the event that any Summary Notice is returned as undeliverable a second time, no further mailing shall be required by the Parties or the Settlement Administrator. *See Id*.

The Settlement Administrator shall also establish a Settlement Website that will inform members of the Settlement Class of the terms of the Settlement Agreement, their rights, dates and deadlines, and related information. *See Id*. at ¶16.

The Notice and Settlement Administration Costs shall be paid by the Common Fund.

E. Attorneys' Fees and Costs

Plaintiffs' Counsel will request a total, all-inclusive amount of 26.316% of the Gross Settlement Amount, not to exceed $5,000,000, for all attorneys' fees, costs, expenses and interest related to work performed or to be performed and costs and expenses incurred or to be incurred by Class Counsel. Defendants do not oppose the fee request. Any attorneys' fees, expenses, and service awards to Plaintiffs will be paid from the Common Fund. Plaintiffs' Counsel will file a separate application for an award of attorneys' fees and expenses ahead of the Final Fairness Hearing. Settlement Class Members will have an opportunity to review that application and submit any objections they may have before the hearing.

LEGAL STANDARD

Rule 23(e) of the Federal Rules of Civil Procedure requires court approval for any compromise of claims brought on a class basis. Fed. R. Civ. P. 23(e) ("The claims . . . of a certified class – or a class proposed to be certified for purposes of settlement – may be settled . . . only with the court's approval."). It is well established in this

Circuit that the settlement of class action litigation is both favored and encouraged. *See Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) ("This presumption is especially strong in 'class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"); *see also In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."); *Curiale v. Lenox Grp., Inc.*, 2008 WL 4899474, at *5 (E.D. Pa. Nov. 14, 2008) ("'The law favors settlement particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.'"); *In re CIGNA Corp.*, 2007 WL 2071898, at *3 (E.D. Pa. July 13, 2007) ("Settlement of complex class action litigation conserves valuable judicial resources, avoids the expense of formal litigation, and resolves disputes that otherwise could linger for years.").

The *Manual for Complex Litigation* describes a three-step process for approving a class action settlement: preliminary approval of the proposed settlement; dissemination of notice of the settlement to class members; and a final approval hearing. *See Manual for Complex Litigation*, §21.63 (4th ed. 2004). At this juncture, Plaintiffs request that the Court take the first and second steps in the settlement approval process by entering the proposed Preliminary Approval Order and ordering the dissemination of notice to the Settlement Class.

Under Rule 23(e), preliminary approval should be granted if the Court "will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B); *see also Jones v. Com Bancorp, Inc.*, 2007 WL 2085357, at *2 (D.N.J. July 16, 2007) ("Courts make a preliminary evaluation of the fairness of the settlement, prior to directing that notice be given to members of the settlement class."). Rule 23(e)(2) provides:

> (2) Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering whether:
>
> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the 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 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); and
>
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). These factors overlap with those set forth by the Third Circuit in *Girsh*, which include:

> "(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 . . . ; [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation . . . ."[2]

521 F.2d at 157. The *Girsh* factors "'are a guide and the absence of one or more does not automatically render the settlement unfair.'" *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5.

Plaintiffs submit that these factors warrant preliminary approval here.

[2] The *Girsh* factors "'are a guide and the absence of one or more does not automatically render the settlement unfair.'" *In re Schering-Plough/Merck Merger Litig.*, 2010 WL 1257722, at *5 (D.N.J. Mar. 26, 2010).

ARGUMENT

A. Preliminary Approval is Appropriate

The Third Circuit favors settlement of class action litigation. *See Ehrheart v. Verizon Wireless*, 609 at 594-595 ("Settlement Agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts."). Where the parties can resolve the litigation through good faith and arms-length negotiations, judicial resources can be preserved and the public interest is furthered. *Bell Atlantic v. Bolger*, 2 F.3d 1304 (3d Cir. 1993); *In re Pet Food Prods. Liab. Litig*., 629 F.3d 333 (3d Cir. 2010)(" ... we reaffirm the overriding public interest is settling class action litigation.").

Judicial review of a proposed class action settlement consists of a two-step process. First, the court determines whether it should grant preliminary approval to the settlement. Second, after notice of the settlement is provided to the class, the court conducts a fairness hearing to determine whether it may grant final approval of the settlement. The first two factors under Rule 23(e)(2) are the adequacy of representation for the class and the arm's-length nature of the settlement negotiations. *See* Fed. R. Civ. P. 23(e)(2)(A)-(B). These two factors overlap with the third *Girsh* factor, which focuses on the stage of the proceedings and the amount of discovery completed. *In re Ins. Brokerage Antitrust Litig.*, 282 F.R.D. 92, 102 (D.N.J. 2012) (Courts have held that "a presumption of fairness exists where a

settlement has been negotiated at arm's length, discovery is sufficient, the settlement proponents are experienced in similar matters and there are few objectors.").

1. Plaintiffs and Plaintiffs' Counsel Have Adequately Represented the Settlement Class

Plaintiffs and their counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently and zealously prosecuting this Litigation on behalf of the proposed Settlement Class, including, *inter alia*, by investigating Defendants' business practices and developing Plaintiffs' claims; drafting detailed complaints and engaging in several rounds of complex and detailed motion practice in the District Court related to Payless' arbitration provision; successfully briefing and arguing a significant appeal before the Third Circuit relating to the threshold issue of the enforceability of Defendants' arbitration provisions; conducting multiple depositions of Defendants representatives and employees; preparing for and defending multiple rounds of Plaintiffs' depositions; reviewing and assessing tens of thousands of Defendants' documents constituting several gigabytes of data, including Defendants' rental databases; and, finally, negotiating and effectuating the proposed settlement now before this Court.

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

Rule 23(e)(2)(B) looks at whether the settlement was negotiated at arm's length. In this case, the Settlement did not occur until counsel conducted a thorough investigation, engaged in motion practice and conducted substantial discovery.

Thereafter, the Parties participated in multiple mediation and settlement sessions prior to achieving a successful resolution. On September 27, 2023, the Parties attended mediation before The Honorable Maurice J. Gallipoli for a one-day mediation session. On January 10, 2024, the Parties attended a second mediation session with Judge Gallipoli which, despite best efforts, was unsuccessful. On March 6, 2024, the Parties attended a settlement conference before The Honorable Madeline Cox Arleo. The Parties appeared again in front of Judge Cox Arleo on December 19, 2024 for another Settlement Conference during which a settlement was agreed upon, and again on June 26, 2025 for a final conference. These negotiations were held with each side having full knowledge of the crucial issues in the case, and they involved numerous phone calls, e-mails, and conferences between counsel in addition to the mediation, as well as repeated exchanges of additional data and documents. As the neutrals can attest, these negotiations were difficult, adversarial, and vigorously executed by both sides.

In addition, the direct participation of an experienced mediator further ensures that the negotiations were non-collusive and conducted properly. *Bredbenner v. Liberty Travel, Inc.*, 2011 WL 1344745, at *10 (D.N.J. Apr. 8, 2011) ("Participation of an independent mediator in settlement negotiations 'virtually insures that the negotiations were conducted at arm's length and without collusion between the parties.'"); *Sanders v. CJS Sols. Grp., LLC*, 2018 WL 1116017, at *2 (S.D.N.Y. Feb.

28, 2018) ("[T]he settlement was negotiated for at arm's length with the assistance of an independent mediator, which reinforces the non-collusive nature of the settlement.").

Arm's length negotiations conducted by competent counsel constitute *prima facie* evidence of fair settlements. In this case, the settlement was the result of intensive, arm's-length negotiations over the course of years between skilled attorneys with vast experience handling complex cases and class actions and with the assistance of an experienced mediator. Kohn Decl., ¶8. There is no evidence that any collusion or illegality existed during settlement negotiations. The Parties' counsel supports the settlement as fair and reasonable, and all certify that it was reached at arm's length.

As reflected in the quality of the neutrals, the prior failed efforts to resolve this Action, and duration of the final sessions before Judge Cox Arleo, the Agreement is the result of hard fought and fully arm's length negotiations. The Class Representatives have no conflict of interest with the remainder of the Class, and they share the Class's interest in obtaining recovery for themselves and the other Class Members. These Class Representatives have cooperated fully in providing relevant documents and discovery and have been actively engaged in the litigation.

3. The Relief Provided for the Settlement Class is Adequate Taking into Account the Costs, Risks, and Delay of Trial and Appeal

Rule 23(e)(2)(C)(i), which overlaps *Girsh* factors 1 and 4 through 9, instructs the Court to consider the adequacy of the settlement relief in light of the costs, risks, and delay that trial and appeal could inevitably impose.[3] *Compare* Fed. R. Civ. P. 23(e)(2)(C)(i), *with Girsh*, 521 F.2d at 157 (factor one focuses on the complexity, expense, and likely duration of the litigation; factors four through nine focus on risks). These factors weigh in favor of approval of the settlement.

Although Plaintiffs believe that the claims asserted in the Litigation are meritorious and the Settlement Class would ultimately prevail at trial, continued litigation against Defendants poses significant risks that make any recovery for the Settlement Class uncertain. The settlement's fairness is underscored by consideration of the obstacles that the Settlement Class would face in ultimately succeeding on the merits, as well as the expense and likely duration of the Litigation. Without any of the risks involved with further litigation, the Settlement Agreement provides Settlement Class Members with significant settlement benefits. Moreover, there are no grounds to doubt the fairness of the settlement or other obvious deficiencies, such as unduly preferential treatment of Plaintiffs or excessive attorney compensation. Plaintiffs, like

[3] The second *Girsh* factor, the reaction of the class to the settlement, does not yet apply, and will be addressed at the final approval stage after the Settlement Class Members have been given notice of the settlement and have had an opportunity to be heard.

all Settlement Class Members, will receive benefits consistent with the Settlement Agreement. As disclosed in the Short Form and Long Form Notices, Plaintiffs will seek payment of service awards for their significant work in representing the Settlement Class. The benefits of settlement clearly outweigh the risks of continued litigation, including trial and appeals, given the substantial relief that Settlement Class Members will be afforded.

Further, continued litigation would be lengthy and expensive. Class action litigation is difficult and complex. A settlement is beneficial to all parties, including the Court. *See Woodward v. NOR–AM Chem. Co.*, 1996 WL 1063670, at *21 (S.D. Ala. May 23, 1996) ("Complex litigation . . . 'can occupy a court's docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.'") (quoting *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992)).

The fourth *Girsh* factor examines "the risks of establishing liability." *Girsh*, 521 F.2d at 157. Under this factor, "'[b]y evaluating the risks of establishing liability, the district court can examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them.'" *Beneli v. BCA Fin. Servs., Inc.*, 324 F.R.D. 89, 103 (D.N.J. 2018) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.*, 55 F.3d 768, 814 (3d Cir. 1995) ("*GMC Truck*")). In considering this factor, the Court

has recognized that "[a] trial on the merits always entails considerable risk[s]." *Pro v. Hertz Equip. Rental Corp.*, 2013 WL 3167736, at *4 (D.N.J. June 20, 2013) (citing *Weiss v. Mercedes-Benz of N. Am., Inc.*, 899 F. Supp. 1297, 1301 (D.N.J. 1995), *aff'd*, 66 F.3d 314 (3d Cir. 1995)). And "no matter how confident one may be of the outcome of [the] litigation, such confidence is often misplaced." *In re Auto. Refinishing Paint Antitrust Litig.*, 617 F. Supp. 2d 336, 343 (E.D. Pa. 2007). Although Plaintiffs' Counsel believe the claims presented in the Litigation are meritorious, they are experienced counsel who understand "the risks surrounding a trial on the merits are always considerable." *Weiss*, 899 F. Supp. at 1301. The settlement provides certainty to the Settlement Class and substantial relief now.

Similarly, the fifth *Girsh* factor "'attempts to measure the expected value of litigating the action rather than settling it at the current time.'" *In re Cendant Corp. Litig.*, 264 F.3d 201, 238 (3d Cir. 2001) (quoting *GMC Truck*, 55 F.3d at 816). The Court looks at the potential damage award if the case were taken to trial against the benefits of immediate settlement. *In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998). In *Warfarin Sodium*, the trial court found that the risk of establishing damages strongly favored settlement, observing that "[d]amages would likely be established at trial through 'a "battle of experts,'" with each side presenting its figures to the jury and with no guarantee whom the jury would believe.'" *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 256 (D.

Del. 2002), *aff'd*, 391 F.3d 516, 537 (3d Cir. 2004). Here, in a complex consumer class action like this one, there is no doubt such a battle of experts would occur.

In sum, taking into account that the risks and uncertainties of continued litigation, and the significant amount of the recovery, the settlement here is certainly reasonable and should be preliminarily approved. *See Girsh*, 521 F.2d at 157. Indeed, given the complexity of the case, the sophistication of Defendants and their counsel, and the uncertain risks and delay inherent in continuing the Litigation, the recovery here is outstanding.

Accordingly, the Court should find that the proposed settlement is fair, reasonable, and adequately protects the interests of the Settlement Class Members.

4. The Other Rule 23(e)(2)(C) Factors Are Met

Rule 23(e)(2)(C) also lists three additional factors that a court considers in approving a settlement: the effectiveness of the proposed method for distributing relief; the terms of the proposed attorneys' fees; and the existence of any other "agreement[s]." Fed. R. Civ. P. 23(e)(2)(C)(ii)-(iv). As set forth below, these factors are readily met.

a. The Proposed Method for Distributing Relief is Effective

As demonstrated below and in the Ballard Declaration, the method and effectiveness of the proposed notice and claims administration process (Rule 23(e)(2)(C)(ii)) are more than sufficient. The Claims Administrator is an

experienced and well-respected Claims Administrator. This Administrator will provide direct notice to all Class Members based on a settlement database that will contain name, email, telephone phone, number and address of the Class Members. The notice plan includes direct email and mail notice to all those who can be identified with reasonable effort. *See* Ballard Decl., ¶¶6-15. Payments will be made by the Claims Administrator either through digital payments sent directly to Class Members or by mailing a check. In addition, a toll-free hotline and a settlement-specific website will be created. *See Id*. at ¶¶16-17, 19. Key documents will be posted on the website, including the Settlement Agreement, Long Form Notice and Preliminary Approval Order. *See Id.* at 16. This is an efficient and effective way of providing Class Members the relief they need and deserve. Moreover, there are no sub-classes and all Class Members are treated equally.

b. Attorneys' Fees and Expenses

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." The Settlement Agreement provides that Plaintiffs' Counsel will apply for an award of attorneys' fees and expenses 30 days prior to the Final Fairness Hearing. Defendants have agreed not to oppose the fee request. This case involves a common benefit fund. As set forth in the proposed Long Form and Short Form Notices, Plaintiffs' Counsel will request a total, all-inclusive amount of 26.316% of the Gross Settlement Amount, not to exceed

$5,000,000, for all attorneys' fees, costs, expenses and interest related to work performed or to be performed and costs and expenses incurred or to be incurred by Class Counsel.[4]

c. The Parties Have No Other Agreements

Rule 23(e)(2)(C)(iv) calls for the disclosure of any other agreements entered into in connection with the settlement of a class action. The Settling Parties have no other agreements concerning the Settlement Agreement or the claims of the Class, or any other matter related to this Litigation or the settlement of this Litigation. *See* Kohn Decl., ¶8.

5. Settlement Class Members are Treated Equitably

Rule 23(e)(2)(D) requires courts to evaluate whether the settlement treats class members equitably relative to one another. Here, the Settlement Agreement is fair, reasonable, and adequate because it treats all Settlement Class Members equitably and does not treat Plaintiffs or any other Settlement Class Member preferentially. Pursuant to the Settlement Agreement, each Settlement Class Member shall receive a pro rata distribution from the Net Settlement Amount that will take into consideration the type of charge that each Settlement Class Member was charged (GSO charges or RSP charges) and will provide payment based upon

[4] Class Counsel will provide the support for their fee request in their motion to award fees.

which type of charge was charged to each individual Class Member. This method ensures that all Class Members are treated equitably.

B. The Proposed Notice Program Satisfies Rule 23 and Due Process and Should be Approved

Under Fed. R. Civ. P. 23(e), class members are entitled to notice of any proposed settlement before it is ultimately approved by the Court. *Manual For Complex Litigation Fourth* § 21.633. Under Rule 23(e) and relevant due process requirements, adequate notice must be given to all absent class members and potential class members to enable them to make an intelligent choice as to whether to opt-out of the class. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283 at 326-27. "'[B]est notice practicable'" means "'individual notice to all members who can be identified through reasonable effort.'" *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). The best practicable notice is that which "is . . . reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Neither Rule 23 nor due process considerations require actual notice to every class member in every case. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985). Rather, "notice reasonably certain to reach most of those interested in objecting" is required "to safeguard the interests of all." *Id.*

The notice plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Short Form and Long Form Notices were negotiated by the Parties and will be disseminated to all persons who fall within the definition of the Settlement Class and whose names and addresses can be identified by Defendants from their records, and through databases tracking nationwide addresses and address changes. In addition, Kroll Settlement Administration will administer the Settlement Website containing relevant information about the settlement. The notice plan set forth in the Settlement Agreement provides the best notice practicable under the circumstances. The Short Form and Long Form Notices were negotiated by the Parties and will be disseminated to all persons who fall within the definition of the Settlement Class and whose names and addresses can be identified with reasonable effort from Defendants' records, and through databases tracking nationwide addresses and address changes. In addition, Kroll Settlement Administration will administer the Settlement Website containing relevant information about the settlement. Ballard Decl. at ¶16.

Moreover, Rule 23(h)(1) requires that "[n]otice of the motion [for attorneys' fees] must be served on all parties and, for motions by class counsel, directed to class members in a reasonable manner." Fed. R. Civ. P. 23(h)(1). The proposed notice plan satisfies the requirements of Rule 23(h)(1), as it notifies Settlement Class Members that Plaintiffs' Counsel will apply to the Court for an award of attorneys'

fees 30 days prior to the Final Approval Hearing. As set forth in the proposed Long Form and Short Form Notices, Plaintiffs' Counsel will request a total, all-inclusive amount up to 30% of the Gross Settlement Amount, not to exceed $5,000,000, for all attorneys' fees, costs, expenses and interest related to work performed or to be performed and costs and expenses incurred or to be incurred by Class Counsel.

The notice plan complies with Federal Rule of Civil Procedure 23 and due process because, among other things, it informs Settlement Class Members of: (1) the nature of the action; (2) the essential terms of the settlement, including the definition of the Settlement Class, the claims asserted, and the benefits offered; (3) the binding effect of a judgment if the Settlement Class Member does not request exclusion; (4) the process for submitting objections and exclusions, including the time and method for objecting or requesting exclusion and that Settlement Class Members may make an appearance through counsel; (5) information regarding Plaintiffs Counsel's request for awards of fees and expenses; and (6) how to make inquiries. Fed. R. Civ. P. 23(c)(2)(B).

Finally, the Notice satisfies all legal requirements and provides a comprehensive explanation of the Settlement in simple, non-legalistic terms. The notices contain all the information required by Rule 23(c); including, the nature of the action, definition of the class, the class claims, issues or defenses, details informing class members that they may enter an appearance though an attorney if

they desire; how to object; the time and manner of requesting exclusion, and the binding effect of the class judgment on members under Rule 23 (c)(3).

Under Rule 23(c), the Court should consider the contents of class notice as well as the method of dissemination. *Bradburn Parent Teacher Store, Inc. v. 3M*, 513 F. Supp. 2d 322, 328 (E.D. Pa. 2007); *In re Prudential*, 148 F.3d 283 at 327. The requirements for the content and dissemination of the Notice have been satisfied and the Notice should be approved.

C. Certification of the Settlement Class is Appropriate

The Supreme Court has recognized that the benefits of a proposed settlement of a class action can be realized only through the certification of a settlement class. *See Amchem Prods. Inc. v. Windsor*, 521 U.S. 591, 620 (1997). To certify a class, Plaintiffs must satisfy all of the requirements of Rule 23(a), and one of the requirements of Rule 23(b). The four requirements of Rule 23(a) are numerosity, commonality, typicality, and adequacy. Fed. R. Civ. P. 23(a). Plaintiffs seek certification under Rule 23(b)(3), which requires a showing that common questions of law or fact predominate over any individual issues and a showing that the class treatment is the superior method for efficiently handling the case. Fed. R. Civ. P. 23(b)(3). These requirements are met for settlement purposes.

1. Numerosity

Numerosity requires "the class [be] so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). The Third Circuit holds that class sizes exceeding 40 are typically sufficient to satisfy this requirement. *Stewart v. Abraham*, 275 F.3d 220, 226-27 (3d Cir. 2001). Under Third Circuit precedent, Plaintiffs "must show sufficient circumstantial evidence specific to the products, problems, parties, and geographic areas actually covered by the class definition to allow a district court to make a factual finding. Only then may the court rely on 'common sense' to forgo precise calculations and exact numbers." *Allen v. Ollie's Bargain Outlet, Inc.*, 37 F.4th 890, 896 (3d Cir. 2022). Here, the Settlement Class definition encompasses approximately 861,292 Settlement Class Members, the joinder of whom in one action would certainly be impracticable. Thus, the numerosity element is satisfied.

2. Commonality

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). This requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of classwide resolution – which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality is met where "the claims at issue . . . implicate[d] a 'uniform course

of conduct common to all class members subject to common proof in a single trial.'" *C.P. v. N.J. Dep't of Educ.*, 2022 WL 3572815, at *6 (D.N.J. Aug. 19, 2022) (quoting *Chiang v. Veneman*, 385 F.3d 256, 266 (3d Cir. 2004)). "That burden is not onerous." *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 380 (3d Cir. 2013).

Here, common questions of law and fact include, for example, whether each Class Member was improperly charged for RSP when they explicitly declined it or were not given the option to decline it; whether each Class Member was improperly charged for GSO when they explicitly declined it, were not given the option to decline it, or returned the car with a full tank of gas and were not refunded; whether Defendants' alleged assumptive selling practices violated consumer protection laws; and whether Class Members are entitled to recover damages as a result of Defendants' alleged conduct. Thus, commonality is satisfied.

3. Typicality

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. This analysis focuses on "whether the interests of the named plaintiffs align with those of the unnamed members . . . and, explicitly, whether the claims and facts of class representatives are sufficiently like those of unnamed class members." *In re Valsartan, Losartan, & Irbesartan Prod. Liab. Litig.*, 2023 WL 1818922, at *9 (D.N.J. Feb. 8, 2023). Plaintiffs establish typicality when "the named plaintiff has

(1) suffered the same injuries as the absent class members, (2) as a result of the same course of conduct by defendants, and (3) their claims are based on the same legal issues." *Arbitrage Fund v. Toronto-Dominion Bank*, 2023 WL 5550198, at *4 (D.N.J. Aug. 29, 2023). However, a class representative's claims need not be identical to those of the absent class members as "fact differences alone between the named and unnamed plaintiffs do not render a claim atypical so long as the named plaintiffs' claim arises from the same events, practices, or course of conduct of the defendants as for all class members and is based upon the same legal theory." *Valsartan*, 2023 WL 1818922, at *9.

Here, there is a nexus between the Plaintiffs' claims and other Settlement Class Members' claims in that they each include the same alleged course of conduct by Defendants and the same common allegations of assumptive selling practices. Similarly, Plaintiffs' legal theories are identical to those advanced by all Class Members, in that all allege that Defendants' conduct violated various consumer protection laws. All the Plaintiffs were subject to the same conduct and suffered the same harm as all Class Members. Finally, there are no defenses to Plaintiffs' claims that may be asserted by Defendants that are unique or different from other proposed class members.

4. Adequacy of Representation

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "'The adequacy inquiry under Rule 23(a)(4) serves to uncover conflicts of interest between named parties and the class they seek to represent.'" *In re Suboxone (Buprenorphine Hydrochlorine & Naloxone) Antitrust Litig.*, 967 F.3d 264, 272 (3d Cir. 2020). "For a class representative to be adequate, it must have 'a minimal degree of knowledge' about the case, . . . and have no conflict of interest with class counsel, . . . and members of the class." *Id.* "Only 'fundamental' conflicts 'will defeat the adequacy requirement.'" *Id.* Here, Plaintiffs have no conflicts with the Settlement Class and have actively participated in this case despite not receiving any special treatment. Plaintiffs have also adequately prosecuted this action through Plaintiffs' Counsel, which is comprised of attorneys with significant experience litigating class and other complex cases, especially in the consumer context and have been appointed Class Counsel in other class action proceedings. *See* Kohn Decl., ¶¶23-24, Ex. 2.

5. Certification Under Rule 23(b)(3) is Appropriate

The proposed class also meets the requirements of Rule 23(b)(3). Rule 23(b)(3) allows class certification of settlement classes where common questions of law and fact predominate over individual questions and class treatment is superior

to individual litigation. Plaintiffs seek to certify a Settlement Class under Rule 23(b)(3), which has two components: predominance and superiority. Rule 23(b)(3) requires "a showing that questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). Put another way, "the focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 298 (3d Cir. 2011). When assessing predominance and superiority, the court may consider that the class will be certified for settlement purposes only, and that a showing of manageability at trial is not required. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems, . . . for the proposal is that there be no trial.").

a. Common Questions of Law and Fact Predominate

"Predominance probes whether the proposed class is sufficiently cohesive to warrant adjudication by representation." *McGowan v. CFG Health Network, LLC*, No. 22-cv-2770 (ZNQ) (RLS), 2024 WL 1340329, at *16 (D.N.J. Mar. 28, 2024) (internal citations omitted). "The focus of the predominance inquiry is on liability, not damages." *Smith v. Suprema Specialties*, No. 02-cv-168 (WHW), 2007 WL

1217980, at *9 (D.N.J. Apr. 23, 2007). Here, this requirement is easily satisfied as all Class Members were harmed by the same alleged conduct by assumptive sales practices allegedly engaged in by Defendants in violation of consumer protection laws. Accordingly, the predominance prong of Rule 23(b)(3) is satisfied.

b. Settlement Class Treatment is Superior

The second prong of Rule 23(b)(3) – that a class action is superior to other available methods for the fair and efficient adjudication of the controversy – is also readily satisfied for the purpose of this settlement. *See* Fed. R. Civ. P. 23(b)(3); *see also Prudential*, 148 F.3d at 316. To determine superiority, the Court should 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; (C) the desirability or undesirability of concentrating the litigation of the claims in [a] particular forum; and, (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). Courts also consider whether "'a class action would achieve economies of time, effort, and expense, and promote . . . uniformity of decisions as to persons similarly situated.'" *Amchem*, 521 U.S. at 615.

Here, Settlement Class Members do not have a strong interest in controlling the prosecution of this case. After all, it would cost them substantially more to litigate an individual case than they could recover in damages. As other courts have recognized in the context of low-damage consumer class actions, this case "'is the

classic negative value case; if class certification is denied, class members will likely be precluded from bringing their claims individually because the cost to bring the claim outweighs the potential payout.'" *In re Marriott Int'l, Inc., Customer Data Sec. Breach Litig.*, 341 F.R.D. 128, 165 (D. Md. 2022), *rev'd on other grounds*, *In re Marriott Int'l, Inc.*, 78 F.4th 677 (4th Cir. 2023). "'For most class members the only realistic alternative to a class action is no action at all.' In such a case, 'the adjudication of the matter through a class action is superior to no adjudication of the matter at all.'" *Id.* Further, there are no other pending cases outside this Court for the conduct alleged. Third, common sense dictates that "the difficulties that would necessarily be presented by thousands upon thousands of individual actions far outweigh any difficulties the Court may encounter in managing a class action in this case." *In re TD Bank, N.A. Debit Card Overdraft Fee Litig.*, 325 F.R.D. 136, 162 (D.S.C. 2018). Finally, manageability concerns are not implicated in settlement class certification. *See Amchem*, 521 U.S. at 620 ("Confronted with a request for settlement-only class certification, a district court need not inquire whether the case, if tried, would present intractable management problems . . . ."). Superiority is met. Thus, the Court may certify the Settlement Class for settlement under Rule 23(b)(3).

6. The Settlement Class Members are Ascertainable

Although not explicitly set forth in the Federal Rules, some courts have read into Rule 23 an implicit requirement that a class be "definite" or "ascertainable." A

proper class definition is necessary to ensure clarity as to who is entitled to relief, who is bound by a final judgment, and who is entitled to the "best notice practicable" in a Rule 23(b)(3) action. *Byrd v. Aaron's, Inc.*, 784 F.3d 154, 175 (3d Cir. 2015); *Manual for Complex Litigation* §21.222; 5 James W. Moore, *et al.*, *Moore's Federal Practice* 23.21[3][d] (3d ed. 2013). "For a class to be sufficiently defined, the court must be able to resolve the question of whether class members are included or excluded from the class by reference to objective criteria." 5 James W. Moore, *et al.*, *Moore's Federal Practice*, 23.21[3] (3d ed. 1997)*; see also Byrd*, 784 F.3d at 164.

Through several cases, the Third Circuit has clarified what is required to establish ascertainability. Building upon the Third Circuit's previous decisions in *Carrera v. Bayer Corp.*, 727 F.3d 300 (3d Cir. 2013), and *Marcus v. BMW of N. Am., LLC*, 687 F.3d 583 (3d Cir. 2012), the Third Circuit has explained that ascertainability requires: 1) that the class members be identifiable by objective criteria; and 2) that "'a reliable and administratively feasible mechanism for determining whether putative class members fall within the class definition.'" *Byrd*, 784 F.3d at 163 (citing *Marcus*, 687 F.3d at 593-94). "The ascertainability requirement consists of nothing more than these two inquiries. And it does not mean that a plaintiff must . . . identify all class members at class certification. . . . ." *Id.* Nor must plaintiffs "demonstrate that a single record, or set of records, conclusively establishes class membership." *City Select Auto Sales Inc. v. BMW Bank of N. Am.*,

Inc., 867 F.3d 434, 441 (3d Cir. 2017). Rather, at this stage of the litigation, a plaintiff need only show that "'class members ***can*** be identified.'" *Byrd*, 784 F.3d at 163 (quoting *Carrera*, 727 F.3d at 308 n.2) (emphasis in original). The Settlement Class proposed here meets all relevant ascertainability criteria.

a. The Settlement Class is Defined with Reference to Objective Criteria

"Many courts and commentators have recognized that an essential prerequisite of a class action, at least with respect to actions under Rule 23(b)(3), is that the class must be currently and readily ascertainable based on objective criteria." *Marcus*, 687 F.3d at 592 (citing *Chiang*, 385 F.3d at 271 (holding that "defining a class by reference to those who 'believe' they were discriminated against undermines the validity of the class by introducing a subjective criterion into what should be an objective evaluation")). Such is the case here.

The Settlement Class includes "all U.S. and Canada residents who (1) rented from Payless in the U.S. during the Class Period and, (2) in connection with that rental, was charged for either Roadside Protection ("RSP") and/or the Gas Service Option ("GSO")." Settlement Agreement, ¶ 1.2. None of these components requires the Court to rely on impermissible subjective standards, potential Settlement Class Members' beliefs, or a resolution of the merits of the claims. *Cf. Manual for Complex Litigation* §21.222 (indicating in its discussion of ascertainability that "order defining the class should avoid subjective standards (*e.g.*, a plaintiff's state of mind)

or terms that depend on resolution of the merits (*e.g.*, persons who were discriminated against")). Instead, these criteria provide a clean and straightforward way to identify "'a particular group [that] was harmed during a particular time frame, in a particular location, in a particular way,'" in accordance with law from this Circuit. *Pollak v. Portfolio Recovery Assocs., LLC*, 285 F. Supp. 3d 812, 841 (D.N.J. 2018). Indeed, the Settlement Class is already identified by Defendants' own rental records. Thus, the first criterion of the Third Circuit's ascertainability analysis is met.

b. There is a Reliable and Administratively Feasible Mechanism for Determining Settlement Class Membership

Second, the Court must be satisfied that there is a "reliable, administratively feasible" method to identify the Settlement Class Members. The Third Circuit addressed this requirement in *Byrd*, where it stated: "We were careful to specify in *Carrera* that '[a]lthough some evidence used to satisfy ascertainability, such as corporate records, will actually identify class members at the certification stage, ascertainability only requires the plaintiff to show that class members ***can be identified***.'" *Byrd*, 784 F.3d at 164 (quoting *Carrera*, 727 F.3d at 308 n.2) (emphasis in original). In other words, there must be evidence that it can be done. *Id.*

As set forth in the Settlement Agreement §2.1, "Defendants will provide the Settlement Administrator and Class Counsel with the Settlement Database containing information necessary for disseminating notice, including contact information (phone

number, email, physical address), rental transaction data, and GSO and/or RSP Charges for each Class Member." *See* Ex. 1 to Kohn Decl. The Settlement Database will contain all class members. The Settlement Administrator will use the database provided by Defendants to provide notice and payments to all class members. *See* Ballard Decl. Therefore, the identity of all class members is known to Defendants and will allow the Settlement Administrator to easily provide notice and payments to the class.

Accordingly, the Settlement Class should be certified for settlement purposes.

D. Proposed Class Counsel Satisfy Rule 23(g)

Pursuant to Rule 23(g), Plaintiffs also move to appoint Greg M. Kohn, David J. DiSabato and Lisa R. Considine, all of Nagel Rice, LLP, as Settlement Counsel. Rule 23(g) focuses on the qualifications of class counsel, complementing the requirement of Rule 23(a)(4) that the representative parties adequately represent the interests of the class members. Fed. R. Civ. P. 23. Although a court may consider any factor concerning the proposed class counsel's ability to "fairly and adequately represent the interests of the class," Rule 23(g)(1)(A) specifically instructs a court to consider:

> (i) the work counsel has done in identifying or investigating potential claims in the action;
> (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action;
> (iii) counsel's knowledge of the applicable law; and
> (iv) the resources that counsel will commit to representing the class.

Fed. R. Civ. P. 23(g). Here, each of these considerations weighs strongly in favor of the adequacy of proposed Settlement Counsel. Proposed Settlement Counsel performed substantial work identifying and investigating potential claims and properly supporting the allegations in the Complaint. As reflected in their firm resumes, Plaintiffs' proposed Settlement Counsel have substantial experience, individually and collectively, successfully prosecuting class actions and other complex litigation throughout the United States. *See* Kohn Decl., ¶¶23-24. Moreover, Settlement Counsel have demonstrated their abilities and commitment to this Litigation, devoting the resources, time and personnel necessary to manage the Litigation and achieve a substantial settlement with Defendants. Proposed Settlement Counsel respectfully submit that they far exceed the requirements of Rule 23(g).

E. The Court Should Approve a Schedule Leading Up To the Final Approval Hearing

Plaintiffs request that the Court set a schedule of events that will lead to the Final Fairness Hearing, that would include, *inter alia*, deadlines for notice to Settlement Class Members, for Settlement Class Members to object to the Settlement or to opt out of the settlement; and deadlines for the filing of papers in support of final approval, and in support of Plaintiffs' request for attorneys' fees and expenses. At the Final Fairness Hearing, the Court should hear all evidence and argument necessary to make its final evaluation of the settlement. *See* Fed. R. Civ. P. 23(e)(2).

Proponents of the settlement may offer argument in support of final approval. Additionally, Settlement Class Members who properly object to the settlement may be heard at this hearing. The Court should determine through the Final Fairness Hearing whether the settlement will be approved.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court enter an Order Granting Plaintiffs' Motion for Preliminary Approval of the Class Action Settlement.

Respectfully submitted,

NAGEL RICE, LLP

Dated: August 20, 2025

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