

Exhibit B

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: EAST PALESTINE TRAIN DERAILMENT

CASE NO. 4:23-CV-00242-BYP
JUDGE BENITA Y. PEARSON

**MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT, APPOINTMENT OF LEAD CLASS COUNSEL,
AND APPROVAL OF NOTICE**

Now come Plaintiffs and move this Honorable Court for preliminary approval of the Settlement Agreement between Plaintiffs and Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “Norfolk Southern,” and together with Plaintiffs, the “Parties”), which is attached hereto as Exhibit A, Appointment of Lead Class Counsel, and Approval of Notice for the reasons set forth in the attached Memorandum in Support. Norfolk Southern consents to the relief requested.

Dated: April 26, 2024

Respectfully submitted,

/s/ M. Elizabeth Graham
M. Elizabeth Graham (pro hac vice)
Adam J. Gomez (pro hac vice)
Caley DeGroote (pro hac vice)
GRANT & EISENHOFER P.A.
123 S. Justison Street, 6th Floor
Wilmington, DE 19801
303-622-7000
303-622-7100 (fax)

egraham@gelaw.com
agomez@gelaw.com
cdegroote@gelaw.com

Seth A. Katz (pro hac vice)
**BURG SIMPSON ELDREDGE
HERSH & JARDINE, P.C.**
40 Inverness Drive East
Englewood, CO 80112
303-792-5595
303-708-0527 (fax)
skatz@burgsimpson.com

Jayne Conroy (pro hac vice)
SIMMONS HANLY CONROY
112 Madison Avenue, 7th Floor
New York, NY 10016
212-784-6400
212-213-5949 (fax)
jconroy@simmonsfirm.com

Michael Morgan (pro hac vice)
MORGAN & MORGAN
20 North Orange Ave., Suite 1600
Orlando, FL 32801
407-420-1414
407-245-3389 (fax)
mmorgan@forthepeople.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ M. Elizabeth Graham

M. Elizabeth Graham
Grant & Eisenhofer P.A.

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**MEMORANDUM IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF SETTLEMENT,
APPOINTMENT OF LEAD CLASS COUNSEL, AND
APPROVAL OF NOTICE**

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I. PRELIMINARY STATEMENT

Plaintiffs file this Motion seeking preliminary approval of a Settlement that will resolve all claims alleged in Plaintiffs' First Amended Master Consolidated Class Action Complaint (ECF No. 138), arising out of, or relating to, the derailment of Norfolk Southern Train 32N, including the subsequent "vent and burn" operation and the chemical release, fire, emergency response, clean-up, remediation, shelter-in-place and evacuation following the derailment (all collectively defined in the Settlement Agreement as "the Incident").

This case arises from the derailment of Norfolk Southern Train 32N in East Palestine, Ohio, on February 3, 2023. Following the derailment, Norfolk Southern and its contractors conducted a "vent and burn" of five railcars containing vinyl chloride. Plaintiffs allege that this operation released various dangerous chemicals that polluted the surrounding air, soil, and water, and led to toxic exposure of neighboring properties, businesses, and persons to those chemicals. Plaintiffs brought their lawsuit and sought to recover damages as a result of the Incident, including loss of use and enjoyment of property, property damage, exposure to toxic material, economic damages, and the need for medical monitoring.

This hard-fought Settlement has been reached after all parties engaged in extensive discovery, and Norfolk Southern and Plaintiffs negotiated the Settlement fairly and at arm's length. The proposed Settlement will provide class-wide releases over a 20-mile radius to all named Defendants in exchange for a significant monetary payment to Settlement Class Members. It is a fair, reasonable, and adequate settlement that meets the criteria for preliminary approval.

Plaintiffs now seek preliminary approval of a proposed Settlement pursuant to Federal Rule of Civil Procedure 23. Plaintiffs respectfully move the Court to (1) order preliminary approval of the Settlement, (2) approve the proposed Long-Form and Short-Form Publication

notices for dissemination to the settlement class members pursuant to the notice plan, (3) appoint Interim Class Counsel as Lead Class Counsel to the Settlement Classes for purposes of this Settlement, and (4) schedule a Final Approval Hearing consistent with the Parties' proposed schedule of events.

II. BACKGROUND AND PROCEDURAL HISTORY

In the evening hours of February 3, 2023, Norfolk Southern Train 32N was traveling eastbound on the Fort Wayne Line through northeast Ohio. (ECF No. 138 at ¶165). Train 32N passed three wayside defect detectors before derailing. Plaintiffs allege that Car 23, owned by General American Marks Company and/or GATX, derailed because of a failed wheel bearing. (ECF No. 138 at ¶146). In total, 38 railcars derailed following the bearing failure. (ECF No. 138 at ¶155). General American Marks Company, GATX Corporation, Oxy Vinyls LP, and Trinity Industries Leasing Company owned or shipped at least one of five railcars that derailed and were carrying vinyl chloride. (ECF No. 138 at ¶133-39). On February 6, 2023, Norfolk Southern and its contractors conducted a “vent and burn” of all five vinyl chloride cars, causing a massive explosion that Plaintiffs allege sent toxic chemicals over East Palestine and the surrounding area. (ECF No. 138 at ¶183-85, 279).

On August 14, 2023, Plaintiffs filed their First Amended Master Consolidated Class Action Complaint (“Master Complaint”) against Norfolk Southern, adding defendants Oxy Vinyls LP, GATX Corporation, General American Marks Company, and Trinity Industries Leasing Company as defendants. (ECF No. 138). The Master Complaint seeks, in summary, redress for residents, property owners, employees and businesses living, working, and/or located in and around the February 3, 2023 Norfolk Southern Train 32N derailment. (ECF No. 138 at ¶1).

A. PLAINTIFFS' ALLEGATIONS AGAINST THE DEFENDANTS SURVIVED A MOTION TO DISMISS

On June 2, 2023, Norfolk Southern filed its Motion to Dismiss and to Strike. (ECF No. 76).¹ The remaining Defendants subsequently filed their own Motions to Dismiss. (ECF Nos. 205 [GATX and General American Marks Company], 206 [Trinity Industries Leasing Company], 207 [Oxy Vinyls LP]). The Court denied all four of Defendants' Motions to Dismiss nearly in their entirety, dismissing only the Ohio-based medical monitoring claim, finding that under Ohio law it is not a stand-alone cause of action. (ECF Nos. 428, 430). However, the Court observed that medical monitoring as an element of damages remains viable for Ohio residents, as do all other claims and remedies of Plaintiffs against all Defendants. (ECF Nos. 428, 430).

B. PLAINTIFFS HAVE ENGAGED IN EXTENSIVE DISCOVERY TO SUPPORT THEIR ALLEGATIONS AND CLASS CERTIFICATION

The Court's June 28, 2023 Case Management Order originally gave the parties until January 5, 2024, to complete fact discovery (ECF No. 98 at ¶11), but that deadline was later extended one month to February 5, 2024, with certain depositions taken after that date by party agreement. Expert reports were to be fully exchanged by May 17, 2024, and expert depositions completed before July 1, 2024. (ECF No. 98 at ¶11).

All parties engaged in comprehensive and voluminous discovery over the ten months following the Court's Case Management Order. Norfolk Southern alone produced over 720,000 documents; all non-plaintiffs together produced over 1,345,000 documents in discovery. Plaintiffs produced over 6,880 documents. Plaintiffs also collected extensive

¹ Though the First Amended Master Consolidated Class Action Complaint was not yet filed, the Court ruled that Norfolk Southern's Motion to Dismiss and to Strike did not need to be amended or refiled because of the limited scope of the new allegations in the First Amended Complaint. (ECF No. 137).

environmental data and facilitated a comprehensive environmental sampling and testing program, in addition to air modeling, to determine the geographic range of exposure. The environmental testing included approximately 160 sampling sites in and around East Palestine, covering sites as far as 45 miles from the Incident.² Plaintiffs also worked with experts to establish the costs of a medical monitoring program, and to determine the damages in their trespass and nuisance claims.³

Defendants deposed all of the 16 proposed class representatives, including some in their capacities as corporate designees. Plaintiffs took or participated in approximately 70 additional depositions over the course of discovery, including Rule 30(b)(6) depositions of all Defendants, and individual depositions of their employees, agents, or representatives involved in the derailment and its aftermath. Depositions were concluded by March 1, 2024.

As a result of their extensive discovery, Plaintiffs fully developed their claims as a result of the Incident.

C. HISTORY OF SETTLEMENT NEGOTIATIONS

Plaintiffs and Norfolk Southern were in the midst of discovery when they began to negotiate a potential settlement. As a result of ongoing negotiations, Norfolk Southern and Plaintiffs engaged in a two-day mediation with the assistance of retired United States District Judge Layn R. Phillips in October 2023. The mediation did not result in a settlement at that time, but productive negotiations between Norfolk Southern and Plaintiffs continued with the

² The coordinates of the Incident site are in East Palestine, Columbiana County, Ohio at Latitude: 40.8360395°N; Longitude: 80.5222838°W.

³ Plaintiffs have worked extensively with their experts, though no expert reports from Plaintiffs have been exchanged in this litigation. Plaintiffs' original expert disclosure deadline was April 1, 2024 (ECF No. 98), but was extended to April 15, 2024, (ECF No. 432) before the Court granted the motion from Plaintiffs and Norfolk Southern to stay deadlines in Plaintiffs' consolidated case pending the filing of preliminary and final approval papers. (ECF No. 446).

assistance of Judge Phillips over the next four months. As fact discovery came to a close, Norfolk Southern and Plaintiffs were engaged in intense negotiations. Ultimately, Plaintiffs and Norfolk Southern decided to return to a formal mediation, again, with Judge Phillips on February 19, 2024.

Plaintiffs' Interim Class and Co-Lead counsel were present at the mediation, including senior attorneys from Grant & Eisenhofer P.A., Burg Simpson Eldredge Hersh & Jardine, P.C., Simmons Hanly Conroy LLP, and Morgan and Morgan, P.A. Norfolk Southern was represented at mediation by senior attorneys from Wilmer Cutler Pickering Hale and Dorr LLP and Dickey, McCamey & Chilcote, as well as multiple in-house counsel representatives of Norfolk Southern. Plaintiffs and Norfolk Southern rigorously negotiated toward a resolution during the course of the day-long mediation. Though Plaintiffs and Norfolk Southern did not finalize an agreement on the day of the mediation, negotiations continued, with counsel for the parties in near constant contact with the mediator.

Judge Phillips presented a mediator's recommendation to Norfolk Southern and Plaintiffs on March 6, 2024. Both parties accepted the mediator's recommendation and announced an agreement in principle based on that recommendation on April 9, 2024. Norfolk Southern and Plaintiffs then reduced that agreement to writing and executed the Settlement Agreement, attached as Exhibit A, on April 26, 2024.

III. TERMS OF THE PROPOSED SETTLEMENT

The Parties have come to a fair result, in the best interest of the Parties, including the Settlement Class Members, as a result of their negotiations. As set forth in the Settlement Agreement, Norfolk Southern has agreed to a total payment of \$600 million to the Settlement Class, defined below, in exchange for a release extinguishing all liability for claims that were or could have been asserted in the Master Complaint as to Norfolk Southern arising out of, or

relating to, the Incident. *See* Settlement Agreement § XVI. This includes a Release of all Plaintiffs' claims that were or could have been asserted in the Master Complaint against Oxy Vinyls, LP, GATX Corporation, General American Marks Company, and Trinity Industries Leasing Company. *See id.* While the proposed Settlement would extinguish all of Plaintiffs' claims against all Defendants, Norfolk Southern's contribution claims against Oxy Vinyls, LP, GATX Corporation, General American Marks Company, and Trinity Industries Leasing Company are expressly preserved under all applicable law.

The Settlement Agreement incorporates the following Settlement Class:

All Persons and Businesses residing, owning or otherwise having a legal interest in property, working, or owning or operating a Business within a 20-mile radius for the Derailment Site, from February 3, 2023 to April 26, 2024.⁴

The \$600 million payment will be distributed in three components, with the assistance of a Settlement Administrator, as follows:⁵

- 1) Direct payments to class member households for all class action claims (except for business loss and personal injury), including nuisance, trespass, property damage/diminution, medical monitoring and mental or emotional injury or harm;
- 2) Business loss payments to qualifying businesses with proof of actual net loss in 2023;
- 3) Optional personal injury claims for persons within a 10-mile radius of the derailment site.

The first component, direct payments, requires threshold certification of residency, employment, and/or property ownership to a Claims Administrator for compensation. It will

⁴ Excluded from the Settlement Class are Norfolk Southern, and any of its parents, subsidiaries, or affiliates; all duly elected and approved officers of Norfolk Southern, and all directors of Norfolk Southern; Norfolk Southern employees, and contractors of Norfolk Southern and their employees, who were specifically sent by Norfolk Southern to the area in and around the Derailment Site to respond to the Incident and do not otherwise fall within the definition of Settlement Class; Norfolk Southern's Counsel; Class Counsel; a government, political subdivision, public entity, or public agency; and this Honorable Court (Pearson, J.) presiding over this Action and the Court's staff.

⁵ The payments to any given Settlement Class Member will be net of any prior payments by Norfolk Southern to avoid double payments. However, all funds, after fees and costs, will be distributed to the Class and no money—none of the \$600,000,000—will revert to Norfolk Southern.

be further divided into two tiers. The first tier will include households within 1-10 miles of the Incident site, and will utilize a point system, measuring factors such as geographic proximity, number of household members, number of children in the house, relocation mandates, and length of displacement; payments will be distributed based on the allocated points. The second tier will include households within 10-20 miles of the Incident and will not include a point system. Instead, it will only consider actual displacement and extraordinary injuries.

The second component, business losses, allocates an amount determined by Class Counsel, in consultation with the Settlement Administrator and financial experts, to compensate qualifying business for actual net losses in 2023, pending the proof required by Class Counsel and the Settlement Administrator. Any portion of this allocated fund that is not claimed by businesses with qualifying losses will be redistributed to the first component, direct payments.

The third, and final, component of the payments, compensation for personal injury claims, provides an additional, optional benefit to qualifying Settlement Class Members within 10 miles of the Incident site. Those persons with past, present, or future personal injuries attributable to the Incident may voluntarily choose to receive compensation for those injuries in exchange for a release of their personal injury claims. Plaintiffs negotiated this benefit to allow residents of East Palestine, and all those within a 10-mile radius of the Incident site, an accessible way to receive compensation for their injuries now and in the future without the burden of additional litigation. Only those persons who elect to participate in this component will provide a release for their personal injury claims. Otherwise, those with personal injury claims can pursue them separately, outside of the terms of this Settlement.

Any portion of this fund that is unclaimed by persons with personal injuries will be redistributed to the first component, direct payments.

Interim Class and Co-Lead Counsel have selected Kroll Settlement Administration, LLC as the Settlement Administrator, and will determine the allocation formula and fixed amounts, subject to Norfolk Southern's review and consent, but with consent not to be unreasonably withheld. *See Wood v. FCA US LLC*, No. 520CV11054JELAPP, 2022 WL 17361963, at *4 (E.D. Mich. Dec. 1, 2022) (approving final settlement that used Kroll Settlement Administration). Interim Class and Co-Lead Counsel will work with Kroll, LLC to open an on-site East Palestine Settlement Center in East Palestine to encourage and assist those in the community to receive the benefits of the Settlement Agreement. This will be a physical, staffed location that community members can visit to submit claim forms.

IV. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL

“The claims, issues, or defenses of a certified class may be settled, voluntarily dismissed, or compromised only with the court’s approval.” *In re Polyurethane Foam Antitrust Litig.*, No. 1:10 MD 2196, 2015 WL 1639269, at *3 (N.D. Ohio Feb. 26, 2015) (Zouhary, J.); *see In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1008 (S.D. Ohio 2001) (noting that Federal Rule of Civil Procedure 23 provides that “[a] class action shall not be dismissed or compromised without the approval of the court”). Ultimate approval of a class action settlement requires that the class representatives and class counsel adequately represented the class, the proposal was negotiated at arm’s length, and that the relief is adequate. Fed. R. Civ. P. 23(e)(2). At the preliminary approval stage, the Court need only determine whether the proposed “‘settlement is fair, adequate, and reasonable under the circumstances, as well as consistent with public interests,’ and whether the interests of the class as a whole are better served if the litigation is resolved by the settlement rather than if

pursued to a verdict by a jury.” *Telectronics*, 137 F. Supp. 2d at 1008. “Given that the Court will have an opportunity to analyze the proposed Settlement Agreement at a final approval hearing, ‘at this junction, [the Court] is not obligated to, nor could it reasonably, undertake a full and complete fairness review.’” *JLXX Corp. v. Bobcat Energy Resources, LLC*, 2019 WL 4573710, *7 (N.D. Ohio Sept. 20, 2019) (Pearson, B.) (citing *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350 (N.D. Ohio, 2001) (O’Malley, J.)); see *In re Sulzer Hip Prosthesis & Knee Prosthesis Liab. Litig.*, No. 1:01-CV-9000, 2001 WL 1842315, at *3 (N.D. Ohio Oct. 20, 2001) (O’Malley, J.) (“approval of the proposed settlement agreement ... is only the first step in an extensive and searching judicial process... the Court [should not “rubber-stamp” the agreement] but also must be mindful of the substantial judicial processes that remain to test the assumptions and representations upon which the parties’ motions are premised.”).

Preliminary approval is appropriate where a “proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible approval.” *Telectronics*, 137 F. Supp. 2d at 1015-16; see also *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. at 350 (finding the court must only “reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the negotiating parties,” and should not second guess the settlement terms). When a settlement is “the result of extensive negotiations by experienced counsel, the Court should presume it is fair.” *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350–51 (N.D. Ohio 2001) (citing *Williams v. Vukovich*, 720 F.2d 909, 923 (6th Cir. 1983)). Further, this limited review should consider the uncertainties, risks, and costs associated with

continued litigation. *Ohio Public Interest Campaign v. Fisher Foods, Inc.*, 546 F. Supp. 1, 7 (N.D. Ohio 1982) (Lambros, J.).

In recently amending Rule 23, the Advisory Committee recognized that the various Circuits had independently generated their own lists of factors to consider in determining whether a settlement is fair, reasonable, and adequate.⁶ Fed. R. Civ. P. 23(e)(2) advisory committee's note to the 2018 amendment. Because the Sixth Circuit factors are similar, caselaw in this Circuit applying those factors remains instructive here. That said, following the instructions of the Advisory Committee, Plaintiff will “present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal.” *Id.* As detailed below, the Settlement merits preliminary approval.

The proposed Settlement here meets the applicable standards and should, accordingly, be preliminarily approved.

A. PLAINTIFFS AND INTERIM CLASS COUNSEL HAVE ADEQUATELY REPRESENTED THE PROPOSED SETTLEMENT CLASS (RULE 23(E)(2)(A))

Plaintiffs and Interim Class Counsel have prosecuted this action on behalf of the proposed Settlement Class with vigor and dedication for the past year, with the aim of securing substantial and expeditious relief for community members affected by the train derailment. *See* Fed. R. Civ. P. 23(e)(2)(A).⁷ As discussed above, Interim Class Counsel have thoroughly investigated the factual and legal issues involved, conducted substantial discovery, engaged

⁶ In the Sixth Circuit, those factors are: (1) the risk of fraud or collusion; (2) the complexity, expense and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest. *UAW v. Gen. Motors Corp.*, 497 F.3d 615, 631.

⁷ Similarly, under the Sixth Circuit factors, courts look to the amount of discovery engaged in by the parties. *See UAW*, 497 F.3d at 631.

in extensive motion practice before this Court, and worked with experts to establish liability and assess the Settlement Class's damages. *See supra* Background and Procedural History § II. In particular, Plaintiffs have obtained more than 1,345,000 documents, taken depositions of the key witnesses, and worked with experts to collect and analyze environmental data, among other things. *Id.*

Plaintiffs have also been actively engaged in the case—each sitting for depositions, responding to discovery requests, and regularly communicating with their counsel up to and including evaluating and approving the proposed Settlement.

B. THE PROPOSED SETTLEMENT IS THE PRODUCT OF SERIOUS, INFORMED, NON-COLLUSIVE NEGOTIATIONS (RULE 23(E)(2)(B))

Rule 23(e)(2) next asks whether the settlement “was negotiated at arm’s length.” Fed. R. Civ. P. 23(e)(2)(B). To ensure negotiations were conducted at arm’s length, courts look to the “conduct of the negotiations,” recognizing that “the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests.” Fed. R. Civ. P. 23(e)(2) advisory committee’s note to the 2018 amendment.⁸

Plaintiffs believe the claims asserted against Norfolk Southern in this case have merit, and that Plaintiffs would ultimately be successful in certifying a class and prevailing on the merits at trial. Nonetheless, Plaintiffs and Class Counsel recognize and acknowledge the risks, expense, and delay associated with continued litigation against Defendants, including at the class certification stage. Specifically, Norfolk Southern disputes that Plaintiffs are entitled to

⁸ Sixth Circuit factors likewise include the risk of fraud or collusion. *See UAW*, 497 F.3d at 631.

recovery based on their claims. Norfolk Southern maintains that it has strong, meritorious defenses to class certification and claims Plaintiffs alleged.

Plaintiffs, Norfolk Southern, and their counsel have also considered the uncertain outcome and risks of any litigation, especially in complex actions such as this, as well as the difficulties inherent in such litigation. *See* Settlement Agreement §§ 1J; 1K. Plaintiffs appreciate that Norfolk Southern is likely to fully exercise its appellate rights against any certified class, leading to substantial delays in the desperately-needed recovery in the East Palestine and surrounding community.

The Settlement Agreement between Norfolk Southern and Plaintiffs will provide relief now, as opposed to years, or even decades, down the road. Recognizing that further litigation would be risky, burdensome, and expensive, Plaintiffs and Norfolk Southern agree that it is desirable and beneficial that the case is settled. *See Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (“in performing this balancing task [of weighing factors in settlement fairness], the trial court is entitled to rely upon the judgment of experienced counsel for the parties.”); *Sellards v. Midland Credit Mgmt., Inc.*, No. 1:20-CV-02676, 2023 WL 3869023, at *9 (N.D. Ohio May 2, 2023), report and recommendation adopted, No. 1:20-CV-02676, 2023 WL 3641447 (N.D. Ohio May 25, 2023) (Fleming, C) (“counsel for both parties seek approval of the settlement agreement, and their opinions are entitled to deference”).

Thus, Plaintiffs and Norfolk Southern engaged in extensive settlement negotiations in good faith and, after months of negotiation at arm’s length, were able to reach a resolution. That coming to an agreement took as long as it did, with multiple formal mediations, is indicative of the serious, informed, and non-collusive nature of the negotiations. As Plaintiffs continued to build the facts of their case, including through a comprehensive environmental

sampling program, they recognized the value of this case and steadfastly impressed the same upon Norfolk Southern and its experienced counsel. *See Reynolds v. Beneficial Nat. Bank*, 260 F.Supp.2d 680, 687–88 (N.D.Ill.2003) (declining to approve settlement on remand and disqualifying class counsel because evidence established that they attempted to settle case without first undertaking sufficient discovery to estimate class damages); *cf. Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 587–88 (N.D. Ill. 2011) (“[T]he question that this Court must answer is not how much or how little discovery was completed by the parties before they agreed to the settlement, but rather whether the discovery that was completed was sufficient for “effective representation.”). Plaintiffs’ extensive discovery also allowed them to appreciate potential weaknesses, including potential modifications to the class definition necessary to succeed on class certification.

Both parties’ interests were represented by experienced attorneys who are well-versed in these types of negotiations. On Plaintiffs’ side, the final mediation was well-informed by not only Interim Class and Co-Lead Counsel, but representatives of the Discovery, Science, and Damages Committees were consulted to ensure that all necessary factors were considered when narrowing the terms of any proposed settlement. Further supporting approval, the parties were assisted by a renowned mediator, which “virtually insures that the negotiations were conducted at arm’s length and without collusion between the parties.” *Hainey v. Parrott*, 617 F. Supp. 2d 668, 673 (S.D. Ohio 2007).

Indeed, numerous courts have specifically noted Judge Phillips’ involvement as a factor weighing in favor of settlement approval. *See Employees Retirement System of the City of St. Louis, et al. v. Jones*, No. 2:20-cv-4813 (S.D. Ohio May 9, 2022) (approving, preliminarily, the proposed settlement and noting it was facilitated by “reputable independent

mediator” Judge Phillips), copy attached as Exhibit B; *Voulgaris v. Array Biopharma Inc.*, No. 17-CV-02789-KLM, 2021 WL 6331178, at *6 (D. Colo. Dec. 3, 2021), aff’d, 60 F.4th 1259 (10th Cir. 2023) (“Judge Phillips’ involvement in the mediation process, the length of the mediation (eleven hours), and the extensive briefing and discovery that occurred in connection with the mediation, demonstrate fair, honest, and arm’s length negotiations in connection with the Settlement.”); *In Re Crocs Inc. Sec. Litig.*, 306 F.R.D. 672, 690 (D. Colo. 2014) (approving settlement and noting that the parties “engaged in extensive negotiations and mediation sessions” in front of “retired United States District Judge Layn R. Phillips, who has extensive experience mediating complex cases.”); *IBEW Local 697 Pension Fund v. Int’l Game Tech., Inc.*, No. 09-cv-00419-MMD-WGC, 2012 WL 5199742, at *2 (D. Nev. Oct. 19, 2012) (finding settlement was fair when it “was reached following arm’s length negotiations between experienced counsel that involved the assistance of an experienced and reputable private mediator, retired Judge Phillips.”); *In re Bear Stearns Cos.*, 909 F. Supp. 2d 259, 265 (S.D.N.Y. 2012) (approving settlement when parties “engaged in extensive arm’s length negotiations, which included multiple sessions mediated by retired federal judge Layn R. Phillips, an experienced and well-regarded mediator of complex securities cases.”).

The negotiations were hard-fought, at arm’s length, by experienced attorneys and with the assistance of a nationally-recognized mediator; thus, the negotiations were serious, informed, non-collusive, and the resulting Settlement Agreement should be preliminarily approved.

C. THE PROPOSED SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE, AND FALLS WITHIN THE RANGE OF POSSIBLE APPROVAL

The Court must “ensure 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

distribution plan, including the claims process; (iii) the terms of any proposed award of attorney’s fees; and (iv) any agreement made in connection with the proposal, as required under Rule 23(e)(3). Fed. R. Civ. P. 23(e)(2)(C).⁹ These factors support preliminary approval.

1. The Settlement Relief Outweighs the Costs, Risks, and Delay of Trial and Appeal (Rule 23(e)(2)(C)(i))

(a) Settlement Components, Including Tiers, are Fair and Supported by Discovery and Depositions

As the terms of this Settlement Agreement were intensely negotiated by experienced counsel, the Court may presume the terms are fair. *See In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350–51 (N.D. Ohio 2001).

Particularly, the distribution and payment components of this Settlement contemplate two forms of relief—household distribution payments and net business loss payments—and a voluntary personal injury payment, which will fairly compensate those affected by the Incident.¹⁰

Interim Class and Co-Lead Counsel strongly believe that the Settlement Class and payments provided to them are appropriate and do not improperly grant preferential treatment to segments of the Class, given the vast fact discovery and expert development that now have been undertaken.

⁹ Similarly, the Sixth Circuit considers the complexity, expense and likely duration of the litigation; the likelihood of success on the merits; the opinions of class counsel and class representatives; the reaction of absent class members; and the public interest. *UAW*, 497 F.3d at 631.

¹⁰ Class Counsel propose that Class representatives receive an additional award of \$15,000 pursuant to the Settlement Agreement. The Sixth Circuit allows incentive awards to class representatives in consideration of several factors, including “their actions to protect the rights of the class members and...the amount of time and effort spent pursuing the litigation.” *Hainey v. Parrott*, 617 F. Supp. 2d 668, 677 (S.D. Ohio 2007). The “mere fact” that a “settlement agreement provides for payment of incentive awards to class representatives does not render the proposed settlement agreement unfair, unreasonable, or inadequate.” *Id.*

Depositions and discovery confirm the “impact zone” that is reflected in the Settlement Agreement. Upon review and analysis of the vast record, including extensive environmental data, any impact of the Incident extends no further than a 20-mile radius from the derailment site, and any claims for relief arising out of, or relating to, the Incident beyond a 20-mile radius are without merit. As reflected in this Settlement, using a geographic radius of 20 miles for all claims (excepting only personal injury claims, limited to a 10-mile radius) fairly and adequately compensates those in East Palestine and the surrounding affected communities for the Incident. Moreover, the allocation formula, which, as described in the Settlement Agreement and below, is based on a weighted point system that heavily considers proximity to the Incident and expert opinions as to the ensuing spread of toxins, both prioritizes those households most impacted and protects the outlying households from the risk of an adverse ruling or verdict.

Eligible Settlement Class Members’ ability to voluntarily elect to participate in and receive a personal injury payment if present within a 10-mile radius of the Incident is designed to compensate those individuals who have suffered, or may suffer, a physical injury arising from the Incident. Because, in Class Counsel’s view, class actions for personal injury claims are not legally viable, this Settlement seeks to nevertheless address all compensable personal injuries on a broad scale. Those Settlement Class Members who participate will be compensated for past, present, and future personal injuries from the Incident. The Settlement avoids risks of a complete non-recovery for any person within the 10-mile radius and provides compensation for personal injuries now and in the years to come. Class and Co-Lead Counsel—including counsel who represent individuals with such injuries—are confident that the 10-mile radius participation definition is more than expansive enough to ensure that all of those Settlement Class Members with personal injury claims are eligible for additional relief in the form of personal injury payments. Simply stated, the

likelihood of success on the merits for personal injury claims outside the 10-mile radius is extremely remote given the science, fact record, and expert analysis.

Accordingly, the terms of the Settlement are fair and should be preliminarily approved on this basis.

2. The Settlement Amount is Significant and Provides a Beneficial Recovery for Settlement Classes That is Exceedingly Reasonable and Adequate

Pursuant to the Settlement Agreement, Co-Lead and Interim Class Counsel will use a Settlement Administrator, and experts, to determine allocation of the \$600,000,000 in settlement funds. This will include in-depth consideration of the potential distribution within each component of the payments. The \$600,000,000 Settlement will provide a significant and broad recovery for those households, businesses, and persons with personal injuries from the Incident. Based on the discovery, depositions, and anticipated expert reports in this case, Plaintiffs' counsel is confident that this is a fair, reasonable, and adequate recovery for Plaintiffs, proposed Settlement Class Members, and persons choosing to receive voluntary personal injury compensation.

The proposed Settlement is more than reasonable and adequate because it allows class members to recover damages that would otherwise be beyond their reach if proceeding individually, given the expenses and costs in complex litigation such as this. The payments available to households and businesses pursuant to the Settlement Agreement are reasonable, and they compensate households and businesses for the claims set forth in the Complaint. (*See* ECF No. 138). The structure of this Settlement also allows a recovery that would not be possible through class action litigation—personal injury compensation. Rather than Settlement Class Members having to incur the expense and delay of pursuing a separate personal injury action, this Settlement allows a streamlined mechanism for qualifying persons

to recover for their personal injuries without the burdens, trouble, and uncertainty imposed by separate litigation.

This Settlement is also highly advantageous as compared to trial. Were this case to proceed to trial, it would be a lengthy proceeding involving complex scientific proof on several issues, which would be expensive for both sides. *See Olden v. Gardner*, 294 F. App'x 210, 217 (6th Cir. 2008) (weighing in favor of settlement the necessity of complex scientific proof, and cost of the experts necessary to present it, which would have been very expensive for both sides). A likely appeal, which Plaintiffs face in this case at the class certification and trial stages, also weighs in favor of settlement. *Id.* Further, the Settlement Agreement payments will avoid the uncertainty, risk, delay, and trouble of further litigation. *See Midland Funding, LLC v. Brent*, No. 3:08 CV 1434, 2011 WL 3557020, at *12 (N.D. Ohio Aug. 12, 2011) (Katz, D.) (“[T]he law favors settlement, particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation.”); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (there is a “strong judicial policy that favors settlements, particularly where complex class action litigation is concerned.”); *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977) (“Particularly in class action suits, there is an overriding public interest in favor of settlement.”). The proposed Settlement is positioned to put financial relief in the hands of the class members prior to the two-year anniversary of the Incident.

The \$600,000,000 million Settlement is beneficial for the East Palestine community and surrounding area, and will provide households, families, and local businesses much-needed, immediate relief for the losses, suffering, and inconvenience they have endured since February 3, 2023. It falls well within the range of possible approval and provides substantial

recovery for the Settlement Class and those Settlement Class Members seeking compensation for past, present, or future personal injuries. The proposed Settlement has “no obvious deficiencies, does not improperly grant preferential treatment” to any segment of the proposed Settlement Classes, is fair, adequate, reasonable, “falls within the range of possible approval,” and should be preliminarily approved. *See Telectronics*, 137 F. Supp. 2d at 1015-16.

3. The Settlement Will Distribute Relief Effectively and Equitably to the Class (Rules 23(e)(2)(C)(ii), 23(e)(2)(D))

In considering settlement approval, the Court should consider “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims.” Fed. R. Civ. P. 23(e)(2)(C)(ii). If the Settlement is approved by the Court, in addition to what is already set forth in the Settlement Agreement and described further below, Plaintiffs will submit a plan of allocation to the Court concurrently with their motion for final approval and will also make this allocation plan available on the Settlement Website. As a part of the notice plan, Settlement Class Members will be instructed to review the plan of distribution on the website and be afforded the opportunity to do so well before they must decide whether to opt out or object to the Settlement.

For the Settlement Class, the Settlement Administrator will determine the amount of each Class Member payment consistent with the plan of distribution. To prevent double recovery, awards will be offset by payments Class Members have already received through the Norfolk Southern claims process.

Approval of the plan of distribution is meant to be separate and distinct from the Court’s approval of the Settlement Agreement. *See, e.g., Gutierrez v. Amplify Energy Corp.*, No. 8:21-CV-01628-DOC, Order, ECF No. 599, (C.D. Cal. Dec. 7, 2022) (granting preliminary approval in a mass environmental casualty (oil spill) case and setting a later deadline for plaintiffs to submit a

detailed allocation plan). As a result, even if a Settlement Class Member objects to the plan of distribution, the Settlement could nonetheless become final and effective. This helps ensure that the Settlement becomes final and effective as soon as possible.

(a) Summary of Distribution Plan

The contemplated distribution plan will effectively distribute relief to the Settlement Class. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii). Courts regularly approve settlement distributions that vary based on the relative damages of each Class Member. *See, e.g., Ware v. CKF Enterprises, Inc.*, No. CV 5:19-183-DCR, 2020 WL 2441415, at *16 (E.D. Ky. May 12, 2020) (approving settlement where class claimants received “allocations that correlate to the number of hours they were allegedly undercompensated.”); *Davis v. Omnicare, Inc.*, No. 5:18-CV-142-REW, 2021 WL 1214501, at *12 (E.D. Ky. Mar. 30, 2021) (approving class settlement and noting “[e]ach specific calculation will hinge on variables particular to a participant as included in a set formula for the sub-classes of driver and dispatcher—the same formula applies per sub-class, and the claimant’s characteristics will explain the differing levels of precise compensation.”)

Here, all Settlement Class Members who submit an approved Claim Form shall receive a Direct Payment per household. The *pro rata* amount of the Direct Payment shall be determined by a point grading system based on criteria that will include the following: distance to Derailment Site, direction from Derailment Site, members of household, acreage, number of properties the claimant owns/leases in the Class Zone, time displaced, property sale, and real or personal property damage. The establishment of these objective criteria will ensure that “similarly situated claimants receive the same monetary award,” thereby assuring “‘horizontal equity’ among claimants.” *See In re Flint Water Cases*, 499 F. Supp. 3d 399, 412 (E.D. Mich. 2021) (finding, at the preliminary approval stage, that allocation among categories of claims was fair because the distribution process required that similarly situated claimants receive the same monetary award).

Any Direct Payment will be less any prior payments, settlements, loans, or other financial payment made by Norfolk Southern arising from or relating to the Incident, including but not limited to payments from the Norfolk Southern Family Assistance Center, and payments from the Norfolk Southern Value Assurance Program.

Settlement Class Member Businesses may also submit a Claim Form seeking a Business Loss Payment. Business Loss Payments require proof of an actual net business financial loss between February 3, 2023, and the execution date of this Settlement Agreement, arising from or relating to the Incident. Settlement Class Members may also submit claims for lost wages. Any Business Loss Payment will be less any prior payments, settlements, loans, or other financial payments made by Norfolk Southern arising from or relating to the Incident, including but not limited to payments from the Norfolk Southern Family Assistance Center, and payments from the Norfolk Southern Value Assurance Program. The Business Loss Payment claim form and process shall not inquire into a Settlement Class Member's tax treatment of any business loss claimed.

After the claims deadline, the Settlement Administrator will calculate the relative shares of damages for these Class Members and distribute awards pro rata.

(b) The Plans of Distribution Are Fair, Reasonable, and Adequate

Fundamentally, “[a]ssessment of a plan of allocation of settlement proceeds in a class action under [Rule] 23 is governed by the same standards of review applicable to the settlement as a whole—the plan must be fair, reasonable, and adequate.” *In re Illumina*, 2021 WL 1017295, at *4 (S.D. Cal. Mar. 17, 2021) (citation omitted). The plan “need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” *Jenson v. First Tr. Corp.*, 2008 WL 11338161, *9 (C.D. Cal. June 9, 2008).

The proposed plan of distribution—described in general terms here, with specific details to be provided to the Court with the plan itself—readily satisfy Rule 23(e)(2)(c)(ii)'s requirement

that settlement funds be distributed “in as simple and expedient a manner as possible.” *Hilsley v. Ocean Spray Cranberries, Inc.*, 2020 WL 520616, at *7 (S.D. Cal. Jan. 31, 2020) (quoting *Newberg, supra*, § 13:53). In addition, no Settlement funds will revert to Norfolk Southern; after payment of any attorneys’ fees, expenses, service awards, and notice administration, all money will be distributed to Class Members. Settlement Agreement at § XIII. This is a “[s]ignificant[]” fact that further demonstrates the Settlement’s fairness and effectiveness. *Hilsley*, 2020 WL 520616, at *7.

(c) The Plans of Distribution Are Equitable

The proposed distributions will also “treat[] class members equitably relative to each other.” Fed. R. Civ. P. 23(e)(2)(D). Relevant considerations include “whether the apportionment of relief among class members takes appropriate account of differences among their claims, and whether the scope of the release may affect class members in different ways that bear on the apportionment of relief.” Fed. R. Civ. P. 23(e)(2), 2018 adv. comm. note. The release in the Settlement affects all Class Members equally. Settlement § XVI.

As noted above, the plan of distribution apportions relief among each proposed Class equitably, considering the relative harm to each Class Member where feasible. Allocation of funds among class members is also equitable, reflecting both relative amounts of damages as estimated by expert analysis to date, and likelihood of recovery given relative strength of claims. *See Robles v. Comtrak Logistics, Inc.*, No. 15-CV-2228, 2022 WL 17672639, at *10 (W.D. Tenn. Dec. 14, 2022) (approving class settlement that allocated amounts to class members based on the number of weeks the employee was misclassified; “[t]his distribution scheme aligns payments with the claim size of each individual driver.”).

4. Settlement Class Counsel Will Seek Reasonable Attorneys’ Fees and Expenses (Rule 23(e)(2)(C)(iii))

Assuming the Court preliminarily approves the proposed Settlement, Plaintiffs' requested Fee and Expense Award will be fully addressed in Class Counsel's Motion for Fees and Expenses. At that time, Plaintiffs will submit additional detailed information in support of their requested award and the Court will have the opportunity to evaluate the reasonableness of the request in full. *Waters v. Pizza to You, L.L.C.*, No. 3:19-CV-372, 2022 WL 404614, at *4 (S.D. Ohio Feb. 9, 2022) (Rose, T.) ("At final approval, courts will have a full record of class counsel's expenses and will consider Class Members' objections (if any) to the preliminarily-approved fee award.").

For purposes of preliminary approval, Class Counsel have committed to seek no more than 27% of the total monetary recovery achieved by the Settlement Agreement, which is a percentage the Sixth Circuit has recognized as acceptable, and costs and expenses up to 3% of the fund. *Does 1-2 v. Deja Vu Servs., Inc.*, 925 F.3d 886, 898 (6th Cir. 2019) ("It is not abnormal for negotiated attorneys' fee awards to comprise 20% to 30% of the total award."); *In re Telectronics Pacing Sys., Inc.*, 137 F. Supp. 2d at 1042, *decision clarified*, 148 F. Supp. 2d 936 (S.D. Ohio 2001)("in common fund cases, the fee percentages range from 10 to 30 percent (10%–30%) of the common fund created"); *Johnson v. Midwest Logistics Sys., Ltd.*, 2013 WL 2295880 (S.D. Ohio May 24, 2013) (approving 33% attorneys' fees and expense award in common fund settlement); *Hainey v. Parrott*, 2007 WL 3308027, at *3 (S.D. Ohio Nov. 6, 2007) (approving attorneys' fees award of 30% in common fund case); *deMunecas v. Bold Food, LLC*, No. 09 CIV. 00440 DAB, 2010 WL 3322580, at *9 (S.D.N.Y. Aug. 23, 2010) (collecting cases awarding 33% in the Second Circuit); *Brown v. Progressions Behav. Health Servs., Inc.*, No. CV 16-6054, 2017 WL 2986300, at *6 (E.D. Pa. July 13, 2017)

(approving 33% award of attorney’s fees and explaining “the Third Circuit has noted that fee awards generally range from 19% to 45% of the settlement fund’ in common fund cases”).

5. No Other Agreements Exist (Rule 23(e)(2)(C)(iv))

Finally, Plaintiffs must identify any agreements “made in connection with the proposal” besides the Settlement itself. Fed. R. Civ. P. 23(e)(2)(C)(iv), 23(e)(3). Plaintiffs and Norfolk Southern have entered into a confidential supplemental agreement, referenced in the Settlement Agreement (§ XI.C), to provide Norfolk Southern with the option to terminate the proposed Settlement if Settlement Class Members’ participation rates trigger certain numerical thresholds. It is typical for agreements of this nature to remain confidential because “[k]nowledge of the specific number of opt outs that will vitiate a settlement might encourage third parties to solicit class members to opt out.” Fed. Judicial Ctr., Manual for Complex Litigation (4th ed.) § 21.631.

V. PROVISIONAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

When a settlement is reached before certification, a court must determine whether to certify the settlement class. *See, e.g.*, Manual for Compl. Litig., § 21.632 (4th ed. 2014); *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613-14 (1997). Class certification is warranted when the requirements of Rule 23(a) and at least one subsection of Rule 23(b) are satisfied. As demonstrated below, the proposed Settlement Class readily satisfies these requirements.¹¹

A. RULE 23(A) IS SATISFIED

Numerosity. Rule 23(a)(1) requires that a class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). The Settlement Class is sufficiently

¹¹ As set forth in the Settlement Agreement, Norfolk Southern stipulates for settlement purposes only to the certification of the Settlement Class but does not waive, and instead expressly reserves, its right to challenge the propriety of conditional or class certification for any other purpose. *See* Settlement Agreement § IV.C.

numerous, as it consists of thousands of residents and businesses within a 20-mile radius of the derailment sight, making joinder impracticable. *See Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006) (recognizing that “while there is no strict numerical test, ‘substantial’ numbers usually satisfy the numerosity requirement”). Accordingly, Rule 23’s numerosity requirement is satisfied.

Commonality. Rule 23(a)(2) requires that there be one or more questions common to the class. This said, “there need only be one question common to the class, so long as the resolution of that question will advance the litigation.” *Philips v. Philip Morris Cos. Inc.*, 298 F.R.D. 355, 363 (N.D. Ohio 2014); *see Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) (“Even a single [common] question will do.”) (quotation marks omitted). This case raises multiple common questions, including whether Norfolk Southern acted negligently in operating and maintaining its railcar, and whether it utilized adequate safety measures and systems. The answer to these questions are the same no matter who in the Settlement Class asks them, and the answer to these common questions are central to this litigation. *See Rikos v. P&G*, 799 F.3d 497, 505 (6th Cir. 2015) (commonality is satisfied where “a common question [] will yield a common answer for the class”). Accordingly, Rule 23’s commonality requirement is satisfied here.

Typicality. The typicality test under Rule 23(a)(3), is “not onerous.” *Cates v. Cooper Tire & Rubber Co.*, 253 F.R.D. 422, 429 (N.D. Ohio 2008). A plaintiff’s claims are “typical” if they are reasonably coextensive with those of absent class members. *See Gen. Tel. Co. of the Sw. v. Falcon*, 457 U.S. 147, 156–57 (1982). Plaintiffs’ claims and those of the Settlement Class each represents are based on the same course of conduct and the same legal theories. *See In re Am. Med. Sys., Inc.*, 75 F.3d 1069, 1082 (6th Cir. 1996) (typicality met where a plaintiff’s claim (arises from the same event or practice or course of conduct that gives rise to the claims of other class members,

and if his or her claims are based on the same legal theory”) (citation omitted). Moreover, the Plaintiffs representing the Settlement Class suffered the same types of alleged harm as the Class Members they seek to represent. Therefore, typicality is satisfied.

Adequacy of Representation. As the proposed Class Representatives, Plaintiffs will continue to “fairly and adequately protect the interests of the class.” Fed. R. Civ. P. 23(a)(4). Courts ask two questions to determine whether proposed class representatives will adequately represent the class: (1) do the named plaintiffs share common interests with unnamed class members? and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class? *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 543 (6th Cir. 2012). Interim Class Counsel have extensive experience litigating and resolving class actions, and are well qualified to represent the Settlement Class. *See supra* § II; *infra* § VII. Interim Class Counsel have vigorously litigated this action on behalf of the Settlement Class, including engaging in substantial motions practice and extensive investigation and discovery, developing experts, participating in mediation, and negotiating the proposed Settlement. *See supra* § II; *infra* § VII.

Likewise, Plaintiffs have demonstrated their commitment to the Settlement Class, including by sitting for depositions, providing pertinent information about their losses, searching for and providing documents and information in response to discovery requests, regularly communicating with their counsel about the case, and reviewing and approving the proposed Settlement.

Finally, Plaintiffs’ and Interim Co-Lead Class Counsel’s interests are aligned with and not antagonistic to the interests of the Settlement Class, with whom they share an interest in obtaining relief from Norfolk Southern for alleged harms caused by the derailment.

B. THE REQUIREMENTS OF RULE 23(B)(3) ARE SATISFIED

In addition to the requirements of Rule 23(a), at least one of the prongs of Rule 23(b) must

be satisfied. Plaintiffs seek certification under Rule 23(b)(3), which requires that “questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3)

Predominance. “The predominance inquiry ‘asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues.’” *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045 (2016) (citation omitted). Courts within the Sixth Circuit favor class treatment of claims stemming from a “common course of conduct,” like those alleged from the train derailment in this case. *Ross v. Abercrombie & Fitch Co.*, 257 F.R.D. 435, 452 (S.D. Ohio 2009); *see also Daffin*, 458 F.3d at 554 (finding predominance where class members alleged the same product defect). Common questions predominate here. The Settlement Class Members’ claims all arise under the same laws and the same alleged conduct. The questions that predominate include whether Norfolk Southern acted negligently in maintaining and operating its train, and whether Norfolk Southern utilized adequate and appropriate safety measures and systems before and after the derailment. Moreover, under the proposed Settlement, there will not need to be a class trial, meaning there are no potential concerns about any individual issues, if any, creating trial inefficiencies. *See Amchem Prods.*, 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.”)

Superiority. Rule 23(b)(3)’s superiority inquiry calls for a comparative analysis of whether a class action is “superior to other available methods for the fair and efficient adjudication of the controversy.” *Id.* at 615. Class treatment is superior to other methods for the resolution of

this case, particularly given the robust relief offered to Settlement Class Members under the Settlement. Moreover, as always, Settlement Class Members remain free to exclude themselves if they wish to do so.

VI. THE PROPOSED NOTICE PROGRAM COMPLIES WITH RULE 23 AND DUE PROCESS

Pursuant to the Settlement Agreement, Interim Class Counsel will work with settlement administrator Kroll Settlement Administration, LLC to disseminate adequate and reasonable notice to Settlement Class Members.

Under Fed. R. Civ. P. 23(e)(1)(B) a District Court approving a class action settlement “must direct notice in a reasonable manner to all class members who would be bound by a proposed settlement, voluntary dismissal, or compromise.” Notice must be “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 & Trust Co.*, 339 U.S. 306, 314 (1950). “[I]ndividual notice must be provided to the Class Members who are identifiable through reasonable effort.” *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 175-76 (1974).

Following preliminary approval of this Settlement, the parties will provide notice of the proposed Settlement to those who will be bound by it, which will encompass the Settlement Class and those Settlement Class Members qualified to receive payment from the personal injury fund, should they choose to participate in the personal injury payment in exchange for a personal injury release. (ECF No. 138). See *Komoroski v. Utility Service Partners Private Label, Inc.*, 2017 WL 3261030, *1 (W.D. Mo. 2017) (“The preliminary approval order will also authorize the parties to provide notice of the proposed settlement to

the class and set forth a schedule for objections, opt-outs, a final fairness hearing, and other deadlines.”).

The proposed notice plan, attached as Exhibit C, created by Interim and Co-Lead Counsel in conjunction with Kroll Settlement Administration, LLC is reasonably calculated to apprise all interested parties of the pendency of the action. Kroll Settlement Administration, LLC will provide notice to interested parties via email and printed mail after developing a database of contact information, through reasonable effort, which will include all household and businesses addressed within twenty miles of the Incident. This will include an initial email and/or letter sent by First-Class U.S. mail informing interested parties of the Settlement and claims process via the proposed form Notices, including the Long-Form Notice and Short-Form Publication Notice (collectively “notice” or “notices”) attached as Exhibits D and E, respectively. The proposed notices sufficiently describe, in clear, concise and easily understood language, the nature of the action and claims, and that the terms of the Settlement Agreement, if approved, will be binding on all Settlement Class Members. Kroll Settlement Administration, LLC will assist Class Counsel in creating a Settlement Website, which will disseminate notice of the Settlement, including the Long-From Notice, allow requests for exclusion, facilitate claim submissions, provide access to relevant case documents, and announce upcoming deadlines.

Kroll Settlement Administration, LLC will also assist in disseminating the Short-Form Publication Notice through local and targeted media. The media and advertisement component of the notice plan will target Settlement Class Members in the region for four to six weeks. It includes (1) posted notices on the Settlement Website, (2) repeated advertisements in ten different local newspapers, (3) online advertisements targeting adults

up to 20 miles from the Incident site on websites including YouTube, Google, Facebook, Instagram, and local newspaper websites, (4) 30-second commercials on Youngstown, Ohio and Pittsburgh, Pennsylvania television stations, and (5) three press releases through Cision PR Newswire into Ohio, Pennsylvania, and West Virginia news lines announcing the settlement, discussing the claim filing process, and, finally, announcing the claim filing deadline is approaching. Norfolk Southern has already established resources for those impacted by the Incident on its own website; Norfolk Southern will post the notice on their website as well.

Class Counsel and Kroll Settlement Administration, LLC will also spearhead the establishment and staffing of a local East Palestine Settlement Center in East Palestine at 191 East Rebecca Street, East Palestine, Ohio 44413, which is well known to the community as the former Family Assistance Center established by Norfolk Southern after the derailment to assist the people of East Palestine and surrounding communities.¹² This local, brick-and-mortar resource will be staffed five days a week for sixteen weeks, with the additional part-time presence of management and senior director-level staff. Class Counsel will also be present and available at the East Palestine Settlement Center on a weekly, part-time basis. The Long-Form Notice and Short-Form Publication Notice will be posted at the East Palestine Settlement Center. Those staffing the East Palestine Settlement Center will be prepared to assist Settlement Class Members in submitting their claim forms, in person, at the East Palestine Settlement Center. This undertaking will ensure that community members, and Settlement Class Members, have a straight-forward and accessible way to ask questions,

¹² Norfolk Southern will be relocating its Family Assistance Center to 248 N Market St., East Palestine, Ohio, 44413.

receive information about the case, and submit claim forms. Both notices will indicate the existence of the East Palestine Settlement Center, the address for it, and that claims can be submitted in person there.

All facets of this proposed notice plan will provide the best notice practicable under the circumstances to Settlement Class Members. The notice plan comports with due process and the Federal Rules of Civil Procedure.

At this stage of the settlement proceedings, Class Counsel request that the Court approve both notices, attached as Exhibits D and E, for dissemination by mail, email, advertisements, and media as set forth in the notice plan.

VII. INTERIM CLASS COUNSEL SHOULD BE CONVERTED TO LEAD CLASS COUNSEL

Appointing Interim Class Counsel as Lead Class Counsel will benefit the Settlement Classes as Interim Class Counsel have done an extensive amount of work in investigating the claims, they have significant experience handling class actions, including environmental toxic torts, they are familiar with the applicable law, and they have more-than-adequate resources to represent the class.

Under Federal Rule of Civil Procedure 23(g)(1), when the Court certifies a class, including for settlement, it “must appoint class counsel.” Fed. R. Civ. P. 23(g)(1).

In order to determine whether an appointment should be made, Rule 23(g)(1) sets out three factors that the court must consider. They are (1) the work counsel has done in identifying or investigating potential claims in the action, (2) counsel’s experience in handling class actions, other complex litigation, and claims of the type asserted in the action, (3) counsel’s knowledge of the applicable law, and (4) the resources counsel will commit to

representing the class. The appointed class counsel must fairly and adequately represent the interests of the class. Fed. R. Civ. P. 23(g)(4).

On April 5, 2023, this Court approved of and appointed current Interim Class Counsel (ECF No. 28). When appointing Interim Class Counsel, this Court considered the above-listed factors in Rule 23(g)(1). (ECF No. 28 at 12-13). The Court noted that Seth A. Katz, M. Elizabeth Graham, and Jayne Conroy had “done significant work in identifying and investigating the potential claims in the [derailment].” (ECF No. 28 at 13). The Court found that their respective law firms have extensive experience in class actions, complex litigation, toxic torts, railroad litigation, regulatory, and environmental litigation, were dedicated to committing substantial economic and legal resources to represent the putative class, and would be able to commit the resources necessary to represent the class. (ECF No. 28 at 13). As such, the Court concluded that Seth A. Katz, M. Elizabeth Graham, and Jayne Conroy, and their firms, were competent to serve as Interim Class Counsel and met the standards set forth in Federal Rule of Civil Procedure Rule 23. (ECF No. 28 at 14).

Since being appointed as Interim Class Counsel, Seth A. Katz, M. Elizabeth Graham, and Jayne Conroy, along with their respective law firms, have continued their dedicated work in investigating the claims resulting from the Incident. As noted *supra*, they have conducted extensive, fast-paced discovery, thoroughly investigated the allegations against Defendants, and have now negotiated a remarkable recovery on behalf of the putative class members. Interim Class Counsel counsel’s experience in handling class actions, complex litigation, and claims of this type have only improved since their appointment as Interim Class Counsel. Their knowledge of the applicable law in this matter is unmatched, as they have been immersed in the legal bases, strengths, and arguments of this case since its inception just over

a year ago. Interim Class Counsel have, efficiently, expended significant resources in representing the putative class; they will continue to do so in the role of Lead Counsel. Finally, Interim Class Counsel have aptly exemplified that they represent the interests of the class and, particularly in negotiating a hard-fought settlement, have demonstrated their commitment to continue doing so.

For these reasons, Plaintiffs and Interim Class Counsel respectfully request the appointment of Seth A. Katz, M. Elizabeth Graham, and Jayne Conroy, and their respective law firms, as Lead Class Counsel for the purposes of representing the settlement classes.

VIII. THE PARTIES' PROPOSED SCHEDULE OF EVENTS

Pursuant to Rule 23, the Settlement Agreement, and the terms of a Preliminary Approval Order, the Parties propose the following schedule of events:

Notice to be Completed	May 24, 2024
Last day to file Objections or Opt-Out Requests	June 24, 2024
Last Day for the Plaintiffs to file Plan of Allocation	September 6, 2024
Last day for Plaintiffs to File motion for Final Approval of Settlement and Approval of Plans of Distribution, and for Lead Class Counsel to file Application for Fees and Expenses and for Service Awards	September 6, 2024
Last day to file replies in support of Final Approval, Plans of Distribution, Attorneys' Fees and Expenses, and Service Awards	September 18, 2024
Final Approval Hearing	September 25, 2024

IX. CONCLUSION

For the foregoing reasons, Plaintiffs request that this Honorable Court grant their Motion for Preliminary Approval of the Settlement Agreement, Appointment of Lead Class Counsel, and Approval of Notice and (1) order preliminary approval of the Settlement, (2) approve the proposed Long-Form and Short-Form Publication notices for dissemination to the Settlement Class Members pursuant to the notice plan, (3) appoint Interim Class Counsel as Lead Class Counsel to the Settlement Class for purposes of this Settlement, and (4) schedule a Final Approval Hearing consistent with the parties' proposed schedule of events. A proposed Order granting Preliminary Approval is attached hereto.

Dated: April 26, 2024

Respectfully submitted,

/s/ M. Elizabeth Graham
M. Elizabeth Graham (pro hac vice)
Adam J. Gomez (pro hac vice)
Caley DeGroote (pro hac vice)
GRANT & EISENHOFER P.A.
123 S. Justison Street, 6th Floor
Wilmington, DE 19801
303-622-7000
303-622-7100 (fax)
egraham@gelaw.com
agomez@gelaw.com
cdegroote@gelaw.com

Seth A. Katz (pro hac vice)
**BURG SIMPSON ELDREDGE
HERSH & JARDINE, P.C.**
40 Inverness Drive East
Englewood, CO 80112
303-792-5595
303-708-0527 (fax)
skatz@burgsimpson.com

Jayne Conroy (pro hac vice)
SIMMONS HANLY CONROY
112 Madison Avenue, 7th Floor
New York, NY 10016

212-784-6400
212-213-5949 (fax)
jconroy@simmonsfirm.com

Michael Morgan (pro hac vice)
MORGAN & MORGAN
20 North Orange Ave., Suite 1600
Orlando, FL 32801
407-420-1414
407-245-3389 (fax)
mmorgan@forthepeople.com

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024 a copy of the foregoing was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ M. Elizabeth Graham

M. Elizabeth Graham
Grant & Eisenhofer P.A.

EXHIBIT A

IN RE: EAST PALESTINE TRAIN DERAILMENT
CLASS ACTION SETTLEMENT AGREEMENT
(SUBJECT TO COURT APPROVAL)

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Exhibit A: Individual Claim Form

Exhibit B: Business Loss Claim Form

Exhibit C: Notice (Short Form)

Exhibit D: Notice (Long Form)

Exhibit E: Personal Injury Release

This SETTLEMENT AGREEMENT, dated as of April 26, 2024 (the “Settlement Date”), is made and entered into by and among Defendants Norfolk Southern Railway Company and Norfolk Southern Corporation (collectively, “Norfolk Southern”), and the Plaintiffs and Class Representatives, individually and on behalf of the Settlement Class, intending that this Action shall be fully and finally compromised, settled, released, and dismissed with prejudice, as to all Parties to this Settlement Agreement and the Released Parties under the terms and conditions set forth herein.

Capitalized terms have the meanings provided in Section II unless a section or subsection of this Settlement Agreement provides otherwise.

I. RECITALS

A. This Action arises out of the February 3, 2023 derailment of a Norfolk Southern train in East Palestine, Ohio. Following the derailment, numerous individual and putative class action lawsuits were filed against Norfolk Southern in the United States District Court for the Northern District of Ohio. On April 5, 2023, the Court (Pearson, J.) consolidated those pending lawsuits into a single putative class action lawsuit, *In re: East Palestine Train Derailment*, No. 4:23-CV-00242; subsequent to the Court’s consolidation order, additional lawsuits were filed, and those were also consolidated into *In re: East Palestine Train Derailment*.

B. Also on April 5, 2023, the Court entered an order appointing interim class counsel, co-lead counsel, a Plaintiffs’ executive committee, a Plaintiffs’ steering committee, Plaintiffs’ subcommittees, and community liaison counsel. Dkt. No. 28.

C. Plaintiffs Steven McKay, Susan Scheufele, Neely Jack, Dawn Baughman, David Anderson, James Ross, Jon Luke Affeltranger, Rosemary Mozuch, Charles Mozuch, Lance Beck, Clarissa Cohan, Rollerena Auto Sales LLC, Harold Feezle, DalQan Holdings, LLC, Valley View MPH LLC, Competition & Luxury Vehicle Club of Darlington, LLC (together, “Plaintiffs”) filed a Master Consolidated Class Action Complaint on May 4, 2023. Dkt. No. 31. (Kayla Baker and Gregory Swan also were originally named Plaintiffs, but the Court granted their motion to withdraw, as both Plaintiffs and proposed class representatives, on March 13, 2024.) Plaintiffs filed their First Amended Master Consolidated Class Action Complaint on August 14, 2023, to include claims against new Defendants OxyVinyls LP, GATX Corporation, General American Marks Company, and Trinity Industries Leasing Company. Dkt. No. 138.

D. Plaintiffs allege harm to individuals, businesses, and property in the surrounding communities arising out of or relating to the Incident. Plaintiffs assert claims for negligence, negligence per se, gross negligence/willful and wanton conduct, strict liability, nuisance, trespasses, spoliation, injury to property, and medical monitoring. Plaintiffs seek compensatory, punitive, and exemplary damages. Alleged property damages (real and personal) include contamination/damage to real property, loss of use and enjoyment of property, diminution in property value, and loss of inventory. Alleged economic losses include lost wages, lost business income, out of pocket expenses, and permanent relocation expenses. Additionally, Plaintiffs

seek medical monitoring for alleged exposure to released chemicals; relief for alleged contamination of workplace; and relief for alleged aggravation and upset.

E. Norfolk Southern denies the merits of Plaintiffs' claims and denies that they are entitled to any relief.

F. On June 2, 2023, Norfolk Southern filed a motion to dismiss and to strike the complaint, Dkt. No. 76, which Plaintiffs opposed on June 30, 2023, Dkt. No. 103. On March 13, 2024, the Court granted in part and denied in part the motion to dismiss. Dkt. No. 428.

G. The Parties engaged in extensive fact discovery, which concluded on February 5, 2024, subject to certain additional depositions taking place by Party agreement outside the fact discovery period. The Parties have also engaged in extensive expert development.

H. The Parties participated in three full-day, in-person mediations before U.S. District Judge Layn R. Phillips (ret.) (the "Mediator" or "Judge Phillips"), and further engaged in numerous telephonic settlement discussions independently and with the aid of Judge Phillips and his team.

I. On April 9, 2024, with the assistance of Judge Phillips, Plaintiffs and Norfolk Southern announced that they had reached an agreement in principle to resolve the Action in order to avoid the expense, burden, and risk of further litigation and fully and finally resolve the Action and all claims that were or could have been asserted in the Complaint.

J. Upon careful review and analysis of the extensive record, Class Representatives and Class Counsel have concluded that it is in the best interests of the Class Representatives and the Settlement Class to settle all Released Claims against the Released Parties for consideration reflected in the terms and benefits of this Settlement Agreement. After arm's length negotiations with Norfolk Southern's Counsel, including through the efforts of Judge Phillips, Class Counsel and Class Representatives have considered, among other things: (1) the complexity, expense, and likely duration of the litigation, through trial and any appeals that might be taken; (2) the stage of the litigation and amount of fact gathering and expert development completed; (3) the potential for Norfolk Southern to prevail in opposing class certification or on the merits; and (4) the range of possible recovery, and have determined that this Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Class Representatives and the Settlement Class. Specifically:

1. Class Counsel strongly believe that this Settlement Agreement and the Settlement Class definition are appropriate given the vast fact discovery and expert development that have now been undertaken. Depositions and discovery confirm the "impact zone" that is reflected in the Settlement Agreement. Upon review and analysis of the vast record, including extensive environmental data, any impact of the Incident extends no further than a 20-mile radius from the Derailment Site, and any claims for relief arising out of, or relating to, the Incident beyond a 20-mile radius are without merit. As reflected in this Settlement, using a geographic radius of 20 miles for all claims

(excepting only Personal Injury Claims, limited to a 10-mile radius) fairly and adequately compensates those in East Palestine and the surrounding affected communities for the Incident. Moreover, the allocation formula, which, as described further below, is based on a weighted point system that heavily considers proximity to the Incident and expert opinions as to the ensuing spread of toxins, both prioritizes those Households most impacted and protects the outlying Households from the risk of an adverse ruling or verdict.

2. Eligible Settlement Class Members' ability to voluntarily elect to participate in and receive a Personal Injury Payment if present within a 10-mile radius of the Incident is designed to compensate those individuals who have suffered, or may suffer, a physical injury arising from the Incident. Because, in Class Counsel's view, class actions for Personal Injury Claims are not legally viable, this Settlement seeks to nevertheless address all compensable personal injuries on a broad scale. Those Settlement Class Members who participate will be compensated for past, present, and future personal injuries from the Incident. The Settlement avoids risks of a complete non-recovery for any person within the 10-mile radius and provides compensation for personal injuries now and in the years to come. Class and Co-Lead Counsel—including counsel who represent individuals with such injuries—are confident that the 10-mile radius participation definition is more than expansive enough to ensure that all of those Settlement Class Members with Personal Injury Claims are eligible for additional relief in the form of Personal Injury Payments. Simply stated, the likelihood of success on the merits for Personal Injury Claims outside the 10-mile radius is extremely remote given the science, fact record, and expert analysis.

K. Upon careful review and analysis of the extensive record, Norfolk Southern has concluded in light of the costs, risks, and burden of litigation, that this Settlement Agreement in this complex putative class action litigation is appropriate. Norfolk Southern and Norfolk Southern's Counsel agree with the Class Representatives and Class Counsel that this Settlement Agreement is a fair, reasonable, and adequate resolution. Norfolk Southern reached this conclusion after considering, among other things, (1) the factual and legal issues relating to the litigation, (2) the substantial benefits of this Settlement Agreement, (3) the expense that would be necessary to defend claims through trial and any appeals that might be taken, and (4) the benefits of resolving protracted and complex litigation.

L. The Parties desire to settle, compromise, and resolve fully the Action.

M. The Parties will seek Court review and approval of the Settlement Agreement, and, upon preliminary approval by the Court, the Parties will seek a Final Judgment from the Court dismissing the Action with prejudice.

N. This Settlement Agreement will not be construed as evidence, nor as an admission by Norfolk Southern, of any liability or wrongdoing whatsoever or as an admission by the Class Representatives, or Settlement Class Members, of any lack of merit in their claims.

NOW, THEREFORE, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, including the Release, this Action shall be settled and compromised under the following terms and conditions.

II. DEFINITIONS

For the purposes of this Settlement Agreement, the following terms (designated by initial capitalization throughout this Agreement) will have the meanings set forth in this Section II.

A. “Action” means the consolidated case *In re: East Palestine Train Derailment*, No. 4:23-CV-00242 (N.D. Ohio). It includes all putative class actions and individual actions composing this consolidated case (*i.e.*, all individual or putative class action complaints filed in this Court that have been, or are in the future, consolidated into this Action), including but not limited to:

Class Actions
1. <i>Feezle et al. v. Norfolk Southern Ry. Co. et al.</i> , 4:23-CV-00242 (N.D. Ohio Feb. 7, 2023)
2. <i>Eisley et al. v. Norfolk Southern Ry. Co.</i> , 4:23-CV-00250 (N.D. Ohio Feb. 8, 2023)
3. <i>Hall et al. v. Norfolk Southern Ry. Co. et al.</i> , 4:23-CV-00257 (N.D. Ohio Feb. 9, 2023)
4. <i>Erdos et al. v. Norfolk Southern Corp. et al.</i> , 4:23-CV-00268 (N.D. Ohio Feb. 9, 2023)
5. <i>Kinder et al. v. Norfolk Southern Corp. et al.</i> , 4:23-CV-00292 (N.D. Ohio Feb. 15, 2023)
6. <i>Canterbury et al. v. Norfolk Southern Corp. et al.</i> , 4:23-CV-00298 (N.D. Ohio Feb. 15, 2023)
7. <i>Battaglia et al. v. Norfolk Southern Ry. Co. et al.</i> , 4:23-CV-00303 (N.D. Ohio Feb. 16, 2023)
8. <i>Davis et al. v. Norfolk Southern Ry. Co. et al.</i> , 4:23-CV-00308 (N.D. Ohio Feb. 16, 2023)
9. <i>Ibel et al. v. Norfolk Southern Corp. et al.</i> , 4:23-CV-00315 (N.D. Ohio Feb. 17, 2023)
10. <i>Baker et al. v. Norfolk Southern Corp. et al.</i> , 4:23-CV-00324 (N.D. Ohio Feb. 20, 2023)
11. <i>Snyder et al. v. Norfolk Southern Ry. Co. et al.</i> , 4:23-CV-00344 (N.D. Ohio Feb. 22, 2023)
12. <i>Dettmer et al. v. Norfolk Southern Ry. Co. et al.</i> , 4:23-CV-00345 (N.D. Ohio Feb. 22, 2023)

13. *Fisher et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00350 (N.D. Ohio Feb. 23, 2023)
14. *Atkinson et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00363 (N.D. Ohio Feb. 23, 2023)
15. *Bodnar et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00380 (N.D. Ohio Feb. 24, 2023)
16. *Mozuch et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00415 (N.D. Ohio Mar. 1, 2023)
17. *Smith et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00429 (N.D. Ohio Mar. 2, 2023)
18. *Affeltranger et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00440 (N.D. Ohio Mar. 3, 2023)
19. *Irizarry et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00479 (N.D. Ohio Mar. 9, 2023)
20. *Policaro et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00495 (N.D. Ohio Mar. 11, 2023)
21. *Barnhouse v. Norfolk Southern Corp. et al.*, 4:23-CV-00510 (N.D. Ohio Mar. 13, 2023)
22. *Kurtz, Jr. et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00529 (N.D. Ohio, Mar. 15, 2023)
23. *Bunts et al. v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-00586 (N.D. Ohio Mar. 21, 2023)
24. *Loyd et al. v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-00634 (N.D. Ohio Mar. 24, 2023)

Individual Actions

1. *Ceramfab, Inc. et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00509 (N.D. Ohio Mar. 13, 2023)
2. *Culixte v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-0600 (N.D. Ohio Mar. 21, 2023)
3. *Gurney et al. v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-00601 (N.D. Ohio Mar. 21, 2023)
4. *Hamilton et al. v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-00602 (N. D. Ohio Mar. 21, 2023)
5. *Hammond v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-00603 (N.D. Ohio Mar. 21, 2023)

6. *McAller et al. v. Norfolk Southern Ry. Co. et al.*, 4:23-CV-00604 (N. D. Ohio Mar. 21, 2023)
7. *Mann et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-00672 (N.D. Ohio Mar. 30, 2023)
8. *Turner v. Norfolk Southern Train Co. et al.*, 4:23-CV-00870 (N.D. Ohio Apr. 13, 2023)
9. *Ceramfab, Inc. et al. v. Norfolk Southern Corp. et al.*, 4:23-CV-2206 (N.D. Ohio Nov. 14, 2023)
10. *Almasy et al. v. Norfolk Southern Corp. et al.*, 4:24-CV-00452 (N.D. Ohio Mar. 8, 2024)

B. “Administrative Deposit” means a payment of five million dollars (\$5,000,000.00) into the Escrow Account paid within fourteen (14) days after the grant of Preliminary Approval by the Court.

C. “Administrative Expenses” means the costs incurred in administering this Settlement, including the costs of Notice.

D. “Administrator” or “Settlement Administrator” means Kroll Settlement Administration, LLC, subject to approval of the Court, which will perform services associated with the administration of the Settlement Agreement including but not limited to providing the Notice; creating and maintaining the Settlement Website; establishing the qualified settlement fund and complying with its tax filing, paying and reporting obligations; receiving and processing Claim Forms; providing information and reports to Class Counsel and Norfolk Southern’s Counsel upon request or as otherwise required by this Settlement Agreement; sending payments under the terms of the Settlement; being responsible for any tax reporting; and performing such other settlement administration matters set forth herein, contemplated by the Settlement, and/or ordered by the Court.

E. “Agreement,” “Settlement Agreement,” or “Settlement” means this Settlement Agreement and all accompanying exhibits, including any subsequent amendments thereto and any exhibits to such amendments.

F. “Business” means any corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, or group of organizations, as well as any unincorporated or other business or trading name that lacks independent legal form or status and under which any individual trades or conducts business.

G. “Claim” means a request to participate in the Settlement Fund submitted by a Settlement Class Member to the Settlement Administrator in accordance with the terms of the Settlement Agreement.

H. “Claim Deadline” means the date ninety (90) days after the Notice Date, which is the date by which Settlement Class Members must respond to the Notice of this Settlement by submitting a Claim Form.

I. “Claim for Extraordinary Loss or Damage” or “Claim for Extraordinary Injury” means any Claims for documented loss, damage, or injury that are so different in kind or degree from those experienced by the majority of Settlement Class Members that they may not be adequately addressed by the general plan of allocation and, in the discretion of the Settlement Administrator, may entitle a Settlement Class Member to an additional award or payment from the Settlement Fund, pursuant to Sections XIII.C.1 and XIII.C.3.

J. “Claim Form” means a document making a Claim—for Direct Payment, Business Loss, or Personal Injury—in substantially the forms attached here as Exhibit A (Individual Claim Form) and Exhibit B (Business Loss Claim Form).

K. “Class Counsel” means the court-appointed interim class action counsel who are so designated and who are signatories to this Settlement Agreement, namely, Seth A. Katz of Burg Simpson Eldredge Hersh & Jardine, P.C., M. Elizabeth Graham of Grant & Eisenhofer P.A., and Jayne Conroy of Simmons Hanly Conroy LLC.

L. “Class Representatives” means Plaintiffs Steven McKay, Susan Scheufele, Brenda Williams, Dawn Baughman, David Anderson, James Ross, Jon Luke Affeltranger, Rosemary Mozuch, Charles Mozuch, Lance Beck, Clarissa Cohan, Rollerena Auto Sales LLC, Harold Feezle, DalQan Holdings, LLC, Valley View MPH LLC, and Competition & Luxury Vehicle Club of Darlington, LLC, or such other or different persons as may be appointed by the Court as the representatives of the Settlement Class.

M. “Co-Lead Counsel” means the court-appointed co-lead counsel who are so designated, namely, Seth A. Katz of Burg Simpson Eldredge Hersh & Jardine, P.C., M. Elizabeth Graham of Grant & Eisenhofer P.A., Jayne Conroy of Simmons Hanly Conroy LLC, and T. Michael Morgan of Morgan & Morgan, P.A.

N. “Complaint” means, unless specified otherwise, the First Amended Master Consolidated Class Action Complaint filed in the Action on August 14, 2023, and any subsequent or amended complaint filed in the Action.

O. “Court” means the United States District Court for the Northern District of Ohio.

P. “Defendants” or “Norfolk Southern” means Norfolk Southern Railway Company and Norfolk Southern Corporation.

Q. “Defense Counsel” or “Norfolk Southern’s Counsel” means Wilmer Cutler Pickering Hale and Dorr LLP and Dickie, McCamey & Chilcote, P.C.

R. “Derailment Site” means the site of the derailment of Norfolk Southern Train 32N on February 3, 2023, in East Palestine, Ohio (Latitude: 40.8360395°N, Longitude: -80.5222838°W).

S. “Effective Date” means one business day following the later of: (1) the date upon which the time expires for filing or noticing any appeal of the Final Judgment; (2) if there is an appeal or appeals, the date of completion, in a manner that finally affirms and leaves in place the Final Judgment without any material modification, of all proceedings arising out of the appeal(s) (including but not limited to the expiration of all deadlines for motions for reconsideration or petitions for review and/or certiorari, all proceedings ordered on remand, and all proceedings arising out of any subsequent appeal(s) following decisions on remand); or (3) the date of final dismissal of any appeal or the final dismissal of any proceeding on certiorari with respect to the Final Judgment.

T. “Eligible Personal Injury Settlement Class Member” means a Settlement Class Member Person who (1) was physically located within 10 miles of the Derailment Site at any time between the date of the Incident and the Settlement Date, and (2) affirms his/her/their presence within those 10 miles during that time, pursuant to Section XIII.C.3.

U. “Escrow Account” means the separate, interest-bearing escrow account to be established by the Settlement Administrator under terms acceptable to Class Counsel and Defense Counsel at a depository institution insured by the Federal Deposit Insurance Corporation that will constitute a court-approved “qualified settlement fund” for federal tax purposes pursuant to 26 C.F.R. § 1.468B-1.

V. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs to Class Counsel approved by the Court to be paid out of the Settlement Fund.

W. “Final Approval Hearing” means the hearing before the Court where Plaintiffs will request that the Court grant Final Approval of the Settlement and enter the Final Judgment, thereby finally approving the Settlement as fair, reasonable, and adequate, and determining the Fee Award and the Service Awards to the Class Representatives.

X. “Final Approval” means the Court’s order finally approving the Settlement.

Y. “Final Judgment” means the final order and judgment to be entered by the Court confirming certification of the Settlement Class for purposes of Settlement, approving the Settlement of the Action in accordance with this Settlement Agreement after the Final Approval Hearing, and dismissing the Action with prejudice.

Z. “Household” means all Persons occupying a single housing unit.

AA. “Incident” means the February 3, 2023 derailment of Norfolk Southern train 32N in East Palestine, Ohio, including without limitation the February 6, 2023 controlled release (also referred to as the vent and burn) of hazardous materials contained in certain derailed railcars and the chemical release, fire, emergency response, clean-up, remediation, shelter-in-place and evacuation in and around East Palestine, Ohio following the February 3, 2023 train derailment and February 6, 2023 controlled release.

BB. “Minor Approval Process” means the process whereby Class Counsel shall take all necessary steps to secure valid and legally enforceable releases, including Personal Injury Releases, for minor Settlement Class Members (*i.e.*, Settlement Class Members who have not, as of the Claim Deadline, reached the age of majority under applicable law).

CC. “Non-Settling Railcar Defendants” means the new defendants named in Plaintiffs’ First Amended Master Consolidated Class Action Complaint, filed on August 14, 2023: OxyVinyls LP, GATX Corporation, General American Marks Company, and Trinity Industries Leasing Company.

DD. “Notice” or “Settlement Notice” means the notice of this proposed Settlement and Final Approval Hearing, which, subject to Court approval, is to be disseminated to the Settlement Class substantially in the manner set forth in this Settlement Agreement, and which fulfills the requirements of Due Process and Federal Rule of Civil Procedure 23, and is substantially in the form of Exhibit C (short-form Notice) and Exhibit D (long-form Notice).

EE. “Notice Date” means the date by which the Notice is disseminated to the Settlement Class, which shall be a date no later than twenty-eight (28) days after entry of Preliminary Approval.

FF. “Parties” means Norfolk Southern and Class Representatives, individually and on behalf of the Settlement Class (both of which may be referred to individually as a “Party”).

GG. “Person” means any individual natural person or any agent or beneficiary thereof.

HH. “Personal Injury Claim” means a personal and/or bodily injury claim as defined in Paragraph 5 of Exhibit E (Personal Injury Release). For avoidance of doubt, claims for medical monitoring, or mental or emotional injury or harm, are not Personal Injury Claims and instead are included in the definition of Released Claims, below.

II. “Personal Injury Settlement Fund” means that portion of the Settlement Fund allocated to satisfy Claims for Personal Injury Payment, as determined by the Settlement Administrator in consultation with Class Counsel, pursuant to Section XIII.D.

JJ. “Plaintiffs” or “Named Plaintiffs” means Steven McKay, Susan Scheufele, Brenda Williams, Dawn Baughman, David Anderson, James Ross, Jon Luke Affeltranger, Rosemary Mozuch, Charles Mozuch, Lance Beck, Clarissa Cohan, Rollerena Auto Sales LLC, Harold Feezle, DalQan Holdings, LLC, Valley View MPH LLC, and Competition & Luxury Vehicle Club of Darlington, LLC.

KK. “Preliminary Approval” means the Court’s Order preliminarily approving the Agreement, appointing Class Counsel, certifying and/or finding the Settlement Class is likely to be certified for purposes of entering the Final Judgment, and approving the form and manner of the Notice.

LL. “Release” means the entirety of Section XVI, including any defined terms in this Section II.

MM. “Released Claims” means any and all past, present, or future claims or causes of action, whether known or unknown, including “Unknown Claims” as defined below, whether in law or in equity, under contract, tort or any other subject area, or under any statute, rule, regulation, order, or law, whether federal, state, or local, on any grounds whatsoever, that were alleged or could have been alleged in the Action relating to the Incident, including without limitation, negligence, gross negligence, strict liability, public nuisance, private nuisance, trespass, trespass to chattels, medical monitoring, mental or emotional injury or harm, spoliation, statutory violations, including but not limited to claims under Ohio R.C. §§ 901.51, 959.02, 42 Pa. C.S.A. § 8313, W.Va. Code § 61-3-41, loss of employment or earning capacity, diminution of property value, property damage (real or personal), loss of use or enjoyment of property, evacuation-related losses, punitive damages, compensatory damages, pain and suffering, injunctive relief, strict liability, willful misconduct, and all other theories, whether existing now or arising in the future, arising out of, due to, resulting from, or relating in any way to, directly or indirectly, the Incident, with the sole exception of Personal Injury Claims as set forth below.

1. Personal Injury Claims—and only Personal Injury Claims—are excepted from the definition of Released Claims.

2. Personal Injury Claims will be released only if an Eligible Personal Injury Settlement Class Member elects to receive a Personal Injury Payment and executes a separate Personal Injury Release.

NN. “Released Parties” means:

1. Norfolk Southern and any of its past or present parents, subsidiaries, affiliated companies, and corporations, and any of their past or present officers, directors, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, agents, consultants, contractors, service providers, successors, or assigns;

2. OxyVinyls LP, GATX Corporation, General American Marks Company, Trinity Industries Leasing Company (collectively defined above as the “Non-Settling Railcar Defendants”);

3. any other manufacturers, owners, lessors, lessees, shippers, and consignees of the rail cars and products involved in the Incident;

4. the manufacturers, installers, and designers of the rail track or other railroad equipment associated with the Incident, including without limitation Progress Rail;

5. the Association of American Railroads;

6. the Terminal Railroad Association of St. Louis;

7. any persons, business entities, and agencies that assisted in or supported the emergency response, remediation, air monitoring, soil monitoring, water monitoring,

and clean-up activities associated with the Incident—including for avoidance of doubt and without limitation, Arcadis U.S., Inc.; Braskem America Inc.; Center for Toxicology and Environmental Health (CTEH); EnviroScience, Inc.; Explosive Service International; Specialized Professional Services Inc. (SPSI); Midland Manufacturing; Specialized Response Solutions (SRS); Hazardous Products Abatement Company (HEPACO); EnviroServe; Engineering Systems Inc. (Esi); Cranemasters; Hulcher Services, Inc.; R.J. Corman Railroad Group; and Timken Company—including the activities of private, public, and governmental agencies, entities, and authorities, whether federal, state, county, or local, their employees, officers, agents, members, and volunteers; and

8. any owners, lessors, and lessees of any other real property located at the site of the Incident.

9. For the avoidance of doubt, any of the “Released Parties” includes, for any of the foregoing entities, any past or present parents, subsidiaries, affiliated companies, and corporations, and any past or present officers, directors, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, agents, consultants, contractors, service providers, successors, or assigns.

OO. “Response Deadline” means the date thirty (30) days after the Notice Date, which is the date by which Settlement Class Members must respond to the Notice of this Settlement by (1) submitting a written objection to the Settlement Agreement with the Settlement Administrator; or (2) submitting a request for exclusion to the Settlement Administrator. The Response Deadline will be set forth in the Notice and on the Settlement Website.

PP. “Service Award” means such award as the Court may authorize to be paid to the Class Representatives from the Settlement Fund for their service to the Class in bringing and prosecuting this case.

QQ. “Settlement Class” means all Persons and Businesses residing, owning or otherwise having a legal interest in property, working, or owning or operating a business within a 20-mile radius of the Derailment Site, from February 3, 2023 to the Settlement Date. Excluded from the Settlement Class are: Norfolk Southern, and any of its parents, subsidiaries, or affiliates; all duly elected and approved officers of Norfolk Southern, and all directors of Norfolk Southern; Norfolk Southern employees, and contractors of Norfolk Southern and their employees, who were specifically sent by Norfolk Southern to the area in and around the Derailment Site to respond to the Incident and do not otherwise fall within the definition of Settlement Class; Norfolk Southern’s Counsel; Class Counsel; a government, political subdivision, public entity, or public agency; and the judge presiding over this Action and the judge’s staff.

RR. “Settlement Class Member” or “Class Member” means a Person or Business who falls within the definition of the Settlement Class and who does not submit a valid request for exclusion from the Settlement Class.

SS. “Settlement Fund” means the non-reversionary cash settlement amount of six-hundred-million dollars (\$600,000,000.00), plus all income earned thereon. Payments to Class Members from the Settlement Amount shall be allocated pursuant to the terms in Section XIII. The Settlement Fund shall satisfy all monetary obligations of Norfolk Southern under this Settlement Agreement. In no event shall Norfolk Southern be required to pay more than the amount of six-hundred-million dollars (\$600,000,000.00).

TT. “Settlement Website” means the website to be created, launched, and maintained by the Administrator, which among other things will provide access to relevant settlement administration documents, including the Notice, relevant case documents, and other relevant material.

UU. “Unknown Claims” means claims that could have been but were not raised in the Action, including but not limited to claims that Plaintiffs or any member of the Settlement Class do not know or suspect to exist, which, if known by him, her, them, or it, might affect his, her, their, or its agreement to release the Released Claims or might affect his, her, theirs, or its decision to agree, to object, or not to object to the Settlement.

III. COURT APPROVAL CONTINGENCY

A. All terms of this Agreement, except as provided in Section III.B, are contingent upon (1) Preliminary Approval of the Settlement by the Court; (2) Final Approval of the Settlement by the Court dismissing the Action with prejudice, including any necessary approvals under the Minor Approval Process; (3) certification by the Court of the Settlement Class for settlement purposes only; and (4) the exhaustion of any appeals.

B. Notwithstanding the exhaustion of any appeals under Section III.A, the Personal Injury Settlement Fund shall be distributed in accordance with Section XIII.D, and executed Personal Injury Releases shall become effective upon Final Approval, or upon any necessary approvals under the Minor Approval Process, and shall remain effective regardless of any appeals or court decisions relating in any way to this Agreement.

IV. PRELIMINARY APPROVAL

A. The Parties and their counsel agree that, within fourteen (14) days of the Settlement Date, Plaintiffs will file a motion for Preliminary Approval of Class Action Settlement with the Court seeking Preliminary Approval of this proposed Settlement. The motion for Preliminary Approval shall request that the Court (1) preliminarily approve the terms and conditions of the Settlement Agreement; (2) approve the Notice to the Settlement Class and the Claim Forms and authorize the notice program distributing them; (3) certify the Settlement Class for settlement purposes only and appoint Class Counsel as counsel to the Settlement Class

for purposes of this Settlement; and (4) schedule a Final Approval Hearing, not earlier than one-hundred-fifty (150) days after Preliminary Approval. The motion for Preliminary Approval of Class Action Settlement shall be accompanied by a Proposed Order Granting Preliminary Approval of Class Action Settlement in a form to be agreed upon by the Parties.

B. The Parties agree to take all commercially reasonable actions necessary to obtain Preliminary and Final Approval of the Settlement and entry of a Final Judgment dismissing all Released Claims against all Released Parties with prejudice. The Parties agree to offer mutual support to the proposed Settlement in all court proceedings and public communications.

C. Norfolk Southern stipulates, for settlement purposes only, to the certification of the Settlement Class but does not waive, and instead expressly reserves, its right to challenge the propriety of conditional or class certification for any other purpose, as if this Agreement had not been entered into by the Parties, in the event that the Court does not grant Preliminary Approval or Final Approval to the Settlement or the Effective Date does not occur. The Parties agree that, if approved, certification of the Settlement Class is in no way an admission by Norfolk Southern that class certification is proper in the Action, or any other litigation against Norfolk Southern. The Parties further agree that, other than to effectuate the Settlement of this Action in this jurisdiction, the certification of the Settlement Class for settlement purposes only and all documents related thereto, including this Agreement and all accompanying exhibits and all orders entered by the Court in connection with this Agreement, shall not be construed or asserted as an acknowledgement of liability, and shall not be admissible in any judicial, arbitral, administrative, investigative, or other court, tribunal, forum, or other proceeding, against any of the Released Parties, with the only admissibility exception being on behalf of Norfolk Southern, in its discretion, with respect to the enforcement of any of its rights of contribution, subrogation, or indemnity under any law.

D. The form of class certification order set forth in the Preliminary Approval Order, Final Approval Order, and Judgment or otherwise, shall expressly state that the Parties agree that certification of the Settlement Class is a conditional certification for settlement purposes only.

V. SETTLEMENT ADMINISTRATOR

A. Class Counsel shall retain Kroll Settlement Administration, LLC to serve as Settlement Administrator and perform services associated with the administration of the Settlement including, without limitation, disseminating Notice to Settlement Class Members, disseminating the notices required by the Class Action Fairness Act (CAFA), 28 U.S.C. § 1715, maintaining the Settlement Website, receiving and processing Claim Forms, distributing awards from the Settlement Fund to Settlement Class Members, and complying with the qualified settlement fund's tax obligations.

B. The Settlement Administrator shall also provide any necessary information to the Court concerning the administration and processing of Claims, including providing reports on request to Class Counsel or Norfolk Southern's Counsel concerning Claims, objections, and

exclusions, and shall respond to inquiries from Class Counsel, Norfolk Southern's Counsel, the Court, and Settlement Class Members.

C. The Settlement Administrator shall, no later than thirty (30) days after the Response Deadline, provide a final report to Class Counsel and Norfolk Southern's Counsel that identifies the number of requests for exclusion and objections received.

D. The Settlement Administrator shall, no later than seven (7) days after the Claim Deadline, provide a final report (the "Claims Report") to Class Counsel and Norfolk Southern's Counsel that identifies the number and types of Claims received, including the number of Claims for Personal Injury Payment and Personal Injury Releases, and other pertinent information, including any executed Personal Injury Releases, as well as any submitted Claims Forms.

E. The costs of administering the Settlement, including the fees and costs paid to the Settlement Administrator, shall be paid from the Settlement Fund.

VI. NOTICE

A. The Parties agree to the following procedures regarding notice:

1. Within twenty-one (21) days after the Court grants Preliminary Approval of the proposed Settlement, the Settlement Administrator shall establish the Settlement Website, which will inform Settlement Class Members of the terms of this Settlement, their rights, dates and deadlines, and related information. The Settlement Website shall also make the Claim Forms available for download and provide Settlement Class Members with the ability to complete and submit the Claim Forms electronically. The Parties shall confer and agree on information posted on the Settlement Website.

2. Within twenty-eight (28) days after the Court grants Preliminary Approval of the proposed Settlement (the "Notice Date"), the Settlement Administrator shall send the Settlement Notice approved by the Court to all Settlement Class Members, via First Class regular U.S. mail, using the most current mailing addresses presently available to Class Counsel.

3. No later than five (5) days after the Notice Date, the Settlement Administrator shall provide Notice by publication as set forth in the Notice plan.

B. Pursuant to 28 U.S.C. § 1715, not later than ten (10) days after the Settlement Agreement is filed with the Court, the Settlement Administrator shall cause to be served notice of the proposed Settlement as required by law upon the Attorneys General of each U.S. State in which Settlement Class members reside (Ohio, Pennsylvania, and West Virginia), the Attorney General of the United States, and any other required government officials.

VII. OBJECTIONS TO SETTLEMENT

A. The Notice shall provide Settlement Class Members who wish to object to the Settlement, including the Fee Award or Service Award, with instructions that they must serve

any objection on the Settlement Administrator with a written statement objecting to the Settlement.

B. For an objection to be considered by the Court, the objection must be submitted by the Response Deadline.

C. In addition, for an objection to be considered by the Court, the objection must set forth:

1. a statement that the objection is to the proposed East Palestine Train Derailment Settlement (the formal name of the Action is not required);
2. the objector's full name, mailing address, email address, telephone number, address at which the objector lived, or, if a Business, operated, on February 3, 2023, and if, on behalf of a Business, the Business name and address;
3. all grounds for the objection, accompanied by any legal support for the objection known to the objector or his or her counsel;
4. the identity of all counsel who represent the objector, if any;
5. a statement whether the objector intends to personally appear and/or testify at the Final Approval Hearing;
6. the objector's signature (an attorney's signature alone is not sufficient); and
7. identification of any class action settlements objected to by the objector and/or objector's counsel in the last three years.

D. Such written objection and all supporting briefs or other materials must be served on the Settlement Administrator no later than the Response Deadline. Class Counsel shall file all such written objections with the Court at least twenty (20) days prior to the Final Approval Hearing. No Person or Business shall be entitled to be heard at the Final Approval Hearing (whether individually or through separate counsel) or to object to the Settlement, and no written objections or briefs submitted by any person shall be received or considered by the Court at the Final Approval Hearing, unless such written statement of objections and supporting materials are timely served upon the Settlement Administrator as set forth herein. Persons or Businesses who wish to speak at the Final Approval Hearing to object to the Settlement must so state in their written objection, as described above. Persons or Businesses failing to file and serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement. Persons or Businesses that are not Settlement Class Members may not object to the Settlement.

E. In the exercise of their due diligence, Class Counsel and/or Defense Counsel may seek expedited discovery from an objecting Settlement Class Member regarding the basis for the

objection, to allow them to appropriately respond to the objection. Failure by the objecting Settlement Class Member to comply with expedited discovery requests may result in the Court striking the Settlement Class Member's objection and otherwise denying that Settlement Class Member the opportunity to make an objection or be further heard.

F. To the extent any Settlement Class Member objects to the Settlement, and such objection is overruled in whole or in part, such Settlement Class Member will be forever bound by the Final Approval Order and Judgment of the Court.

VIII. EXCLUSIONS FROM SETTLEMENT

A. Any Person or Business in the Settlement Class may submit a request for exclusion from the Settlement on or before the Response Deadline.

B. A request for exclusion from the Settlement by any Person, excluding minor Persons, constitutes a request for exclusion from the Settlement by that Person's entire Household. If a Person requesting exclusion withdraws his or her request for exclusion, that Person's entire Household will be deemed to have withdrawn the request for exclusion as well.

C. To be valid, any request for exclusion must (1) be in writing; (2) identify the case name (*In re: East Palestine Train Derailment*, No. 4:23-CV-00242 (N.D. Ohio)); (3) state the full name, current address, and address of the Person or Business in the Settlement Class seeking exclusion; (4) be signed by the Person or Business seeking exclusion; and (5) be postmarked or received by the Settlement Administrator on or before the Response Deadline. Each request for exclusion must also contain a statement to the effect that "I hereby request to be excluded from the proposed Settlement Class in *In re: East Palestine Train Derailment*, No. 4:23-CV-00242 (N.D. Ohio)."

D. A request for exclusion that does not include all of the foregoing information, that is sent to an address or email address other than that designated in the Notice, or that is not postmarked or delivered to the Settlement Administrator within the time specified, shall be invalid and the Persons or Businesses serving such a request shall be deemed to remain Settlement Class Members and shall be bound as Settlement Class Members by this Settlement Agreement, if approved. No Person or Business may request to be excluded from the Settlement Class through "mass" or "class" opt-outs meaning that, with the exception of the treatment of Households under Section VIII.B, each Person or Business who seeks to be excluded must send an individual, separate, request to the Settlement Administrator that complies with all requirements of this Section VIII.

E. Any Person or Business who requests exclusion from the Settlement Class shall not (1) be bound by any orders or Final Judgment entered in the Action; (2) receive a payment under this Settlement Agreement; (3) gain any rights by virtue of this Settlement Agreement; or (4) be entitled to object to any aspect of this Settlement Agreement or Final Judgment.

F. Copies of all requests for exclusion from the Settlement Class received by the Administrator (or other person designated to receive exclusion requests) shall be provided to Defense Counsel and Class Counsel no later than fourteen (14) days after the Response Deadline.

IX. CLAIMS

A. All Settlement Class Members will be entitled to submit a Claim against the Settlement Fund.

B. Claim Forms will be submitted electronically, by mail, or in person at a claims assistance center and will be administered by the Settlement Administrator. Settlement Class Members will need to submit the information and/or documentation identified in the Claim Form. Sample Claim Forms are attached as part of the Class Notice, Exhibits C and D.

C. Claims must be submitted by the Claim Deadline (*i.e.* the date that is ninety (90) days after the Notice Date), although Norfolk Southern and Plaintiffs may agree to have considered Claims received after that date in their discretion and after consultation with the Settlement Administrator.

X. FINAL APPROVAL

A. After Notice to the Settlement Class is given, within fourteen (14) days after the Settlement Administrator provides the Claims Report, Class Counsel shall move the Court for entry of Final Approval and a Final Judgment, which shall include, among other provisions, a request that the Court:

1. find that it has personal jurisdiction over all Settlement Class Members and subject matter jurisdiction to approve this Settlement Agreement, including all attached Exhibits;
2. approve the Settlement as fair, reasonable, and adequate as to, and in the best interests of, the Settlement Class Members;
3. direct the Parties and their counsel to implement and consummate the Settlement according to its terms and conditions;
4. find that the Notice implemented pursuant to the Settlement Agreement (a) constitutes the best practicable notice under the circumstances; (b) constitutes notice that is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Action and their rights to object to or exclude themselves from this Settlement Agreement and to appear at the Final Approval Hearing; (c) is reasonable and constitutes due, adequate, and sufficient notice to all Persons and Businesses entitled to receive notice; and (d) fulfills the requirements of the Federal Rules of Civil Procedure, the Due Process Clause of the United States Constitution, and the rules of the Court;

5. finally certify or confirm certification of the Settlement Class under Federal Rule of Civil Procedure 23, including finding that the Class Representatives and Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement Agreement;

6. dismiss the Action on the merits and with prejudice, without fees or costs to any Party except as provided in this Settlement Agreement;

7. incorporate the Release, make the Release effective as of the Effective Date, and forever discharge the Released Parties as set forth herein;

8. state that the Court's final order shall constitute a binding judicial declaration effectuating a judicial compromise of any minor claim and, as appropriate, any necessary approval under the Minor Approval Process;

9. authorize the Parties, without further approval from the Court, to agree to and adopt such amendments, modifications, and expansions of the Settlement and its implementing documents (including all Exhibits to this Settlement Agreement) that (a) shall be consistent in all material respects with the Final Judgment; and (b) do not limit the rights of Settlement Class Members; and

10. without affecting the finality of the Final Judgment for purposes of appeal, retain jurisdiction as to all matters relating to administration, consummation, enforcement and interpretation of the Settlement Agreement and the Final Judgment, and for any other necessary purpose.

B. The Parties shall, in good faith, cooperate, assist, and undertake all reasonable actions and steps in order to accomplish these required events on the schedule set by the Court, subject to the terms of this Settlement Agreement.

C. The Final Approval Order shall provide that the Action shall be dismissed with prejudice and without costs, with the Court retaining jurisdiction over the case for purposes of ensuring compliance with the terms of this Settlement Agreement and any order of the Court issued in connection therewith.

XI. TERMINATION

A. Plaintiffs and Norfolk Southern shall each have the right to terminate the Settlement and this Agreement, by providing written notice of their election to do so ("Termination Notice") to the other Parties to this Agreement within thirty (30) days of the Court's final refusal to enter the Preliminary Approval Order in any material respect; the Court's final refusal to approve the Settlement or any material part thereof; the Court's final refusal to enter Final Approval in any material respect as to the Settlement, including any final refusal under the Minor Approval Process; or the date upon which the Court's Final Approval Order is modified or reversed in any material respect by a final order of any appellate court.

B. Any decision or proceeding, whether in this Court or any appellate court, with respect to an application for attorneys' fees or reimbursement of litigation expenses or with respect to any plan of allocation shall not be considered material to the Settlement, shall not affect the finality of any Final Approval Order or Final Judgment, and shall not be grounds for termination of the Settlement.

C. In addition to the grounds set forth above, Norfolk Southern shall have the unilateral right to terminate the Settlement under the conditions set forth in Norfolk Southern's supplemental agreement with Plaintiffs (the "Supplemental Termination Agreement"), by serving upon Class Counsel a notice of termination within seven (7) days of its receipt from the Settlement Administrator of the Claims Report specified in Section V.D hereof, if the Settlement Class Members' participation rates trigger the numerical thresholds specified in the Supplemental Termination Agreement. The Supplemental Termination Agreement, which is being executed concurrently herewith, shall not be filed with the Court and its terms shall not be disclosed in any other manner (other than the statements herein and in the Notice, to the extent necessary, or as otherwise provided in the Supplemental Termination Agreement) unless and until the Court otherwise directs or a dispute arises between Plaintiffs and Norfolk Southern concerning its interpretation or application, in which event the Parties shall submit the Supplemental Termination Agreement to the Court in camera and request that the Court afford it confidential treatment.

D. If (1) Norfolk Southern exercises its right to terminate the Settlement as provided in this Agreement, including the Supplemental Termination Agreement referenced above; (2) Plaintiffs exercise their right to terminate the Settlement as provided in this Agreement; (3) the Court refuses to grant Preliminary Approval or Final Approval of the Settlement; or (4) the Effective Date as to the Agreement otherwise fails to occur, then, except as provided in Section III.B, the Settlement and the relevant portions of this Agreement shall be canceled and terminated, Plaintiffs and Norfolk Southern shall revert to their respective positions in the Action as of April 26, 2024, and the terms and provisions of this Agreement shall have no further force and effect with respect to the Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or order entered by the Court in accordance with the terms of this Settlement, except for any order staying the Action, shall be treated as vacated, *nunc pro tunc*.

XII. SETTLEMENT FUND

A. In consideration of the settlement of the Released Claims by the Settlement Class against Norfolk Southern, Norfolk Southern shall pay the amount of the Settlement Fund (\$600,000,000.00). The Settlement Fund is inclusive of Class Counsel's Fee Award, Administrative Deposit, Administrative Expenses, and Service Awards, if any. The Settlement Fund shall satisfy all monetary obligations of Norfolk Southern under the Settlement Agreement. In no event shall Norfolk Southern be required to pay more than the amount of six-hundred-million dollars (\$600,000,000.00).

B. Upon payment, the Settlement Fund shall become a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1. Class Counsel and/or the Settlement Administrator shall establish an income-bearing account designated as a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1, pursuant to the Internal Revenue Code (the “Escrow Account”).

C. Neither the Parties nor the Settlement Administrator shall take any position in any filing or before any tax authority that is inconsistent with treating the Settlement Fund as a “qualified settlement fund,” as defined in 26 C.F.R. § 1.468B-1. Norfolk Southern shall be the “transferor” and the Settlement Administrator shall be the “administrator” of the Settlement Fund within the meaning of 26 C.F.R. §§ 1.468B-1(d)(1) and 1.468B-2(k)(3), respectively. As a result, the Settlement Administrator will be responsible for all tax paying, filing, withholding and reporting obligations of the “qualified settlement fund,” including without limitation those arising from any payments made from the Settlement Fund, including any reporting required on IRS Form 1099, if any, for distributions made from the Settlement Fund. The Parties agree to take all necessary and reasonable actions to qualify the Settlement Fund pursuant to the United States Treasury Regulations.

D. Norfolk Southern shall have no responsibility or liability relating to the administration, investment, or distribution of the Settlement Fund, which shall be the sole responsibility of Class Counsel and the Settlement Administrator.

E. Norfolk Southern shall pay the Administrative Deposit of five million dollars (\$5,000,000.00) into the Escrow Account within fourteen (14) days after the grant of Preliminary Approval by the Court.

F. Norfolk Southern shall pay the Personal Injury Settlement Fund and the Fee Award into the Escrow Account within fourteen (14) days after the grant of Final Approval by the Court.

G. The balance of the Settlement Fund—less the amount of the Administrative Deposit, the Personal Injury Settlement Fund, and the Fee Award—shall be paid by Norfolk Southern to the Escrow Account within ten (10) days of the Effective Date. The six-hundred-million-dollar (\$600,000,000.00) Settlement Fund is the maximum amount that Norfolk Southern will pay for the entire Settlement, including all costs and fees of any kind.

H. Recipients of any payment under this Settlement will be responsible for any taxes that may be assessed on such payments.

XIII. DISTRIBUTION OF SETTLEMENT FUND

A. *Common Fund.* This is a common fund settlement to be administered on a claims-made basis.

B. *Payment of Administrative Expenses, Fee Award, Service Awards, and Personal Injury Settlement Fund.* As set forth in this Settlement Agreement, the Administrative Expenses,

Fee Award, Service Award, and Personal Injury Settlement Fund will be paid from the Settlement Fund.

C. *Plan of Allocation.* The amount of the Settlement Fund plus any income accrued thereon less the Administrative Expenses, Fee Award, and Service Award shall be distributed to Settlement Class Members as follows, pursuant to allocation formulas and amounts to be determined by Class Counsel—subject to review and consent by Norfolk Southern with consent not to be unreasonably withheld, and with any disputes about reasonableness to be decided by binding arbitration before Judge Phillips:

1. Direct Payments

a. All Settlement Class Member Persons who submit an approved Claim Form shall receive a direct payment (“Direct Payment”) per Household, which shall be a portion of the remaining Settlement Fund after payment of all approved Business Loss Payments, Personal Injury Payments, the Fee Award, Service Awards, and Administrative Expenses.

b. The pro rata amount of the Direct Payment shall be determined by a point grading system to be determined by Class Counsel and the Settlement Administrator, including factors such as geographic proximity, relocation mandates, length of displacement, and the amounts of any prior payments, settlements, loans, or other financial payouts by Norfolk Southern.

c. The pro rata amount of the Direct Payment shall be determined per Household of a Settlement Class Member submitting an approved Claim Form. If any Settlement Class Member in a Household submits an approved Claim Form, then a Direct Payment shall be distributed to that Household.

d. Settlement Class Member Persons may, at their election, submit Claims for Extraordinary Loss or Damage above any award issued under the Direct Payment point grading system to be determined by Class Counsel and the Settlement Administrator. Claims for Extraordinary Loss or Damage shall be submitted on a Household basis and must include itemized damages or losses supported by dated documentation. Claims for Extraordinary Loss or Damage shall be evaluated and, if appropriate, accepted and awarded subject to the discretion of the Settlement Administrator.

e. Any Direct Payment, including any additional amounts awarded for Claims for Extraordinary Loss or Damage, will be less any prior payments, settlements, loans, or other financial payment made by Norfolk Southern arising from or relating to the Incident, including but not limited

to payments from the Norfolk Southern Family Assistance Center and payments from the Norfolk Southern Value Assurance Program.

2. Businesses Loss Payments

a. Settlement Class Member Businesses may submit a Claim Form seeking a business loss payment (“Business Loss Payment”).

b. Business Loss Payments require proof of an actual net business financial loss between February 3, 2023 and the Settlement Date arising from or relating to the Incident, to be determined by Class Counsel and the Administrator.

c. Any Business Loss Payment will be less any prior payments, settlements, loans, or other financial payments made by Norfolk Southern arising from or relating to the Incident, including but not limited to payments from the Norfolk Southern Family Assistance Center and payments from the Norfolk Southern Value Assurance Program.

d. The amount of each Business Loss Payment shall be determined pursuant to an allocation formula by Class Counsel and the Administrator. The Business Loss Payment Claim Form and process shall not inquire into a Settlement Class Member’s tax treatment of any business loss claimed.

e. Any unallocated monies for Business Loss Payments will be reallocated to the Direct Payment distribution.

3. Personal Injury Payments

a. Eligible Personal Injury Settlement Class Members will also be eligible for a personal injury payment (“Personal Injury Payment”).

b. To be eligible for a Personal Injury Payment, an Eligible Personal Injury Settlement Class Member must submit a Claim Form, in the form attached as Exhibit A to the Settlement Agreement, confirming presence within the 10-mile radius of the Derailment Site such that he/she/they claims to have suffered an exposure to potential toxins, accompanied by a duly executed Personal Injury Release (Exhibit E). Each Eligible Personal Injury Settlement Class Member submitting a Claim Form for a Personal Injury Payment must duly execute a Personal Injury Release in order to receive a Personal Injury Payment. A Claim Form for a Personal Injury Payment may not be submitted on behalf of an entire Household; each Eligible Personal Injury Settlement Class Member in the Household who seeks a Personal Injury Payment must duly execute a separate Personal Injury Release.

- c. Eligible Personal Injury Settlement Class Members may, at their election, submit Claims for Extraordinary Injury above any award issued by the Settlement Administrator. Claims for Extraordinary Injury shall be submitted on an individual basis and must include itemized injuries supported by dated documentation. Claims for Extraordinary Injury shall be evaluated and, if appropriate, accepted and awarded subject to the discretion of the Settlement Administrator.
- d. To the extent an Eligible Personal Injury Settlement Class Member is a minor, any Personal Injury Payments: (i) made to or on behalf of any such minor shall be in accordance with the orders issued by the court overseeing the compromise of such claims pursuant to the Minor Approval Process; (ii) made to any trust, account, or fund on behalf of any such minor shall be issued from the qualified settlement fund only pursuant to joint written instructions from Class Counsel and Norfolk Southern's Counsel.
- e. Class Counsel will work in good faith to encourage Eligible Personal Injury Settlement Class Members to seek and obtain Personal Injury Payments by submitting Claim Forms for Personal Injury Payments and Personal Injury Releases.
- f. Any Personal Injury Payment, including for any additional amounts awarded for Claims for Extraordinary Injury, will be less any prior payments, settlements, loans, or other financial payout made by Norfolk Southern arising from or relating to any Personal Injury Claim arising from the Incident, including but not limited to payments from the Norfolk Southern Family Assistance Center arising from or relating to any Personal Injury Claim.
- g. The amount of each Personal Injury Payment shall be determined pursuant to an allocation formula by Class Counsel and the Administrator.
- h. In the Settlement Administrator's Claims Report, the Settlement Administrator shall assign a final value to all Claims for Personal Injury Payment for all Eligible Personal Injury Settlement Class Members who have submitted a Claim Form and executed a Personal Injury Release, and that final value shall be the total amount of the Personal Injury Settlement Fund paid by Norfolk Southern pursuant to Section XII.F; that final value shall be exclusive of any Claim for Extraordinary Injury, which shall be evaluated and, if appropriate, accepted, and awarded pursuant to Section XIII.C.3.c.

- i. Any unallocated monies for Personal Injury Payments will be reallocated to the Direct Payment distribution.

D. *Distribution of Personal Injury Settlement Fund*

1. Within thirty (30) days of Final Approval, and subject to any required Claim verification by the Settlement Administrator, the Settlement Administrator shall begin to distribute the Personal Injury Settlement Fund as follows:

- a. the Settlement Administrator shall begin to issue and mail to each Eligible Personal Injury Settlement Class Member who submits a Claim Form accompanied by a duly executed Personal Injury Release a check in the amount determined to be his/her/their award, pursuant to the allocation plan described in Section XIII.C; and
- b. the Settlement Administrator shall pay any such Eligible Personal Injury Settlement Class Member who is represented separately by counsel his/her/their check in accordance with Class Counsel's written instructions.

2. Any Eligible Personal Injury Settlement Class Member's check returned to the Settlement Administrator by the Postal Service with a forwarding address shall be re-mailed by the Settlement Administrator within seven (7) days following its receipt of the returned mail. If any Eligible Personal Injury Settlement Class Member's check is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts to locate the correct address and shall promptly re-mail the check after verifying its validity.

3. Each Eligible Personal Injury Settlement Class Member will have ninety (90) days from the date on which the checks are issued to cash or deposit his/her/their check, and each check shall bear a legend stating that the check shall be void after 90 days. If any check is not cashed or deposited in that period of time, that check will become void.

4. Any individual settlement payment or portions thereof that remain unnegotiated ninety (90) days following the mailing of the Personal Injury Payment award shall be deemed unclaimed. In such event, those Eligible Personal Injury Settlement Class Members shall be deemed to have irrevocably waived any right or claim to a Personal Injury Payment, but the Settlement Agreement and Personal Injury Release nevertheless will be binding on them.

5. If an Eligible Personal Injury Settlement Class Member notifies the Settlement Administrator or Class Counsel that he/she/they believes that a check has been lost or stolen, the Settlement Administrator shall promptly stop payment on such check. If the check in question has not been negotiated before the stop payment order, the

Settlement Administrator will issue a replacement check, from which the fees associated with the stop-payment order will first be deducted. The Eligible Personal Injury Settlement Class Member will have an additional forty-five (45) days to cash or deposit the issued check from the date of re-mailing. If any check is not cashed or deposited in that period of time, the check will be voided.

6. If there remains any residual from the Personal Injury Settlement Fund after all payments are made under this Settlement Agreement because settlement checks are not cashed or deposited within ninety (90) days after issuance, the residual shall be paid to Settlement Class Members who cashed their checks in a pro-rata distribution if economically feasible; otherwise, Class Counsel shall apply to have any residual distributed to a cy pres fund that directly benefits the residents of or around East Palestine, to be approved by the Court.

E. *Distribution of Settlement Fund*

1. Within thirty (30) days after the Effective Date, the Settlement Administrator shall begin to distribute the Settlement Fund as follows:

- a. the Settlement Administrator shall begin to issue and mail to each Settlement Class Member who submits a Claim a check in the amount determined to be his/her/their award, pursuant to the allocation plan described in Section XIII.C; and
- b. the Settlement Administrator shall issue and mail to each Plaintiff any Service Award approved by the Court.

2. Any Settlement Class Member's check returned to the Settlement Administrator by the Postal Service with a forwarding address shall be re-mailed by the Settlement Administrator within seven (7) days following its receipt of the returned mail. If any Settlement Class Member's check is returned to the Settlement Administrator without a forwarding address, the Settlement Administrator shall undertake reasonable efforts to locate the correct address and shall promptly re-mail the Settlement Class Member's check after verifying its validity.

3. Each Settlement Class Member will have ninety (90) days from the date on which the checks are issued to cash or deposit his or her settlement check, and each check shall bear a legend stating that the check shall be void after ninety (90) days. If any settlement check is not cashed or deposited in that period of time, that settlement check will become void.

4. Any individual settlement payment or portions thereof that remain unnegotiated ninety (90) days following the mailing of the Settlement award shall be deemed unclaimed. In such event, those Settlement Class Members will be deemed to have irrevocably waived any right or claim to a settlement payment, but the Settlement

Agreement and Release of claims contained therein nevertheless will be binding upon them.

5. If a Settlement Class Member notifies the Settlement Administrator or Class Counsel that he or she believes that a settlement check has been lost or stolen, the Settlement Administrator shall promptly stop payment on such check. If the settlement check in question has not been negotiated prior to the stop payment order, the Settlement Administrator will issue a replacement check, from which the fees associated with the stop-payment order will first be deducted. The Class Member will have an additional forty-five (45) days to cash or deposit the re-issued check from the date of re-mailing. If any settlement check is not cashed or deposited in that period of time, that settlement check will be voided.

6. If there remains any residual from the Settlement Fund after all payments are made under this Agreement because settlement checks are not cashed or deposited within ninety (90) days after issuance, the residual shall be paid to Settlement Class Members who cashed their checks in a pro-rata distribution if economically feasible; otherwise, Class Counsel shall apply to have any residual distributed to a cy pres fund that directly benefits the residents of or around East Palestine, to be approved by the Court.

XIV. ATTORNEYS' FEES AND COSTS

A. Class Counsel and Norfolk Southern's Counsel represent that they have not discussed attorneys' fees and reimbursements of costs prior to agreement on the material terms of this Settlement Agreement.

B. Class Counsel may petition the Court for a Fee Award in conjunction with the Settlement for work performed in connection with the Action pursuant to Rules 23(h) and 54(d)(2) of the Federal Rules of Civil Procedure. Any such petition shall be filed within fourteen (14) days after the Settlement Administrator provides the Claims Report (*i.e.*, a final report to Class Counsel and Norfolk Southern's Counsel that identifies the number and types of Claims received).

C. Any attorneys' fees awarded in conjunction with the Settlement shall be paid from the Settlement Fund and shall reduce the Settlement Fund payable to Settlement Class Members. As part of the petition for a Fee Award, Class Counsel may seek a reimbursement of costs and expenses, which reimbursement shall be paid if allowed by the Court from the Settlement Fund and shall reduce the Settlement Fund payable to Settlement Class Members.

D. The Fee Award awarded to Class Counsel will be paid from the Settlement Fund into the Escrow Account pursuant to Section XII.F (*i.e.*, within fourteen (14) days after the grant of Final Approval) and wired from the Escrow Account to an account number identified by Class Counsel. If, however, at the time of the grant of Final Approval the Court has not issued its order on the Fee Award, Class Counsel will be paid from the Escrow Account to an account

number identified by Class Counsel within two (2) business days of such order on the Fee Award.

E. If this Settlement is terminated pursuant to Section XI or modified or reversed in any material respect by a final order of any appellate court, or if the Fee Award is modified or reversed on any appeal, Class Counsel shall return to Norfolk Southern any and all attorneys' fees and costs previously paid to Class Counsel as any part of the Fee Award, plus accrued interest at the same net rate as is earned by the Settlement Fund, within fourteen (14) days of such termination or entry of an order on appeal modifying or reversing Final Approval or the Fee Award.

XV. SERVICE AWARD TO PLAINTIFFS

A. Class Counsel may petition for a Service Award to Named Plaintiffs. Any such petition shall be filed within fourteen (14) days after the Settlement Administrator provides the Claims Report to Class Counsel and Norfolk Southern's Counsel that identifies the number and types of Claims received. Any Service Award granted to Named Plaintiffs shall be paid from the Settlement Fund and shall reduce the Settlement Fund payable to the Settlement Class Members, and shall be in addition to payments that such Named Plaintiffs shall receive as Settlement Class Members.

B. Any such Service Award granted by the Court shall be distributed by the Settlement Administrator in a separate check mailed contemporaneously with the mailing of checks to the Class and shall be reported to state and federal taxing authorities as non-wage income on IRS Form 1099.

C. Norfolk Southern will not oppose any request by Class Counsel for Service Awards to the Named Plaintiffs that do not exceed fifteen-thousand dollars (\$15,000) per Named Plaintiff.

XVI. RELEASE

A. Upon the Effective Date, by operation of the entry of the Final Approval Order and accompanying Final Judgment, Plaintiffs and all Settlement Class Members shall be deemed to fully, forever, and irrevocably release, remise, and discharge the Released Parties from any and all Released Claims, and shall be enjoined from continuing, instituting, or prosecuting any legal proceeding against the Released Parties relating in any way to the Released Claims.

B. Upon the Effective Date, Plaintiffs and all Settlement Class Members shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights, and benefits of Section 1542 of the California Civil Code (or any other analogous state or federal law), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE

RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Upon the Effective Date, Plaintiffs and all Settlement Class Members also shall be deemed to have, and shall have, expressly waived and relinquished, to the fullest extent permitted by law, any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable or equivalent to § 1542 of the California Civil Code. Plaintiffs and Settlement Class Members acknowledge that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this Release, but that it is their intention to finally and forever settle and release the Released Claims, notwithstanding any Unknown Claims they may have.

C. The Released Claims also include a release of all claims for attorneys' fees and costs incurred by Plaintiffs, Settlement Class Members, or Class Counsel in connection with the Action and the Settlement of the Action.

D. Settlement Class Members understand and agree that this Release is a full and final release applying to both those Released Claims that are currently known, anticipated, or disclosed and to all those Released Claims that are presently unknown, unanticipated, or undisclosed to any and all Settlement Class Members arising out of the alleged facts, circumstances, and occurrences underlying: (1) the claims set forth in the Action; or (2) the Released Parties' conduct with respect to the Action.

E. Personal Injury Claims will be released only if a Settlement Class Member elects to receive a Personal Injury Payment and executes a separate Personal Injury Release.

F. Class Counsel shall take all necessary steps to secure valid and legally enforceable releases, including Personal Injury Releases, for minor Settlement Class Members (*i.e.*, Settlement Class Members who have not, as of the Claim Deadline, reached the age of majority under applicable law).

G. Settlement Class Members retain claims, if any, against persons or entities who are not Released Parties, but such reservation, if any, creates no basis for a claim of contribution, subrogation, or indemnification (collectively, an "Insurer Claim"), however denominated, by the non-Released Party against the Released Party. For avoidance of doubt, this Release shall apply to all related Insurer Claims of Settlement Class Members' subrogees or insurance carriers, and Settlement Class Members expressly waive any contractual or other right or claim of contribution, subrogation, or indemnification by any insurer or other party for an Insurer Claim against any Released Parties. If a Settlement Class Member has made an insurance claim or has received insurance proceeds for any itemized loss or damage caused by the Incident, and the Settlement Class Member submits an itemized claim for the same loss or damage under the Settlement, then the Settlement Class Member will indemnify Released Parties for any liability

that Released Parties, or any of them, incur for an Insurer Claim, provided that (a) the Insurer Claim is brought by an entity seeking to recover payment of insurance proceeds to the Settlement Class Member for the same itemized loss or damage; and (b) the amount for which the Settlement Class Member indemnifies Released Parties shall be limited to only that amount of the Settlement payment to the Settlement Class Member made directly for said itemized loss or damage, if any.

H. This Agreement, including this Release, and any Personal Injury Releases, is not intended to affect—and instead expressly preserves—any and all of Norfolk Southern’s rights of contribution, subrogation, or indemnity under any law, including for avoidance of doubt and without limitation Norfolk Southern’s claims against the Non-Settling Railcar Defendants under Ohio law, including Ohio R.C. § 2307.25, titled “Right of contribution; settlements; subrogation; indemnity,” Ohio R.C. § 2307.26, titled “Contribution,” Ohio R.C. § 2307.28, titled “Release or covenant not to sue or not to enforce judgment,” or any other applicable law.

XVII. NO ADMISSION OF LIABILITY

A. Neither this Agreement (whether or not consummated), including the exhibits hereto and the plan of allocation contained therein (or any other plan of allocation that may be approved by the Court), the negotiations leading to the execution of this Agreement, nor any proceedings taken pursuant to or in connection with this Agreement and/or approval of the Settlement (including any arguments proffered in connection therewith) constitute or shall be offered against Norfolk Southern as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by Norfolk Southern with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was or could have been asserted or the deficiency of any defense that has been or could have been asserted in this Action or in any other litigation, or of any liability, negligence, fault, or other wrongdoing of any kind of Norfolk Southern or in any way referred to for any other reason as against Norfolk Southern, in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of this Agreement.

B. However, if this Agreement is approved by the Court, the Parties and the Released Parties and their respective counsel may refer to it to effectuate the protections from liability granted hereunder or otherwise to enforce the terms of the Settlement.

XVIII. MISCELLANEOUS PROVISIONS

A. *Complete Agreement.* Other than as stated herein and in the Supplemental Termination Agreement referenced and defined above, the Parties warrant that no representation, promise, or inducement has been offered or made to induce any Party to enter into this Agreement and that they are competent to execute this Agreement and accept full responsibility therefor. This Agreement contains and constitutes the entire understanding and agreement between the Parties and supersedes all previous oral and written negotiations, agreements,

commitments, and writings in connection therewith. This Agreement may not be amended or modified except by a writing signed by authorized representatives of all Parties.

B. *Arbitration.* The Parties agree to meet and confer in good faith to resolve any disagreements over the implementation of the terms of this Agreement or any other documents necessary to effectuate the Settlement. If the meet and confer is not successful, the Parties agree to binding, non-appealable arbitration before Judge Phillips to resolve any disagreements over the implementation of the terms of this Agreement or any other documents necessary to effectuate the Settlement. If ordered by Judge Phillips, the prevailing Party in any such dispute will be awarded the costs of the arbitration and its attorneys' fees.

C. *Knowing and Voluntary Agreement.* Each Party agrees that he, she, or it is entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. Each Party further affirms that he, she, or it has not been coerced, threatened, or intimidated into signing this Agreement; that he, she, or it has been advised to consult with an attorney; and that he, she, or it in fact has consulted with an attorney before signing this Agreement. Class Counsel represent that they have conducted a thorough investigation into the facts of the Action and have diligently pursued an investigation of the claims asserted on behalf of Settlement Class Members arising from or relating to the Incident. Based on their own independent investigation and the extensive litigation and mediation, which led to this Settlement, Class Counsel state that they are of the opinion that the Settlement with Norfolk Southern is fair, reasonable, and adequate, and is in the best interest of the Members of the Settlement Class, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Norfolk Southern.

D. *Notices.* Any notices issued pursuant to the terms of this Agreement shall be sent to the Parties at the addresses of their respective counsel as follows:

Plaintiffs	Norfolk Southern
<p>M. Elizabeth Graham GRANT & EISENHOFER P.A. 123 South Justison Street Wilmington, DE 19801 302-622-7000 Fax: 302-622-7061 Email: egraham@gelaw.com</p>	<p>Alan E. Schoenfeld WILMER CUTLER PICKERING HALE AND DORR LLP 7 World Trade Center 250 Greenwich Street New York, NY 10007 212-230-8800 Email: alan.schoenfeld@wilmerhale.com</p>
<p>Seth A. Katz BURG SIMPSON ELDREDGE HERSH & JARDINE, P.C. 40 Inverness Drive East Englewood, CO 80112 303-792-5595 Fax: 303-708-0527 Email: skatz@burgsimpson.com</p>	<p>Albinas Prizgintas WILMER CUTLER PICKERING HALE AND DORR LLP 2100 Pennsylvania Avenue, NW Washington, DC 20037 202-663-6719 Fax: 202-663-6363 Email: albinas.prizgintas@wilmerhale.com</p>
<p>Jayne Conroy SIMMONS HANLY CONROY LLC One Court Street Alton, IL 62002 618-259-2222 Fax: 618-259-2251 Email: jconroy@simmonsfirm.com</p>	
<p>T. Michael Morgan MORGAN & MORGAN 20 North Orange Avenue, Suite 1600 Orlando, Florida 32801 407-420-1414 Fax: 407-245-3389 Email: mmorgan@forthepeople.com</p>	

E. *Severability.* If any part of this Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law.

F. *Binding on Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of the Parties and their respective heirs, trustees, issue, next-of-kin, executors, administrators, successors, and assigns.

G. *Counterparts.* This Agreement may be executed in counterparts, including by electronic means, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and when taken together with other signed counterparts, shall constitute one Agreement, which shall be binding upon and effective as to the Parties.

H. *Headings.* The headings used in this Agreement are for convenient reference only, and do not alter or limit the terms of each section.

I. *Amendment or Modification.* This Agreement may be amended or modified only by a written instrument signed by all Parties and their counsel.

J. *Authorization to Enter into Settlement Agreement.* Counsel for Plaintiffs and Norfolk Southern's Counsel are expressly authorized by the Parties whom they represent to enter into this Agreement and to take all appropriate action required or permitted to be taken by such parties to effectuate its terms, and to execute any other documents required to carry out the terms of this Agreement.

K. *Governing Law.* All terms of this Agreement and the exhibits hereto shall be governed by and interpreted according to the laws of the State of Ohio without regard to its principles of conflict of laws.

L. *Jurisdiction of the Court.* Any dispute regarding the interpretation or validity of, or otherwise arising out of, this Agreement, or relating to the Action or the Released Claims, including any disputes regarding fees, costs and/or expenses amongst counsel, shall be subject to the exclusive jurisdiction of the Court and shall be decided pursuant to the laws of the State of Ohio. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Agreement and all orders and judgments entered in connection therewith, and Plaintiffs and Norfolk Southern and their respective counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the Settlement embodied in this Agreement and all orders and judgments entered in connection therewith. Furthermore, pursuant to Northern District of Ohio Local Rule 3.1 and in the interests of judicial efficiency and economy, the Parties agree that, subject to Court approval, the Court will have jurisdiction over any opt-out litigation arising out of or relating to the Incident filed in, removed to, or transferred to the Court, and that any such litigation will be deemed related to the Action under Northern District of Ohio Local Rule 3.1.

M. *Invalidity of Any Provision.* Plaintiffs and Norfolk Southern request that before declaring any provision of this Agreement invalid, the Court shall first attempt to construe all provisions valid to the fullest extent possible consistent with applicable precedents.

N. *Waiver of Right to Object.* By signing this Agreement, Plaintiffs and Class Counsel, and Norfolk Southern and Defense Counsel, agree to be bound by the terms herein and further agree not to object to any of the terms of this Agreement. Any such objection shall therefore be void and of no force or effect.

O. *Public Communications.* Class Counsel (including their firms and any representative on their behalf) agree that they will not make any statements that disparage Norfolk Southern's conduct, character, or business reputation. Facts in the public domain shall not be considered disparaging.

P. *Non-Use of Work Product.* Unless inconsistent with their ethical obligations or order of the Court, or as otherwise agreed to in writing by Class Counsel and Defense Counsel, Class Counsel agree that they will not use, nor will they allow to be used, any work product derived from any discovery in this Action, whether or not any such work product includes information designated protected under the protective order in this case, in the prosecution or litigation of any other case, claim, or action.

IN WITNESS WHEREOF, Plaintiffs and Norfolk Southern and their respective counsel have executed this Agreement as of the date first set forth below.

DocuSigned by:

7A8FE105340E413...
Plaintiff: Steven McKay Date: 4/26/2024

DocuSigned by:

E4300A598FE64A0...
Plaintiff: Susan Scheufele Date: 4/26/2024

DocuSigned by:

B8895758B64D485...
Plaintiff: Brenda Williams Date: 4/26/2024

DocuSigned by:

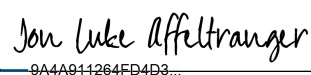
56AABB0B9B2E409...
Plaintiff: Dawn Baughman Date: 4/26/2024

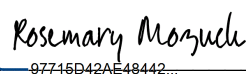
DocuSigned by:


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Plaintiff: David Anderson Date: 4/26/2024

DocuSigned by:

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Plaintiff: James Ross Date: 4/26/2024

DocuSigned by:

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Plaintiff: John Luke Affeltranger Date: 4/26/2024

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Plaintiff: Rosemary Mozuch Date: 4/26/2024

DocuSigned by:

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Plaintiff: Charles Mozuch Date: 4/26/2024

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Plaintiff: Lance Beck Date: 4/26/2024

DocuSigned by:

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Plaintiff: Clarissa Cohan Date: 4/26/2024

Plaintiff: DocuSigned by:
Harold Feezle
94EF686CC66348E...
 Rollerena Auto Sales LLC
 Date: 4/26/2024

By: Harold Feezle

Title: President

Plaintiff: DocuSigned by:
Harold Feezle
94EF686CC66348E...
 Harold Feezle
 Date: 4/26/2024

Plaintiff: DocuSigned by:
Allen Ryan
99298A2DD57B433...
 DalQan Holdings, LLC
 Date: 4/26/2024

By: Allen Ryan
 Title: In House Counsel

DS
AR

Plaintiff: DocuSigned by:
David Anderson
FF6309763FA9455...
 Valley View MPH LLC
 Date: 4/26/2024

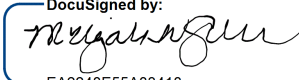
By: David Anderson

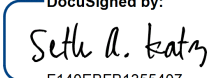
Title: Owner

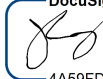
Plaintiff: DocuSigned by:
Jon Luke Affeltranger
9A4A911264FD4D3...
 Competition & Luxury Vehicle Club
 of Darlington, LLC
 Date: 4/26/2024

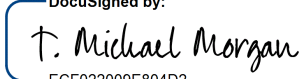
By: Jon Luke Affeltranger

Title: Owner

Class & Co-Lead Counsel: 
DocuSigned by: EA2248E55A83418... Date: 4/26/2024
M. Elizabeth Graham
GRANT & EISENHOFER P.A.

Class & Co-Lead Counsel: 
DocuSigned by: F140EBFB1355407... Date: 4/26/2024
Seth A. Katz
BURG SIMPSON ELDREDGE
HERSH & JARDINE, P.C.

Class & Co-Lead Counsel: 
DocuSigned by: 4A59FDCAE4FB4D1... Date: 4/26/2024
Jayne Conroy
SIMMONS HANLY CONROY LLC

Co-Lead Counsel: 
DocuSigned by: ECF022009E804D2... Date: 4/26/2024
T. Michael Morgan
MORGAN & MORGAN

Defendant: Jason Morris Date: 4/26/2024
Norfolk Southern Corporation

By: Jason Morris
Title: Vice President Law

Defendant: Jason Morris Date: 4/26/2024
Norfolk Southern Railway Company

By: Jason Morris
Title: Vice President Law

Defendants' Counsel: Alan E. Schoenfeld Date: 4/26/2024
Alan Schoenfeld
WILMER CUTLER PICKERING
HALE AND DORR LLP

Defendants' Counsel: Albinas J. Prizgintas Date: 4/26/2024
Albinas Prizgintas
WILMER CUTLER PICKERING
HALE AND DORR LLP

EXHIBIT A

Individual Claim Form

MUST BE FILED
ONLINE OR
POSTMARKED
NO LATER THAN
<<DATE>>

In re: East Palestine Train Derailment
United States District Court for the Northern
District of Ohio
Case No. 4:23-cv-00242

For Office Use
Only

INDIVIDUAL CLAIM FORM

CLASS MEMBER INFORMATION

Current Resident:

<<Address1>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<Zip+4>>

If you have moved since 2-3-23, provide name and current mailing address:

First Name MI Last Name

Address 1 Unit/Apartment #

Address 2

City State Zip

I. Direct Payment

All claimants must complete Section I. Please submit only one Claim Form per household.

➤ Physical address on February 3, 2023, if different than above (CANNOT BE A P.O. BOX):

Street Address

City State Zip

➤ Email address: _____ Telephone #: _____

➤ Did you ___ live, ___ work, or ___ own property within 20-miles of the derailment site ("Class Area") on February 3, 2023? **Please select all that apply.**

➤ Proof of residence/ownership/employment within 20-miles of the derailment site on February 3, 2023. Select an option and attach a copy of one of the following documents

showing your address **that covers February 2023** to this form (driver's license is not sufficient proof of residence):

- Gas Bill (attach a copy)
 - Electric Bill (attach a copy)
 - Other Utility Bill (attach a copy)
 - Pay Stub (attach a copy)
 - Other (such as lease or bank account statement) (describe and attach a copy):
-

A. Residents / Property Owners

Complete **only** if you lived or owned property in the Class Area as identified above.

- Number of people physically residing in your household on 2/3/23: Adults
 Children (under the age of 18)
- Number of adults physically residing in your household on 2/3/23 born before 2/3/1958:
- Were you evacuated/displaced from your residence? Yes No. If you answered "yes", please provide the dates and address(es) to which you were evacuated or stayed during your displacement:

- Total number of days you were displaced from your residence? days
- Date you permanently returned to your residence: / /
- Acreage of property you owned in within 20-miles of the derailment:
- Was your residence, property, and/or personal property physically damaged? Yes
 No
- If you answered "yes" to the previous question, select the applicable damage and provide itemized details regarding the type, cost, and extent of the damage to your residence, property, and/or personal property:

Type of Damage	Description of Damage (attach additional pages as necessary)
<input type="checkbox"/> Fire/water/smoke damage	
<input type="checkbox"/> Structural damage	
<input type="checkbox"/> Contamination	
<input type="checkbox"/> Other damage	

- **Claim for Extraordinary Loss or Damage.** If you believe you have experienced extraordinary losses or damages that are supported by dated documentation, you may submit a claim for additional compensation. Such a claim must itemize or list those losses or damages for evaluation by the Settlement Administrator. These claims will undergo detailed review by the Settlement Administrator and must be accompanied at the time of submission by all dated documentary evidence. **Submission of a claim for extraordinary loss or damage will significantly delay payment of your award, if any, and there is no guarantee that your claim will be approved or that you will receive an award greater than you might otherwise receive under the Direct Payment process (attach additional pages as necessary).**

B. Employees

Complete *only* if you worked within 20-miles of the derailment as identified above.

- Name and contact information of employer on 2/3/23:

- Average daily salary or wage as of 2/3/23: _____
- Total number of days missed from work on or after 2/3/23 as a result of the derailment:
_____ days
- Why the derailment resulted in missed time from work:

Complete the items in Section II ONLY IF you were physically located within 10 miles of the derailment site between 2/3/23 - 4/26/24 and are seeking a Personal Injury Payment. If you are not making a claim in Section II, skip to Section III.

II. Personal Injury Payment

*For those who choose to participate, a Personal Injury Payment is available only to eligible Settlement Class Members who were physically located within 10 miles of the derailment site between 2/3/23 - 4/26/24. If you are eligible, it is your decision whether to seek this Personal Injury Payment, and **you are not required to participate to otherwise receive any other benefits under the Settlement.** Those choosing to submit a Personal Injury Claim Form **must also** return a separately completed Individual Settlement and Final Agreement to Release Personal Injury Claims (“Personal Injury*

Release") for **each household member** claimed below. A copy of the Personal Injury Release is included with this Claim Form, and additional copies may be obtained by visiting the East Palestine Settlement Center or website www.EastPalestineTrainSettlement.com.

Head of Household (Person Completing this Claim Form)

- Name of participating household member: _____
- Date of birth of participating household member: _____
- Physical location between 2/3/23 – 2/8/23, if different from physical address above:

- Do you believe you were exposed to chemicals as a result of the derailment? __ Yes __ No
This is not a condition for participation in the Personal Injury Payment.
- Did you suffer physical symptoms or injuries caused by the derailment? __ Yes __ No
This is not a condition for participation in the Personal Injury Payment.
- If you answered “yes” to the previous question, describe the applicable symptoms or injuries and identify whether you sought medical treatment by a medical professional and/or were formally diagnosed by a medical professional (attach additional pages as necessary). If you leave this question blank, the Settlement Administrator will construe your answer as “no.”:

Description of Symptoms or Injuries	Medical Treatment by Medical Professional (Y/N)	Formal Diagnosis by Medical Professional (Y/N)

- **Claim for Extraordinary Injury.** If you believe you have experienced extraordinary injuries that are supported by dated documentation, you may submit a claim for additional compensation. Such a claim must itemize or list those injuries for evaluation by the Settlement Administrator. These claims will undergo detailed review by the Settlement Administrator and must be accompanied at the time of submission by all dated documentary evidence. **Submission of a claim for extraordinary injury will significantly delay payment of your award, if any, and there is no guarantee that your claim will be approved or that you will receive an award greater than you might otherwise receive under the Personal Injury Payment process (attach additional pages as necessary).**
- **Attach a copy of a valid, government issued identification for this household member.**
- Household Member No. 2**
- Name of participating household member: _____
- Date of birth of participating household member: _____

- Physical location between 2/3/23 – 2/8/23, if different from physical address above:

- Do you believe you were exposed to chemicals as a result of the derailment? Yes No
This is not a condition for participation in the Personal Injury Payment.

- Did you suffer physical symptoms or injuries caused by the derailment? Yes No
This is not a condition for participation in the Personal Injury Payment.

- If you answered “yes” to the previous question, describe the applicable symptoms or injuries and identify whether you sought medical treatment by a medical professional and/or were formally diagnosed by a medical professional (attach additional pages as necessary). If you leave this question blank, the Settlement Administrator will construe your answer as “no.”:

Description of Symptoms or Injuries	Medical Treatment by Medical Professional (Y/N)	Formal Diagnosis by Medical Professional (Y/N)

- **If this household member is over the age of 16, attach a copy of a valid, government issued identification.**

Household Member No. 3

- Name of participating household member: _____

- Date of birth of participating household member: _____

- Physical location between 2/3/23 – 2/8/23, if different from physical address above:

- Do you believe you were exposed to chemicals as a result of the derailment? Yes No
This is not a condition for participation in the Personal Injury Payment.

- Did you suffer physical symptoms or injuries caused by the derailment? Yes No
This is not a condition for participation in the Personal Injury Payment.

- If you answered “yes” to the previous question, describe the applicable symptoms or injuries and identify whether you sought medical treatment by a medical professional and/or were formally diagnosed by a medical professional (attach additional pages as necessary). If you leave this question blank, the Settlement Administrator will construe your answer as “no.”:

Description of Symptoms or Injuries	Medical Treatment by Medical Professional (Y/N)	Formal Diagnosis by Medical Professional (Y/N)

- **If this household member is over the age of 16, attach a copy of a valid, government issued identification.**

Household Member No. 4

- Name of participating household member: _____
- Date of birth of participating household member: _____
- Physical location between 2/3/23 - 2/8/23, if different from physical address above:

- Do you believe you were exposed to chemicals as a result of the derailment? Yes No
This is not a condition for participation in the Personal Injury Payment.
- Did you suffer physical symptoms or injuries caused by the derailment? Yes No
This is not a condition for participation in the Personal Injury Payment.
- If you answered “yes” to the previous question, describe the applicable symptoms or injuries and identify whether you sought medical treatment by a medical professional and/or were formally diagnosed by a medical professional (attach additional pages as necessary). If you leave this question blank, the Settlement Administrator will construe your answer as “no.”:

Description of Symptoms or Injuries	Medical Treatment by Medical Professional (Y/N)	Formal Diagnosis by Medical Professional (Y/N)

- **If this household member is over the age of 16, attach a copy of a valid, government issued identification.**

Household Member No. 5

- Name of participating household member: _____

- Date of birth of participating household member: _____
- Physical location between 2/3/23 - 2/8/23, if different from physical address above:

- Do you believe you were exposed to chemicals as a result of the derailment? __ Yes __ No
This is not a condition for participation in the Personal Injury Payment.
- Did you suffer physical symptoms or injuries caused by the derailment? __ Yes __ No
This is not a condition for participation in the Personal Injury Payment.
- If you answered “yes” to the previous question, describe the applicable symptoms or injuries and identify whether you sought medical treatment by a medical professional and/or were formally diagnosed by a medical professional (attach additional pages as necessary). If you leave this question blank, the Settlement Administrator will construe your answer as “no.”:

Description of Symptoms or Injuries	Medical Treatment by Medical Professional (Y/N)	Formal Diagnosis by Medical Professional (Y/N)

- **If this household member is over the age of 16, attach a copy of a valid, government issued identification.**

III. Affirmation and Certification

All claimants must complete Section III.

By signing below and submitting this claim, I, on behalf of myself and the members of my household identified above, swear or affirm under penalty of perjury that neither myself nor any member of my household has been fully compensated for loss, damages, or injury incurred as a result of the February 3, 2023 derailment of Norfolk Southern Train 32N, including the February 6, 2023 “vent and burn” (the “Incident”) by any prior insurance payments, and that all information contained herein and all information submitted to the Settlement Administrator is truthful and accurate.

Signature of Claimant

____/____/_____
Date

EXHIBIT B

Business Loss Claim Form



3106400000000

MUST BE FILED
ONLINE OR
POSTMARKED
NO LATER THAN
<<DATE>>

In re: East Palestine Train Derailment
United States District Court for the Northern
District of Ohio
Case No. 4:23-cv-00242

For Office Use
Only

BUSINESS LOSS CLAIM FORM

CLASS MEMBER INFORMATION

<<FirstName>> <<LastName>>

<<Address1>>

<<Address2>>

<<City>>, <<ST>> <<Zip>>-<<Zip4>>

Make address changes below:

Address 1

Address 2

City

State

Zip

I. Complete the Following If Represented by an Attorney:

Attorney Name

Law Firm

Address

City

ST

Zip

II. Claim for Actual Net Business Loss:

If you have suffered actual net business losses arising from the February 3, 2023 derailment of Norfolk Southern Train 32N, including the February 6, 2023 "vent and burn" (the "Incident"), that have not been compensated by Norfolk Southern, you have the right to submit a claim for those losses for evaluation by the Settlement Administrator. The Claims will undergo detailed review by the Settlement Administrator (and must be supported by substantial evidence) and will take several additional months to review. *There is no guarantee that your Claim will be approved.*



TBD



CF



Page 1 of 3

State the basis for your claim of uncompensated or outstanding actual net business losses (attach additional pages as necessary), including your Employer Identification Number and a copy of any city, county and/or state licenses for your business:

Identify and attach all forms of proof submitted to support your claim of uncompensated or outstanding actual net business losses (attach additional pages as necessary). **You must include, at a minimum, your business' federal tax returns for 2022 and 2023, or if your business is not incorporated or does not otherwise have an independent legal status or identify, your personal tax returns for 2022 and 2023:**

Have you received compensation directly from Norfolk Southern? ___ Yes or ___ No

- o If yes, how much compensation did you receive and for which losses (attach additional pages as necessary)?

Compensation:	Description of loss:
\$_____.	
\$_____.	
\$_____.	
\$_____.	
\$_____.	

Have you made any claim for insurance? ___ Yes or ___ No

- o If yes, identify your insurer, and how much you received from insurance and for which losses (attach additional pages as necessary)? Please note that you have an ongoing obligation to provide updates on any insurance payments received, if applicable.



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Page 2 of 3

Insurer Name and Contact Information



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Page 3 of 3

Compensation:	Description of loss:
\$ _____.	
\$ _____.	
\$ _____.	
\$ _____.	
\$ _____.	

III. Affirmation and Certification

By signing below and submitting this claim, I swear or affirm under penalty of perjury that I have valid, legal authority to act on behalf of the above-referenced business, that the above-referenced business has not been fully compensated for any losses incurred as a result of the Incident by prior insurance payments, and that all information contained herein and all information submitted to the Settlement Administrator is truthful and accurate.

Signature of Claimant

___/___/___
Date

Title



31064



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Page 4 of 3

EXHIBIT C

Notice (Short Form)

If you were affected by the derailment of Norfolk Southern Train 32N on February 3, 2023, including the February 6, 2023 “vent and burn”, please read this summary notice *carefully* – your rights are affected

What is this notice about?

A proposed Settlement has been reached in a class action lawsuit concerning the derailment of Norfolk Southern Train 32N in East Palestine, Ohio, on February 3, 2023, including the February 6, 2023 “vent and burn” (the “Incident”). Plaintiffs claim that Norfolk Southern caused the Incident and, as a result, Plaintiffs claim they suffered certain economic and non-economic losses, including real property damage, personal property damage, displacement expenses, increased risk of diseases, lost wages, loss of business income, emotional distress, disruption, inconvenience, loss of use and enjoyment of property, and loss of goodwill. Norfolk Southern denies the claims asserted in the lawsuit and denies any wrongdoing, including that it violated any law.

Who is a Class Member?

If you lived, worked, owned property, or owned or operated a business within 20 miles of the derailment site in East Palestine, Ohio, from February 3, 2023, to April 26, 2024, you are a Class Member. A list of eligible addresses can be found at the website below.

What does the Settlement provide?

The Settlement provides a \$600 million Settlement Fund to make cash payments to eligible Class Members and for Court-approved payments for settlement administration, attorneys’ fees and expenses, and class representative awards. Filing a claim will allow Class Members to receive money under the Settlement, if it is approved by the Court. Awards from the Settlement Fund will be based on a Court-approved formula that takes into account a number of factors, including geographic location, household size, and length of displacement. Individual Class Members who were physically present within 10 miles from the derailment site and decide to participate may also receive additional Court-approved payments in exchange for releases of past, present, and future personal injury claims arising out of the Incident. Class Members that are businesses may apply for itemized compensation of actual net business losses. You do not need to hire a lawyer to participate in the Settlement.

How can I receive a payment?

The only way to qualify for a payment is to timely submit a Claim Form. Notices with Claim Forms attached have been mailed to Class Members. You can also obtain a claim form on the website below, by calling 1-833-425-3400, or by writing to:

In re: East Palestine Train Derailment Settlement
c/o Kroll Settlement Administration LLC
PO Box 5324
New York, NY 10150-5324

The deadline to file your Claim Form is August 22, 2024.

What are my rights?

You may exclude yourself from being bound by the decisions the Court makes concerning the Settlement by timely filing a valid notice of exclusion (“opt out”) with the Settlement Administrator. Alternatively, Class Members who wish to participate in the Settlement but do not like all or part of the Settlement terms can object to the Settlement. To object, you must send a letter to the Settlement Administrator explaining the specific factual and legal reasons why the Settlement should not be approved. The Notice and the website contain specific instructions you must follow to opt out or object. **The deadline to file an opt out or objection is June 24, 2024.** If you do nothing, you will be bound by the terms of the Settlement, but will not receive any payment from the Settlement.

The Court will hold a Final Approval Hearing on September 25, 2024, at 10:00 a.m. at the Thomas D. Lambros Federal Building and United States Courthouse, 125 Market Street, Youngstown, Ohio 44503 to: (a) consider whether the proposed settlement is fair, reasonable, and adequate; and (b) decide the plaintiffs’ lawyers’ request for fees of up to 27% of the gross settlement value (\$162,000,000), costs of notice and administration and case-related expenses of up to 3% of the gross settlement value (\$18,000,000), and a \$15,000 award to each of the class representatives. The motion for attorneys’ fees and costs will be posted on the website after it is filed. You may appear at the hearing, but you are not required to and you may hire an attorney to appear for you, at your own expense.

This is only a summary.

For additional information including the Claim Form, the Settlement Agreement, how to file a claim, opt out or objection, and Frequently Asked Questions call 1-833-425-3400, or visit www.EastPalestineTrainSettlement.com.

EXHIBIT D

Notice (Long Form)

United States District Court for the Northern District of Ohio

If you lived, worked, owned property or owned or operated a business within 20 miles of the derailment site of Norfolk Southern Train 32N in East Palestine, Ohio, from February 3, 2023 to April 26, 2024, you could receive payment from a class action settlement.

This Notice is authorized by the United States District Court for the Northern District of Ohio.

This is not a solicitation from a lawyer, nor do you need to hire a lawyer to participate.

- A number of residents, property owners, and businesses – the “Plaintiffs” – within 20 miles of the derailment site of Norfolk Southern Train 32N in East Palestine, Ohio (the “Class Area”) sued, among others, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively “Norfolk Southern”) for losses they suffered from the February 3, 2023 derailment of Norfolk Southern Train 32N, including the “vent and burn” of five railcars on February 6, 2023 (collectively, the “Incident”). Plaintiffs and Norfolk Southern have reached a Class Action Settlement (the “Settlement”).
- The Settlement creates a \$600 million Settlement Fund. After Court-approved costs and fees, including attorneys’ and experts’ fees, the remainder of the Settlement Fund will be used to compensate people and businesses covered by the Settlement, called “Settlement Class Members.”
- You are a Settlement Class Member if you lived, worked, owned property, or owned or operated a business within 20 miles of the derailment site from February 3, 2023 to April 26, 2024. As a Settlement Class Member, you may be entitled to compensation from the Settlement Fund. The terms of the Settlement are described more fully below.
- **Your legal rights are affected whether you act or not. Please read this Notice carefully.**

Your Legal Rights and Options in this Settlement	
File a Claim for Payment by August 22, 2024	Filing the Claim Form(s) included with this Notice, and available at www.EastPalestineTrainSettlement.com , will allow you to receive money under the Settlement, if it is approved by the Court.
File a Notice of Exclusion by June 24, 2024	<p>If you do not wish to participate in the Settlement, you may exclude yourself or “opt out” of the Settlement Class by writing to the Settlement Administrator. As an “opt out”, you will have no rights to payments or benefits as a Settlement Class Member under the Settlement, and you will keep the right, if any, to sue Norfolk Southern.</p> <p>You do not need to, and should not, file a Notice of Exclusion if you want to participate in the Settlement, but do not want to receive a Personal Injury Payment, as described below.</p>

Object to the Settlement by June 24, 2024	If you do not think the Settlement is fair, you may write to the Settlement Administrator to object to its approval by the Court.
Do Nothing	If you do nothing, you will get no payment or benefits from the Settlement and you will give up certain rights. You will be bound by the terms of the Settlement, but will not receive any payment from the Settlement. However, by doing nothing you will not be giving up your claim, if any, for past, present or future personal injuries you have suffered.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Please be patient.

Questions? Read on and visit www.EastPalestineTrainSettlement.com

PARA UNA NOTIFICACIÓN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

General Information

1. What is this lawsuit about?

This class action lawsuit seeks to recover money for the people and businesses harmed by the Incident. The Honorable Benita Y. Pearson of the United States District Court for the Northern District of Ohio is the judge overseeing this case, called *In re: East Palestine Train Derailment*, Case No. 4:23-cv-00242. In the lawsuit, the Plaintiffs allege that Norfolk Southern (among others) caused the Incident and, as a result, the Class suffered real property damage, personal property damage, displacement expenses, lost wages, loss of business income, diminution of property value, increased risk of disease, emotional distress, disruption, inconvenience, loss of use and enjoyment of property and loss of goodwill. Norfolk Southern denies the claims asserted in the lawsuit and denies any wrongdoing, including that it violated any law.

2. Who are the lawyers representing the Settlement Class?

The Court appointed the following lawyers to represent you and the other Settlement Class Members: Seth A. Katz of Burg Simpson Eldredge Hersh & Jardine, P.C.; M. Elizabeth Graham of Grant & Eisenhofer P.A.; and Jayne Conroy of Simmons Hanly Conroy. The Court also appointed T. Michael Morgan of Morgan & Morgan, P.A. as a Co-Lead Counsel.

These firms are called Co-Lead and Class Counsel. You will not be charged individually for their services; if approved by the Court, Co-Lead and Class Counsel will be compensated from the Settlement. A copy of Co-Lead and Class Counsel's Motion for Attorneys' Fees and Expenses will be available 13 days before September 25, 2024.

Who is in the Class

3. Am I part of the Settlement Class?

You are a Settlement Class Member if you resided, worked, owned property, or owned or operated a business within 20-miles of the Derailment Site from February 3, 2023 to April 26, 2024. You are excluded from the Settlement Class if you are a director or duly elected and approved officer of Norfolk Southern, or any of its parents, subsidiaries, or affiliates; Norfolk Southern employees, and contractors of Norfolk Southern and their employees, who were specifically sent by Norfolk Southern to the area in and around the Derailment Site to respond to the Incident and do not otherwise fall within the definition of Settlement Class; Norfolk Southern's Counsel; Class Counsel; a government, political subdivision, public entity, or public agency; and the judge presiding over this Action and the judge's staff. If you are unsure whether you are part of the Settlement Class, a list of eligible addresses within 20-miles of the derailment site is available on the website www.EastPalestineTrainSettlement.com.

Questions? Call Toll-Free 1-833-425-3400 or visit www.EastPalestineTrainSettlement.com

The Settlement Benefits

4. What does the Settlement provide?

The Settlement creates a \$600 million Settlement Fund to make: (1) cash payments to Settlement Class Members; and (2) Court-approved payments for Settlement administration, attorneys' fees and expenses, and Class Representative Awards. Class Counsel will request attorneys' fees of up to 27% of the Settlement Fund (\$162,000,000), settlement notice and administration costs and attorneys' costs and expenses up to 3% of the Fund (\$18,000,000), and a \$15,000 award to each of the Class Representatives. The Court may award less than these amounts.

To be eligible for a monetary award from the Settlement, Settlement Class Members must submit a Claim Form(s) (*see* Question 6 below). The amount each individual Settlement Class Member will receive will be determined through a Court-supervised claims process. Not all Settlement Class Members will receive the same amount. You do not need to hire a lawyer to participate in the Settlement.

This Settlement is separate from Norfolk Southern's ongoing remediation of East Palestine and the surrounding area, as well as claims made by state and federal agencies for, among other things, environmental clean-up.

5. What payments can I get from the Settlement?

After deductions for approved attorneys' fees and costs, Class Representative Awards, and Settlement Notice and Administration costs, the remaining funds will be distributed to Settlement Class Members in the following ways depending on category: (1) Court-approved direct payments to individuals ("Direct Payments"); or (2) itemized compensation for actual net business losses ("Business Loss Payments"). In addition, for those Eligible Settlement Class Members within 10 miles of the derailment site who **voluntarily** choose to participate, Settlement Class Members may also submit claims for personal injury payments ("Personal Injury Payments" for which they may receive additional Court-approved lump sum payments in exchange for releases of past, present, and future personal injury claims arising out of the Incident. The payment options provided by the Settlement are detailed below and more information is available on the website www.EastPalestineTrainSettlement.com.

Direct Payments

Individual Settlement Class Member households can receive a lump sum Direct Payment from the Settlement Fund based on a Court-approved formula that takes into account a number of factors, including geographic location, household size, acreage, length of displacement, and the nature of property damage, if any. Using these factors, the Settlement Administrator will base your payment on how severely your life was disrupted and any resulting increased risk of future disease. Below are the **potential, average** lump sum payment amounts based on proximity to East Palestine, Ohio, for households that participate in the Settlement:

0-2 Miles	Approximately \$70,000
2-4 Miles	Approximately \$45,000
4-7 Miles	Approximately \$30,000
7-10 Miles	Approximately \$15,000
10-15 Miles	Approximately \$500
15-20 Miles	Approximately \$250

In order to receive a Direct Payment, you must submit a Claim Form. Direct payments will be reduced by any payment you already received from Norfolk Southern. If, after everyone sends in Claim Forms, the compensation claims total more than \$600 million, net of all other expenses under the Settlement, the payments will be reduced. If the compensation claims are less than \$600 million net of costs, the payments will be increased and/or additional payments will be made on a pro rata basis.

Extraordinary Loss or Damage Payments

Individual Settlement Class Members who they have extraordinary claims for uncompensated losses or damages may also submit claims for additional compensation. Claims for extraordinary losses or damages must be supported by dated documentation. **The Settlement Administrator will conduct a detailed review of these claims, which will**

Questions? Call Toll-Free 1-833-425-3400 or visit www.EastPalestineTrainSettlement.com

significantly delay the payment of the Direct Payment, including any additional payment for extraordinary loss or damage.

Personal Injury Payments

Settlement Class Members who were physically located within 10 miles of the derailment site may also receive an additional lump sum Personal Injury Payments (“Eligible Personal Injury Settlement Class Members”). In evaluating claims for Personal Injury Payment, the Settlement Administrator will use objective, Court-approved criteria like the nature of any physical injury and resulting medical treatment, if any, to allocate funds to each Eligible Personal Injury Settlement Class Member. Settlement Class Members who choose to submit a claim for personal injury will be required to separately execute releases of all past, present, or future personal injury claims, known and unknown, related to or arising from the Incident (“Personal Injury Release”). To the extent an Eligible Personal Injury Settlement Class Member is a minor (under 18), additional terms apply, including that any Personal Injury Payments will only be made in accordance with applicable court orders.

Submission of a personal injury claim is strictly voluntary; you are not required to submit a personal injury claim to otherwise receive any other benefits under the Settlement, if eligible. Additional information about the Personal Injury Payments, including an example of the required release, is available on the website www.EastPalestineTrainSettlement.com. Below are the **potential, average** payment amounts based on proximity to East Palestine, Ohio, for individuals that submit a claim for Personal Injury Payment:

0-2 Miles	Approximately \$10,000
2-5 Miles	Approximately \$5,000
5-10 Miles	Approximately \$1,000

Extraordinary Injury Payments

Eligible Personal Injury Settlement Class Members who believe they have extraordinary claims for uncompensated injury may also submit claims for additional compensation. Claims for extraordinary injury must be submitted on an individual basis and must include itemized injuries supported by dated documentation. **The Settlement Administrator will conduct a detailed review of these claims, which will significantly delay payment of the Personal Injury Payment, including any additional payment for extraordinary injury.**

Actual Net Business Loss Payments

Settlement Class Members that are businesses may only submit an itemized compensation claim by submitting a Claim Form. The Settlement Administrator will conduct a detailed review of itemized compensation claims, allocating funds for the actual net business losses caused by the Incident. Settlement Class Members that are businesses will have their potential award, if any, reduced by the amount of any payment already received from Norfolk Southern or other sources.

If the Settlement is approved, whether you submit a claim for Direct Payments, Actual Net Business Loss Payments, object, or do nothing, you will not be able to sue, continue to sue, or be part of any other lawsuit against Norfolk Southern relating to the claims that were or could have been asserted in the First Amended Master Consolidated Class Action Complaint, a copy of which is available on the website www.EastPalestineTrainSettlement.com.

How to Receive a Payment

6. How can I receive a payment?

To qualify for payment, you must timely submit a Claim Form. Read the instructions carefully. You can submit the completed Claim Form by mail to In re: East Palestine Train Derailment Settlement, c/o Kroll Settlement Administration, LLC, PO Box 5324, New York, NY 10150-5324, online at www.EastPalestineTrainSettlement.com or in person at the East Palestine Settlement Center located at 191 East Rebecca Street, East Palestine, Ohio 44413.

Questions? Call Toll-Free 1-833-425-3400 or visit www.EastPalestineTrainSettlement.com

The completed Claim Form must be submitted by no later than August 22, 2024. If the Court approves the Settlement, payments should start to go out in or around December 2024. But there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement. Please be patient.

Excluding Yourself from the Settlement

7. How do I get out of the Settlement?

You may opt out of the Settlement by mailing an opt out request to the Settlement Administrator at:

In re: East Palestine Train Derailment Settlement
Attn: Exclusions
PO Box 5324
New York, NY 10150-5324

Settlement Class Members who desire to opt out of the Settlement must mail a written request to opt out stating that they seek exclusion from the Settlement and providing their: (1) name; (2) address; (3) telephone number; (4) e-mail address; (5) Claim ID, if applicable; and (6) information regarding their attorney, if any.

To be valid and effective, an original request to opt out must be signed by the Settlement Class Member, not by the Settlement Class Member's attorneys, if any, or anyone else. Mass or group opt-outs are not permitted, and each Settlement Class Member may only opt out on behalf of himself, herself or itself. Electronic signatures (other than DocuSign) are not valid and effective.

The opt-out request must be postmarked no later than June 24, 2024, or it will be denied as untimely and invalid.

8. What happens if I opt out?

If you submit a timely and valid request to opt out of the Settlement, you will not have any rights as a Settlement Class Member; you will not receive any payment or other benefits provided by the Settlement; you will not be able to object to the Settlement; and you will keep the right, if any, to sue Norfolk Southern for all claims arising out of the Incident.

Objecting to the Settlement

9. How do I object to the Settlement?

If you are a Settlement Class Member who wishes to participate in the Settlement but believes the Settlement terms are unfair, you can object to the Settlement. To object, you must send a letter to the Settlement Administrator explaining why you think the Court should not approve the Settlement. This letter must say that you object to the In re: East Palestine Train Derailment Settlement, and include your: (1) name; (2) address at which you lived, worked or owned a property or business from February 3, 2023 to the present; (3) email address; (4) telephone number; (5) signature; (6) documentation establishing your status as a Settlement Class Member; (7) the specific factual and legal reasons why the Settlement should not be approved; (8) whether you will appear or testify at the Final Approval Hearing; and (9) the name and contact information of your attorney, if any, and any class action settlements your attorney has objected to in the last five years. This letter must be mailed to the Settlement Administrator at In re: East Palestine Train Derailment Settlement, c/o Kroll Settlement Administration, LLC, PO Box 5324, New York, NY 10150-5324, postmarked by no later than June 24, 2024.

You do not need to hire an attorney to submit an objection on your behalf; however, if you choose to do so at your own expense, that attorney must: (1) file a notice of appearance with the Court by no later than June 24, 2024; (2) file a sworn declaration attesting to their representation of the Settlement Class Member on whose behalf the objection is being filed; and (3) satisfy on behalf of the Settlement Class Member all substantive requirements for objection described in this Question. Objections cannot be made on behalf of multiple Settlement Class Members; each Settlement Class Member who wishes to object must submit an individual objection as described above. While the Court will consider your views, you cannot ask the Court to change the Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

Unless the Court directs otherwise, any Settlement Class Member who fails to fully comply with the requirements for objecting will not be able to object to the Settlement, will not be heard on any such objection and/or will not be able to appeal from the Court's disposition of this Settlement. Objectors must still comply with the deadlines for filing claims if they wish to participate in the Settlement.

10. What is the difference between objecting and opting out?

Objecting is telling the Court you do not like something about the Settlement and it should not be approved for any of the Settlement Class Members. You can object to the Settlement only if you do not exclude yourself from the Settlement. You can still get the Settlement benefits if it is approved over your objection.

Excluding yourself from the Settlement is opting out and telling the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it no longer affects you.

You cannot opt out of the Settlement and object to it.

If You Do Nothing

11. What happens if I do nothing at all?

If you take no action at all, you will get no Settlement payment or benefit, but you will have given up your right to start a lawsuit, continue a lawsuit or be part of any other lawsuit against Norfolk Southern relating to the Incident. **However, any claim you may have for personal injury arising out of the Incident against Norfolk Southern will not be affected even if you do nothing.**

The Final Approval Hearing

12. When will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on September 25, 2024, at 10:00 a.m. at the Thomas D. Lambros Federal Building and United States Courthouse, 125 Market Street, Youngstown, Ohio 44503. At this hearing, the Court will consider whether the Settlement Agreement and proposed Settlement is a fair, reasonable and adequate resolution of the lawsuit. If there are timely and properly submitted objections, the Court will consider them and any response Plaintiffs and Norfolk Southern may have to those objections. The Court may listen to people who have asked to speak at the hearing. Unless you have objected to the Settlement and asked to speak at the Final Approval Hearing, it is not necessary for you to attend to receive a Settlement payment. At or after the hearing, the Court will decide whether to approve the Settlement. The Court will also decide how much Class Counsel and Named Plaintiffs will be paid from the Settlement Fund, and will make an award for approved litigation, notice and settlement administration costs. If the Court ultimately does not approve the Settlement, or if the Court's approval is reversed on appeal or the Settlement Agreement is terminated, then the Settlement will become null and void. If the Settlement becomes null and void, the case will proceed as though the Settlement Agreement was never entered into.

Getting More Information

13. Are more details about the Settlement available?

Yes. This Notice simply summarizes the proposed Settlement. The specific details are in the Settlement Agreement and other case documents. You can get a copy of these and other documents at www.EastPalestineTrainSettlement.com, by calling 1-833-425-3400 or by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.ohnd.uscourts.gov>.

All current dates and deadlines are available on the website, although dates may be subject to change with approval of the Court. You may also contact the Settlement Administrator by phone at 1-833-425-3400 or email at info@EastPalestineTrainSettlement.com. Do not contact Class Counsel or the Court to request any additional information.

EXHIBIT E

Personal Injury Release

East Palestine Train Derailment

Important Information About the Attached Individual Settlement and Final Agreement to Release Personal Injury Claims

You have the right to consult with Class Counsel, or an attorney of your own choosing, before signing a release of legal rights.

The attached Individual Settlement and Final Agreement to Release Personal Injury Claims (“Personal Injury Release”) is a binding legal document. By signing this document, in exchange for a Personal Injury Payment, you are forever waiving and releasing all Personal Injury Claims that you may have against Norfolk Southern Railway Company and Norfolk Southern Corporation (collectively “the Company”) or any other Released Party in connection with the February 3, 2023 derailment of Norfolk Southern train 32N in East Palestine, Ohio, including without limitation the February 6, 2023 controlled release (also referred to as the vent and burn) of hazardous materials contained in certain derailed railcars and the chemical release, fire, emergency response, clean-up, remediation, shelter-in-place and evacuation in and around East Palestine, Ohio following the February 3, 2023 train derailment and February 6, 2023 controlled release (all collectively, “the Incident”).

By signing the attached Personal Injury Release, you are forever giving up and discharging any rights that you may have for any Personal Injury Claims arising out of, due to, resulting from, or relating in any way to, directly or indirectly, the Incident even if you are not currently aware of any such Personal Injury Claims and even if any such Personal Injury Claims arise in the future or do not manifest themselves until the future.

By signing the attached Personal Injury Release, you acknowledge that you have read and understand the terms of the Personal Injury Release, including the capitalized defined terms referenced therein, and that you execute the Personal Injury Release voluntarily and without being pressured or influenced by, and without relying upon, any statement or representation made by any person acting on behalf of the Company.

The Personal Injury Payment that you are eligible for arises under the putative class action *In re: East Palestine Train Derailment*, No. 4:23-CV-00242, pending in the United States District Court for the Northern District of Ohio. A class action settlement has been proposed in that case, but the Court has not yet given final approval to that proposed class action settlement.

- **No Payment Until Final Approval.** If you decide to sign the attached Personal Injury Release, you will not receive any Personal Injury Payment unless and until the Court issues its final order approving the proposed class action settlement.
- **Payment And Personal Injury Release Effective Regardless Of Any Appeals.** But if the Court does grant final approval, this Personal Injury Release will become immediately effective (or, if you are a minor, upon completion of any necessary minor approval process), and your determined Personal Injury Payment will be distributed, regardless of any appeals of the proposed class action settlement.

It is possible that an appellate court could modify or reverse any final approval of the proposed class action settlement. Moreover, it is possible that the terms of the proposed class action settlement may change in the future as a result of further legal proceedings. **By signing this Personal Injury Release, however, you are forever waiving and releasing all past, present, or future Personal Injury Claims, known and unknown, arising out of, due to, resulting from, or relating in any way to, directly or indirectly, the Incident regardless of the outcome or resolution of the proposed class action settlement in *In re: East Palestine Train Derailment*, No. 4:23-CV-00242 (N.D. Ohio).**

ACKNOWLEDGMENT

I acknowledge that I have read and understand the information above. I agree to accept the payment as a final settlement of all past, present, or future Personal Injury Claims, known and unknown, related to or arising from the Incident.

Printed Name

Signature

Date

Address

Phone Number

Email Address

**INDIVIDUAL SETTLEMENT AND FINAL AGREEMENT TO
RELEASE PERSONAL INJURY CLAIMS**

THIS INDIVIDUAL SETTLEMENT AND FINAL AGREEMENT TO RELEASE PERSONAL INJURY CLAIMS (“Personal Injury Release”) is made and entered into this ___ day of _____ 2024, by and between _____ [Name] (“Releasor”), and Norfolk Southern Railway Company and Norfolk Southern Corporation (collectively, “Company,” and together with Releasor, the “Parties”).

Capitalized terms herein have the definition provided in the Class Action Settlement Agreement, dated April 26, 2024, except as otherwise defined in this Personal Injury Release.

WITNESSETH THAT:

WHEREAS, Releasor is a Settlement Class Member in *In re: East Palestine Train Derailment*, No. 4:23-CV-00242, pending in the United States District Court for the Northern District of Ohio;

WHEREAS, the Company and the Class Representatives in that Action, individually and on behalf of the Settlement Class, have agreed to settle that Action by entering into a Settlement Agreement, dated April 26, 2024;

WHEREAS, in addition to any compensation awarded to Releasor through his/her/their membership in the Settlement Class by submission of a Claim, Releasor has chosen to enter into this Personal Injury Release in order to receive the benefit of this Personal Injury Release, namely a Personal Injury Payment;

WHEREAS, Releasor affirms that he/she/they was physically located within 10 miles of the Derailment Site at any time between the date of the Incident (defined below) and the Settlement Date; and

WHEREAS, the Parties hereto desire to enter into this Personal Injury Release relating to the release of Personal Injury Claims (as defined in Paragraph 5 below) that Releasor may have against the Released Parties (as defined in Paragraph 11 below) arising out of, due to, resulting from, or relating in any way to, directly or indirectly, the Incident, which is defined to mean the February 3, 2023 derailment of Norfolk Southern train 32N in East Palestine, Ohio, including without limitation the February 6, 2023 controlled release (also referred to as the vent and burn) of hazardous materials contained in certain derailed railcars and the chemical release, fire, emergency response, clean-up, remediation, shelter-in-place and evacuation in

and around East Palestine, Ohio following the February 3, 2023 train derailment and February 6, 2023 controlled release.

NOW, THEREFORE, in consideration of the Personal Injury Payment to be provided to Releasor, the receipt and sufficiency of which is hereby mutually acknowledged by the Parties, the Parties agree as follows:

1. Releasor shall receive a Personal Injury Payment from the Personal Injury Settlement Fund, with the amount of the Personal Injury Payment to be determined by the Settlement Administrator and Class Counsel, and pursuant to the distribution plan described in Section XIII.C.3 of the Settlement Agreement.
2. In entering into this Release, Releasor understands that the following table represents the **potential, average** payment amounts based on proximity to the Derailment Site, for individuals seeking a Personal Injury Payment. Releasor understands that his/her/their payment could be more or less depending on the determination of the Settlement Administrator and Class Counsel.

Potential, Average Personal Injury Payments

0-2 Miles	Approximately \$10,000
2-5 Miles	Approximately \$5,000
5-10 Miles	Approximately \$1,000

3. This Personal Injury Release shall become effective upon issuance of the Court's order finally approving the Settlement—or, if Releasor is a minor, upon the completion by Class Counsel of all necessary steps to secure valid and legally enforceable releases for minors.
4. This Personal Injury Release shall remain effective:
 - A. regardless of whether the Settlement Agreement is ever modified or reversed on any appeal by any court; and
 - B. regardless of any appeals or court decisions relating in any way to the liability of the Released Parties in any current or future litigation.

Capitalized terms in this Personal Injury Release defined by reference to the Settlement Agreement shall continue to have their defined meaning in all events, regardless of whether the foregoing circumstances described in Paragraph 4.A or 4.B occur.

5. Releasor, for himself/herself and his/her heirs, parents, beneficiaries, administrators, executors, successors, assigns, agents, principals, representatives, subrogees, and subrogors, hereby unconditionally, absolutely, and irrevocably fully and forever releases, acquits, covenants not to sue, and discharges the Released Parties from any and all past, present, or future Personal Injury Claims, defined to mean claims, rights, legal or administrative complaints, demands, suits, liability (including all direct and/or indirect liability), damages, losses, costs, debts, actions, and causes of action (in law or equity), or expenses of any kind whatsoever, known or unknown, that have been or could have been brought in connection with:

- (a) Past, present, or future personal injury or bodily injury, and any progression and/or exacerbation of personal injury or bodily injury, of whatsoever kind or nature, where such injury, progression, and/or exacerbation in whole or in part arose from, was due to, resulted from, or was related to, directly or indirectly, the Incident, or wrongful death and/or survival actions as a result of such injury, progression, and/or exacerbation; and/or
- (b) Loss of past, present, or future salary, wages, or other earnings, impairment of earning capacity, loss of service, ability or capacity, emotional or psychological distress, disease, illness, mental or physical pain or suffering, emotional or mental harm, anguish or loss of enjoyment of life, funeral, burial and estate administration expense, and any and all other injury, loss, damage, harm of whatsoever kind or nature growing out of, arising out of, or arising as a consequence of, whether in whole or in part, directly or indirectly, any personal injury or bodily injury, including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life, to another person, and any progression and/or exacerbation of personal injury or bodily injury to another person, of whatsoever kind or nature, where such injury, progression, and/or exacerbation in whole or in part arose from, was due to, resulted from, or was related to, directly or indirectly, the Incident, or wrongful death and/or survival actions as a result of such injury, progression, and/or exacerbation; and/or

- (c) Loss of support, services, consortium, companionship, society, or affection, or damage to familial relations arising out of any personal injury or bodily injury, including disease, mental or physical pain or suffering, emotional or mental harm, or anguish or loss of enjoyment of life, to another person, and any progression and/or exacerbation of personal injury or bodily injury to another person, of whatsoever kind or nature, where such injury, progression, and/or exacerbation in whole or in part arose from, was due to, resulted from, or was related to, directly or indirectly, the Incident, or wrongful death and/or survival actions as a result of such injury, progression, and/or exacerbation; and/or
- (d) Increased risk, possibility, or fear of suffering in the future from any disease, injury, illness, emotional or mental harm, condition, or death, in whole or in part arising out of, due to, resulting from, or relating in any way to, directly or indirectly, the Incident.

6. Releasor acknowledges and agrees that unknown consequences or progression of presently known injuries, diseases or illnesses may arise, develop, or be discovered in the future, including disabling conditions not now known to Releasor, and that future medical treatment, including surgery, may be necessary. Releasor understands that he/she/they may have suffered, or may in the future develop, injuries, diseases, illnesses, damages, and/or other harms that are presently unknown to Releasor as a result or consequence of the Incident as set forth above.

7. Releasor acknowledges and agrees that the consideration received under this Personal Injury Release constitutes full and complete consideration for the release and discharge of Personal Injury Claims as defined in Paragraph 5, including any and all past, present, or future claims, rights, legal or administrative complaints, demands, suits, liability (including all direct and/or indirect liability), damages, losses, costs, debts, actions, and causes of action (in law or equity), or expenses of any kind whatsoever, known or unknown, arising from or otherwise concerning such unknown or future complications or progression, including the effects and consequences thereof and regardless of whether Releasor enters into this Personal Injury Release based upon a misunderstanding of any fact or a misunderstanding of any applicable law.

8. Releasor understands and agrees that the signing of this Personal Injury Release prevents Releasor or any person or entity acting by or through Releasor from making and/or asserting any further claim, right, demand, suit, cost, debt, action and/or cause of action of any nature whatsoever against Released Parties, or

any of them, concerning the Incident as set forth above. Releasor further understands and agrees that making and/or asserting any further claim, right, demand, suit, cost, debt, action and/or cause of action of any nature whatsoever against Released Parties, or any of them, concerning the Incident as set forth above shall constitute a material breach of the Release and shall entitle the Company to recover the amount of the Personal Injury Payment as well as any attorneys' fees and expenses resulting therefrom.

9. Releasor understands and agrees that the signing of this Personal Injury Release shall be deemed an express waiver and relinquishment to the fullest extent permitted by law, of the provisions, rights, and benefits of Section 1542 of the California Civil Code (or any other analogous state or federal law), which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Releasor further understands and agrees that the signing of this Personal Injury Release shall be deemed an express waiver and relinquishment to the fullest extent permitted by law, of any and all provisions, rights and benefits conferred by any law of any state or territory of the United States, or principle of common law, or the law of any jurisdiction outside of the United States, which is similar, comparable, or equivalent to § 1542 of the California Civil Code. Releasor acknowledges that they may discover facts in addition to or different from those that they now know or believe to be true with respect to the subject matter of this release, but that it is their intention to finally and forever settle and release the Personal Injury Claims (as defined in Paragraph 5 above), notwithstanding any unknown claims they may have.

10. Releasor agrees to indemnify and hold harmless Released Parties, or any of them, for any and all losses, claims, causes of action, actions, liabilities, judgments, verdicts, awards or demands of any kind or nature, by any tortfeasor or alleged tortfeasor, or any other person or entity asserting any independent or derivative claim or right, whether by law, contract or otherwise, including, but not limited to, actions for contribution and/or indemnification, arising out of any of the matters released herein.

11. Released Parties means:

A. Norfolk Southern and any of its past or present parents, subsidiaries, affiliated companies, and corporations, and any of their past or present officers, directors, managers, employees, general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, agents, consultants, contractors, service providers, successors, or assigns;

B. OxyVinyls LP, GATX Corporation, General American Marks Company, Trinity Industries Leasing Company (collectively defined as the “Non-Settling Railcar Defendants”);

C. any other manufacturers, owners, lessors, lessees, shippers, and consignees of the rail cars and products involved in the Incident;

D. the manufacturers, installers, and designers of the rail track or other railroad equipment associated with the Incident, including without limitation Progress Rail;

E. the Association of American Railroads;

F. Terminal Railroad Association of St. Louis;

G. any persons, business entities, and agencies that assisted in or supported the emergency response, remediation, air monitoring, soil monitoring, water monitoring, and clean-up activities associated with the Incident—including for avoidance of doubt and without limitation, Arcadis U.S., Inc.; Braskem America Inc.; Center for Toxicology and Environmental Health (CTEH); EnviroScience, Inc.; Explosive Service International; Specialized Professional Services Inc. (SPSI); Midland Manufacturing; Specialized Response Solutions (SRS); Hazardous Products Abatement Company (HEPACO); EnviroServe; Engineering Systems Inc. (Esi); Cranemasters; Hulcher Services, Inc.; R.J. Corman Railroad Group; and Timken Company—including the activities of private, public, and governmental agencies, entities, and authorities, whether federal, state, county, or local, their employees, officers, agents, members, and volunteers; and

H. any owners, lessors, and lessees of any other real property located at the site of the Incident.

For the avoidance of doubt, any of the “Released Parties” includes, for any of the foregoing entities, any past or present parents, subsidiaries, affiliated companies, and corporations, and any past or present officers, directors, managers, employees,

general partners, limited partners, principals, insurers, reinsurers, shareholders, attorneys, advisors, representatives, agents, consultants, contractors, service providers, successors, or assigns.

12. Releasor retains Personal Injury Claims, if any, against persons or entities who are not Released Parties, but such reservation creates no basis for a claim of contribution, subrogation, or indemnification (collectively, an “Insurer Claim”), however denominated, by any non-Released Party against any Released Party. For avoidance of doubt, this Release shall apply to all related Insurer Claims of the Releasor’s subrogees or insurance carriers, and Releasor expressly waives any contractual or other right or claim of contribution, subrogation, or indemnification by any insurer or other party for an Insurer Claim against any Released Parties. If Releasor has made an insurance claim or has received insurance proceeds for any itemized loss or damage relating to Personal Injury Claims caused by the Incident, and Releasor submits an itemized claim for the same loss or damage as part of the Personal Injury Payment, then Releasor will indemnify Released Parties for any liability that Released Parties, or any of them, incur for an Insurer Claim, provided that (a) the Insurer Claim is brought by an entity seeking to recover payment of insurance proceeds to Releasor for the same itemized loss or damage; and (b) the amount for which Releasor indemnifies Released Parties shall be limited to only that amount of the Personal Injury Payment to Releasor made directly for said itemized loss or damage, if any.

13. Releasor agrees to satisfy any and all valid liens that have been asserted and/or which could be or may be asserted for reimbursement of any medical benefits provided to the Releasor by a third party, including without limitation Medicare or Medicaid, as a result of any injuries allegedly caused by the Incident.

14. Releasor is _____ is not _____ [**Check One**] entitled to Medicare Parts A through D.

15. This Release is not intended to affect—and instead expressly preserves—any and all of Norfolk Southern’s rights of contribution, subrogation, or indemnity under any law, including for avoidance or doubt and without limitation Norfolk Southern’s claims against the Non-Settling Railcar Defendants under Ohio law, including Ohio R.C. § 2307.25, titled “Right of contribution; settlements; subrogation; indemnity,” Ohio R.C. § 2307.26, titled “Contribution,” Ohio R.C. § 2307.28, titled “Release or covenant not to sue or not to enforce judgment,” or any other applicable law.

16. Releasor agrees that the provisions of this Personal Injury Release are severable. In the event that any provision is found to be unlawful or unenforceable, Releasor further agrees that the remaining provisions hereof shall remain in full force and effect.

17. Releasor agrees this Personal Injury Release constitutes the final, complete, and exclusive agreement and understanding between the Company and Releasor and supersedes any and all other agreements, written or oral, between Company and Releasor with respect to the subject matter of this Personal Injury Release in settlement of Personal Injury Claims arising out of or related to the Incident.

18. The Personal Injury Release constitutes no admission of liability or wrongdoing by the Company, and the Personal Injury Payment is made purely by way of compromise and settlement.

19. In entering into this Release, Releasor represents that he/she/they has completely read all terms and that such terms are fully understood and voluntarily accepted by him/her/them. Releasor hereby confirms that Releasor was afforded the opportunity to and if Releasor so decided did confer with Class Counsel, or an attorney of his/her/their choice, concerning the terms and conditions of this Release.

THUS, RELEASOR HEREBY ACKNOWLEDGES THAT RELEASOR HAS READ THE ENTIRETY OF THIS RELEASE, UNDERSTANDS ITS TERMS AND ITS MEANING AND EFFECT, AND THAT, BY SIGNING THIS RELEASE, UNDERSTANDS AND AGREES THAT RELEASOR IS RELEASING HIS/HER/THEIR RIGHTS REFERENCED HEREIN AGAINST RELEASED PARTIES, AND EACH OF THEM.

Releasor Name	Releasor Signature	Date
Phone Number	Address	Email Address

—If Releasor Is A Minor—

Releasor's Years of Age At The Time of Signature: _____

Parent's Name Parent's Signature Date

Phone Number Address Email Address

EXHIBIT B

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

EMPLOYEES RETIREMENT SYSTEM	:	
OF THE CITY OF ST. LOUIS, et al.,	:	
	:	
Plaintiffs,	:	Case No. 2:20-cv-4813
	:	
v.	:	Chief Judge Algenon L. Marbley
	:	
	:	Magistrate Judge Kimberly A. Jolson
CHARLES E. JONES, et al.,	:	
	:	
Defendants,	:	
	:	
FIRSTENERGY CORP.,	:	
	:	
Nominal Defendant.	:	

ORDER OF PRELIMINARY SETTLEMENT APPROVAL

This matter is before the Court on Plaintiffs’ Unopposed Motion for Preliminary Settlement Approval (ECF No. 170). Plaintiffs’ Motion is **GRANTED** with the modification noted below.

I. BACKGROUND OF PROPOSED SETTLEMENT

According to the Consolidated Complaint, this shareholder derivative action seeks to hold current and former FirstEnergy Directors and Officers accountable for their roles in orchestrating a large bribery, racketeering, and pay-to-play scheme with Ohio politicians, at substantial cost to the Company’s long-term interests. (ECF No. 75 ¶¶ 1–14). The Complaint asserts a federal cause of action for violation of Section 14(a) of the Securities Exchange Act of 1934 and Rule 14a-9 thereunder, as well as state law claims for breach of fiduciary duty, unjust enrichment, corporate waste, and contribution and indemnification. On May 11, 2021, the Court found that Plaintiffs’ allegations pass muster and denied Defendants’ motion to dismiss. (ECF No. 93).

There are two other shareholder derivative actions pending against FirstEnergy in relation to the alleged bribery scandal. One is in the Northern District of Ohio under the caption *Miller v.*

Anderson, Case No. 5:20-cv-1743-JRA (the “Northern District Action”); and the other is in the Summit County Court of Common Pleas under the caption *In re FirstEnergy Corp., Stockholder Derivative Litigation*, Case No. CV-2020-07-2107 (the “Ohio State Court Action”).¹

All parties in all shareholder derivative cases, as well as the Special Litigation Committee of FirstEnergy’s Board of Directors, have entered into a Stipulation and Agreement of Settlement (the “Stipulation”), dated March 11, 2022. (ECF No. 170-3). The Stipulation sets forth the terms and conditions of a proposed global settlement of the shareholder derivative cases, subject to the Court’s review and approval.

The proposed settlement resulted from a lengthy mediation before retired United States District Judge Layn R. Phillips. (ECF No. 170 at 10). Under the proposed terms, FirstEnergy will obtain a \$180 million recovery funded by the Company’s insurers—which Plaintiffs represent is “among the largest derivative recoveries ever achieved” in the United States and “three times greater than any prior derivative recovery in the history of the Sixth Circuit.” (*Id.* at 2, 12). Moreover, FirstEnergy will commit to a series of internal governance reforms, crafted with the assistance of Columbia Law Professor and corporate governance expert Jeffrey Gordon. (*Id.* at 2). Those reforms include the departure of six Directors, active Board oversight of FirstEnergy’s political spending and lobbying activities, and specific disclosures in the annual proxy statements issued to shareholders. (*Id.* at 12). Professor Gordon states the governance reforms “will significantly improve shareholder welfare at FirstEnergy” by giving “assurance . . . against a recurrence of the conduct” that precipitated this case. (ECF No. 170-5 ¶ 22). These settlement terms now stand before the Court for preliminary approval.

¹ For clarity, these shareholder derivative actions are wholly distinct from other litigation involving FirstEnergy—including the class action for securities fraud captioned *In re FirstEnergy Corp. Securities Litigation*, Case No. 2:20-cv-3785, which also is pending before this Court.

II. APPLICABLE STANDARD

Under Federal Rule of Civil Procedure 23.1(c), court approval and shareholder notice are required for the settlement of any derivative case. The typical approval process tracks that of a class action settlement, which entails: “1) preliminary approval of the proposed settlement at an informal hearing; 2) dissemination of mailed and/or published notice to all affected class members; and 3) a formal fairness hearing at which interested parties may comment on the proposed settlement.” *Brent v. Midland Funding, LLC*, 2011 WL 3862363, at *12 (N.D. Ohio Sept. 1, 2011) (citing *Williams v. Vukovich*, 720 F.3d 909, 920–21 (6th Cir. 1983)); *see also In re: Regions Morgan Keegan Sec.*, 2015 WL 11145134, at *2 (W.D. Tenn. Nov. 30, 2015) (“The procedure for approving settlements in derivative actions is the same as class actions.”).

At the preliminary approval stage, “the Court decides whether notice of the proposed settlement would be appropriate, but makes no final determination about the settlement’s fairness.” *Id.* at *4. “If the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls with the range of possible approval, then the Court should direct that notice be given to the class members of a formal fairness hearing, at which evidence may be presented in support of and in opposition to the settlement.” *In re Teletronics Pacing Sys., Inc.*, 137 F. Supp. 2d 985, 1015–16 (S.D. Ohio 2001) (quoting *Manual for Complex Litig.* § 30.44 (2d ed. 1985)). The court “is not obligated to, nor could it reasonably, undertake a full and complete fairness review” at the preliminary approval stage; that analysis occurs on final approval. *In re Inter-Op Hip Prosthesis Liab. Litig.*, 204 F.R.D. 330, 350 (N.D. Ohio 2001).

In the Sixth Circuit, “[s]ettlements are welcome” in shareholder derivative cases, especially, “because litigation is ‘notoriously difficult and unpredictable.’” *Granada Invs., Inc. v.*

DWG Corp., 962 F.2d 1203, 1205 (6th Cir. 1992) (quoting *Maher v. Zapata Corp.*, 714 F.2d 436, 455 (5th Cir. 1983)). “Absent evidence of fraud or collusion, such settlements are not to be trifled with.” *Id.* (citing *Priddy v. Edelman*, 883 F.2d 438, 447 (6th Cir. 1989)).

III. PRELIMINARY FINDINGS AND CONCLUSIONS

The Court has reviewed and considered the Stipulation and all its exhibits, including the proposed notices and proposed final judgment. (ECF No. 170-3). From that review, the Court determines that the proposed settlement meets the standard articulated above and that preliminary approval is warranted.

First, the proposed settlement was reached through serious arms-length negotiation, facilitated by a reputable independent mediator. The negotiations followed a contested motion to dismiss and a voluminous exchange of document discovery. On these facts, “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations”—at least on preliminary review. *Telectronics*, 137 F. Supp. 2d at 1015–16 (internal quotation marks omitted); *see also Bert v. AK Steel Corp.*, 2008 WL 4693747, at *2 (S.D. Ohio Oct. 23, 2008) (“The participation of an independent mediator in settlement negotiations virtually [e]nsures that the negotiations were conducted at arm’s length and without collusion between the parties.”).

Second, the proposed settlement represents a substantial (though not complete) recovery for FirstEnergy, the real party at interest. The monetary component, at \$180 million, measures favorably against other shareholder derivative settlements and would have a significant effect on the Company’s financial position. Moreover, the Company’s insurance policies, which are the main source of recoverable assets, are being eroded by legal costs as this derivative action continues, meaning the ultimate recovery might be higher now than at the end of a case tried to verdict. Added value is found in the corporate governance reforms, which aim to prevent future

improprieties in the Company's political activity and forestall potential liabilities and harms therefrom. By demonstrating a commitment to transparency and oversight, the reforms also would begin to repair FirstEnergy's non-pecuniary reputational damages. Furthermore, the Court recognizes that certainty and finality are beneficial to FirstEnergy, whereas continued litigation entails inherent uncertainties that could weigh on the Company for years. Thus, the proposed settlement terms "fall[] with the range of possible approval," pending fuller analysis at the fairness hearing. *Telectronics*, 137 F. Supp. 2d at 1015–16 (internal quotation marks omitted).

In one respect, the Court will deviate from the parties' requested approval. The parties seek "a customary prosecution bar enjoining Plaintiffs, FirstEnergy, or anyone else from commencing or prosecuting any other action asserting any of the claims alleged in this Action—including the Northern District Action and the State Court Action—pending this Court's determination as to whether final approval should be granted." (ECF No. 170 at 26). However, the parties do not identify the authority by which this Court could stay related cases in co-equal courts of competent jurisdiction. Nor is it an obvious proposition, in this unique posture. Therefore, the prosecution bar will apply only to this case and to others not yet commenced; it will not extend to the pending Northern District and State Court Actions. If the parties wish to stay the other active cases, they may move in those respective courts. Alternatively, they may file a motion to alter or amend this Order, identifying the specific authority by which one court might enter a global prosecution bar over the objections of another court.

In summary, preliminary approval is appropriate, and it is so granted. The proposed settlement resulted from serious mediation, and its terms contain no facial defects that would foreclose approval. This is enough for the parties to commence shareholder notice and advance to a fairness hearing. Of course, preliminary approval "is only the first step in an extensive and

searching judicial process, which may or may not result in final approval of a settlement in this matter.” *Inter-Op*, 204 F.R.D. at 337. Any findings on whether the proposed settlement is in fact fair, reasonable, and adequate are reserved until the fairness hearing, where the Court will conduct further inquiry informed by shareholders’ perspectives.

IV. ORDER OF PRELIMINARY APPROVAL

Having found that sufficient grounds exist for entering this preliminary approval, the Court hereby **ORDERS** as follows:

1. The Court preliminarily approves the Settlement on the terms set forth in the Stipulation,² subject to further consideration at a hearing to be held before the Court on **Thursday, July 21, 2022, at 9:00 a.m.**, in Courtroom 1, Room 331, of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215 (the “Settlement Fairness Hearing”), to, among other things: (i) determine whether the proposed Settlement, on the terms and conditions provided for in the Stipulation, is fair, reasonable, and adequate, and should be approved by the Court; (ii) determine whether the Judgment, substantially in the form attached as Exhibit F to the Stipulation, should be entered dismissing the Southern District Action with prejudice, and settling and releasing, and barring and enjoining the commencement or prosecution of any action asserting, any and all Released Plaintiffs’ Claims against the Released Defendants’ Persons, as set forth in the Stipulation; (iii) determine whether the application for a Fee and Expense Award to Plaintiffs’ Counsel should be approved; and (iv) rule on such other matters as the Court may deem appropriate.

2. The Court expressly reserves the right to adjourn the Settlement Fairness Hearing without any further notice other than an announcement at the Settlement Fairness Hearing. The

² This Order incorporates by reference the definitions in the Stipulation and, unless otherwise defined in this Order, all capitalized terms used in this Order shall have the same meaning as set forth in the Stipulation.

Court may decide to hold the Settlement Fairness Hearing by telephone or video conference without notice to the FirstEnergy stockholders. If the Court later orders that the Settlement Fairness Hearing be conducted telephonically or by video conference, that decision will be posted on the “Investor Relations” portion of FirstEnergy’s website. Any Current FirstEnergy Stockholder (or his, her, or its counsel) who wishes to appear at the Settlement Fairness Hearing should consult the Court’s docket and the “Investor Relations” portion of FirstEnergy’s website for any change in date, time, or format of the Settlement Fairness Hearing.

3. The Court expressly reserves the right to approve the Settlement with such modification(s) as may be consented to by the Settling Parties, or without modification, and with or without further notice of any kind to FirstEnergy stockholders. The Court reserves the right to enter its Judgment approving the Settlement and dismissing the Released Plaintiffs’ Claims as against the Released Defendants’ Persons regardless of whether the Court has awarded the Fee and Expense Award.

4. The Court approves the form, content, and requirements of the Notice, attached to the Stipulation as Exhibit D, and the Summary Notice, attached to the Stipulation as Exhibit E, and finds that the dissemination of the Notice and publication of the Summary Notice, substantially in the manner and form set forth in this Order, meets the requirements of Rule 23.1 of the Federal Rules of Civil Procedure, due process, and all other applicable law and rules, and constitutes due and sufficient notice of all matters relating to the Settlement.

5. By no later than five (5) business days after the date of entry of this Preliminary Approval Order, the Company (or its successor-in-interest) shall cause: (a) the filing with the SEC of a Current Report on Form 8-K, attaching the Notice, substantially in the form attached as Exhibit D to the Stipulation, and the Stipulation; (b) the publication of the Summary Notice, substantially

in the form attached as Exhibit E to the Stipulation, once in the *Wall Street Journal*, *Investor's Business Daily*, or similar publication; and (c) the posting of the Notice and the Stipulation on the "Investor Relations" portion of the Company's website, which documents shall remain posted thereto through the Effective Date of the Settlement. The Company shall pay or cause to be paid any and all Notice Costs regardless of the form or manner of notice ordered by the Court and regardless of whether the Court approves the Settlement or the Effective Date of the Settlement otherwise fails to occur, and in no event shall Defendants, Plaintiffs, or their respective attorneys be responsible for any such costs or expenses.

6. By no later than twenty-one (21) calendar days before the Settlement Fairness Hearing, counsel for the SLC on behalf of the Company shall file with the Court an appropriate proof of compliance with the notice procedures set forth in this Order.

7. Any person or entity who owns shares of FirstEnergy common stock as of the close of business on the date of the Stipulation ("Current FirstEnergy Stockholder") and who continues to own shares of FirstEnergy common stock through the date of the Settlement Fairness Hearing may appear at the Settlement Fairness Hearing to show cause why the proposed Settlement should not be approved; why the Judgment should not be entered thereon; or why the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs should not be granted; provided, however, that no such person shall be heard or entitled to contest the approval of the terms and conditions of the proposed Settlement, the Judgment to be entered approving the same, or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs, unless such person has filed with the Clerk of the United States District Court for the Southern District of Ohio, 85 Marconi Boulevard, Columbus, Ohio 43215, and delivered (by hand, first-class mail, or express service) to counsel at the addresses

stated below, a written, signed objection that: (i) identifies the case name and case number for the Southern District Action, *Employees Retirement System of the City of St. Louis, et al. v. Jones, et al.*, Case No. 2:20-cv-4813-ALM-KAJ; (ii) states the objector's name, address, and telephone number, and if represented by counsel, the name, address, and telephone number of his, her, or its counsel; (iii) contains a representation as to whether the objector and/or his, her, or its counsel intends to appear at the Settlement Fairness Hearing; (iv) contains a statement of the objection(s) to any matters before the Court, the grounds for the objection(s) or the reasons for the objector's desiring to appear and be heard, as well as all documents or writings the objector desires the Court to consider, including any legal and evidentiary support; (v) if the objector has indicated that he, she, or it intends to appear at the Settlement Fairness Hearing, identifies any witnesses the objector may call to testify and any exhibits the objector intends to introduce into evidence at the Settlement Fairness Hearing; and (vi) includes documentation sufficient to prove that the objector owned shares of FirstEnergy common stock as of the close of business on the date of the Stipulation, together with a statement that the objector continues to hold shares of FirstEnergy common stock on the date of filing of the objection and will continue to hold shares of FirstEnergy common stock as of the date of the Settlement Fairness Hearing. Any such objection must be filed with the Court no later than fourteen (14) calendar days prior to the Settlement Fairness Hearing and delivered to each of the below-noted counsel such that it is received no later than fourteen (14) calendar days prior to the Settlement Fairness Hearing.

Co-Lead Counsel for the Southern District Plaintiffs

Jeroen van Kwawegen
Bernstein Litowitz Berger & Grossmann LLP
1251 Avenue of the Americas
New York, NY 10020

- and -

Thomas Curry
Saxena White P.A.
1000 N. West Street, Suite 1200
Wilmington, DE 19801

Representative Counsel for Defendants

Geoffrey J. Ritts
Jones Day
North Point
901 Lakeside Avenue
Cleveland, OH 44114

Counsel for the SLC and FirstEnergy

Maeve O'Connor
Debevoise & Plimpton, LLP
919 Third Avenue
New York, New York 10022

8. Any person or entity who fails to object in the manner prescribed above shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to any aspect of the Settlement, the Judgment to be entered approving the Settlement, or the application for an award of attorneys' fees and expenses to Plaintiffs' Counsel and service awards to Plaintiffs, in the Southern District Action or in any other action or proceeding in any court or tribunal.

9. The contents of the Settlement Fund shall be deemed and considered to be *in custodia legis* of the Court, and shall remain subject to the jurisdiction of the Court, until such time as they shall be transferred or disbursed from the Settlement Fund pursuant to the Stipulation and/or further order(s) of the Court.

10. Co-Lead Counsel for the Southern District Plaintiffs is authorized and directed to prepare any tax returns and any other tax reporting form for or in respect to the Settlement Fund, to pay from the Settlement Fund any Taxes owed with respect to the Settlement Fund, and to otherwise perform all obligations with respect to Taxes and any reporting or filings in respect

thereof without further order of the Court in a manner consistent with the provisions of the Stipulation.

11. Plaintiffs shall file and serve papers in support of final approval of the proposed Settlement and in support of their application for the Fee and Expense Award by no later than twenty-eight (28) calendar days prior to the Settlement Fairness Hearing. If reply papers are necessary, they are to be filed and served by no later than seven (7) calendar days prior to the Settlement Fairness Hearing.

12. In the event the Settlement is terminated or the Effective Date does not occur for any reason, then: (i) the Settlement and the relevant portions of the Stipulation shall be canceled; (ii) the Settling Parties shall revert to their respective litigation positions in the Actions as of immediately prior to the execution of the Term Sheet on February 9, 2022; and (iii) the terms and provisions of the Stipulation shall have no further force and effect with respect to the Settling Parties and shall not be used in the Actions or in any other proceeding for any purpose, and the Settling Parties shall proceed in all respects as if the Stipulation had not been entered.


13. Pursuant to the Court's Order dated February 11, 2022, all pleading deadlines, discovery, and other proceedings in the Southern District Action (except as may be necessary to carry out the terms and conditions of the proposed Settlement) have been stayed and suspended until further order of the Court.

14. The Court retains exclusive jurisdiction over the Southern District Action to consider all further matters arising out of or related to the Settlement.

15. Pending the Court's determination as to final approval of the Settlement, Plaintiffs, FirstEnergy, FirstEnergy stockholders, and anyone acting or purporting to act on behalf of FirstEnergy are hereby barred and enjoined from commencing or prosecuting any action asserting

any of the claims alleged in the Southern District Action against any of the Defendants in any court or tribunal; *provided*, this prosecution bar shall not extend to the Northern District Action, nor to the State Court Action, unless those courts agree to stay their respective cases; *and further provided*, all forms and notices approved herein shall be updated as necessary to reflect the accurate scope of this prosecution bar.

IT IS SO ORDERED.


ALGENON L. MARBLEY
CHIEF UNITED STATES DISTRICT JUDGE

DATED: May 9, 2022

EXHIBIT C

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OHIO**

	:	Case No.: 4:23-cv-00242
	:	
<i>In re East Palestine Train Derailment</i>	:	DECLARATION OF JEANNE C. FINEGAN, APR OF KROLL NOTICE MEDIA SOLUTIONS IN CONNECTION WITH PRELIMINARY APPROVAL OF SETTLEMENT
	:	
	:	

I, Jeanne C. Finegan, hereby declare:

INTRODUCTION

1. I am the Managing Director and Head of Kroll Notice Media Solutions (“Kroll Media”),¹ a business unit of Kroll Settlement Administration LLC (“Kroll”), the proposed Settlement Administrator in the above-captioned case. This declaration is based upon my personal knowledge as well as information provided to me by my associates and staff, including information reasonably relied upon in the fields of advertising media and communications.

2. Kroll has been designated by the Parties as the Settlement Administrator to, among other tasks,² develop and implement a publication Notice plan (the “Media Notice Plan”) in connection with that certain Class Action Settlement Agreement (the “Settlement Agreement”) entered into in this Action.

¹ Capitalized terms used but not defined herein have the meanings given to them in the Settlement Agreement (as defined below).

² Such other tasks are described in the declaration of my colleague, Scott M. Fenwick, filed contemporaneously herewith.

3. This declaration describes my experience in designing and implementing notices and notice programs, as well as my credentials to opine on the overall adequacy of noticing efforts. It also describes the proposed overall “Notice Plan” and addresses how this comprehensive program is consistent with other court-approved, best-practicable notice programs, the requirements of Fed. Civ. P. 23(c)(2)(B), and the Federal Judicial Center guidelines for best practicable due process notice.³

4. The proposed Notice Plan, as more fully detailed below, includes a particularly appropriate mix of direct mail, print, online display advertising, and social media advertising, designed to reach an estimated 90% of the target audience on average of 2.7 times. By way of comparison, the Federal Judicial Center states that a publication notice plan that reaches⁴ over 70% of targeted class members is considered a high percentage and the “norm” of a notice campaign.⁵

5. To ensure that our calculations and estimates are accurately projected, the proposed Notice Plan, as described below, was designed using objective, syndicated advertising research tools from MRI-Simmons and comScore (as described in greater detail below). These are the same tools reasonably relied upon by advertising agencies nationwide as the basis to select media for large brands.

QUALIFICATIONS

6. My credentials, expertise, and experience that qualify me to provide an expert opinion and advice regarding notice in class action cases includes more than 30 years of

³ FED. JUD. CTR., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* (2010), available at <https://www.fjc.gov/sites/default/files/2012/NotCheck.pdf>. The guide suggests that the minimum threshold for adequate notice is 70%. See *id.* at pages 1, 3.

⁴ “Reach” measures the number of people who receive or are otherwise exposed to a notice plan.

⁵ Barbara Rothstein and Thomas Willging, *Federal Judicial Center Managing Class Action Litigation: A Pocket Guide for Judges*, at 27 (3d Ed. 2010).

communications and advertising experience, specifically in the class action and bankruptcy notice context.

7. I am a member of the Board of Directors for the Alliance for Audited Media (“AAM”),⁶ and I am the only notice expert accredited in Public Relations (APR) by the Universal Accreditation Board, a program administered by the Public Relations Society of America. Further, I have provided testimony before Congress on issues of notice. I have served the Consumer Product Safety Commission (“CPSC”) as an expert to determine ways in which the CPSC can increase the effectiveness of its product recall campaigns.

8. I have served as an expert and have been directly responsible for the design and implementation of more than 1,000 notice programs, including some of the largest and most complex programs ever implemented in the United States, as well as globally in over 140 countries and in thirty-seven (37) languages. I have been recognized by numerous courts in the United States as an expert on notification and outreach.

9. During my career, the more than 1,000 complex notice programs I have planned and implemented have covered a wide range of class action, bankruptcy, regulatory, and consumer matters, the subject matters of which have included product liability, data breach, construction defect, antitrust, asbestos, medical, pharmaceutical, human rights, civil rights, telecommunications, media, environmental, securities, banking, insurance, and bankruptcy.

10. I worked with the Special Settlement Administrator’s team to assist with the outreach strategy for the historic auto airbag settlement in *In re Takata Airbag Prods. Liab. Litig.*, No. 15-MD-2599-FAM (S.D. Fla.). I was extensively involved as a lead contributing author for

⁶ Founded in 1914, the Alliance for Audited Media provides cross-media verification across all brand platforms including web, mobile, and print.

Guidelines and Best Practices Implementing 2018 Amendments to Rule 23 Class Action Settlement Provisions, published by Duke University School of Law. I have also provided testimony before the United States Congress on issues of notice.⁷

11. Additionally, I have published and lectured extensively on various aspects of legal noticing and taught continuing education courses for jurists and lawyers alike on best practice methods for providing notice in various contexts. Among others, my relevant experience spans more than 26 years and includes matters such as *In re: Columbia Gas Cases*, Civ. Action No. 1877CV01343G (Mass. Super. Ct. 2020); *In Re: PG&E Corporation*, Case No. 19-30088 (Bankr. N.D. Cal. 2019); *In re: New Orleans Tank Car Leakage Fire Litig.*, No. 87-16374 (La. Civ. Dist. Ct., Parish of Orleans 2000). *In Re: Georgia-Pacific Toxic Explosion Litig.*, No. 98 CVC05-3535 (Ohio Ct. Com. Pl., Franklin County 1998).

12. Additionally, I have been recognized as being at the forefront of modern notice practices,⁸ and I was one of the first notice experts to integrate digital media,⁹ social media and influencers¹⁰ into court-approved legal notice programs.

13. As further reference, in evaluating the adequacy and effectiveness of my notice programs, courts have repeatedly recognized my work as an expert. For example:

⁷ See, e.g., Report on the Activities of the Committee on the Judiciary of the House of Representatives: “Notice” Provision in the *Pigford v. Glickman* Consent Decree: Hearing Before Subcommittee on the Constitution, 108th Cong. 2nd Sess. 805 (2004) (statement of Jeanne C. Finegan); *Pigford v. Glickman & U.S. Dep’t of Agric.*, 185 F.R.D. 82, 102 (D.D.C. Apr. 14, 1999) (J. Finegan provided live testimony and was cross-examined before Congress in connection with a proposed consent decree settling a class action suit against the U.S. Department of Agriculture. In the court opinion that followed, the Honorable Paul L. Friedman approved the consent decree and commended the notice program, stating, “The [c]ourt concludes that class members have received more than adequate notice. . . the timing and breadth of notice of the class settlement was sufficient. . . The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations.”).

⁸ See, e.g., Deborah R. Hensler, *et al.*, *Class Action Dilemmas, Pursuing Public Goals for Private Gain*, RAND (2000).

⁹ See *In re Louisiana-Pacific Inner-Seal Siding Litig.*, Case Nos. 879-JE, 1453-JE (D. Or. 1995).

¹⁰ See *In Re: PG&E Corp.*, Case No. 19-30088 (Bankr. N.D. Cal. 2019).

a. ***Yahoo! Inc. Customer Data Security Breach Litigation***, Case No. 5:16-MD-02752 (N.D. Cal. 2010). In the preliminary approval order, dated July 20, 2019, paragraph 21, the Honorable Lucy Kho stated:

“The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances.”

b. ***Hill’s Pet Nutrition, Inc., Dog Food Products Liability Litigation***, Case No. 19-MD-2887 (D. Kan. 2021). In the Preliminary Approval Transcript, dated February 2, 2021, at pages 28-29, the Honorable Julie A. Robinson stated:

I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time.

c. ***In re Purdue Pharma L.P.***, Case No. 19-23649 (Bankr. S.D.N.Y. 2019). In the Omnibus Hearing transcript, regarding Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, dated June 3, 2020, at page 88:10, the Honorable Robert Drain stated:

The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan’s declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it’s a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of

claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times.

d. *In Re: PG&E Corporation*, Case No. 19-30088 Bankr. (N.D. Cal. 2019).

In the Hearing transcript re: (I) Establishing, Deadline for Filing Proofs of Claim, (II) Establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors, dated June 26, 2019, at pages 21:1, 201:20, the Honorable Dennis Montali stated:

“...the technology and the thought that goes into all these plans is almost incomprehensible... Ms. Finegan has really impressed me today...”

A more fulsome description of my credentials and experience that qualify me to provide expert opinions on the adequacy of class action notice programs is attached as Exhibit A.

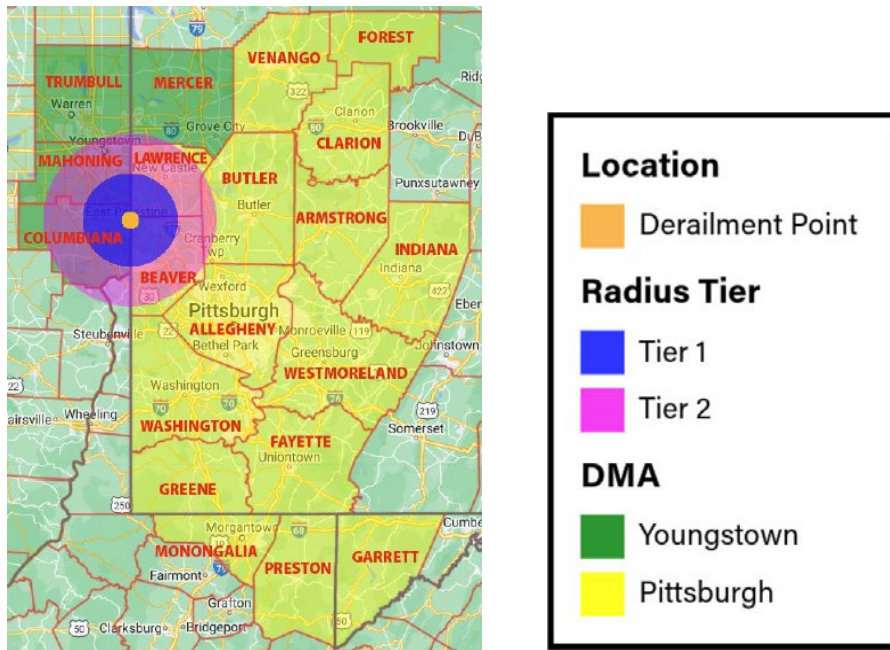
SETTLEMENT CLASS DEFINITION

14. The proposed Notice Plan is designed to inform Settlement Class Members of the proposed Settlement between the Plaintiffs and Class Representatives and Defendant. The Settlement Agreement defines the Settlement Class as:

All Persons and Businesses residing, owning or otherwise having a legal interest in property, working, or owning or operating a business within a 20-mile radius of the Derailment Site, from February 3, 2023 to the execution date of the Settlement Agreement. Excluded from the Settlement Class are Norfolk Southern, and any of its parents, subsidiaries, or affiliates; all duly elected and approved officers of Norfolk Southern, and all directors of Norfolk Southern; and the judge presiding over this Action and the judge’s staff.

SUMMARY OF NOTICE PROGRAM ELEMENTS

15. To reach potential Settlement Class Members, Notice will primarily focus on a 20-mile radius of the Derailment Site, and throughout the Designated Market Areas (“DMA”) ¹¹ of Youngstown and Pittsburgh.

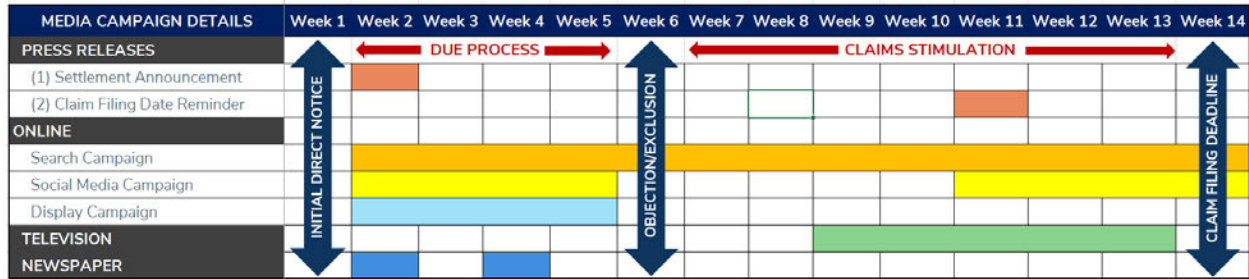


16. In order to provide effective due process notice and ensure the greatest awareness of the proposed Settlement, Kroll will include two separate flights of advertising over a 90-day period. The first flight of advertising will be to provide due process notice, informing Settlement Class Members of their rights, including their right to opt out or object, as well as important dates

¹¹ Designated Market Areas (“DMA”) are geographic areas in the U.S. which are analyzed by the Nielsen Company for the purpose of measuring television viewership and popularity of television channels. In the U.S., there are 210 DMAs designated by Nielson. They are well defined zip code regions for study and do not overlap with each other.

and deadlines. The second flight will occur after the Response Deadline and will remind Settlement Class Members that the Claim Deadline is approaching and encourage them to file a Claim. The flight timing is illustrated in the chart below.

NOTICE FLIGHT TIMELINE



NOTICE FLIGHT MEDIA SUMMARY

Flight 1 - Due Process Notice will include the following elements:

- Direct Notice via First Class U.S. Mail to potential Settlement Class Members identified as a resident or business in within a 20-mile radius of the Derailment Site through the use of two (2) address search services;
- Local Newspaper in 10 surrounding communities;
- Online display banner advertising geo-targeted within a 20-mile radius to reach potential Settlement Class Members;
- Google keyword search advertising;
- Social media advertising through Facebook, Instagram, and YouTube within a 20-mile radius;
- A press release geographically targeted.

Flight 2 -Claim Stimulation Notice

- Two (2) rounds of reminder direct mail Notice sent via First Class U.S. Mail and via email (where an email address has been provided directly to Kroll by potential Settlement Class Members).
- Local broadcast television in the Youngstown, Ohio and Pittsburgh, Pennsylvania Designated Market Areas;
- Local cable television in the Youngstown, Ohio and Pittsburgh, Pennsylvania Designated Market Areas;

- Online display banner advertising geo-targeted within a 20-mile radius to reach potential Settlement Class Members;
- Social Media within a 20-mile radius;
- Google keyword search advertising, and
- A press release.

Throughout the entire Notice program:

- A neutral, informational Settlement Website on which the notices and other important Court documents will be posted; and
- A 24-hour toll-free interactive voice response (“IVR”) telephone line that Settlement Class Members can call for more information about the Settlement, including, but not limited to, requesting copies of the notice or claim forms.

METHODOLOGY FOR DEVELOPMENT OF ONLINE AND SOCIAL MEDIA NOTICE CAMPAIGN

17. In order to formulate this Notice Plan, Kroll is guided by best-in-class nationally syndicated media research data provided by MRI-Simmons Research (“MRI”)¹² and online measurement comScore,¹³ to provide media consumption habits and audience delivery verification of the potentially affected population. This information informs Kroll about which media channels the target audience of Settlement Class Members prefer and then how many of them the Media Notice Plan is estimated to reach. Based on this research, Kroll’s cutting-edge approach to notice focuses on the quality of media exposure, engagement, and appropriate media environment.

18. These data resources are used by numerous advertising agencies nationwide as the basis to select the most appropriate media to reach specific target audiences. The resulting key findings are instrumental in our selection of media channels and outlets for determining the

¹² MRI’s *Survey of the American Consumer*® is the industry standard for magazine audience ratings in the U.S. and is used by the majority of media and marketing agencies in the country. MRI provides comprehensive reports on demographic, lifestyle, product usage and media exposure.

¹³ comScore is a global Internet information provider on which leading companies and advertising agencies rely for consumer behavior insight and Internet usage data.

estimated net audience reached through the Notice Plan. Specifically, this research identifies which media channels are favored by the target audience, (*i.e.*, Settlement Class Members). Further, this research identifies browsing behaviors on the Internet, which social media channels are visited, and which magazines are read by Settlement Class Members.

19. This media research technology allows us to accurately report to the Court the percentage of the target audience estimated to be reached by the online/social media Notice component and how many times the target audience will have the opportunity to see the message. In advertising, this is commonly referred to as a “Reach and Frequency” analysis, where “Reach” refers to the estimated percentage of the unduplicated audience exposed to the campaign, and “Frequency” refers to how many times, on average, the target audience had the opportunity to see the message. The calculations are used by advertising and communications firms worldwide and have become a critical element to help provide the basis for determining adequacy of notice in class actions and class action settlements.

FLIGHT 1 - DUE PROCESS NOTICE DETAILS

Media: Local Newspaper, Online, Social, Search, Press Release.

LOCAL NEWSPAPER

20. The summary Notice will be published twice, with one daily and one weekend insertion in the following newspapers within the 20-mile radius of the Derailment Site:

LOCAL NEWSPAPERS	FREQUENCY	AD SIZE	INSERTIONS	CIRCULATION
<i>Beaver County Times</i>	Daily	1/4 Page	1	3,830
<i>Beaver County Times (Sunday)</i>	Daily	1/4 Page	1	7,237
<i>East Liverpool Review</i>	Daily	1/4 Page	2	2,201

<i>Lisbon Morning Journal</i>	Daily	1/4 Page	2	3,560
<i>New Castle News</i>	Daily	1/4 Page	2	6,279
<i>Niles Review Newspaper</i>	Weekly	1/4 Page	2	11,000
<i>Steubenville Herald-Star/ Weirton Daily Times</i>	Daily	1/4 Page	1	7,111
<i>Steubenville Herald-Star/ Weirton Daily Times (Sunday)</i>	Daily	1/4 Page	1	9,025
<i>Vindicator</i>	Daily	1/4 Page	1	15,200
<i>Vindicator (Sunday)</i>	Daily	1/4 Page	1	16,200

ONLINE DISPLAY ADVERTISING

21. Online display banner ads will be directed to all adults over the age of 18 within a 20-mile radius of the Derailment Site. Additionally, online banner ads will focus on local newspaper websites (i.e., *Beaver County Times*, *East Liverpool*, *Lisbon Morning Journal*, *New Castle News*, *Niles Review Newspaper*, *Steubenville Herald-Star* and *Vindicator*).

22. Kroll will apply a 20-mile, geo-targeting, programmatic approach to digital advertising. Programmatic advertising is a computerized approach to buying ads online, which uses an algorithm to show a specific ad to a specific visitor in a specific context, where potential Settlement Class Members are visiting across an allow list¹⁴ of approximately 6,000 websites. These ads are device agnostic and will appear across desktop, laptop, tablet, or mobile devices.

Online display advertising will run in both flight 1 and 2.

¹⁴ An “allow list” is a custom list of acceptable websites where ad content may be served. Creating an allow list helps to mitigate ad fraud, ensure ads will be served in relevant digital environments to the target audience and helps to ensure that ads will not appear next to offensive or objectionable content.

KEYWORD SEARCH

23. Keyword search advertisements will be utilized on Google Ads. When a user conducts a search in their browser, relevant links appear on the search result pages of keyword/phrase searches. Keyword and search topics will include, *East Palestine train derailment*, *East Palestine train accident*, *Ohio train derailment*, *East Palestine train claims*, *Ohio train accident lawsuit*, etc. **Online display advertising will run in both flight 1 and 2.**

SOCIAL MEDIA ADVERTISING

24. Social media impressions will be served on Facebook and Instagram targeting those who “like” and “follow” relevant pages, including *East Palestine*, *Ohio Toxic Chemical Disaster*, *The Truth Lives Here – East Palestine Ohio*, *East Palestine off the Rails*, etc. Kroll will also target users who have interacted with relevant accounts, videos or posts/tags, including *#eastpalestinetrainderailment*, *#ohiotrainderailment*, *#eastpalestinetrainderailmentdrone*, and *#eastpalestine*, among others.

25. On YouTube, ads will be geographically targeted within a 20-mile radius of the Derailment Site and will be contextually targeted to appear within train derailment/accident relevant content. **Social media advertising will run for the duration of both flight 1 and 2.**

PRESS RELEASES AND MONITORING

26. Kroll intends to issue two (2) press releases, which will be distributed over Cision PR Newswire's Ohio, Pennsylvania and West Virginia Newslines. The first Press Release will be issued at the beginning of media campaign will provide information regarding the Settlement and Claim filing.

27. The second press release will be issued during the claim stimulation period. Its purpose is to alert Settlement Class Members of the upcoming Claim Deadline and the importance

of filing a timely Claim. Kroll Media will monitor for resulting news mentions and provide a report of the news mentions at the conclusion of the Notice Program.

FLIGHT 2 CLAIM STIMULATION

Media: Online, Social, Search, Press Release and Local broadcast and cable television.

LOCAL BROADCAST CABLE TELEVISION DETAIL

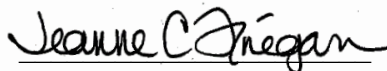
28. In addition to online, social and search media and a second press release, Kroll will employ local broadcast and network cable television commercials to maintain awareness to the Claim Deadline and to help promote Claim filing. Approximately 360 30-second television commercials will air across the Youngstown and Pittsburgh Designated Market Areas (DMAs) over the claim stimulation period prior to the Claim Deadline. The selected DMAs provide media coverage across 20 counties throughout Ohio, Pennsylvania and West Virginia. **Local and cable television will air only during the claim stimulation period.**

CONCLUSION

29. In my opinion, the Notice Plan reflects a particularly appropriate, highly targeted, and contemporary way to provide Notice to Settlement Class Members. The Notice Plan is expected to exceed an estimated 90% of targeted Settlement Class Members, on average 2.7 times. In my opinion, the efforts undertaken in this proposed Notice Plan are of the highest modern communication standards, are reasonably calculated to provide notice, and are consistent with best-practicable, court-approved notice programs in similar matters and the Federal Judicial Center's guidelines concerning appropriate reach.

I declare under penalty of perjury, under the laws of the United States of America, that the foregoing is true and correct.

Executed on April 19, 2024 in Tigard, Oregon.

A handwritten signature in black ink that reads "Jeanne C. Finegan". The signature is written in a cursive style with a horizontal line underneath the name.

Jeanne C. Finegan

Exhibit A

JEANNE C. FINEGAN, APR



Jeanne Finegan, APR, is the Managing Director and Head of Kroll Notice Media. She is a member of the Board of Directors for the prestigious Alliance for Audited Media (AAM) and was named by *Diversity Journal* as one of the “Top 100 Women Worth Watching.” She is a distinguished legal notice and communications expert with more than 30 years of communications and advertising experience.

She was a lead contributing author for Duke University's School of Law, "*Guidelines and Best Practices Implementing Amendments to Rule 23 Class Action Settlement Provisions.*" And more recently, she has been involved with New York School of Law and The Center on Civil Justice (CCJ) assisting with a class action settlement data analysis and comparative visualization tool called the *Aggregate Litigation Project*, designed to help judges make decisions in aggregate cases on the basis of data as opposed to anecdotal information. Moreover, her experience also includes working with the Special Settlement Administrator's team to assist with the outreach strategy for the historic Auto Airbag Settlement, In re: *Takata Airbag Products Liability Litigation* MDL 2599.

During her tenure, she has planned and implemented over 1,000 high-profile, complex legal notice communication programs. She is a recognized notice expert in both the United States and in Canada, with extensive international notice experience spanning more than 170 countries and over 40 languages.

Ms. Finegan has lectured, published and has been cited extensively on various aspects of legal noticing, product recall and crisis communications. She has served the Consumer Product Safety Commission (CPSC) as an expert to determine ways in which the Commission can increase the effectiveness of its product recall campaigns. Further, she has planned and implemented large-scale government enforcement notice programs for the Federal Trade Commission (FTC) and the Securities and Exchange Commission (SEC).

Ms. Finegan is accredited in Public Relations (APR) by the Universal Accreditation Board, which is a program administered by the Public Relations Society of America (PRSA) and is also a recognized member of the Canadian Public Relations Society (CPRS). She has served on examination panels for APR candidates and worked *pro bono* as a judge for prestigious PRSA awards.

Ms. Finegan has provided expert testimony before Congress on issues of notice, and expert testimony in both state and federal courts regarding notification campaigns. She has conducted numerous media audits of proposed notice programs to assess the adequacy of those programs under Fed R. Civ. P. 23(c)(2) and similar state class action statutes.

She was an early pioneer of plain language in notice (as noted in a RAND study,¹) and continues to set the standard for modern outreach as the first notice expert to integrate social and mobile media into court approved legal notice programs.

In the course of her class action experience, courts have recognized the merits of, and admitted expert testimony based on, her scientific evaluation of the effectiveness of notice plans. She has designed legal notices for a wide range of class actions and consumer matters that include data breach, product liability, construction defect, antitrust, medical/pharmaceutical, human rights, civil rights, telecommunication, media, environment, government enforcement actions, securities, banking, insurance, mass tort, restructuring and product recall.

¹ Deborah R. Hensler et al., CLASS ACTION DILEMMAS, PURSUING PUBLIC GOALS FOR PRIVATE GAIN. RAND (2000).



JUDICIAL COMMENTS AND LEGAL NOTICE CASES

In evaluating the adequacy and effectiveness of Ms. Finegan's notice campaigns, courts have repeatedly recognized her excellent work. The following excerpts provide some examples of such judicial approval.

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019). Omnibus Hearing, Motion Pursuant to 11 U.S.C. §§ 105(a) and 501 and Fed. R. Bankr. P. 2002 and 3003(c)(3) for Entry of an Order (I) Extending the General Bar Date for a Limited Period and (II) Approving the Form and Manner of Notice Thereof, June 3, 2020, transcript p. 88:10, the Honorable Robert Drain stated:

"The notice here is indeed extraordinary, as was detailed on page 8 of Ms. Finegan's declaration in support of the original bar date motion and then in her supplemental declaration from May 20th in support of the current motion, the notice is not only in print media, but extensive television and radio notice, community outreach, -- and I think this is perhaps going to be more of a trend, but it's a major element of the notice here -- online, social media, out of home, i.e. billboards, and earned media, including bloggers and creative messaging. That with a combined with a simplified proof of claims form and the ability to file a claim or first, get more information about filing a claim online -- there was a specific claims website -- and to file a claim either online or by mail. Based on Ms. Finegan's supplemental declaration, it appears clear to me that that process of providing notice has been quite successful in its goal in ultimately reaching roughly 95 percent of all adults in the United States over the age of 18 with an average frequency of message exposure of six times, as well as over 80 percent of all adults in Canada with an average message exposure of over three times."

In Re: PG&E Corporation Case No. 19-30088 Bankr. (N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. June 26, 2019, Transcript of Hearing p. 21:1, the Honorable Dennis Montali stated:

...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...

Yahoo! Inc. Customer Data Security Breach Litigation, Case No. 5:16-MD-02752 (ND Cal 2016). In the Order Preliminary Approval, dated July 20, 2019, the Honorable Lucy Kho stated, para 21,

"The Court finds that the Approved Notices and Notice Plan set forth in the Amended Settlement Agreement satisfy the requirements of due process and Federal Rule of Civil Procedure 23 and provide the best notice practicable under the circumstances."

In re: Mallinckrodt PLC, et al., No. 20-12522 (Bankr. D. Del. 2022). In the Opinion, dated, February 2, 2022, the Hon. Judge John. T. Dorsey stated:

"Notice and a meaningful opportunity to be heard are essential conditions of constitutional due process. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950) (stating, "[t]he notice must be of such nature as reasonably [sic] to convey the required information..."). In evaluating whether due process requirements have been met in a particular case, the proper inquiry is whether the notice was reasonably calculated under the circumstances to apprise interested parties of action being taken and afford them an opportunity to present their objection. Mullane, 339 U.S. at 314.104 . . . Here, I find the notice provided to opioid claimants satisfies these requirements." [D.I. 6347, at p. 42].

Hill's Pet Nutrition, Inc., Dog Food Products Liability Litigation, Case No. 19-MD-2887 (U.S. District Court, District Kansas 2021). In the Preliminary Approval Transcript, February 2, 2021 p. 28-29, the Honorable Julie A. Robinson stated:

"I was very impressed in reading the notice plan and very educational, frankly to me, understanding the communication, media platforms, technology, all of that continues to evolve rapidly and the ability to not only target consumers, but to target people that could rightfully receive notice continues to improve all the time."



Google Referrer Header Privacy Litigation Case No. CV-10-04809 (N.D. Cal 2023). During the hearing for preliminary approval of the class action settlement, the Honorable Edward J. Davila acknowledged the complexities of the notice program’s class member targeting approach, stating:
“Let me say, it’s amazing that the administrator can do all of that...” Hr’g. Tr. May 4, 2023, at 11:10-11.

Hesse v. Godiva Chocolatier, Inc. Case No. 1:19-cv-0972-LAP (S.D.N.Y. 2022). In the Order Granting Final Approval of Class Settlement and Award of Attorneys’ Fees and Class Representative Service Awards, dated April, 20, 2022, p. 2-3, the Honorable Loretta A. Preska stated:

“The notice provided to the Class pursuant to the Settlement Agreement and Preliminary Approval Order—including (i) repeated direct notice to the Class via email, (ii) the creation of the Settlement Website, and (iii) the dissemination of notice via publication and digital media notice—fully complied with the requirements of Fed. R. Civ. P. 23 and due process, was reasonably calculated under the circumstances to apprise the Class of the pendency of the Action, their right to object or exclude themselves from the Settlement Agreement, and their right to appear at the Final Approval Hearing. In particular, through a multi-media channel approach to notice, which employed direct notice, digital, social and mobile media, an estimated 82 percent of targeted Class Members were reached by the notice program, on average 2.8 times. Declaration of Jeanne C. Finegan (“Finegan Decl.”) ¶33 (ECF No. 86). Godiva possessed email addresses for 8,235,538 potential class members. Finegan Decl. ¶ 17. Accordingly, Kroll Settlement Administration (“Kroll”) emailed direct notice to each of these individuals, i.e., approximately 46% of the Class. It then sent another 7,692,027 reminder emails. Id. ¶ 20. In conjunction with this direct notice, Kroll implemented a state-of-the-art publication notice plan, which consisted of 35 million media impressions, including on Facebook and Instagram, and the creation of a settlement website and IVR phone support for Class Members to contact if they had any questions about the Settlement or the case. Id. ¶¶ 21-25.”

In re: The Bank of New York Mellon ADR FX Litigation, 16-CV-00212-JPO-JLC (S.D.N.Y. 2019). In the Final Order and Judgement, dated June 17, 2019, para 5, the Honorable J. Paul Oetkin stated:
“The dissemination of notice constituted the best notice practicable under the circumstances.”

In Re: ZF-TRW Airbag Control Units Products Liability Litigation, Case No. LA ML 19-2905, C.D. Cal (2023). In the Order re: Plaintiffs Motion for Final Approval of Class Settlement, and Award of Attorneys’ Fees, Expenses, and Service Awards to Settlement Representatives, dated November 28, 2023, p. 10, the Honorable John A Kronstadt stated:

“Notice of the settlement was administered by Kroll Settlement Administration LLC (the “Administrator”). Declaration of Jeanne Finegan, Dkt. 815-2 ¶ 1. The Administrator effected both direct mailed notice and additional multimedia efforts to raise awareness about the Settlement Agreement. Id. ¶ 3. The Administrator estimated that, as a result of its efforts, it reached over 95% of the class members. Id”.

Simerlein et al., v. Toyota Motor Corporation, Case No. 3:17-cv-01091-VAB (District of CT 2019). In the Ruling and Order on Motion for Preliminarily Approval, dated January 14, 2019, p. 30, the Honorable Victor Bolden stated:

“In finding that notice is sufficient to meet both the requirements of Rule 23(c) and due process, the Court has reviewed and appreciated the high-quality submission of proposed Settlement Notice Administrator Jeanne C. Finegan. See Declaration of Jeanne C. Finegan, APR, Ex. G to Agrmt., ECF No. 85-8.”

Fitzhenry- Russell et al., v. Keurig Dr. Pepper Inc., Case No. :17-cv-00564-NC, (ND Cal). In the Order Granting Final Approval of Class Action Settlement, Dated April 10, 2019, the Honorable Nathanael Cousins stated:

“...the reaction of class members to the proposed Settlement is positive. The parties anticipated that 100,000 claims would be filed under the Settlement (see Dkt. No. 327-5 ¶ 36)—91,254



claims were actually filed (see Finegan Decl ¶ 4). The 4% claim rate was reasonable in light of Heffler's efforts to ensure that notice was adequately provided to the Class."

Pettit et al., v. Procter & Gamble Co., Case No. 15-cv-02150-RS ND Cal. In the Order Granting Final Approval of the Class Action Settlement and Judgement, Dated March 28, 2019, p. 6, the Honorable Richard Seeborg stated:

"The Court finds that the Notice Plan set forth in the Settlement Agreement, and effectuated pursuant to the Preliminary Approval Order, constituted the best notice practicable under the circumstances and constituted due and sufficient notice to the Settlement Class. ...the number of claims received equates to a claims rate of 4.6%, which exceeds the rate in comparable settlements."

Carter v Forjas Taurus S.S., Taurus International Manufacturing, Inc., Case No. 1:13-CV-24583 PAS (S.D. Fl. 2016). In her Final Order and Judgment Granting Plaintiffs Motion for Final Approval of Class Action Settlement, the Honorable Patricia Seitz stated:

"The Court considered the extensive experience of Jeanne C. Finegan and the notice program she developed. ...There is no national firearms registry and Taurus sale records do not provide names and addresses of the ultimate purchasers... Thus, the form and method used for notifying Class Members of the terms of the Settlement was the best notice practicable. ...The court-approved notice plan used peer-accepted national research to identify the optimal traditional, online, mobile and social media platforms to reach the Settlement Class Members."

Additionally, in January 20, 2016, Transcript of Class Notice Hearing, p. 5 Judge Seitz, noted:

"I would like to compliment Ms. Finegan and her company because I was quite impressed with the scope and the effort of communicating with the Class."

Cook et. al., v. Rockwell International Corp. and the Dow Chemical Co., No. 90-cv-00181- KLK (D.Colo. 2017)., aka, Rocky Flats Nuclear Weapons Plant Contamination. In the Order Granting Final Approval, dated April 28, 2017, p.3, the Honorable John L. Kane said:

The Court-approved Notice Plan, which was successfully implemented by [HF Media- emphasis added] (see Doc. 2432), constituted the best notice practicable under the circumstances. In making this determination, the Court finds that the Notice Plan that was implemented, as set forth in Declaration of Jeanne C. Finegan, APR Concerning Implementation and Adequacy of Class Member Notification (Doc. 2432), provided for individual notice to all members of the Class whose identities and addresses were identified through reasonable efforts, ... and a comprehensive national publication notice program that included, inter alia, print, television, radio and internet banner advertisements. ...Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, the Court finds that the Notice Plan provided the best notice practicable to the Class.

In re: Domestic Drywall Antitrust Litigation, MDL. No. 2437, in the U.S. District Court for the Eastern District of Pennsylvania. For each of the four settlements, Finegan implemented an extensive outreach effort including traditional, online, social, mobile and advanced television and online video. In the Order Granting Preliminary Approval to the IPP Settlement, Judge Michael M. Baylson stated:

"The Court finds that the dissemination of the Notice and summary Notice constitutes the best notice practicable under the circumstances; is valid, due, and sufficient notice to all persons... and complies fully with the requirements of the Federal rule of Civil Procedure."

Warner v. Toyota Motor Sales, U.S.A. Inc., Case No 2:15-cv-02171-FMO FFMx (C.D. Cal. 2017). In the Order Re: Final Approval of Class Action Settlement; Approval of Attorney's Fees, Costs & Service Awards, dated May 21, 2017, the Honorable Fernando M. Olguin stated:

Finegan, the court-appointed settlement notice administrator, has implemented the multiprong notice program. ...the court finds that the class notice and the notice process fairly and adequately informed the class members of the nature of the action, the terms of the proposed settlement, the effect of the action and release of claims, the class members' right to exclude



themselves from the action, and their right to object to the proposed settlement. (See Dkt. 98, PAO at 25-28).

Michael Allagas, et al., v. BP Solar International, Inc., et al., BP Solar Panel Settlement, Case No. 3:14-cv-00560- SI (N.D. Cal., San Francisco Div. 2016). In the Order Granting Final Approval, Dated December 22, 2016, The Honorable Susan Illston stated:

Class Notice was reasonable and constituted due, adequate and sufficient notice to all persons entitled to be provided with notice; and d. fully satisfied the requirements of the Federal Rules of Civil Procedure, including Fed. R. Civ. P. 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable law.

Foster v. L-3 Communications EOTech, Inc. et al (6:15-cv-03519), Missouri Western District Court. In the Court's Final Order, dated July 7, 2017, The Honorable Judge Brian Wimes stated: "The Court has determined that the Notice given to the Settlement Class fully and accurately informed members of the Settlement Class of all material elements of the Settlement and constituted the best notice practicable."

In re: Skechers Toning Shoes Products Liability Litigation, No. 3:11-MD-2308-TBR (W.D. Ky. 2012). In his Final Order and Judgment granting the Motion for Preliminary Approval of Settlement, the Honorable Thomas B. Russell stated:

... The comprehensive nature of the class notice leaves little doubt that, upon receipt, class members will be able to make an informed and intelligent decision about participating in the settlement.

Brody v. Merck & Co., Inc., et al, No. 3:12-cv-04774-PGS-DEA (N.J.) (Jt Hearing for Prelim App, Sept. 27, 2012, transcript page 34). During the Hearing on Joint Application for Preliminary Approval of Class Action, the Honorable Peter G. Sheridan acknowledged Ms. Finegan's work, noting:

Ms. Finegan did a great job in testifying as to what the class administrator will do. So, I'm certain that all the class members or as many that can be found, will be given some very adequate notice in which they can perfect their claim.

Quinn v. Walgreen Co., Wal-Mart Stores Inc., 7:12 CV-8187-VB (NYSJ) (Jt Hearing for Final App, March. 5, 2015, transcript page 40-41). During the Hearing on Final Approval of Class Action, the Honorable Vincent L. Briccetti stated:

"The notice plan was the best practicable under the circumstances. ... [and] "the proof is in the pudding. This settlement has resulted in more than 45,000 claims which is 10,000 more than the Pearson case and more than 40,000 more than in a glucosamine case pending in the Southern District of California I've been advised about. So the notice has reached a lot of people and a lot of people have made claims."

In Re: TracFone Unlimited Service Plan Litigation, No. C-13-3440 EMC (ND Ca). In the Final Order and Judgment Granting Class Settlement, July 2, 2015, the Honorable Edward M. Chen noted:

"...[D]epending on the extent of the overlap between those class members who will automatically receive a payment and those who filed claims, the total claims rate is estimated to be approximately 25-30%. This is an excellent result..."

In Re: Blue Buffalo Company, Ltd., Marketing and Sales Practices Litigation, Case No. 4:14-MD-2562 RWS (E.D. Mo. 2015), (Hearing for Final Approval, May 19, 2016 transcript p. 49). During the Hearing for Final Approval, the Honorable Rodney Sippel said:

It is my finding that notice was sufficiently provided to class members in the manner directed in my preliminary approval order and that notice met all applicable requirements of due process and any other applicable law and considerations.



DeHoyos, et al., v. Allstate Ins. Co., No. SA-01-CA-1010 (W.D.Tx. 2001). In the Amended Final Order and Judgment Approving Class Action Settlement, the Honorable Fred Biery stated:

[T]he undisputed evidence shows the notice program in this case was developed and implemented by a nationally recognized expert in class action notice programs. ... This program was vigorous and specifically structured to reach the African American and Hispanic class members. Additionally, the program was based on a scientific methodology which is used throughout the advertising industry and which has been routinely embraced routinely [sic] by the Courts. Specifically, in order to reach the identified targets directly and efficiently, the notice program utilized a multi-layered approach which included national magazines; magazines specifically appropriate to the targeted audiences; and newspapers in both English and Spanish.

In Re: Reebok Easytone Litigation, No. 10-CV-11977 (D. MA. 2011). The Honorable F. Dennis Saylor IV stated in the Final Approval Order:

The Court finds that the dissemination of the Class Notice, the publication of the Summary Settlement Notice, the establishment of a website containing settlement-related materials, the establishment of a toll-free telephone number, and all other notice methods set forth in the Settlement Agreement and [Ms. Finegan's] Declaration and the notice dissemination methodology implemented pursuant to the Settlement Agreement and this Court's Preliminary Approval Order... constituted the best practicable notice to Class Members under the circumstances of the Actions.

Bezdek v. Vibram USA and Vibram FiveFingers LLC, No 12-10513 (D. MA) The Honorable Douglas P. Woodlock stated in the Final Memorandum and Order:

...[O]n independent review I find that the notice program was robust, particularly in its online presence, and implemented as directed in my Order authorizing notice. ...I find that notice was given to the Settlement class members by the best means "practicable under the circumstances." Fed.R.Civ.P. 23(c)(2).

Gemelas v. The Dannon Company Inc., No. 08-cv-00236-DAP (N.D. Ohio). In granting final approval for the settlement, the Honorable Dan A. Polster stated:

In accordance with the Court's Preliminary Approval Order and the Court-approved notice program, [Ms. Finegan] caused the Class Notice to be distributed on a nationwide basis in magazines and newspapers (with circulation numbers exceeding 81 million) specifically chosen to reach Class Members. ... The distribution of Class Notice constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. 1715, and any other applicable law.

Pashmova v. New Balance Athletic Shoes, Inc., 1:11-cv-10001-LTS (D. Mass.). The Honorable Leo T. Sorokin stated in the Final Approval Order:

The Class Notice, the Summary Settlement Notice, the web site, and all other notices in the Settlement Agreement and the Declaration of [Ms. Finegan], and the notice methodology implemented pursuant to the Settlement Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Actions, the terms of the Settlement and their rights under the settlement ... met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.

Hartless v. Clorox Company, No. 06-CV-2705 (CAB) (S.D.Cal.). In the Final Order Approving Settlement, the Honorable Cathy N. Bencivengo found:

The Class Notice advised Class members of the terms of the settlement; the Final Approval Hearing and their right to appear at such hearing; their rights to remain in or opt out of the Class and to object to the settlement; the procedures for exercising such rights; and the binding effect of this Judgment, whether favorable or unfavorable, to the Class. The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the



requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.

McDonough et al., v. Toys 'R' Us et al, No. 09:-cv-06151-AB (E.D. Pa.). In the Final Order and Judgment Approving Settlement, the Honorable Anita Brody stated:

The Court finds that the Notice provided constituted the best notice practicable under the circumstances and constituted valid, due and sufficient notice to all persons entitled thereto.

In re: Pre-Filled Propane Tank Marketing & Sales Practices Litigation, No. 4:09-md-02086-GAF (W.D. Mo.) In granting final approval to the settlement, the Honorable Gary A. Fenner stated:

The notice program included individual notice to class members who could be identified by Ferrellgas, publication notices, and notices affixed to Blue Rhino propane tank cylinders sold by Ferrellgas through various retailers. ... The Court finds the notice program fully complied with Federal Rule of Civil Procedure 23 and the requirements of due process and provided to the Class the best notice practicable under the circumstances.

Stern v. AT&T Mobility Wireless, No. 09-cv-1112 CAS-AGR (C.D.Cal. 2009). In the Final Approval Order, the Honorable Christina A. Snyder stated:

[T]he Court finds that the Parties have fully and adequately effectuated the Notice Plan, as required by the Preliminary Approval Order, and, in fact, have achieved better results than anticipated or required by the Preliminary Approval Order.

In re: Processed Egg Prods. Antitrust Litig., MDL No. 08-md-02002 (E.D.P.A.). In the Order Granting Final Approval of Settlement, Judge Gene E.K. Pratter stated:

The Notice appropriately detailed the nature of the action, the Class claims, the definition of the Class and Subclasses, the terms of the proposed settlement agreement, and the class members' right to object or request exclusion from the settlement and the timing and manner for doing so.... Accordingly, the Court determines that the notice provided to the putative Class Members constitutes adequate notice in satisfaction of the demands of Rule 23.

In re Polyurethane Foam Antitrust Litigation, 10- MD-2196 (N.D. OH). In the Order Granting Final Approval of Voluntary Dismissal and Settlement of Defendant Domfoam and Others, the Honorable Jack Zouhary stated:

The notice program included individual notice to members of the Class who could be identified through reasonable effort, as well as extensive publication of a summary notice. The Notice constituted the most effective and best notice practicable under the circumstances of the Settlement Agreements, and constituted due and sufficient notice for all other purposes to all persons and entities entitled to receive notice.

Rojas v Career Education Corporation, No. 10-cv-05260 (N.D.E.D. IL) In the Final Approval Order dated October 25, 2012, the Honorable Virginia M. Kendall stated:

The Court Approved notice to the Settlement Class as the best notice practicable under the circumstance including individual notice via U.S. Mail and by email to the class members whose addresses were obtained from each Class Member's wireless carrier or from a commercially reasonable reverse cell phone number look-up service, nationwide magazine publication, website publication, targeted on-line advertising, and a press release. Notice has been successfully implemented and satisfies the requirements of the Federal Rule of Civil Procedure 23 and Due Process.

Golloher v Todd Christopher International, Inc. DBA Vogue International (Organix), No. C 1206002 N.D. CA. In the Final Order and Judgment Approving Settlement, the Honorable Richard Seeborg stated:

The distribution of the notice to the Class constituted the best notice practicable under the circumstances, and fully satisfied the requirements of Federal Rule of Civil Procedure 23, the requirements of due process, 28 U.S.C. §1715, and any other applicable law.



Stefanyshyn v. Consolidated Industries, No. 79 D 01-9712-CT-59 (Tippecanoe County Sup. Ct., Ind.). In the Order Granting Final Approval of Settlement, Judge Randy Williams stated:

The long and short form notices provided a neutral, informative, and clear explanation of the Settlement. ... The proposed notice program was properly designed, recommended, and implemented ... and constitutes the "best practicable" notice of the proposed Settlement. The form and content of the notice program satisfied all applicable legal requirements. ... The comprehensive class notice educated Settlement Class members about the defects in Consolidated furnaces and warned them that the continued use of their furnaces created a risk of fire and/or carbon monoxide. This alone provided substantial value.

McGee v. Continental Tire North America, Inc. et al, No. 06-6234-(GEB) (D.N.J.).

The Class Notice, the Summary Settlement Notice, the web site, the toll-free telephone number, and all other notices in the Agreement, and the notice methodology implemented pursuant to the Agreement: (a) constituted the best practicable notice under the circumstances; (b) constituted notice that was reasonably calculated to apprise Class Members of the pendency of the Action, the terms of the settlement and their rights under the settlement, including, but not limited to, their right to object to or exclude themselves from the proposed settlement and to appear at the Fairness Hearing; (c) were reasonable and constituted due, adequate and sufficient notice to all persons entitled to receive notification; and (d) met all applicable requirements of law, including, but not limited to, the Federal Rules of Civil Procedure, 20 U.S.C. Sec. 1715, and the Due Process Clause(s) of the United States Constitution, as well as complied with the Federal Judicial Center's illustrative class action notices.

Varacallo, et al. v. Massachusetts Mutual Life Insurance Company, et al., No. 04-2702 (JLL) (D.N.J.). The Court stated that:

[A]ll of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices. ... By working with a nationally syndicated media research firm, [Finegan's firm] was able to define a target audience for the MassMutual Class Members, which provided a valid basis for determining the magazine and newspaper preferences of the Class Members. (Preliminary Approval Order at p. 9). ... The Court agrees with Class Counsel that this was more than adequate. (Id. at § 5.2).

In Re: Nortel Network Corp., Sec. Litig., No. 01-CV-1855 (RMB) Master File No. 05 MD 1659 (LAP) (S.D.N.Y.). Ms. Finegan designed and implemented the extensive United States and Canadian notice programs in this case. The Canadian program was published in both French and English, and targeted virtually all investors of stock in Canada. See www.nortelsecuritieslitigation.com. Of the U.S. notice program, the Honorable Loretta A. Preska stated:

The form and method of notifying the U.S. Global Class of the pendency of the action as a class action and of the terms and conditions of the proposed Settlement ... constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons and entities entitled thereto.

Regarding the B.C. Canadian Notice effort: *Jeffrey v. Nortel Networks*, [2007] BCSC 69 at para. 50, the Honourable Mr. Justice Groberman said:

The efforts to give notice to potential class members in this case have been thorough. There has been a broad media campaign to publicize the proposed settlement and the court processes. There has also been a direct mail campaign directed at probable investors. I am advised that over 1.2 million claim packages were mailed to persons around the world. In addition, packages have been available through the worldwide web site nortelsecuritieslitigation.com on the Internet. Toll-free telephone lines have been set up, and it appears that class counsel and the Claims Administrator have received innumerable calls from potential class members. In short, all reasonable efforts have been made to ensure that potential members of the class have had notice of the proposal and a reasonable opportunity was provided for class members to register their objections, or seek exclusion from the settlement.



Mayo v. Walmart Stores and Sam's Club, No. 5:06 CV-93-R (W.D.Ky.). In the Order Granting Final Approval of Settlement, Judge Thomas B. Russell stated:

According to defendants' database, the Notice was estimated to have reached over 90% of the Settlement Class Members through direct mail. The Settlement Administrator ... has classified the parties' database as 'one of the most reliable and comprehensive databases [she] has worked with for the purposes of legal notice.' ... The Court thus reaffirms its findings and conclusions in the Preliminary Approval Order that the form of the Notice and manner of giving notice satisfy the requirements of Fed. R. Civ. P. 23 and affords due process to the Settlement Class Members.

Fishbein v. All Market Inc., (d/b/a Vita Coco) No. 11-cv-05580 (S.D.N.Y.). In granting final approval of the settlement, the Honorable J. Paul Oetken stated:

"The Court finds that the dissemination of Class Notice pursuant to the Notice Program...constituted the best practicable notice to Settlement Class Members under the circumstances of this Litigation ... and was reasonable and constituted due, adequate and sufficient notice to all persons entitled to such notice, and fully satisfied the requirements of the Federal Rules of Civil Procedure, including Rules 23(c)(2) and (e), the United States Constitution (including the Due Process Clause), the Rules of this Court, and any other applicable laws."

Lucas, et al. v. Kmart Corp., No. 99-cv-01923 (D.Colo.), wherein the Court recognized Jeanne Finegan as an expert in the design of notice programs, and stated:

The Court finds that the efforts of the parties and the proposed Claims Administrator in this respect go above and beyond the "reasonable efforts" required for identifying individual class members under F.R.C.P. 23(c)(2)(B).

In Re: Johns-Manville Corp. (Statutory Direct Action Settlement, Common Law Direct Action and Hawaii Settlement), No 82-11656, 57, 660, 661, 665-73, 75 and 76 (BRL) (Bankr. S.D.N.Y.). The nearly half-billion dollar settlement incorporated three separate notification programs, which targeted all persons who had asbestos claims whether asserted or unasserted, against the Travelers Indemnity Company. In the Findings of Fact and Conclusions of a Clarifying Order Approving the Settlements, slip op. at 47-48 (Aug. 17, 2004), the Honorable Burton R. Lifland, Chief Justice, stated:

As demonstrated by Findings of Fact (citation omitted), the Statutory Direct Action Settlement notice program was reasonably calculated under all circumstances to apprise the affected individuals of the proceedings and actions taken involving their interests, Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950), such program did apprise the overwhelming majority of potentially affected claimants and far exceeded the minimum notice required. . . The results simply speak for themselves.

Pigford v. Glickman and U.S. Department of Agriculture, No. 97-1978. 98-1693 (PLF) (D.D.C.). This matter was the largest civil rights case to settle in the United States in over 40 years. The highly publicized, nationwide paid media program was designed to alert all present and past African-American farmers of the opportunity to recover monetary damages against the U.S. Department of Agriculture for alleged loan discrimination. In his Opinion, the Honorable Paul L. Friedman commended the parties with respect to the notice program, stating;

The parties also exerted extraordinary efforts to reach class members through a massive advertising campaign in general and African American targeted publications and television stations. . . The Court concludes that class members have received more than adequate notice and have had sufficient opportunity to be heard on the fairness of the proposed Consent Decree.

In Re: Louisiana-Pacific Inner-Seal Siding Litig., Nos. 879-JE, and 1453-JE (D.Or.). Under the terms of the Settlement, three separate notice programs were to be implemented at three-year intervals over a period of six years. In the first notice campaign, Ms. Finegan implemented the print advertising and



Internet components of the Notice program. In approving the legal notice communication plan, the Honorable Robert E. Jones stated:

The notice given to the members of the Class fully and accurately informed the Class members of all material elements of the settlement...[through] a broad and extensive multi-media notice campaign.

Additionally, with regard to the third-year notice program for Louisiana-Pacific, the Honorable Richard Unis, Special Master, commented that the notice was:

...well formulated to conform to the definition set by the court as adequate and reasonable notice. Indeed, I believe the record should also reflect the Court's appreciation to Ms. Finegan for all the work she's done, ensuring that noticing was done correctly and professionally, while paying careful attention to overall costs. Her understanding of various notice requirements under Fed. R. Civ. P. 23, helped to ensure that the notice given in this case was consistent with the highest standards of compliance with Rule 23(d)(2).

In Re: Expedia Hotel Taxes and Fees Litigation, No. 05-2-02060-1 (SEA) (Sup. Ct. of Wash. in and for King County). In the Order Granting Final Approval of Class Action Settlement, Judge Monica Benton stated:

The Notice of the Settlement given to the Class ... was the best notice practicable under the circumstances. All of these forms of Notice directed Class Members to a Settlement Website providing key Settlement documents including instructions on how Class Members could exclude themselves from the Class, and how they could object to or comment upon the Settlement. The Notice provided due and adequate notice of these proceeding and of the matters set forth in the Agreement to all persons entitled to such notice, and said notice fully satisfied the requirements of CR 23 and due process.

Thomas A. Foster and Linda E. Foster v. ABTco Siding Litigation, No. 95-151-M (Cir. Ct., Choctaw County, Ala.). This litigation focused on past and present owners of structures sided with Abitibi-Price siding. The notice program that Ms. Finegan designed and implemented was national in scope and received the following praise from the Honorable J. Lee McPhearson:

The Court finds that the Notice Program conducted by the Parties provided individual notice to all known Class Members and all Class Members who could be identified through reasonable efforts and constitutes the best notice practicable under the circumstances of this Action. This finding is based on the overwhelming evidence of the adequacy of the notice program. ... The media campaign involved broad national notice through television and print media, regional and local newspapers, and the Internet (see id. ¶¶9-11) The result: over 90 percent of Abitibi and ABTco owners are estimated to have been reached by the direct media and direct mail campaign.

Wilson v. Massachusetts Mut. Life Ins. Co., No. D-101-CV 98-02814 (First Judicial Dist. Ct., County of Santa Fe, N.M.). This was a nationwide notification program that included all persons in the United States who owned, or had owned, a life or disability insurance policy with Massachusetts Mutual Life Insurance Company and had paid additional charges when paying their premium on an installment basis. The class was estimated to exceed 1.6 million individuals. www.insuranceclassclaims.com. In granting preliminary approval to the settlement, the Honorable Art Encinias found:

[T]he Notice Plan [is] the best practicable notice that is reasonably calculated, under the circumstances of the action. ...[and] meets or exceeds all applicable requirements of the law, including Rule 1-023(C)(2) and (3) and 1-023(E), NMRA 2001, and the requirements of federal and/or state constitutional due process and any other applicable law.

Sparks v. AT&T Corp., No. 96-LM-983 (Third Judicial Cir., Madison County, Ill.). The litigation concerned all persons in the United States who leased certain AT&T telephones during the 1980's. Ms. Finegan designed and implemented a nationwide media program designed to target all persons who may have leased telephones during this time period, a class that included a large percentage of the entire population of the United States. In granting final approval to the settlement, the Court found:

The Court further finds that the notice of the proposed settlement was sufficient and furnished Class Members with the information they needed to evaluate whether to participate in or opt out



of the proposed settlement. The Court therefore concludes that the notice of the proposed settlement met all requirements required by law, including all Constitutional requirements.

In Re: Georgia-Pacific Toxic Explosion Litig., No. 98 CVC05-3535 (Ct. of Common Pleas, Franklin County, Ohio). Ms. Finegan designed and implemented a regional notice program that included network affiliate television, radio and newspaper. The notice was designed to alert adults living near a Georgia-Pacific plant that they had been exposed to an air-borne toxic plume and their rights under the terms of the class action settlement. In the Order and Judgment finally approving the settlement, the Honorable Jennifer L. Bunner stated:

[N]otice of the settlement to the Class was the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The Court finds that such effort exceeded even reasonable effort and that the Notice complies with the requirements of Civ. R. 23(C).

In Re: American Cyanamid, No. CV-97-0581-BH-M (S.D.AI.). The media program targeted Farmers who had purchased crop protection chemicals manufactured by American Cyanamid. In the Final Order and Judgment, the Honorable Charles R. Butler Jr. wrote:

The Court finds that the form and method of notice used to notify the Temporary Settlement Class of the Settlement satisfied the requirements of Fed. R. Civ. P. 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all potential members of the Temporary Class Settlement.

In Re: First Alert Smoke Alarm Litig., No. CV-98-C-1546-W (UWC) (N.D.AI.). Ms. Finegan designed and implemented a nationwide legal notice and public information program. The public information program ran over a two-year period to inform those with smoke alarms of the performance characteristics between photoelectric and ionization detection. The media program included network and cable television, magazine and specialty trade publications. In the Findings and Order Preliminarily Certifying the Class for Settlement Purposes, Preliminarily Approving Class Settlement, Appointing Class Counsel, Directing Issuance of Notice to the Class, and Scheduling a Fairness Hearing, the Honorable C.W. Clemon wrote that the notice plan:

...constitutes due, adequate and sufficient notice to all Class Members; and (v) meets or exceeds all applicable requirements of the Federal Rules of Civil Procedure, the United States Constitution (including the Due Process Clause), the Alabama State Constitution, the Rules of the Court, and any other applicable law.

In Re: James Hardie Roofing Litig., No. 00-2-17945-65SEA (Sup. Ct. of Wash., King County). The nationwide legal notice program included advertising on television, in print and on the Internet. The program was designed to reach all persons who own any structure with JHBP roofing products. In the Final Order and Judgment, the Honorable Steven Scott stated:

The notice program required by the Preliminary Order has been fully carried out... [and was] extensive. The notice provided fully and accurately informed the Class Members of all material elements of the proposed Settlement and their opportunity to participate in or be excluded from it; was the best notice practicable under the circumstances; was valid, due and sufficient notice to all Class Members; and complied fully with Civ. R. 23, the United States Constitution, due process, and other applicable law.

Barden v. Hurd Millwork Co. Inc., et al, No. 2:6-cv-00046 (LA) (E.D.Wis.)

"The Court approves, as to form and content, the notice plan and finds that such notice is the best practicable under the circumstances under Federal Rule of Civil Procedure 23(c)(2)(B) and constitutes notice in a reasonable manner under Rule 23(e)(1)."

Altieri v. Reebok, No. 4:10-cv-11977 (FDS) (D.C.Mass.)

"The Court finds that the notices ... constitute the best practicable notice... The Court further finds that all of the notices are written in simple terminology, are readily understandable by Class Members, and comply with the Federal Judicial Center's illustrative class action notices."



Marengo v. Visa Inc., No. CV 10-08022 (DMG) (C.D.Cal.)

"[T]he Court finds that the notice plan...meets the requirements of due process, California law, and other applicable precedent. The Court finds that the proposed notice program is designed to provide the Class with the best notice practicable, under the circumstances of this action, of the pendency of this litigation and of the proposed Settlement's terms, conditions, and procedures, and shall constitute due and sufficient notice to all persons entitled thereto under California law, the United States Constitution, and any other applicable law."

Palmer v. Sprint Solutions, Inc., No. 09-cv-01211 (JLR) (W.D.Wa.)

"The means of notice were reasonable and constitute due, adequate, and sufficient notice to all persons entitled to be provide3d with notice."

In Re: Tyson Foods, Inc., Chicken Raised Without Antibiotics Consumer Litigation, No. 1:08-md-01982 RDB (D. Md. N. Div.)

"The notice, in form, method, and content, fully complied with the requirements of Rule 23 and due process, constituted the best notice practicable under the circumstances, and constituted due and sufficient notice to all persons entitled to notice of the settlement."

Sager v. Inamed Corp. and McGhan Medical Breast Implant Litigation, No. 01043771 (Sup. Ct. Cal., County of Santa Barbara)

"Notice provided was the best practicable under the circumstances."

Deke, et al. v. Cardservice Internat'I, Case No. BC 271679, slip op. at 3 (Sup. Ct. Cal., County of Los Angeles)

"The Class Notice satisfied the requirements of California Rules of Court 1856 and 1859 and due process and constituted the best notice practicable under the circumstances."

Levine, et al. v. Dr. Philip C. McGraw, et al., Case No. BC 312830 (Los Angeles County Super. Ct., Cal.)

"[T]he plan for notice to the Settlement Class ... constitutes the best notice practicable under the circumstances and constituted due and sufficient notice to the members of the Settlement Class ... and satisfies the requirements of California law and federal due process of law."

In re: Canadian Air Cargo Shipping Class Actions, Court File No. 50389CP, Ontario Superior Court of Justice, Supreme Court of British Columbia, Quebec Superior Court

"I am satisfied the proposed form of notice meets the requirements of s. 17(6) of the CPA and the proposed method of notice is appropriate."

Fischer et al v. IG Investment Management, Ltd. et al, Court File No. 06-CV-307599CP, Ontario Superior Court of Justice.

In re: Vivendi Universal, S.A. Securities Litigation, No. 02-cv-5571 (RJH)(HBP) (S.D.N.Y.).

In re: Air Cargo Shipping Services Antitrust Litigation, No. 06-MD-1775 (JG) (VV) (E.D.N.Y.).

Berger, et al., v. Property ID Corporation, et al., No. CV 05-5373-GHK (CWx) (C.D.Cal.).

Lozano v. AT&T Mobility Wireless, No. 02-cv-0090 CAS (AJWx) (C.D.Cal.).

Howard A. Engle, M.D., et al., v. R.J. Reynolds Tobacco Co., Philip Morris, Inc., Brown & Williamson Tobacco Corp., No. 94-08273 CA (22) (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Royal Dutch/Shell Transport Securities Litigation, No. 04 Civ. 374 (JAP) (Consolidated Cases) (D. N.J.).



In re: Epson Cartridge Cases, Judicial Council Coordination Proceeding, No. 4347 (Sup. Ct. of Cal., County of Los Angeles).

UAW v. General Motors Corporation, No: 05-73991 (E.D.MI).

Wicon, Inc. v. Cardservice Intern'l, Inc., BC 320215 (Sup. Ct. of Cal., County of Los Angeles).

In re: SmithKline Beecham Clinical Billing Litig., No. CV. No. 97-L-1230 (Third Judicial Cir., Madison County, Ill.).

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning billings for clinical laboratory testing services.

MacGregor v. Schering-Plough Corp., No. EC248041 (Sup. Ct. Cal., County of Los Angeles).

This nationwide notification program was designed to reach all persons who had purchased or used an aerosol inhaler manufactured by Schering-Plough. Because no mailing list was available, notice was accomplished entirely through the media program.

In re: Swiss Banks Holocaust Victim Asset Litig., No. CV-96-4849 (E.D.N.Y.).

Ms. Finegan managed the design and implementation of the Internet site on this historic case. The site was developed in 21 native languages. It is a highly secure data gathering tool and information hub, central to the global outreach program of Holocaust survivors. www.swissbankclaims.com.

In re: Exxon Valdez Oil Spill Litig., No. A89-095-CV (HRH) (Consolidated) (D. Alaska).

Ms. Finegan designed and implemented two media campaigns to notify native Alaskan residents, trade workers, fisherman, and others impacted by the oil spill of the litigation and their rights under the settlement terms.

In re: Johns-Manville Phenolic Foam Litig., No. CV 96-10069 (D. Mass).

The nationwide multi-media legal notice program was designed to reach all Persons who owned any structure, including an industrial building, commercial building, school, condominium, apartment house, home, garage or other type of structure located in the United States or its territories, in which Johns-Manville PFRI was installed, in whole or in part, on top of a metal roof deck.

Bristow v Fleetwood Enters Litig., No Civ 00-0082-S-EJL (D. Id).

Ms. Finegan designed and implemented a legal notice campaign targeting present and former employees of Fleetwood Enterprises, Inc., or its subsidiaries who worked as hourly production workers at Fleetwood's housing, travel trailer, or motor home manufacturing plants. The comprehensive notice campaign included print, radio and television advertising.

In re: New Orleans Tank Car Leakage Fire Litig., No 87-16374 (Civil Dist. Ct., Parish of Orleans, LA) (2000).

This case resulted in one of the largest settlements in U.S. history. This campaign consisted of a media relations and paid advertising program to notify individuals of their rights under the terms of the settlement.

Garría Spencer v. Shell Oil Co., No. CV 94-074(Dist. Ct., Harris County, Tex.).

The nationwide notification program was designed to reach individuals who owned real property or structures in the United States, which contained polybutylene plumbing with acetyl insert or metal insert fittings.

In re: Hurd Millwork Heat Mirror™ Litig., No. CV-772488 (Sup. Ct. of Cal., County of Santa Clara).



This nationwide multi-media notice program was designed to reach class members with failed heat mirror seals on windows and doors, and alert them as to the actions that they needed to take to receive enhanced warranties or window and door replacement.

Laborers Dist. Counsel of Alabama Health and Welfare Fund v. Clinical Lab. Servs., Inc., No. CV-97-C-629-W (N.D. Ala.)

Ms. Finegan designed and developed a national media and Internet site notification program in connection with the settlement of a nationwide class action concerning alleged billing discrepancies for clinical laboratory testing services.

In re: StarLink Corn Prods. Liab. Litig., No. 01-C-1181 (N.D. Ill)

Ms. Finegan designed and implemented a nationwide notification program designed to alert potential class members of the terms of the settlement.

In re: MCI Non-Subscriber Rate Payers Litig., MDL Docket No. 1275, 3:99-cv-01275 (S.D.Ill.).

The advertising and media notice program, found to be “more than adequate” by the Court, was designed with the understanding that the litigation affected all persons or entities who were customers of record for telephone lines presubscribed to MCI/World Com, and were charged the higher non-subscriber rates and surcharges for direct-dialed long distance calls placed on those lines. www.rateclaims.com.

In re: Albertson’s Back Pay Litig., No. 97-0159-S-BLW (D.Id.).

Ms. Finegan designed and developed a secure Internet site, where claimants could seek case information confidentially.

In re: Georgia Pacific Hardboard Siding Recovering Program, No. CV-95-3330-RG (Cir. Ct., Mobile County, Ala.)

Ms. Finegan designed and implemented a multi-media legal notice program, which was designed to reach class members with failed G-P siding and alert them of the pending matter. Notice was provided through advertisements, which aired on national cable networks, magazines of nationwide distribution, local newspaper, press releases and trade magazines.

In re: Diet Drugs (Phentermine, Fenfluramine, Dexfenfluramine) Prods. Liab. Litig., Nos. 1203, 99-20593.

Ms. Finegan worked as a consultant to the National Diet Drug Settlement Committee on notification issues. The resulting notice program was described and complimented at length in the Court’s Memorandum and Pretrial Order 1415, approving the settlement.

Ms. Finegan designed the Notice programs for multiple state antitrust cases filed against the Microsoft Corporation. In those cases, it was generally alleged that Microsoft unlawfully used anticompetitive means to maintain a monopoly in markets for certain software, and that as a result, it overcharged consumers who licensed its MS-DOS, Windows, Word, Excel and Office software. The multiple legal notice programs designed by Jeanne Finegan and listed below targeted both individual users and business users of this software. The scientifically designed notice programs took into consideration both media usage habits and demographic characteristics of the targeted class members.

In re: Florida Microsoft Antitrust Litig. Settlement, No. 99-27340 CA 11 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Montana Microsoft Antitrust Litig. Settlement, No. DCV 2000 219 (First Judicial Dist. Ct., Lewis & Clark Co., Mt.).

In re: South Dakota Microsoft Antitrust Litig. Settlement, No. 00-235(Sixth Judicial Cir., County of Hughes, S.D.).



In re: Kansas Microsoft Antitrust Litig. Settlement, No. 99C17089 Division No. 15 Consolidated Cases (Dist. Ct., Johnson County, Kan.)

“The Class Notice provided was the best notice practicable under the circumstances and fully complied in all respects with the requirements of due process and of the Kansas State. Annot. §60-22.3.”

In re: North Carolina Microsoft Antitrust Litig. Settlement, No. 00-CvS-4073 (Wake) 00-CvS-1246 (Lincoln) (General Court of Justice Sup. Ct., Wake and Lincoln Counties, N.C.).

In re: ABS II Pipes Litig., No. 3126 (Sup. Ct. of Cal., Contra Costa County).

The Court approved regional notification program designed to alert those individuals who owned structures with the pipe that they were eligible to recover the cost of replacing the pipe.

In re: Avenue A Inc. Internet Privacy Litig., No: C00-1964C (W.D. Wash.).

In re: Lorazepam and Clorazepate Antitrust Litig., No. 1290 (TFH) (D.C.C.).

In re: Providian Fin. Corp. ERISA Litig., No C-01-5027 (N.D. Cal.).

In re: H & R Block., et al Tax Refund Litig., No. 97195023/CC4111 (MD Cir. Ct., Baltimore City).

In re: American Premier Underwriters, Inc, U.S. Railroad Vest Corp., No. 06C01-9912 (Cir. Ct., Boone County, Ind.).

In re: Sprint Corp. Optical Fiber Litig., No: 9907 CV 284 (Dist. Ct., Leavenworth County, Kan).

In re: Shelter Mutual Ins. Co. Litig., No. CJ-2002-263 (Dist.Ct., Canadian County. Ok).

In re: Conseco, Inc. Sec. Litig., No: IP-00-0585-C Y/S CA (S.D. Ind.).

In re: Nat’l Treasury Employees Union, et al., 54 Fed. Cl. 791 (2002).

In re: City of Miami Parking Litig., Nos. 99-21456 CA-10, 99-23765 – CA-10 (11th Judicial Dist. Ct. of Miami-Dade County, Fla.).

In re: Prime Co. Incorporated D/B/A/ Prime Co. Personal Comm., No. L 1:01CV658 (E.D. Tx.).

Aalsea Veneer v. State of Oregon A.A., No. 88C-11289-88C-11300.



INTERNATIONAL EXPERIENCE

In re Endo International plc., No. 22-22549 (Bankr. S.D.N.Y. 2022).

In re Imerys Talc America, Inc. No. 19-10289 (Bankr. D.Del. 2021).

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Bell v. Canadian Imperial Bank of Commerce, et al, Court File No.: CV-08-359335 (Ontario Superior Court of Justice); (2016).

In re: Canadian Air Cargo Shipping Class Actions (Ontario Superior Court of Justice, Court File No. 50389CP, Supreme Court of British Columbia.

In re: Canadian Air Cargo Shipping Class Actions (Québec Superior Court).

Fischer v. IG Investment Management LTD., No. 06-CV-307599CP (Ontario Superior Court of Justice).

In Re Nortel I & II Securities Litigation, Civil Action No. 01-CV-1855 (RMB), Master File No. 05 MD 1659 (LAP) (S.D.N.Y. 2006).

Frohlinger v. Nortel Networks Corporation et al., Court File No.: 02-CL-4605 (Ontario Superior Court of Justice).

Association de Protection des Épargnants et Investisseurs du Québec v. Corporation Nortel Networks, No.: 500-06-0002316-017 (Superior Court of Québec).

Jeffery Jv. Nortel Networks Corporation et al., Court File No.: S015159 (Supreme Court of British Columbia).

Gallardi v. Nortel Networks Corporation, No. 05-CV-285606CP (Ontario Superior Court).

Skarstedt v. Corporation Nortel Networks, No. 500-06-000277-059 (Superior Court of Québec).

SEC ENFORCEMENT NOTICE PROGRAM EXPERIENCE

SEC v. Vivendi Universal, S.A., et al., Case No. 02 Civ. 5571 (RJH) (HBP) (S.D.N.Y.).
The Notice program included publication in 11 different countries and eight different languages.

SEC v. Royal Dutch Petroleum Company, No.04-3359 (S.D. Tex.)

FEDERAL TRADE COMMISSION NOTICE PROGRAM EXPERIENCE

FTC v. TracFone Wireless, Inc., Case No. 15-cv-00392-EMC.

FTC v. Skechers U.S.A., Inc., No. 1:12-cv-01214-JG (N.D. Ohio).

FTC v. Reebok International Ltd., No. 11-cv-02046 (N.D. Ohio)

FTC v. Chanery and RTC Research and Development LLC [Nutraquest], No :05-cv-03460 (D.N.J.)



BANKRUPTCY EXPERIENCE

Ms. Finegan has designed and implemented hundreds of domestic and international bankruptcy notice programs. A sample case list includes the following:

In re RML, LLC (Revlon) No. 22-10784 (Bankr. S.D.N.Y. 2023)

In re Endo International plc., No. 22-22549 (Bankr. S.D.N.Y. 2022).

In re Mallinckrodt PLC, et al., No. 20-12522 (Bankr. D. Del. 2022).

In re Imerys Talc America, Inc. No. 19-10289 Bankr. (D. Del 2021).

In re Paddock Enterprises LLC., No. 20-10028 (Bankr. D. Del. 2020).

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

In Re: PG&E Corporation Case No. 19-30088 (Bankr. N.D. Cal. 2019). Hearing Establishing, Deadline for Filing Proofs of Claim, (II) establishing the Form and Manner of Notice Thereof, and (III) Approving Procedures for Providing Notice of Bar Date and Other Information to all Creditors and Potential Creditors PG&E. *June 26, 2019, Transcript of Hearing p. 21:1*, the Honorable Dennis Montali stated:

...the technology and the thought that goes into all these plans is almost incomprehensible. He further stated, p. 201:20 ... Ms. Finegan has really impressed me today...

In re AMR Corporation [American Airlines], et al., No. 11-15463 (SHL) (Bankr. S.D.N.Y.)

"due and proper notice [was] provided, and ... no other or further notice need be provided."

In re Jackson Hewitt Tax Service Inc., et al., No 11-11587 (Bankr. D.Del.) (2011).

The debtors sought to provide notice of their filing as well as the hearing to approve their disclosure statement and confirm their plan to a large group of current and former customers, many of whom current and viable addresses promised to be a difficult (if not impossible) and costly undertaking. The court approved a publication notice program designed and implemented by Finegan and the administrator, that included more than 350 local newspaper and television websites, two national online networks (24/7 Real Media, Inc. and Microsoft Media Network), a website notice linked to a press release and notice on eight major websites, including CNN and Yahoo. These online efforts supplemented the print publication and direct-mail notice provided to known claimants and their attorneys, as well as to the state attorneys general of all 50 states. The *Jackson Hewitt* notice program constituted one of the first large chapter 11 cases to incorporate online advertising.

In re: Nutraquest Inc., No. 03-44147 (Bankr. D.N.J.)

In re: General Motors Corp. et al, No. 09-50026 (Bankr. S.D.N.Y.)

This case is the 4th largest bankruptcy in U.S. history. Ms. Finegan and her team worked with General Motors restructuring attorneys to design and implement the legal notice program.

In re: ACandS, Inc., No. 0212687 (Bankr. D.Del.) (2007)

"Adequate notice of the Motion and of the hearing on the Motion was given."

In re: United Airlines, No. 02-B-48191 (Bankr. N.D Ill.)

Ms. Finegan worked with United and its restructuring attorneys to design and implement global legal notice programs. The notice was published in 11 countries and translated into 6 languages. Ms. Finegan worked closely with legal counsel and UAL's advertising team to select the appropriate media and to negotiate the most favorable advertising rates. www.pd-ual.com.



In re: Enron, No. 01-16034 (Bankr. S.D.N.Y.)

Ms. Finegan worked with Enron and its restructuring attorneys to publish various legal notices.

In re: Dow Corning, No. 95-20512 (Bankr. E.D. Mich.)

Ms. Finegan originally designed the information website. This Internet site is a major information hub that has various forms in 15 languages.

In re: Harnischfeger Inds., No. 99-2171 (RJW) Jointly Administered (Bankr. D. Del.)

Ms. Finegan designed and implemented 6 domestic and international notice programs for this case. The notice was translated into 14 different languages and published in 16 countries.

In re: Keene Corp., No. 93B 46090 (SMB), (Bankr. E.D. MO.)

Ms. Finegan designed and implemented multiple domestic bankruptcy notice programs including notice on the plan of reorganization directed to all creditors and all Class 4 asbestos-related claimants and counsel.

In re: Lamonts, No. 00-00045 (Bankr. W.D. Wash.)

Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Monet Group Holdings, Nos. 00-1936 (MFW) (Bankr. D. Del.)

Ms. Finegan designed and implemented a bar date notice.

In re: Laclede Steel Co., No. 98-53121-399 (Bankr. E.D. MO.)

Ms. Finegan designed and implemented multiple bankruptcy notice programs.

In re: Columbia Gas Transmission Corp., No. 91-804 (Bankr. S.D.N.Y.)

Ms. Finegan developed multiple nationwide legal notice notification programs for this case.

In re: U.S.H. Corp. of New York, et al. (Bankr. S.D.N.Y.)

Ms. Finegan designed and implemented a bar date advertising notification campaign.

In re: Best Prods. Co., Inc., No. 96-35267-T, (Bankr. E.D. Va.)

Ms. Finegan implemented a national legal notice program that included multiple advertising campaigns for notice of sale, bar date, disclosure and plan confirmation.

In re: Lodgian, Inc., et al., No. 16345 (BRL) Factory Card Outlet – 99-685 (JCA), 99-686 (JCA) (Bankr. S.D.N.Y.)

In re: Internat'l Total Servs, Inc., et al., Nos. 01-21812, 01-21818, 01-21820, 01-21882, 01-21824, 01-21826, 01-21827 (CD) Under Case No: 01-21812 (Bankr. E.D.N.Y.)

In re: Decora Inds., Inc. and Decora, Incorp., Nos. 00-4459 and 00-4460 (JJF) (Bankr. D. Del.)

In re: Genesis Health Ventures, Inc., et al, No. 002692 (PJW) (Bankr. D. Del.)

In re: Tel. Warehouse, Inc., et al, No. 00-2105 through 00-2110 (MFW) (Bankr. D. Del.)

In re: United Cos. Fin. Corp., et al, No. 99-450 (MFW) through 99-461 (MFW) (Bankr. D. Del.)

In re: Caldor, Inc. New York, The Caldor Corp., Caldor, Inc. CT, et al., No. 95-B44080 (JLG) (Bankr. S.D.N.Y.)

In re: Physicians Health Corp., et al., No. 00-4482 (MFW) (Bankr. D. Del.)

In re: GC Cos., et al., Nos. 00-3897 through 00-3927 (MFW) (Bankr. D. Del.)



In re: Heilig-Meyers Co., et al., Nos. 00-34533 through 00-34538 (Bankr. E.D. Va.).

MASS TORT EXPERIENCE AND PRODUCT RECALL

In re: East Palestine Train Derailment, No. 23-cv-00242 (N.D. Ohio).

Imerys Talc America, Inc. No. 19-10289 (Bankr. D. Del 2021).

In re Paddock Enterprises LLC., Bi 2011-10028 (Bankr. D. Del 2020).

In re: Columbia Gas Cases, Superior Court of Massachusetts, Civ Action No. 1877CV01343G (2020). On September 13, 2018, an over-pressurization event led to devastating gas explosions and fires impacting residents and businesses across Lawrence, Andover, and North Andover, Massachusetts. The event caused significant personal injury, property damage, business interruption, and other damage to area residents.

Ms. Finegan and the Kroll Notice Media team designed and implemented the outreach. The publication notice considered potential barriers concerning trust, language, and media use when developing the plan. The plan included local television, local radio, local newspaper, banner ads, search engine ads, social media, press releases, community outreach via town hall meetings and flyer distribution to local groups.

In Re: PG&E Corporation Case No. 19-30088 Bankr. N.D. Cal. 2019).

In re Purdue Pharma L.P., No. 19-23649 (Bankr. S.D.N.Y. 2019).

Reser's Fine Foods. Reser's is a nationally distributed brand and manufacturer of food products through giants such as Albertsons, Costco, Food Lion, WinnDixie, Ingles, Safeway and Walmart. Ms. Finegan designed an enterprise-wide crisis communication plan that included communications objectives, crisis team roles and responsibilities, crisis response procedures, regulatory protocols, definitions of incidents that require various levels of notice, target audiences, and threat assessment protocols. Ms. Finegan worked with the company through two nationwide, high profile recalls, conducting extensive media relations efforts.

Gulf Coast Claims Facility Notice Campaign. Finegan coordinated a massive outreach effort throughout the Gulf Coast region to notify those who have claims as a result of damages caused by the Deep Water Horizon Oil spill. The notice campaign included extensive advertising in newspapers throughout the region, Internet notice through local newspaper, television and radio websites and media relations. The Gulf Coast Claims Facility (GCCF) was an independent claims facility, funded by BP, for the resolution of claims by individuals and businesses for damages incurred as a result of the oil discharges due to the Deepwater Horizon incident on April 20, 2010.

City of New Orleans Tax Revisions, Post-Hurricane Katrina. In 2007, the City of New Orleans revised property tax assessments for property owners. As part of this process, it received numerous appeals to the assessments. An administration firm served as liaison between the city and property owners, coordinating the hearing schedule and providing important information to property owners on the status of their appeal. Central to this effort was the comprehensive outreach program designed by Ms. Finegan, which included a website and a heavy schedule of television, radio and newspaper advertising, along with the coordination of key news interviews about the project picked up by local media.



ARTICLES/ SOCIAL MEDIA

Interview, "How Marketers Achieve Greater ROI Through Digital Assurance," Alliance for Audited Media ("AAM"), white paper, January 2021.

Tweet Chat: Contributing Panelist #Law360SocialChat, A live Tweet workshop concerning the benefits and pit-falls of social media, Lextalk.com, November 7, 2019.

Author, "Top Class Settlement Admin Factors to Consider in 2020" Law360, New York, (October 31, 2019, 5:44 PM ET).

Author, "Creating a Class Notice Program that Satisfies Due Process" Law360, New York, (February 13, 2018 12:58 PM ET).

Author, "3 Considerations for Class Action Notice Brand Safety" Law360, New York, (October 2, 2017 12:24 PM ET).

Author, "What Would Class Action Reform Mean for Notice?" Law360, New York, (April 13, 2017 11:50 AM ET).

Author, "Bots Can Silently Steal your Due Process Notice." Wisconsin Law Journal, April 2017.

Author, "*Don't Turn a Blind Eye to Bots*. Ad Fraud and Bots are a Reality of the Digital Environment." LinkedIn article March 6, 2107.

Co-Author, "Modern Notice Requirements Through the Lens of *Eisen* and *Mullane*" – Bloomberg - BNA Class Action Litigation Report, 17 CLASS 1077, (October 14, 2016).

Author, "Think All Internet Impressions Are The Same? Think Again" – Law360.com, New York (March 16, 2016, 3:39 ET).

Author, "Why Class Members Should See an Online Ad More Than Once" – Law360.com, New York, (December 3, 2015, 2:52 PM ET).

Author, 'Being 'Media-Relevant' — What It Means and Why It Matters - Law360.com, New York (September 11, 2013, 2:50 PM ET).

Co-Author, "New Media Creates New Expectations for Bankruptcy Notice Programs," ABI Journal, Vol. XXX, No 9, (November 2011).

Quoted Expert, "Effective Class Action Notice Promotes Access to Justice: Insight from a New U.S. Federal Judicial Center Checklist," Canadian Supreme Court Law Review, (2011), 53 S.C.L.R. (2d).

Co-Author, with Hon. Dickran Tevrizian – "Expert Opinion: It's More Than Just a Report...Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape," BNA Class Action Litigation Report, 12 CLASS 464, May 27, 2011.

Co-Author, with Hon. Dickran Tevrizian, Your Insight, "Expert Opinion: It's More Than Just a Report -Why Qualified Legal Experts Are Needed to Navigate the Changing Media Landscape,"^[1]_[SEP] TXLR, Vol. 26, No. 21, May 26, 2011.

Quoted Expert, "Analysis of the FJC's 2010 Judges' Class Action Notice and Claims Process Checklist and Guide: A New Roadmap to Adequate Notice and Beyond," BNA Class Action Litigation Report, 12 CLASS 165, February 25, 2011.



Author, Five Key Considerations for a Successful International Notice Program, BNA Class Action Litigation Report, April, 9, 2010 Vol. 11, No. 7 p. 343.

Quoted Expert, "Communication Technology Trends Pose Novel Notification Issues for Class Litigators," BNA Electronic Commerce and Law, 15 ECLR 109 January 27, 2010.

Author, "Legal Notice: R U ready 2 adapt?" BNA Class Action Report, Vol. 10 Class 702, July 24, 2009.

Author, "On Demand Media Could Change the Future of Best Practicable Notice," BNA Class Action Litigation Report, Vol. 9, No. 7, April 11, 2008, pp. 307-310.

Quoted Expert, "Warranty Conference: Globalization of Warranty and Legal Aspects of Extended Warranty," Warranty Week, warrantyweek.com/archive/ww20070228.html/ February 28, 2007.

Co-Author, "Approaches to Notice in State Court Class Actions," For The Defense, Vol. 45, No. 11, November, 2003.

Citation, "Recall Effectiveness Research: A Review and Summary of the Literature on Consumer Motivation and Behavior," U.S. Consumer Product Safety Commission, CPSC-F-02-1391, p.10, Heiden Associates, July 2003.

Author, "The Web Offers Near, Real-Time Cost Efficient Notice," American Bankruptcy Institute, ABI Journal, Vol. XXII, No. 5., 2003.

Author, "Determining Adequate Notice in Rule 23 Actions," For The Defense, Vol. 44, No. 9 September, 2002.

Author, "Legal Notice, What You Need to Know and Why," Monograph, July 2002.

Co-Author, "The Electronic Nature of Legal Noticing," The American Bankruptcy Institute Journal, Vol. XXI, No. 3, April 2002.

Author, "Three Important Mantras for CEO's and Risk Managers," - International Risk Management Institute, irmi.com, January 2002.

Co-Author, "Used the Bat Signal Lately," The National Law Journal, Special Litigation Section, February 19, 2001.

Author, "How Much is Enough Notice," Dispute Resolution Alert, Vol. 1, No. 6. March 2001.

Author, "Monitoring the Internet Buzz," The Risk Report, Vol. XXIII, No. 5, Jan. 2001.

Author, "High-Profile Product Recalls Need More Than the Bat Signal," - International Risk Management Institute, irmi.com, July 2001.

Co-Author, "Do You Know What 100 Million People are Buzzing About Today?" Risk and Insurance Management, March 2001.

Quoted Article, "Keep Up with Class Action," Kentucky Courier Journal, March 13, 2000.

Author, "The Great Debate - How Much is Enough Legal Notice?" American Bar Association – Class Actions and Derivatives Suits Newsletter, winter edition 1999.



SPEAKER/EXPERT PANELIST/PRESENTER

Expert Webcast	Panelist, Mass Torts: Implications for Bankruptcy and Restructuring, October 19, 2023. https://lnkd.in/gdy5synR/ .
Chief Litigation Counsel Association (CLCA)	Speaker, "Four Factors Impacting the Cost of Your Class Action Settlement and Notice," Houston TX, May 1, 2019.
CLE Webinar	"Rule 23 Changes to Notice, Are You Ready for the Digital Wild, Wild West?" October 23, 2018, https://bit.ly/2RIRvZq/ .
American Bar Assn.	Faculty Panelist, 4 th Annual Western Regional CLE Class Actions, "Big Brother, Information Privacy, and Class Actions: How Big Data and Social Media are Changing the Class Action Landscape" San Francisco, CA June, 2018.
Miami Law Class Action Faculty & Complex Litigation Forum	Panelist, "Settlement and Resolution of Class Actions," Miami, FL December 2, 2016.
The Knowledge Group	Faculty Panelist, "Class Action Settlements: Hot Topics 2016 and Beyond," Live Webcast, www.theknowledgegroup.org , October 2016.
ABA National Symposium	Faculty Panelist, "Ethical Considerations in Settling Class Actions," New Orleans, LA, March 2016.
S.F. Banking Attorney Assn.	Speaker, "How a Class Action Notice can Make or Break your Client's Settlement," San Francisco, CA, May 2015.
Perrin Class Action Conf.	Faculty Panelist, "Being Media Relevant, What It Means and Why It Matters – The Social Media Evolution: Trends, Challenges and Opportunities," Chicago, IL May 2015.
Bridgeport Continuing Ed.	Speaker, Webinar "Media Relevant in the Class Notice Context." July, 2014.
Bridgeport Continuing Ed.	Faculty Panelist, "Media Relevant in the Class Notice Context." Los Angeles, California, April 2014.
CASD 5 th Annual	Speaker, "The Impact of Social Media on Class Action Notice." Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, September 2012.
Law Seminars International	Speaker, "Class Action Notice: Rules and Statutes Governing FRCP (b)(3) Best Practicable... What constitutes a best practicable notice? What practitioners and courts should expect in the new era of online and social media." Chicago, IL, October 2011. <i>*Voted by attendees as one of the best presentations given.</i>
CASD 4 th Annual	Faculty Panelist, "Reasonable Notice - Insight for practitioners on the FJC's <i>Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide</i> . Consumer Attorneys of San Diego Class Action Symposium, San Diego, California, October 2011.
CLE International	Faculty Panelist, Building a Workable Settlement Structure, CLE International, San Francisco, California May, 2011.



CASD	Faculty Panelist, "21 st Century Class Notice and Outreach." 3 rd Annual Class Action Symposium CASD Symposium, San Diego, California, October 2010.
CASD	Faculty Panelist, "The Future of Notice." 2 nd Annual Class Action Symposium CASD Symposium, San Diego California, October 2009.
American Bar Association	Speaker, 2008 Annual Meeting, "Practical Advice for Class Action Settlements: The Future of Notice In the United States and Internationally – Meeting the Best Practicable Standard." Section of Business Law Business and Corporate Litigation Committee – Class and Derivative Actions Subcommittee, New York, NY, August 2008.
Women Lawyers Assn.	Faculty Panelist, Women Lawyers Association of Los Angeles "The Anatomy of a Class Action." Los Angeles, CA, February, 2008.
Warranty Chain Mgmt.	Faculty Panelist, Presentation Product Recall Simulation. Tampa, Florida, March 2007.
Practicing Law Institute.	Faculty Panelist, CLE Presentation, 11 th Annual Consumer Financial Services Litigation. Presentation: Class Action Settlement Structures – Evolving Notice Standards in the Internet Age. New York/Boston (simulcast), NY March 2006; Chicago, IL April 2006 and San Francisco, CA, May 2006.
U.S. Consumer Product Safety Commission	Ms. Finegan participated as an invited expert panelist to the CPSC to discuss ways in which the CPSC could enhance and measure the recall process. As a panelist, Ms Finegan discussed how the CPSC could better motivate consumers to take action on recalls and how companies could scientifically measure and defend their outreach efforts. Bethesda, MD, September 2003.
Weil, Gotshal & Manges	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." New York, June 2003.
Sidley & Austin	Presenter, CLE presentation, "A Scientific Approach to Legal Notice Communication." Los Angeles, May 2003.
Kirkland & Ellis	Speaker to restructuring group addressing "The Best Practicable Methods to Give Notice in a Tort Bankruptcy." Chicago, April 2002.
Georgetown University Law	Faculty, CLE White Paper: "What are the best practicable methods to Center Mass Tort Litigation give notice? Dispelling the communications myth – A notice Institute disseminated is a notice communicated," Mass Tort Litigation Institute. Washington D.C.
American Bar Association	Presenter, "How to Bullet-Proof Notice Programs and What Communication Barriers Present Due Process Concerns in Legal Notice," ABA Litigation Section Committee on Class Actions & Derivative Suits. Chicago, IL, August 6, 2001.
McCutchin, Doyle, Brown	Speaker to litigation group in San Francisco and simulcast to four other McCutchin locations, addressing the definition of effective notice and



	barriers to communication that affect due process in legal notice. San Francisco, CA, June 2001.
Marylhurst University	Guest lecturer on public relations research methods. Portland, OR, February 2001.
University of Oregon	Guest speaker to MBA candidates on quantitative and qualitative research for marketing and communications programs. Portland, OR, May 2001.
Judicial Arbitration & Mediation Services (JAMS)	Speaker on the definition of effective notice. San Francisco and Los Angeles, CA, June 2000.
International Risk Management Institute	Past Expert Commentator on Crisis and Litigation Communications. www.irmi.com .
The American Bankruptcy Institute Journal (ABI)	Past Contributing Editor – Beyond the Quill. www.abi.org .

BACKGROUND

Ms. Finegan's past experience includes working in senior management for leading Class Action Administration firms including The Garden City Group (GCG) and Poorman-Douglas Corp., (EPIQ). Ms. Finegan co-founded Huntington Advertising, a nationally recognized leader in legal notice communications. After Fleet Bank purchased her firm in 1997, she grew the company into one of the nation's leading legal notice communication agencies.

Prior to that, Ms. Finegan spearheaded Huntington Communications, (an Internet development company) and The Huntington Group, Inc., (a public relations firm). As a partner and consultant, she has worked on a wide variety of client marketing, research, advertising, public relations and Internet programs. During her tenure at the Huntington Group, client projects included advertising (media planning and buying), shareholder meetings, direct mail, public relations (planning, financial communications) and community outreach programs. Her past client list includes large public and privately held companies: Code-A-Phone Corp., Thrifty-Payless Drug Stores, Hyster-Yale, The Portland Winter Hawks Hockey Team, U.S. National Bank, U.S. Trust Company, Morley Capital Management, and Durametal Corporation.

Prior to Huntington Advertising, Ms. Finegan worked as a consultant and public relations specialist for a West Coast-based Management and Public Relations Consulting firm.

Additionally, Ms. Finegan has experience in news and public affairs. Her professional background includes being a reporter, anchor and public affairs director for KWJJ/KJIB radio in Portland, Oregon, as well as reporter covering state government for KBZY radio in Salem, Oregon. Ms. Finegan worked as an assistant television program/promotion manager for KPDX directing \$50 million in programming. She was also the program/promotion manager at KECH-22 television.

Ms. Finegan's multi-level communication background gives her a thorough, hands-on understanding of media, the communication process, and how it relates to creating effective and efficient legal notice campaigns.

MEMBERSHIPS, PROFESSIONAL CREDENTIALS

- APR** Accredited. Universal Board of Accreditation Public Relations Society of America
- **Member of the Public Relations Society of America**
 - **Member Canadian Public Relations Society**



Board of Directors - Alliance for Audited Media, Secretary.

Alliance for Audited Media (“AAM”) is the recognized leader in cross-media verification. It was founded in 1914 as the Audit Bureau of Circulations (ABC) to bring order and transparency to the media industry. Today, more than 4,000 publishers, advertisers, agencies and technology vendors depend on its data-driven insights, technology certification audits and information services to transact with trust.

SOCIAL MEDIA

LinkedIn: www.linkedin.com/in/jeanne-finegan-apr-7112341b

EXHIBIT D

United States District Court for the Northern District of Ohio

If you lived, worked, owned property or owned or operated a business within 20 miles of the derailment site of Norfolk Southern Train 32N in East Palestine, Ohio, from February 3, 2023 to April 26, 2024, you could receive payment from a class action settlement.

This Notice is authorized by the United States District Court for the Northern District of Ohio.

This is not a solicitation from a lawyer, nor do you need to hire a lawyer to participate.

- A number of residents, property owners, and businesses – the “Plaintiffs” – within 20 miles of the derailment site of Norfolk Southern Train 32N in East Palestine, Ohio (the “Class Area”) sued, among others, Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively “Norfolk Southern”) for losses they suffered from the February 3, 2023 derailment of Norfolk Southern Train 32N, including the “vent and burn” of five railcars on February 6, 2023 (collectively, the “Incident”). Plaintiffs and Norfolk Southern have reached a Class Action Settlement (the “Settlement”).
- The Settlement creates a \$600 million Settlement Fund. After Court-approved costs and fees, including attorneys’ and experts’ fees, the remainder of the Settlement Fund will be used to compensate people and businesses covered by the Settlement, called “Settlement Class Members.”
- You are a Settlement Class Member if you lived, worked, owned property, or owned or operated a business within 20 miles of the derailment site from February 3, 2023 to April 26, 2024. As a Settlement Class Member, you may be entitled to compensation from the Settlement Fund. The terms of the Settlement are described more fully below.
- **Your legal rights are affected whether you act or not. Please read this Notice carefully.**

Your Legal Rights and Options in this Settlement	
File a Claim for Payment by August 22, 2024	Filing the Claim Form(s) included with this Notice, and available at www.EastPalestineTrainSettlement.com , will allow you to receive money under the Settlement, if it is approved by the Court.
File a Notice of Exclusion by June 24, 2024	<p>If you do not wish to participate in the Settlement, you may exclude yourself or “opt out” of the Settlement Class by writing to the Settlement Administrator. As an “opt out”, you will have no rights to payments or benefits as a Settlement Class Member under the Settlement, and you will keep the right, if any, to sue Norfolk Southern.</p> <p>You do not need to, and should not, file a Notice of Exclusion if you want to participate in the Settlement, but do not want to receive a Personal Injury Payment, as described below.</p>

Object to the Settlement by June 24, 2024	If you do not think the Settlement is fair, you may write to the Settlement Administrator to object to its approval by the Court.
Do Nothing	If you do nothing, you will get no payment or benefits from the Settlement and you will give up certain rights. You will be bound by the terms of the Settlement, but will not receive any payment from the Settlement. However, by doing nothing you will not be giving up your claim, if any, for past, present or future personal injuries you have suffered.

- These rights and options—and the deadlines to exercise them—are explained in this notice.
- The Court in charge of this case still has to decide whether to approve the Settlement. Please be patient.

Questions? Read on and visit www.EastPalestineTrainSettlement.com

PARA UNA NOTIFICACIÓN ESPAÑOL, LLAMAR O VISITAR NUESTRO WEBSITE

General Information

1. What is this lawsuit about?

This class action lawsuit seeks to recover money for the people and businesses harmed by the Incident. The Honorable Benita Y. Pearson of the United States District Court for the Northern District of Ohio is the judge overseeing this case, called *In re: East Palestine Train Derailment*, Case No. 4:23-cv-00242. In the lawsuit, the Plaintiffs allege that Norfolk Southern (among others) caused the Incident and, as a result, the Class suffered real property damage, personal property damage, displacement expenses, lost wages, loss of business income, diminution of property value, increased risk of disease, emotional distress, disruption, inconvenience, loss of use and enjoyment of property and loss of goodwill. Norfolk Southern denies the claims asserted in the lawsuit and denies any wrongdoing, including that it violated any law.

2. Who are the lawyers representing the Settlement Class?

The Court appointed the following lawyers to represent you and the other Settlement Class Members: Seth A. Katz of Burg Simpson Eldredge Hersh & Jardine, P.C.; M. Elizabeth Graham of Grant & Eisenhofer P.A.; and Jayne Conroy of Simmons Hanly Conroy. The Court also appointed T. Michael Morgan of Morgan & Morgan, P.A. as a Co-Lead Counsel.

These firms are called Co-Lead and Class Counsel. You will not be charged individually for their services; if approved by the Court, Co-Lead and Class Counsel will be compensated from the Settlement. A copy of Co-Lead and Class Counsel's Motion for Attorneys' Fees and Expenses will be available 13 days before September 25, 2024.

Who is in the Class

3. Am I part of the Settlement Class?

You are a Settlement Class Member if you resided, worked, owned property, or owned or operated a business within 20-miles of the Derailment Site from February 3, 2023 to April 26, 2024. You are excluded from the Settlement Class if you are a director or duly elected and approved officer of Norfolk Southern, or any of its parents, subsidiaries, or affiliates; Norfolk Southern employees, and contractors of Norfolk Southern and their employees, who were specifically sent by Norfolk Southern to the area in and around the Derailment Site to respond to the Incident and do not otherwise fall within the definition of Settlement Class; Norfolk Southern's Counsel; Class Counsel; a government, political subdivision, public entity, or public agency; and the judge presiding over this Action and the judge's staff. If you are unsure whether you are part of the Settlement Class, a list of eligible addresses within 20-miles of the derailment site is available on the website www.EastPalestineTrainSettlement.com.

The Settlement Benefits

4. What does the Settlement provide?

The Settlement creates a \$600 million Settlement Fund to make: (1) cash payments to Settlement Class Members; and (2) Court-approved payments for Settlement administration, attorneys' fees and expenses, and Class Representative Awards. Class Counsel will request attorneys' fees of up to 27% of the Settlement Fund (\$162,000,000), settlement notice and administration costs and attorneys' costs and expenses up to 3% of the Fund (\$18,000,000), and a \$15,000 award to each of the Class Representatives. The Court may award less than these amounts.

To be eligible for a monetary award from the Settlement, Settlement Class Members must submit a Claim Form(s) (*see* Question 6 below). The amount each individual Settlement Class Member will receive will be determined through a Court-supervised claims process. Not all Settlement Class Members will receive the same amount. You do not need to hire a lawyer to participate in the Settlement.

This Settlement is separate from Norfolk Southern's ongoing remediation of East Palestine and the surrounding area, as well as claims made by state and federal agencies for, among other things, environmental clean-up.

5. What payments can I get from the Settlement?

After deductions for approved attorneys' fees and costs, Class Representative Awards, and Settlement Notice and Administration costs, the remaining funds will be distributed to Settlement Class Members in the following ways depending on category: (1) Court-approved direct payments to individuals ("Direct Payments"); or (2) itemized compensation for actual net business losses ("Business Loss Payments"). In addition, for those Eligible Settlement Class Members within 10 miles of the derailment site who **voluntarily** choose to participate, Settlement Class Members may also submit claims for personal injury payments ("Personal Injury Payments" for which they may receive additional Court-approved lump sum payments in exchange for releases of past, present, and future personal injury claims arising out of the Incident. The payment options provided by the Settlement are detailed below and more information is available on the website www.EastPalestineTrainSettlement.com.

Direct Payments

Individual Settlement Class Member households can receive a lump sum Direct Payment from the Settlement Fund based on a Court-approved formula that takes into account a number of factors, including geographic location, household size, acreage, length of displacement, and the nature of property damage, if any. Using these factors, the Settlement Administrator will base your payment on how severely your life was disrupted and any resulting increased risk of future disease. Below are the **potential, average** lump sum payment amounts based on proximity to East Palestine, Ohio, for households that participate in the Settlement:

0-2 Miles	Approximately \$70,000
2-4 Miles	Approximately \$45,000
4-7 Miles	Approximately \$30,000
7-10 Miles	Approximately \$15,000
10-15 Miles	Approximately \$500
15-20 Miles	Approximately \$250

In order to receive a Direct Payment, you must submit a Claim Form. Direct payments will be reduced by any payment you already received from Norfolk Southern. If, after everyone sends in Claim Forms, the compensation claims total more than \$600 million, net of all other expenses under the Settlement, the payments will be reduced. If the compensation claims are less than \$600 million net of costs, the payments will be increased and/or additional payments will be made on a pro rata basis.

Extraordinary Loss or Damage Payments

Individual Settlement Class Members who they have extraordinary claims for uncompensated losses or damages may also submit claims for additional compensation. Claims for extraordinary losses or damages must be supported by dated documentation. **The Settlement Administrator will conduct a detailed review of these claims, which will**

Questions? Call Toll-Free 1-833-425-3400 or visit www.EastPalestineTrainSettlement.com

significantly delay the payment of the Direct Payment, including any additional payment for extraordinary loss or damage.

Personal Injury Payments

Settlement Class Members who were physically located within 10 miles of the derailment site may also receive an additional lump sum Personal Injury Payments (“Eligible Personal Injury Settlement Class Members”). In evaluating claims for Personal Injury Payment, the Settlement Administrator will use objective, Court-approved criteria like the nature of any physical injury and resulting medical treatment, if any, to allocate funds to each Eligible Personal Injury Settlement Class Member. Settlement Class Members who choose to submit a claim for personal injury will be required to separately execute releases of all past, present, or future personal injury claims, known and unknown, related to or arising from the Incident (“Personal Injury Release”). To the extent an Eligible Personal Injury Settlement Class Member is a minor (under 18), additional terms apply, including that any Personal Injury Payments will only be made in accordance with applicable court orders.

Submission of a personal injury claim is strictly voluntary; you are not required to submit a personal injury claim to otherwise receive any other benefits under the Settlement, if eligible. Additional information about the Personal Injury Payments, including an example of the required release, is available on the website www.EastPalestineTrainSettlement.com. Below are the **potential, average** payment amounts based on proximity to East Palestine, Ohio, for individuals that submit a claim for Personal Injury Payment:

0-2 Miles	Approximately \$10,000
2-5 Miles	Approximately \$5,000
5-10 Miles	Approximately \$1,000

Extraordinary Injury Payments

Eligible Personal Injury Settlement Class Members who believe they have extraordinary claims for uncompensated injury may also submit claims for additional compensation. Claims for extraordinary injury must be submitted on an individual basis and must include itemized injuries supported by dated documentation. **The Settlement Administrator will conduct a detailed review of these claims, which will significantly delay payment of the Personal Injury Payment, including any additional payment for extraordinary injury.**

Actual Net Business Loss Payments

Settlement Class Members that are businesses may only submit an itemized compensation claim by submitting a Claim Form. The Settlement Administrator will conduct a detailed review of itemized compensation claims, allocating funds for the actual net business losses caused by the Incident. Settlement Class Members that are businesses will have their potential award, if any, reduced by the amount of any payment already received from Norfolk Southern or other sources.

If the Settlement is approved, whether you submit a claim for Direct Payments, Actual Net Business Loss Payments, object, or do nothing, you will not be able to sue, continue to sue, or be part of any other lawsuit against Norfolk Southern relating to the claims that were or could have been asserted in the First Amended Master Consolidated Class Action Complaint, a copy of which is available on the website www.EastPalestineTrainSettlement.com.

How to Receive a Payment

6. How can I receive a payment?

To qualify for payment, you must timely submit a Claim Form. Read the instructions carefully. You can submit the completed Claim Form by mail to In re: East Palestine Train Derailment Settlement, c/o Kroll Settlement Administration, LLC, PO Box 5324, New York, NY 10150-5324, online at www.EastPalestineTrainSettlement.com or in person at the East Palestine Settlement Center located at 191 East Rebecca Street, East Palestine, Ohio 44413.

Questions? Call Toll-Free 1-833-425-3400 or visit www.EastPalestineTrainSettlement.com

The completed Claim Form must be submitted by no later than August 22, 2024. If the Court approves the Settlement, payments should start to go out in or around December 2024. But there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. Everyone who sends in a Claim Form will be informed of the progress of the Settlement. Please be patient.

Excluding Yourself from the Settlement

7. How do I get out of the Settlement?

You may opt out of the Settlement by mailing an opt out request to the Settlement Administrator at:

In re: East Palestine Train Derailment Settlement
Attn: Exclusions
PO Box 5324
New York, NY 10150-5324

Settlement Class Members who desire to opt out of the Settlement must mail a written request to opt out stating that they seek exclusion from the Settlement and providing their: (1) name; (2) address; (3) telephone number; (4) e-mail address; (5) Claim ID, if applicable; and (6) information regarding their attorney, if any.

To be valid and effective, an original request to opt out must be signed by the Settlement Class Member, not by the Settlement Class Member's attorneys, if any, or anyone else. Mass or group opt-outs are not permitted, and each Settlement Class Member may only opt out on behalf of himself, herself or itself. Electronic signatures (other than DocuSign) are not valid and effective.

The opt-out request must be postmarked no later than June 24, 2024, or it will be denied as untimely and invalid.

8. What happens if I opt out?

If you submit a timely and valid request to opt out of the Settlement, you will not have any rights as a Settlement Class Member; you will not receive any payment or other benefits provided by the Settlement; you will not be able to object to the Settlement; and you will keep the right, if any, to sue Norfolk Southern for all claims arising out of the Incident.

Objecting to the Settlement

9. How do I object to the Settlement?

If you are a Settlement Class Member who wishes to participate in the Settlement but believes the Settlement terms are unfair, you can object to the Settlement. To object, you must send a letter to the Settlement Administrator explaining why you think the Court should not approve the Settlement. This letter must say that you object to the In re: East Palestine Train Derailment Settlement, and include your: (1) name; (2) address at which you lived, worked or owned a property or business from February 3, 2023 to the present; (3) email address; (4) telephone number; (5) signature; (6) documentation establishing your status as a Settlement Class Member; (7) the specific factual and legal reasons why the Settlement should not be approved; (8) whether you will appear or testify at the Final Approval Hearing; and (9) the name and contact information of your attorney, if any, and any class action settlements your attorney has objected to in the last five years. This letter must be mailed to the Settlement Administrator at In re: East Palestine Train Derailment Settlement, c/o Kroll Settlement Administration, LLC, PO Box 5324, New York, NY 10150-5324, postmarked by no later than June 24, 2024.

You do not need to hire an attorney to submit an objection on your behalf; however, if you choose to do so at your own expense, that attorney must: (1) file a notice of appearance with the Court by no later than June 24, 2024; (2) file a sworn declaration attesting to their representation of the Settlement Class Member on whose behalf the objection is being filed; and (3) satisfy on behalf of the Settlement Class Member all substantive requirements for objection described in this Question. Objections cannot be made on behalf of multiple Settlement Class Members; each Settlement Class Member who wishes to object must submit an individual objection as described above. While the Court will consider your views, you cannot ask the Court to change the Settlement; the Court can only approve or reject the Settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue.

Unless the Court directs otherwise, any Settlement Class Member who fails to fully comply with the requirements for objecting will not be able to object to the Settlement, will not be heard on any such objection and/or will not be able to appeal from the Court's disposition of this Settlement. Objectors must still comply with the deadlines for filing claims if they wish to participate in the Settlement.

10. What is the difference between objecting and opting out?

Objecting is telling the Court you do not like something about the Settlement and it should not be approved for any of the Settlement Class Members. You can object to the Settlement only if you do not exclude yourself from the Settlement. You can still get the Settlement benefits if it is approved over your objection.

Excluding yourself from the Settlement is opting out and telling the Court that you do not want to be part of the Settlement. If you opt out of the Settlement, you cannot object to it because it no longer affects you.

You cannot opt out of the Settlement and object to it.

If You Do Nothing

11. What happens if I do nothing at all?

If you take no action at all, you will get no Settlement payment or benefit, but you will have given up your right to start a lawsuit, continue a lawsuit or be part of any other lawsuit against Norfolk Southern relating to the Incident. **However, any claim you may have for personal injury arising out of the Incident against Norfolk Southern will not be affected even if you do nothing.**

The Final Approval Hearing

12. When will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing on September 25, 2024, at 10:00 a.m. at the Thomas D. Lambros Federal Building and United States Courthouse, 125 Market Street, Youngstown, Ohio 44503. At this hearing, the Court will consider whether the Settlement Agreement and proposed Settlement is a fair, reasonable and adequate resolution of the lawsuit. If there are timely and properly submitted objections, the Court will consider them and any response Plaintiffs and Norfolk Southern may have to those objections. The Court may listen to people who have asked to speak at the hearing. Unless you have objected to the Settlement and asked to speak at the Final Approval Hearing, it is not necessary for you to attend to receive a Settlement payment. At or after the hearing, the Court will decide whether to approve the Settlement. The Court will also decide how much Class Counsel and Named Plaintiffs will be paid from the Settlement Fund, and will make an award for approved litigation, notice and settlement administration costs. If the Court ultimately does not approve the Settlement, or if the Court's approval is reversed on appeal or the Settlement Agreement is terminated, then the Settlement will become null and void. If the Settlement becomes null and void, the case will proceed as though the Settlement Agreement was never entered into.

Getting More Information

13. Are more details about the Settlement available?

Yes. This Notice simply summarizes the proposed Settlement. The specific details are in the Settlement Agreement and other case documents. You can get a copy of these and other documents at www.EastPalestineTrainSettlement.com, by calling 1-833-425-3400 or by accessing the docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://ecf.ohnd.uscourts.gov>.

All current dates and deadlines are available on the website, although dates may be subject to change with approval of the Court. You may also contact the Settlement Administrator by phone at 1-833-425-3400 or email at info@EastPalestineTrainSettlement.com. Do not contact Class Counsel or the Court to request any additional information.

EXHIBIT E

If you were affected by the derailment of Norfolk Southern Train 32N on February 3, 2023, including the February 6, 2023 “vent and burn”, please read this summary notice *carefully* – your rights are affected

What is this notice about?

A proposed Settlement has been reached in a class action lawsuit concerning the derailment of Norfolk Southern Train 32N in East Palestine, Ohio, on February 3, 2023, including the February 6, 2023 “vent and burn” (the “Incident”). Plaintiffs claim that Norfolk Southern caused the Incident and, as a result, Plaintiffs claim they suffered certain economic and non-economic losses, including real property damage, personal property damage, displacement expenses, increased risk of diseases, lost wages, loss of business income, emotional distress, disruption, inconvenience, loss of use and enjoyment of property, and loss of goodwill. Norfolk Southern denies the claims asserted in the lawsuit and denies any wrongdoing, including that it violated any law.

Who is a Class Member?

If you lived, worked, owned property, or owned or operated a business within 20 miles of the derailment site in East Palestine, Ohio, from February 3, 2023, to April 26, 2024, you are a Class Member. A list of eligible addresses can be found at the website below.

What does the Settlement provide?

The Settlement provides a \$600 million Settlement Fund to make cash payments to eligible Class Members and for Court-approved payments for settlement administration, attorneys’ fees and expenses, and class representative awards. Filing a claim will allow Class Members to receive money under the Settlement, if it is approved by the Court. Awards from the Settlement Fund will be based on a Court-approved formula that takes into account a number of factors, including geographic location, household size, and length of displacement. Individual Class Members who were physically present within 10 miles from the derailment site and decide to participate may also receive additional Court-approved payments in exchange for releases of past, present, and future personal injury claims arising out of the Incident. Class Members that are businesses may apply for itemized compensation of actual net business losses. You do not need to hire a lawyer to participate in the Settlement.

How can I receive a payment?

The only way to qualify for a payment is to timely submit a Claim Form. Notices with Claim Forms attached have been mailed to Class Members. You can also obtain a claim form on the website below, by calling 1-833-425-3400, or by writing to:

In re: East Palestine Train Derailment Settlement
c/o Kroll Settlement Administration LLC
PO Box 5324
New York, NY 10150-5324

The deadline to file your Claim Form is August 22, 2024.

What are my rights?

You may exclude yourself from being bound by the decisions the Court makes concerning the Settlement by timely filing a valid notice of exclusion (“opt out”) with the Settlement Administrator. Alternatively, Class Members who wish to participate in the Settlement but do not like all or part of the Settlement terms can object to the Settlement. To object, you must send a letter to the Settlement Administrator explaining the specific factual and legal reasons why the Settlement should not be approved. The Notice and the website contain specific instructions you must follow to opt out or object. **The deadline to file an opt out or objection is June 24, 2024.** If you do nothing, you will be bound by the terms of the Settlement, but will not receive any payment from the Settlement.

The Court will hold a Final Approval Hearing on September 25, 2024, at 10:00 a.m. at the Thomas D. Lambros Federal Building and United States Courthouse, 125 Market Street, Youngstown, Ohio 44503 to: (a) consider whether the proposed settlement is fair, reasonable, and adequate; and (b) decide the plaintiffs’ lawyers’ request for fees of up to 27% of the gross settlement value (\$162,000,000), costs of notice and administration and case-related expenses of up to 3% of the gross settlement value (\$18,000,000), and a \$15,000 award to each of the class representatives. The motion for attorneys’ fees and costs will be posted on the website after it is filed. You may appear at the hearing, but you are not required to and you may hire an attorney to appear for you, at your own expense.

This is only a summary.

For additional information including the Claim Form, the Settlement Agreement, how to file a claim, opt out or objection, and Frequently Asked Questions call 1-833-425-3400, or visit www.EastPalestineTrainSettlement.com.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: EAST PALESTINE TRAIN DERAILMENT

CASE NO. 4:23-CV-00242-BYP
JUDGE BENITA Y. PEARSON

**[PROPOSED] ORDER GRANTING MOTION FOR PRELIMINARY
APPROVAL OF SETTLEMENT, APPOINTMENT OF LEAD CLASS
COUNSEL, AND APPROVAL OF NOTICE**

Before the Court is the Motion for Preliminary Approval of Settlement, Appointment of Lead Class Counsel, and Approval of Notice Under Fed. R. Civ. P. 23(e) (“Motion for Preliminary Settlement Approval”), filed by Plaintiffs. Plaintiffs and Defendants Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, “Norfolk Southern”) have entered into a Class Action Settlement Agreement, dated April 26, 2024 (“Settlement Agreement”). Having thoroughly reviewed the Settlement Agreement, including the proposed forms of class notice and other exhibits thereto, the Motion for Preliminary Settlement Approval, and the papers and arguments in connection therewith, and good cause appearing, the Court hereby **ORDERS** as follows:

1. The capitalized terms used in this Order Granting Preliminary Settlement Approval have the same meaning as defined in the Settlement Agreement.
2. The Court hereby preliminarily approves the Settlement Agreement and the terms embodied therein. The Court finds that the proposed Settlement Class, as defined in the Settlement Agreement, meets the requirements for class certification for settlement purposes only under Fed. R. Civ. P. 23(a) and 23(b)(3) as follows:

- a. The Settlement Class is so numerous that joinder of all members in a single proceeding would be impracticable;
- b. The members of the Settlement Class share common questions of law and fact;
- c. The Class Representatives' claims are typical of those of the Settlement Class Members;
- d. The Class Representatives and Interim Class Counsel have fairly and adequately represented the interests of the Settlement Class and will continue to do so; and
- e. Questions of law and fact common to the Settlement Class predominate over the questions affecting only individual Settlement Class Members, and certification of the Settlement Class is superior to other available methods for the fair and efficient adjudication of this controversy.

3. The Court finds, pursuant to Fed. R. Civ. P. 23(e)(1)(B)(i), that the proposed Settlement Agreement is fair, reasonable, and adequate, entered into in good faith, and free from collusion. The Court further finds that Interim Class Counsel have ably represented the proposed Settlement Class. They conducted a thorough investigation of the facts and law prior to filing suit, engaged in and reviewed substantial discovery, and are knowledgeable about the strengths and weaknesses of the case. The involvement of Hon. Layn Phillips (Ret.), a highly qualified mediator, in the settlement process supports this Court's finding that the Settlement Agreement was reached at arm's length and is free from collusion. The relief provided for in the Settlement Agreement outweighs the substantial costs, delay, and risks presented by further prosecution of issues during pre-trial, trial, and possible appeal. Based on these factors, the Court concludes that the Settlement Agreement meets the criteria for preliminary settlement approval and is deemed fair, reasonable, and adequate, such that notice to the Settlement Class is appropriate.

4. Having considered the factors set forth in Fed. Riv. Civ. P. 23(g), the Court appoints Interim Class Counsel Seth A. Katz, Jayne Conroy, and M. Elizabeth Graham and their respective law firms, as Lead Class Counsel.

5. A Final Approval Hearing shall be held before this Court on September 25, 2024, to: (a) determine whether the proposed Settlement should be finally approved as fair, reasonable, and adequate, so that the Final Approval Order and Judgment should be entered; (b) consider any timely objections to this Settlement and the Parties' responses to such objections; (c) rule on any application for attorneys' fees and expenses; (d) rule on any application for service awards; and (e) determine whether the plan of allocation that will be submitted by Lead Class Counsel should be approved.

6. Consideration of the plan of allocation, any application for attorneys' fees and expenses and any objections thereto, and any application for service awards and any objections thereto, shall be separate from consideration of whether the proposed Settlement should be approved, and the Court's rulings on each motion or application shall be embodied in a separate order.

7. Plaintiffs shall file their motion for final settlement approval no later than September 6, 2024.

8. The Court appoints Kroll Settlement Administration, LLC as the Settlement Administrator in this Action. In accordance with the Parties' Settlement Agreement and the Orders of this Court, the Settlement Administrator shall effectuate the provision of notice to Settlement Class Members and shall administer the Settlement Agreement and distribution process.

9. The Court finds that the Parties' Notice Plan (a) constitutes the best notice practicable under the circumstances of this Action; (b) constitutes due and sufficient notice to the Class of the

terms of the Settlement Agreement and the Final Approval Hearing; and (c) complies fully with the requirements of the Federal Rules of Civil Procedure, the United States Constitution, and any other applicable law.

10. The Court approves, as to form and content, the direct notice plan and the Long-Form and Short-Form publication notices substantially in the forms in the Notice Plan attached as Exhibits C, D, and E to the Motion for Preliminary Settlement Approval (collectively, “Notice Plan”).

a. The Settlement Administrator shall complete direct notice substantially in the form attached to the Notice Plan by May 24, 2024.

b. Within ten (10) days of the Court’s entry of this Preliminary Approval Order, the Settlement Administrator shall cause the Long-Form Notice to be published on the website created for this settlement, www.EastPalestineTrainSettlement.com. The Long-Form Notice shall be substantially in the forms in the Notice Plan.

c. Not later than thirty-five (35) days following the entry of this Preliminary Approval Order, the Settlement Administrator shall file with the Court declarations attesting to compliance with this paragraph.

11. Each and every member of the Settlement Class shall be bound by all determinations and orders pertaining to the Settlement Agreement, including the release of all claims to the extent set forth in the Settlement Agreement, unless such person requests exclusion from the Settlement in a timely and proper manner, as hereinafter provided.

12. A member of the Settlement Class wishing to request exclusion (or “opt-out”) from the Settlement shall mail a request for exclusion to the Settlement Administrator. The request for exclusion must comply with all applicable requirements stated in the Settlement Agreement,

including that it must (1) be in writing; (2) identify the case name (*In re: East Palestine Train Derailment*, No. 4:23-CV-00242 (N.D. Ohio)); (3) state the full name, current address, and address of the Settlement Class member seeking exclusion; (4) be signed by the Settlement Class member seeking exclusion; (5) be mailed to the Settlement Administrator at the address specified in the Notice; (6) be postmarked no later than June 24, 2024; and (7) clearly state the Settlement Class Member's desire to be excluded from the Settlement Class. The request for exclusion shall not be effective unless it provides the required information and is made within the time stated above. No member of the Settlement Class, or any person acting on behalf of or in concert or in participation with a member of the Settlement Class, may request exclusion of any other member of a Settlement Class from the Settlement.

13. Members of the proposed Settlement Class who timely request exclusion from the Settlement will relinquish their rights to benefits under the Settlement and will not release any claims against Norfolk Southern.

14. All members of the proposed Settlement Class who do not timely and validly request exclusion shall be bound by all terms of the Settlement Agreement and by the Final Approval Order and Judgment even if they have previously initiated or subsequently initiate individual litigation or any other proceedings against the Defendants.

15. The Settlement Administrator will provide promptly, and no later than 14 days following the deadline for members of the Settlement Class to opt-out, Plaintiffs and Norfolk Southern with copies of any exclusion requests, and Plaintiffs shall file a list of all persons who have validly opted out of the Settlement with the Court prior to the Final Approval Hearing.

16. Any Settlement Class Member may object to the Settlement Agreement, any application for attorneys' fees and expenses, any application for incentive awards, and/or the plan

of allocation submitted by Lead Class Counsel. Any Settlement Class Member who wishes to object must file with the Court and serve on all counsel listed in paragraph 18, below, no later than June 24, 2024, a detailed statement of the specific objections being made and the basis for those objections. In addition to the statement, the objecting Settlement Class Member must comply with all applicable requirements in the Settlement Agreement, including setting forth the objecting Settlement Class Member's name, address, and telephone number. Any objecting Settlement Class Member shall have the right to appear and be heard at the Final Approval Hearing, either personally or through an attorney retained at the Settlement Class Member's expense. Any Settlement Class Member who intends to appear at the Final Approval Hearing either in person or through counsel must file with the Court and serve on all counsel listed in paragraph 18, no later than ninety (90) days after Preliminary Approval, a written notice of intention to appear. Failure to file a notice of intention to appear will result in the Court declining to hear the objecting Settlement Class Member or the Settlement Class Member's counsel at the Final Approval Hearing.

17. Any Settlement Class Member who does not make an objection in the time and manner provided shall be deemed to have waived such objection and forever shall be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement, the payment of attorneys' fees and expenses and incentive awards, the plan of allocation, the Final Approval Order, and the Judgment.

18. Service of all papers on counsel for the Parties shall be made as follows: For Lead Class Counsel, to: Seth A. Katz at Burg Simpson Eldredge Hersh & Jardine, P.C. 40 Inverness Drive East Englewood, CO 80112; M. Elizabeth Graham at Grant & Eisenhofer P.A., 123 S. Justison Street, 6th Floor, Wilmington, DE 19801; and Jayne Conroy at Simmons Hanly Conroy,

112 Madison Avenue, 7th Floor New York, NY 10016. For Norfolk Southern, to: Alan Schoenfeld at Wilmer Cutler Pickering Hale and Dorr, LLP, 7 World Trade Center, 250 Greenwich Street, New York, NY 10007 and Albinas Prizgintas at Wilmer Cutler Pickering Hale and Dorr, LLP, 2100 Pennsylvania Avenue, NW, Washington, DC 20037.

19. Lead Class Counsel shall file a supplemental brief in support of Final Settlement Approval and a supplemental brief in support of the plan of allocation no later than September 18, 2024.

20. In the event that the proposed Settlement is not approved by the Court, or in the event that the Settlement Agreement becomes null and void pursuant to its terms, this Order and all Orders entered in connection therewith shall become null and void, shall be of no further force and effect, and shall not be used or referred to for any purposes whatsoever in this Action or in any other case or controversy. In such event, the Settlement Agreement and all negotiations and proceedings directly related thereto shall be deemed to be without prejudice to the rights of any and all of the Parties, who shall be restored to their respective positions as of the date and time immediately preceding the execution of the Settlement Agreement.

21. Norfolk Southern stipulates for settlement purposes only to the certification of the Settlement Class but does not waive, and instead expressly reserves, its right to challenge the propriety of conditional or class certification for any other purpose.

22. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Class Members. The Final Approval Hearing may, from time to time and without further notice to the Settlement Class Members, be continued by order of the Court.

23. The following schedule is hereby ordered:

Notice to be Completed	May 24, 2024
Last day to file Objections or Opt-Out Requests	June 24, 2024
Last Day for the Plaintiffs to file Plan of Allocation	September 6, 2024
Last day for Plaintiffs to File motion for Final Approval of Settlement and Approval of Plans of Distribution, and for Lead Class Counsel to file Application for Fees and Expenses and for Service Awards	September 6, 2024
Last day to file replies in support of Final Approval, Plans of Distribution, Attorneys' Fees and Expenses, and Service Awards	September 18, 2024
Final Approval Hearing	September 25, 2024

IT IS SO ORDERED.

DATED this ___ day of _____, 2024

The Honorable Benita Y. Pearson