

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

DOREEN CAHILL and JANET CHRISTMAN on  
behalf of themselves and all others similarly  
situated,

Plaintiffs,

v.

KEURIG GREEN MOUNTAIN, INC.,

Defendant.

Case No. 22-cv-7507-CS

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

Dated: September 16, 2025

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**TABLE OF CONTENTS**

	<b>PAGE(S)</b>
INTRODUCTION .....	1
FACTUAL AND PROCEDURAL BACKGROUND.....	2
A. Factual Background .....	2
B. Procedural Background.....	2
TERMS OF THE SETTLEMENT.....	4
A. Class Definitions.....	4
B. Monetary Relief .....	5
C. Non-Monetary Relief.....	6
D. Release .....	6
E. Notice And Administration Expenses.....	6
F. Service Award And Attorneys’ Fees, Costs, And Expenses .....	7
ARGUMENT.....	7
I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE.....	7
A. The <i>Grinnell</i> Factors.....	9
1. Litigation Through Trial Would Be Complex, Costly, And Long ( <i>Grinnell</i> Factor 1).....	9
2. The Reaction Of The Class ( <i>Grinnell</i> Factor 2).....	10
3. Discovery Has Advanced Far Enough To Allow The Parties To Responsibly Resolve The Case ( <i>Grinnell</i> Factor 3).....	11
4. Plaintiffs Would Face Real Risks If The Case Proceeded ( <i>Grinnell</i> Factors 4, 5, And 6).....	12
5. The Risks of Maintaining a Class Through Trial ( <i>Grinnell</i> Factor 6).....	13
6. Defendant’s Ability To Withstand A Greater Judgment ( <i>Grinnell</i> Factor 7).....	13
7. The Settlement Amount Is Reasonable In Light Of The Possible Recovery And The Attendant Risks Of Litigation ( <i>Grinnell</i> Factors 8 And 9).....	14
B. The Rule 23(e)(2) Factors.....	15
1. The Class Representatives And Class Counsel Have Adequately Represented The Class (Rule 23(e)(2)(A).....	15
2. The Settlement Was Negotiated At Arm’s Length.....	15

3.	The Settlement Provides Adequate Relief To The Class.....	16
4.	The Settlement Treats All Class Members Equally.....	17
C.	The Notice Plan Comports With Due Process.....	18
D.	The Settlement Class Should Be Finally Certified.....	20
CONCLUSION.....		22

**TABLES OF AUTHORITIES**

	<b>PAGE(S)</b>
<b>CASES</b>	
<i>City of Detroit v. Grinnell</i> , 495 F.2d 448 (2d Cir. 1974) .....	Passim
<i>Eisen v. Carlisle &amp; Jacquelin</i> , 417 U.S. 156 (1974) .....	18
<i>Frank v. Eastman Kodak Co.</i> , 228 F.R.D. 174 (W.D.N.Y. 2005) .....	Passim
<i>Fresno Cnty. Employees’ Ret. Ass’n v. Isaacson/Weaver Family Trust</i> , 925 F.3d 63 (2d Cir. 2019) .....	8
<i>Gilliam v. Addicts Rehab. Ctr. Fund</i> , 2008 WL 782596 (S.D.N.Y. Mar. 24, 2008).....	14
<i>Hanlon v. Chrysler Corp.</i> , 150 F.3d 1011 (9th Cir. June 9, 1998).....	11
<i>Hayes v. Harmony Gold Min. Co.</i> , 2011 WL 6019219 (S.D.N.Y. Dec. 2, 2011).....	17
<i>In re Adelphia Commc’ns Corp. Sec. &amp; Derivative Litigs.</i> , 271 F. App’x 41 (2d Cir. 2008).....	19
<i>In re AOL Time Warner, Inc.</i> , 2006 WL 903236 (S.D.N.Y. Apr. 6, 2006) .....	11
<i>In re Austrian &amp; German Bank Holocaust Litig.</i> , 80 F. Supp. 2d 164 (S.D.N.Y. 2000) .....	9, 12, 13
<i>In re EVCI Career Colls. Holding Corp. Sec. Litig.</i> , 2007 WL 2230177 (S.D.N.Y. July 27, 2007).....	8
<i>In re GSE Bonds Antitrust Litig.</i> , 414 F. Supp. 3d 686 (S.D.N.Y. 2019) .....	15, 16, 17
<i>In re Marsh &amp; McLennan Cos., Inc. Sec. Litig.</i> , 2009 WL 5178546 (S.D.N.Y. Dec. 23, 2009).....	19
<i>In re MetLife Demutualization Litig.</i> , 689 F. Supp. 2d 297 (E.D.N.Y. 2010).....	10

*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*,  
330 F.R.D. 11 (E.D.N.Y. 2019)..... 15, 16, 17, 18

*In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*,  
2019 WL 6875472 (E.D.N.Y. Dec. 16, 2019)..... 9

*In re Vitamin C Antitrust Litig.*,  
2012 WL 5289514..... 10, 12

*Joel A. v. Giuliani*,  
218 F.3d 132 (2d Cir. 2000) ..... 15, 18

*Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*,  
333 F.R.D. 314 (S.D.N.Y. 2019)..... 8

*Khait v. Whirlpool Corp.*,  
2010 WL 2025106 (E.D.N.Y. Jan. 20, 2010)..... 17

*Massiah v. MetroPlus Health Plan, Inc.*,  
2012 WL 5874655 (E.D.N.Y. 2012) ..... 11

*Meredith Corp. v. SESAC, LLC*,  
87 F. Supp. 3d 650 (S.D.N.Y. 2015) ..... 18

*Moses v. The New York Times Co.*,  
79 F.4th 235 (2d Cir. 2023) ..... 8, 18

*Newman v. Stein*,  
464 F.2d 689 (2d Cir. 1972) ..... 14

*Reyes v. Altamarea Grp.*,  
2011 WL 4599822 (S.D.N.Y. Aug. 16, 2011)..... 17

*TBK Partners, Ltd. v. Western Union Corp.*,  
517 F. Supp. 380 (S.D.N.Y. 1981) ..... 9

*Teachers’ Ret. Sys. Of Louisiana v. A.C.L.N. Ltd.*,  
2004 WL 2997957 (S.D.N.Y. May 14, 2004) ..... 14

*Tiro v. Public House Invs., LLC*,  
2013 WL 4830949 (S.D.N.Y. Sept. 10, 2013) ..... 7

*Torres v. Gristede’s Oper. Corp.*,  
2010 WL 5507892 (S.D.N.Y. Dec. 21, 2010)..... 11

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*,  
396 F.3d 96 (2d Cir. Jan. 4, 2005)..... 8, 19

*Weigner v. City of N.Y.*,  
852 F.2d 646 (2d Cir. 1988) ..... 19

*Willix v. Healthfirst, Inc.*,  
2011 WL 754862 (E.D.N.Y. Feb. 18, 2011) ..... 12, 17

**RULES**

Fed. R. Civ. P. 12(b)(6)..... 3

Fed. R. Civ. P. 23(e)(2)..... 7, 8, 9

Fed. R. Civ. P. 23 ..... Passim

## INTRODUCTION

On June 20, 2025, this Court preliminarily approved the class action settlement between Plaintiffs Doreen Cahill and Janet Christman (“Plaintiffs”) and Defendant Keurig Green Mountain Inc. (“Defendant”) and directed that notice be sent to the Settlement Class.<sup>1</sup> *See* ECF No. 75. The settlement administrator has successfully implemented the Court-approved notice plan. *See* Declaration of Cameron R. Azari Regarding Implementation And Adequacy Of Notice Plan (“Epiq Decl.”) ¶ 18. The reaction from the Settlement Class has been overwhelmingly positive. Specifically, of the 230,000+ Settlement Class Members, zero objected and only four requested to be excluded.<sup>2</sup> *Id.* ¶ 51. The Settlement is an excellent result for the Classes and the Court should grant final approval.

The strength of the Settlement speaks for itself. After extensive negotiations, the Parties reached a Settlement that creates a non-reversionary \$950,000 settlement fund from which qualifying class members (defined as Performance Issue Claim Class Members in the settlement agreement) claimants will receive a *pro rata* cash payment. Settlement §§ 1.34, 2.2. As to the other category of class members (defined as Coffee Maker Purchaser Class Members in the settlement agreement) (together with the Performance Issue Claim Class Members, the “Settlement Class Members”), they shall receive an extended warranty of 12 additional months (24 months total from date of purchase) to make a warranty claim with Defendant based on any defect that caused a loss of power while performing the descaling process. *Id.* § 2.1(a).

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<sup>1</sup> Capitalized terms used in this memorandum are defined in the Class Action Settlement Agreement (the “Settlement”), attached to the Declaration of Philip L. Fraietta In Support of Plaintiffs’ Unopposed Motion for Final Approval (“Fraietta Decl.”) as Exhibit 1.

<sup>2</sup> The deadline for Settlement Class Members to object or request exclusion was August 29, 2025. *See* ECF No. 75 ¶ 27.

Given the relief provided by the Settlement, the Court should not hesitate to grant final approval.

### **FACTUAL AND PROCEDURAL BACKGROUND**

#### **A. Factual Background**

Plaintiffs and Settlement Class Members are purchasers of Defendant's Coffee Makers. Plaintiffs allege that the Coffee Makers suffer from performance or operational issues when descaled according to the directions supplied with the Coffee Makers or with the Keurig Descaling Solution. First Amended Complaint (ECF No. 23) ("FAC") ¶ 1. Plaintiffs allege that when this issue occurs, the Coffee Makers are rendered entirely inoperable and unable to be fixed by consumers. *Id.* ¶ 3. Plaintiffs allege that Keurig knew or should have known about this issue but failed to disclose this fact to consumers, despite receiving complaints about the issue. *See id.* ¶¶ 7-24. As such, Plaintiffs allege they are entitled to damages for various violations of New York and California statutes and common law causes of action. *Id.* ¶¶ 39-40. Defendant denies that it breached any express or implied contract with Plaintiffs or consumers, or that it was unjustly enriched as a result of its sale of the Coffee Makers.

Defendant has maintained that no such defect exists with the Coffee Makers, that it acted properly and reasonably in accord with all applicable laws, rules, regulations, and that it did not violate any express or implied contractual obligations to Plaintiffs or consumers. Nevertheless, Keurig has agreed to the settlement to avoid the time, inconvenience, costs and uncertainty of protracted litigation for itself.

#### **B. Procedural Background**

On September 1, 2022, Doreen Cahill filed a putative class action complaint in the United States District Court for the Southern District of New York. The complaint alleges that Keurig's K-Supreme, K-Supreme Plus, and K-Supreme SMART coffee makers (the "Coffee Maker(s)")

may experience performance or operational issues when descaled according to the directions supplied with the Coffee Makers or with the Keurig Descaling Solution. (ECF No. 1.). The complaint was originally brought against both Keurig and Bed Bath & Beyond, Inc. *Id.* Bed Bath & Beyond was dismissed from the action on June 7, 2023 and takes no part in this proposed Settlement. (ECF No. 47).

In response to the complaint, on November 21, 2022, Keurig filed a letter requesting a pre-motion conference regarding its intent to file a motion to dismiss under Fed. R. Civ. P. 12(b)(6). (ECF No. 19).

On December 12, 2022, Ms. Cahill filed a letter in response to Defendant's November 21, 2022 letter. (ECF No. 21).

The pre-motion conference was conducted on December 19, 2022, and pursuant to which Ms. Cahill filed the operative First Amended Complaint on January 20, 2023, adding Janet Christman as a Plaintiffs along with claims under California law. (ECF No. 23).

In response to the Amended Complaint, on March 6, 2023, Defendant filed a Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (ECF No. 37). On May 3, 2023, Plaintiffs filed an Opposition to the Motion to Dismiss. (ECF No. 43). And on May 3, 2023, Defendant filed a Reply in Support of its Motion to Dismiss. (ECF No. 44).

The hearing on Defendant's Motion to Dismiss was held on December 20, 2023, during which the Court issued a bench ruling granting in part and denying in part Defendant's motion. (ECF No. 55). Plaintiffs were given leave to amend but declined to do so. (ECF No. 50).

An initial scheduling conference was also heard on December 20, 2023, and the Court issued a Civil Case Discovery Plan and Scheduling Order on December 22, 2023. (ECF No. 49).

On January 26, 2024, Defendant filed an Answer to the First Amended Complaint,

denying the allegations generally and asserting twenty-eight affirmative and other defenses. (ECF No. 53).

Thereafter, the Parties engaged in discovery, including the exchange of thousands of pages of documents.

Throughout the litigation, the Parties discussed the prospect of settlement. To that end, the Parties agreed to participate in a private mediation with the Honorable Shira A. Scheindlin (Ret.) of Boies Schiller Flexner, LLP. On August 20, 2024, the Parties participated in a full-day mediation with Judge Scheindlin. At the conclusion of the mediation session, the Parties had not reached an agreement.

The Parties continued to engage in good-faith settlement negotiations after the mediation's conclusion, working jointly on a Class Action Settlement Term Sheet, which was executed by the Parties on January 7, 2025. The Parties then worked jointly on the fuller Settlement Agreement which was submitted to the Court. The Court asked the Parties to implement some changes, after which the Court preliminarily approved the operative Settlement on June 20, 2025. ECF No. 75.

### **TERMS OF THE SETTLEMENT**

The key terms of the Settlement are briefly summarized as follows:

#### **A. Class Definitions**

The "Settlement Classes" are defined as:

- a. **"Performance Issue Claim Class"** is defined as (1) all Persons in the United States (including its states, districts or territories) who are not excluded below in this paragraph and who lodged complaints to Keurig claiming that a Coffee Maker experienced the Defect within the first 12 months of purchase between October 1, 2020 to the date of Preliminary Approval and were not provided with a remedy by Keurig pursuant to its Limited Warranty and (2) all Persons in the United States (including its states, districts or territories) who are not excluded below in this paragraph, and who can demonstrate valid claims that a Coffee Maker manifested operational issues associated with the descaling process. Excluded from the

Performance Issue Claim Class are (1) any Persons whose Coffee Makers are still within Defendant's original Limited Warranty period or the extended Limited Warranty period set forth below in paragraph 2.1(a); (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (4) Persons who properly execute and file a timely request for exclusion from the class; and (5) the legal representatives, successors or assigns of any such excluded Persons.

- b. **"Coffee Maker Purchaser Class"** which is defined as all Persons in the United States (including its states, districts or territories) who purchased one of the Coffee Makers, or Descaling Solution for use with the Coffee Makers, from two years prior to the date of Preliminary Approval up to the date of Preliminary Approval, excluding Performance Issue Claim Class Members and all Persons in the United States (including its states, districts or territories) who lodged complaints to Keurig claiming that a Coffee Maker experienced the Defect during the Class Period and who were provided with a remedy by Keurig pursuant to its Limited Warranty. Also excluded from the Coffee Maker Purchaser Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded Persons.

Settlement ¶¶ 1.35; ECF No. 75 ¶ 9.

### **B. Monetary Relief**

The Settlement consists of a non-reversionary cash fund in the amount of \$950,000.00, which will be used to pay all approved claims by Performance Issue Claim Class Members, notice and administration expenses, a Court-approved service award to Plaintiffs, and attorneys' fees, costs, and expenses to proposed Class Counsel to the extent awarded by the Court.

Settlement §§ 1.34, 2.2. Every member of the Performance Issue Claim Class who submits a timely and valid Claim Form will receive a *pro rata* cash payment from the Settlement Fund. *Id.* § 2.2(b). The *pro rata* payment for each Performance Issue Claim Class Member will be equal to the Settlement Fund divided by the total number of claims made, following the deduction of notice and claims administration costs, attorneys' fees and expenses, and the class representative

service award, all of which will be paid from the Settlement Fund. *Id.* §§ 1.36; 2.2(b).

**C. Non-Monetary Relief**

For all Coffee Maker Purchaser Class Members who purchased one of the Coffee Makers, or Descaling Solution for use with the Coffee Makers, from two years prior to the date of Preliminary Approval up to the date of Preliminary Approval, who lodged complaints to Keurig claiming that a Coffee Maker experienced the Defect during the Class Period and who were provided with a remedy by Keurig pursuant to its Limited Warranty, and who submit a valid claim, Keurig shall extend by one (1) year the expiration date of its Limited Warranty under the terms and conditions set forth fully in Section 2.1(b) of the Agreement. *Id.* § 2.1(a).

**D. Release**

In exchange for the relief described above, Defendant and each of the “Released Parties” as defined at § 1.32 of the Settlement will receive a full release of all claims arising out of any and all causes of action, suits, claims, liens, demands, judgments, costs, damages, obligations, attorney fees (except as provided for in the Class Settlement), and all other legal responsibilities in any form or nature, including but not limited to, all claims relating to or arising out of state, local, or federal statute, ordinance, regulation, or claim at common law or in equity, whether past, present, or future, known or unknown, asserted or unasserted, arising out of or in any way allegedly related to the Coffee Makers and the Keurig Descaling Solution, including all claims that were brought or could have been brought in the Action. *See id.* §§ 1.30, 1.32, 1.35.1-4 for full release language.

**E. Notice And Administration Expenses**

The Settlement Fund will be used to pay the cost of sending the Notice set forth in the Agreement and any other notice as required by the Court, as well as all other costs of administration of the Settlement. *See id.* §§ 1.33, 1.36.

**F. Service Award And Attorneys' Fees, Costs, And Expenses**

In recognition of their efforts on behalf of the Settlement Class, the Parties have agreed that Plaintiffs may receive, subject to Court approval, a service award of up to \$5,000 each from the Settlement Fund, as appropriate compensation for their time and effort serving as Class Representative and as a party to the Action. *Id.* § 8.3. Defendant has also agreed that the Settlement Fund may also be used to pay Class Counsel reasonable attorneys' fees and to reimburse costs and expenses in this Action, in an amount to be approved by the Court. *Id.* § 8.1. Class Counsel has—with no consideration from Defendant—limited its petition to the Court for attorneys' fees, unreimbursed costs, and expenses to one-third of the Settlement Fund (\$316,666.66). *See* ECF No. 80, Plaintiffs' Fee Petition. Defendant has not opposed Plaintiffs' motion for attorneys' fees. Should the Court award less than the amount sought by Class Counsel, the difference in the amount sought and the amount ultimately awarded shall remain in the Settlement Fund. *See* Settlement §8.1.

**ARGUMENT**

**I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE**

Final approval of the Settlement is appropriate here because it is procedurally and substantively fair, adequate, and reasonable. *See* Fed. R. Civ. P. 23(e)(2). To determine whether to approve a settlement, “[c]ourts examine procedural and substantive fairness in light of the ‘strong judicial policy in favor of settlement’ of class action suits.” *Tiro v. Public House Invs., LLC*, 2013 WL 4830949, at \*5 (S.D.N.Y. Sept. 10, 2013). “Fairness is determined upon review of both the terms of the settlement agreement and the negotiating process that led to such agreement.” *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 184 (W.D.N.Y. 2005). “A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.”

*Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96 at 116 (2d. Cir. Jan. 4, 2005). Courts must also “expressly consider two core factors when reviewing the substantive fairness of a settlement: the adequacy of relief provided to a class and the equitable treatment of class members.” *Moses v. The New York Times Co.*, 79 F.4th 235, 244 (2d Cir. 2023) (citing Fed. R. Civ. P. 23(e)(2)(C)-(D)). When evaluating the relief provided, “courts must ‘tak[e] into account,’ among other considerations, ‘the terms of any proposed award of attorney’s fees,’” such that “‘both the terms of the settlement and any fee award encompassed in a settlement agreement [is reviewed]’ in tandem.” *Id.* (citing Fed. R. Civ. P. 23(e)(2)(C)(iii)); *Fresno Cnty. Employees’ Ret. Ass’n v. Isaacson/Weaver Family Trust*, 925 F.3d 63, 72 (2d Cir. 2019)).

Courts and public policy considerations favor settlement, particularly in class actions and other complex cases where substantial resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. “The compromise of complex litigation is encouraged by the courts and favored by public policy,” and is particularly encouraged for the compromise of class actions. *Id.* at 117. “Absent fraud or collusion ... [courts] should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.” *In re EVCi Career Colls. Holding Corp. Sec. Litig.*, 2007 WL 2230177, at \*4 (S.D.N.Y. July 27, 2007).

Courts should also consider the “four enumerated factors in the new [Federal Rule of Civil Procedure] Rule 23(e)(2), in addition to the nine *Grinnell* factors.” *Johnson v. Rausch, Sturm, Israel, Enerson & Hornik, LLP*, 333 F.R.D. 314, 420 (S.D.N.Y. 2019). The Rule 23(e) factors are whether: (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of

processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2). The Rule 23(e)(2) factors significantly overlap or implicate the *Grinnell* factors, and the Rule 23(e)(2) factors do not displace the *Grinnell* factors. *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 2019 WL 6875472, at \*14 (E.D.N.Y. Dec. 16, 2019) (“There is significant overlap between the Rule 23(e)(2) and *Grinnell* factors, which complement, rather than displace each other.”).

**A. The *Grinnell* Factors**

**1. Litigation Through Trial Would Be Complex, Costly, And Long (*Grinnell* Factor 1)**

By reaching a favorable settlement prior to dispositive motions or trial, Plaintiffs seek to avoid significant expense and delay, and instead ensure recovery for the class. “Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000), *aff’d sub. nom.*, *D’Amato v. Deutsche Bank*, 236 F.3d 78 (2d Cir. 2001). Courts consistently have held that, unless the proposed settlement is clearly inadequate, its acceptance and approval are preferable to the continuation of lengthy and expensive litigation with uncertain results. *TBK Partners, Ltd. v. Western Union Corp.*, 517 F. Supp. 380, 389 (S.D.N.Y. 1981), *aff’d*, 675 F.2d 456 (2d Cir. 1982).

This case is no exception. As discussed herein, the Parties have engaged in extensive motion practice and formal and informal discovery. Fraietta Decl. ¶¶ 8-14. The next steps in the litigation would have been resolution by the Court of Plaintiffs’ forthcoming motion for class certification, and Defendant’s forthcoming motion for summary judgment. At minimum, these

efforts would be costly and time-consuming for the Parties and the Court, and create the risk that a litigation class would not be certified and/or that the Settlement Class Members would recover nothing at all. Keurig is represented by formidable defense counsel well-versed in consumer products litigation, and Keurig has indicated that it would continue to assert numerous defenses on the merits. *See, e.g.*, Answer to First Amended Complaint (ECF No. 53). Plaintiffs and Class Counsel are also aware that Keurig would oppose class certification vigorously, and that Keurig would prepare a competent defense at trial. Looking beyond trial, Plaintiffs are also keenly aware that Keurig could appeal the merits of any adverse decision, thereby further delaying any potential recovery for the Class.

The Settlement, on the other hand, permits a prompt resolution of this action on terms that are fair, reasonable, and adequate to the Class. This result will be accomplished years earlier than if the case proceeded to judgment through trial and/or appeals, and provides certainty whereas litigation does not and could result in defeat for the Class on summary judgment, at trial or on appeal. Consequently, this *Grinnell* factor plainly weighs in favor of final approval of the proposed Settlement.

## **2. The Reaction Of The Class (*Grinnell* Factor 2)**

With the second *Grinnell* factor, the Court judges “the reaction of the class to the settlement.” *In re Vitamin C Antitrust Litig.*, 2012 WL 5289514, at \*4 (quoting *City of Detroit v. Grinnell*, 495 F.2d 448 at 463 (2d Cir. 1974)). “It is well settled that the reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy.” *In re MetLife Demutualization Litig.*, 689 F. Supp. 2d 297, 333 (E.D.N.Y. 2010) (internal quotation marks omitted). This “significant” factor weighs heavily in favor of final approval.

Here, the reaction of the Class Members to the Settlement has been overwhelmingly positive. Class Notice has been provided to the Settlement Class Members in accordance with

the requirements of Rule 23(c)(2)(B) and the Preliminary Approval Order (ECF No. 75 at 5-9), and individual notice reached approximately 95.6% of identified Settlement Class Members, while the notice plan overall reached at least 70% of the Settlement Classes. *See* Epiq Decl. ¶ 18. As of September 15, 2025, Epiq has received 121,806 Claim Forms (120,691 Performance Issue Claim Forms, 1,030 Coffee Maker Purchaser Claim Forms). *Id.* ¶ 55. And furthermore, as of September 15, 2025, **zero** class members objected to the Settlement, and **only four** opted-out. *See id.* ¶ 51. This exceptional participation rate and lack of objections from the Settlement Classes leaves no question that the class members view the Settlement favorably, which weighs heavily in favor of final approval and further supports the “presumption of fairness.” *See, e.g., Hanlon v. Chrysler Corp.*, 150 F.3d 1011 at 1027 (9th Cir. June 9, 1998) (“[T]he fact that the overwhelming majority of the class willingly approved the offer and stayed in the class presents at least some objective positive commentary as to its fairness.”); *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at \*4 (E.D.N.Y. 2012) (“The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.”). Consequently, this *Grinnell* factor weighs in favor of final approval of the Settlement.

### **3. Discovery Has Advanced Far Enough To Allow The Parties To Responsibly Resolve The Case (*Grinnell* Factor 3)**

This factor goes to “whether the plaintiffs have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement.” *In re AOL Time Warner, Inc.*, 2006 WL 903236, at \*10 (S.D.N.Y. Apr. 6, 2006). “The pertinent question is whether counsel had an adequate appreciation of the merits of the case before negotiating.” *Torres v. Gristede’s Oper. Corp.*, 2010 WL 5507892, at \*5 (S.D.N.Y. Dec. 21, 2010) (internal quotation omitted). “[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . but an aggressive

effort to ferret out facts helpful to the prosecution of the suit.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 176 (internal quotation marks omitted).

Here, Class Counsel are sufficiently well informed of the strengths and weaknesses of the claims, having drafted three separate pleadings and survived, in part, a motion to dismiss. Class Counsel also spoke with potential merits experts concerning the strengths and weaknesses of the case, as well as the strengths and weaknesses of Keurig’s arguments and affirmative defenses. Moreover, the information exchanged during settlement negotiations permitted Class Counsel to learn the relevant facts and circumstances in an efficient and cost-effective manner. Keurig provided extensive information detailing the number of complaints submitted by consumers regarding the alleged descaling issue and also provided its own expert evaluation of the descaling issue and its merits. The Parties also exchanged further information through mediation submission, as well as various written correspondence and phone calls. As a result, Class Counsel was well-positioned to evaluate the strengths of Plaintiffs’ claims, Keurig’s defenses, and prospects for success. This *Grinnell* factor thus also weighs in favor of final approval.

**4. Plaintiffs Would Face Real Risks If The Case Proceeded  
(*Grinnell* Factors 4, 5, And 6)**

“The fourth, fifth, and sixth *Grinnell* factors all relate to continued litigation risks,” *i.e.*, the risks of establishing liability, damages, and maintaining the class action through trial. *In re Vitamin C*, 2012 WL 5289514, at \*5. “Litigation inherently involves risks.” *Willix v. Healthfirst, Inc.*, 2011 WL 754862, at \*4 (E.D.N.Y. Feb. 18, 2011). “One purpose of a settlement is to avoid the uncertainty of a trial on the merits.” *Id.*

Although Plaintiffs believe their case is strong, it is not without risk. At the time of the settlement, Keurig was prepared to engage in further fact and expert discovery in anticipation of its forthcoming motion for summary judgment, and had made it clear that it would vigorously

contest the certification of a litigation class. *See* Fraietta Decl. ¶¶ 24-25. In weighing the risks of certifying a class and establishing liability and damages, the court “must only weigh the likelihood of success by the plaintiff class against the relief offered by the settlement.” *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 177 (internal quotations omitted).

In the context of this litigation, Plaintiffs and the putative Class face risks in overcoming Keurig’s forthcoming summary judgment motion and certifying a class. Moreover, further litigation will only delay relief to the Settlement Class Members. The proposed Settlement alleviates these risks, and provides a substantial benefit to the Settlement Class Members in a timely fashion. These *Grinnell* factors thus favor final approval.

**5. The Risks of Maintaining a Class Through Trial (*Grinnell* Factor 6)**

The risk of maintaining the class status through trial is also present. The Court has not yet certified the proposed Class and such a determination would be reached only after exhaustive class certification briefing is filed. Keurig would argue that individual questions preclude class certification. Keurig would also argue that a class action is not a superior method to resolve Plaintiffs’ claims, and that a class trial would not be manageable.

Were the Court to certify a class, Keurig would likely challenge certification through a Rule 23(f) petition and subsequently move to decertify, forcing additional rounds of briefing. Risk, expense, and delay permeate such a process. The proposed settlement eliminates this risk, expense, and delay. This factor weighs in favor of final approval.

**6. Defendant’s Ability To Withstand A Greater Judgment (*Grinnell* Factor 7)**

Keurig probably could withstand a greater judgment. However, a “defendant’s ability to withstand a greater judgment, standing alone, does not suggest that the settlement is unfair.” *Frank*, 228 F.R.D. at 186 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp.

2d at 178, n.9). Thus, at worst, this factor is neutral.

**7. The Settlement Amount Is Reasonable In Light Of The Possible Recovery And The Attendant Risks Of Litigation (Grinnell Factors 8 And 9)**

The determination of whether a settlement amount is reasonable “does not involve the use of a mathematical equation yielding a particularized sum.” *Frank*, 228 F.R.D. at 186 (W.D.N.Y. 2005). “Instead, ‘there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.’” *Id.* (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)).

Because a settlement provides certain and immediate recovery, courts often approve settlements even where the benefits obtained as a result of the settlement are less than those originally sought. As the Second Circuit stated in *Grinnell*, “[t]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth of a single percent of the potential recovery.” 495 F.2d at 455 n.2.

Here, the total settlement value is \$950,000 in cash, plus the extension of the limited warranty. In addition, Defendant has agreed to pay the costs of service payments to Plaintiffs, notice and administration costs, as well as reasonable attorneys’ fees, plus costs and expenses for proposed Class Counsel from the all-in fund established by the Settlement. Settlement ¶ 1.34. Weighing the benefits of the Settlement against the risks associated with proceeding in litigation and in collecting on any judgment, the Settlement is more than reasonable. Moreover, where – as here – a settlement assures immediate payment of substantial amounts to Settlement Class Members, and does not “sacrific[e] ‘speculative payment of a hypothetically larger amount years down the road,’” the settlement is reasonable under this factor. *See Gilliam v. Addicts Rehab. Ctr. Fund*, 2008 WL 782596, \*5 (S.D.N.Y. Mar. 24, 2008) (quoting *Teachers’ Ret. Sys. Of*

*Louisiana v. A.C.L.N. Ltd.*, 2004 WL 2997957, \*5 (S.D.N.Y. May 14, 2004)). Thus, these *Grinnell* factors also weigh in favor of preliminary approval.

In sum, all of the *Grinnell* factors weigh in favor of approval, or are neutral at worst. If objections arise after notice is issued to the Class, the Court may reevaluate its determination. Because the settlement on its face, is ““fair, adequate, and reasonable, and not a product of collusion,”” *Frank*, 228 F.R.D. at 184 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138-39 (2d Cir. 2000)), the Court should grant final approval.

**B. The Rule 23(e)(2) Factors**

**1. The Class Representatives And Class Counsel Have Adequately Represented The Class (Rule 23(e)(2)(A))**

“Determination of adequacy typically entails inquiry as to whether: (1) Plaintiffs’ interests are antagonistic to the interest of other members of the class and (2) Plaintiffs’ attorneys are qualified, experienced and able to conduct the litigation.” *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litig.*, 330 F.R.D. 11, 30 (E.D.N.Y. 2019). Here, “Plaintiffs’ interests are aligned with other class members’ interests because [she] suffered the same injuries:” paying an allegedly unlawful fee to Defendant due to its alleged failure to properly disclose the fee. *In re GSE Bonds Antitrust Litig.*, 414 F. Supp. 3d 686, 692 (S.D.N.Y. 2019). “Because of these injuries, Plaintiffs[] ha[s] an interest in vigorously pursuing the claims of the class.” *Id.* Further, numerous other courts in this Circuit have previously found that Class Counsel adequately meet the obligations and responsibilities of Class Counsel. *See Fraietta Decl. Ex. 2, Firm Resume of Bursor & Fisher, P.A.* This factor thus favors final approval

**2. The Settlement Was Negotiated At Arm’s Length**

Class Counsel and counsel for Defendant are experienced in class action litigation and engaged in protracted settlement discussions with the benefit of all necessary information to

make an informed and intelligent evaluation of the strengths and weaknesses of the case.

Accordingly, this Rule 23(e)(2) factor has been met.

### 3. The Settlement Provides Adequate Relief To The Class

Whether relief is adequate takes into account “(i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, if required; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3).” Rule 23(e)(2)(C)(i-iv). As to “the costs, risks, and delay of trial and appeal,” this factor “subsumes several *Grinnell* factors ... including: (i) the complexity, expense and likely duration of the litigation; (ii) the risks of establishing liability; (iii) the risks of establishing damages; and (iv) the risks of maintaining the class through the trial. *In re Payment Card Interchange*, 330 F.R.D. at 36. As noted above, the Settlement has met each of these *Grinnell* factors. *Supra* §§ I.A(1)-(6). As to “any agreement required to be identified by Rule 23(e)(3)” or “any agreement made in connection with the proposal,” *In re GSE Bonds*, 414 F. Supp. 3d at 696, no such agreement exists in this case other than the Settlement. Fraietta Decl. ¶ 32.

As to “the effectiveness of any proposed method of distributing relief to the class,” “[a]n allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.” *In re Payment Card Interchange*, 330 F.R.D. at 40. Here, under the terms of the Settlement, Performance Issue Claim Class Members who submit a timely Claim Form will receive a *pro rata* portion of the Settlement Fund, as a percentage of the Out-of-Pocket fees he or she paid to and received by Defendant during the class period, following the deduction of notice and claims administration costs, attorneys’ fees and expenses, and the class representative service award, all of which will be paid by the Settlement Fund.

Settlement §§ 1.35.1; 1.36; 2.2(b). This plan was proposed by experienced and competent counsel with the assistance of an experienced Settlement Administrator and ensures “the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund.” *In re GSE Bonds*, 414 F. Supp. 3d at 695.

As to “the terms of any proposed award of attorney’s fees,” Class Counsel has applied for attorneys’ fees, costs, and expenses “not to exceed one-third” of the Settlement Fund, which amounts to no more than \$316,666.66. Settlement ¶ 8.1; ECF No. 80. Class Counsel’s application is unopposed and is a reasonable request, and courts in this Circuit routinely approve fee requests in the amount of one-third of a common fund. *See, e.g., Hayes v. Harmony Gold Min. Co.*, 2011 WL 6019219, at \*1 (S.D.N.Y. Dec. 2, 2011) (awarding “attorneys’ fees in the amount of one third” of a \$9 million settlement fund), *aff’d* 509 F. App’x 21, 23-24 (2d Cir. 2013) (affirming fee award, and noting “the prospect of a percentage fee award from a common fund settlement, as here, aligns the interests of class counsel with those of the class”); *Khait v. Whirlpool Corp.*, 2010 WL 2025106, at \*8 (E.D.N.Y. Jan. 20, 2010) (awarding 33% of \$9 million settlement fund); *Willix v. Healthfirst, Inc.*, 2011 WL 754862, at \*6-7 (E.D.N.Y. Feb. 18, 2011) (awarding 33% of \$7.7 million settlement fund). As courts in this Circuit have noted, fee requests for up to one-third of common funds represent what “reasonable, paying client[s] ... typically pay ... of their recoveries under private retainer agreements.” *Reyes v. Altamarea Grp.*, 2011 WL 4599822, at \*8 (S.D.N.Y. Aug. 16, 2011).

#### **4. The Settlement Treats All Class Members Equally**

This Rule 23(e)(2) factor discusses “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.” *In re Payment Card Interchange*, 330 F.R.D. at 47. Here, the Settlement distributes cash relief to

each Settlement Class Member on a *pro rata* basis equal to the percentage of the total amount of Out-of-Pocket fees he or she paid to Defendant during the class period, which has been found by courts in this Circuit to be equitable. *See id.*; *see also, e.g., Meredith Corp. v. SESAC, LLC*, 87 F. Supp. 3d 650, 667 (S.D.N.Y. 2015) (finding that a *pro rata* distribution plan “appears to treat the class members equitably ... and has the benefit of simplicity”). Thus, this Rule 23(e)(2) factor is weighs in favor of approval.<sup>3</sup>

\* \* \*

Because the Settlement is, on its face, “fair, adequate, and reasonable, and not a product of collusion,” *Frank*, 228 F.R.D. at 184 (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138-39 (2d Cir. 2000)), the Court should grant final approval.

### C. The Notice Plan Comports With Due Process

Before final approval can be granted, due process and Rule 23 require that the notice provided to the Settlement Class is “the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort.” Fed. R. Civ. P. 23(c)(2)(B); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974). “Such

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<sup>3</sup> Additionally, the Second Circuit has found that “the existence and extent of incentive payments is relevant to whether ‘class members [are treated] equitably relative to each other.’” *Moses*, 79 F.4th at 245 (quoting Fed. R. Civ. P. 23(e)(2)(D)) (“[T]he equitable-treatment requirement protects the interests of class representatives who play an active role in the litigation ... [while] [a]t the same time, the rule requires that courts reject incentive awards that are excessive compared to the service provided by the class representative ...”). Here, the requested \$5,000 service award comprises a mere 0.2% of the \$2,500,000.00 Settlement Fund and will have a *de minimis* impact on class member recovery. Additionally, other courts in this Circuit have found that \$5,000 service awards are appropriate in ACAL and unlawful fee cases. *See Norcross v. Tishman Speyer Properties, L.P.*, Case No. 23-cv-11153-JPO, ECF No. 36 at ¶ 15 (S.D.N.Y. Aug. 16, 2024) (approving \$5,000 service award in similar ACAL ticket fee case); *Russett v. The Northwestern Mutual Life Ins. Co.*, Case No. 19-cv-07414-KMK, ECF No. 51 at ¶ 15 (S.D.N.Y. Oct. 6, 2020) (approving \$5,000 service awards in case alleging unlawful fees under New York General Business Law § 399-zzz); *Heigl v. Waste Management of New York, LLC*, Case No. 19-cv-05487-WFK-ST, ECF No. 35 at ¶ 15 (E.D.N.Y. May 20, 2021) (same).

notice to class members need only be reasonably calculated under the circumstances to apprise interested parties of the pendency of the settlement proposed and to afford them an opportunity to present their objections.” *In re Marsh & McLennan Cos., Inc. Sec. Litig.*, 2009 WL 5178546, at \*12 (S.D.N.Y. Dec. 23, 2009). Notice must clearly state essential information regarding the settlement, including the nature of the action, terms of the settlement, and class members’ options. *See* Fed. R. Civ. P. 23(c)(2)(B). At its core, all that notice must do is “fairly apprise the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with the proceedings.” *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005) (citation omitted).

“It is clear that for due process to be satisfied, not every class member need receive actual notice, as long as counsel ‘acted reasonably in selecting means likely to inform persons affected.’” *In re Adelpia Commc’ns Corp. Sec. & Derivative Litigs.*, 271 F. App’x 41, 44 (2d Cir. 2008) (quoting *Weigner v. City of N.Y.*, 852 F.2d 646, 649 (2d Cir. 1988)). The Federal Judicial Center notes that a notice plan is reasonable if it reaches at least 70% of the class. *See* Fed. Judicial Ctr., *Judges’ Class Action Notice and Claims Process Checklist and Plain Language Guide* 3 (2010). The notice plan here easily meets these standards. *See* Epiq Decl. ¶ 18.

At preliminary approval, the Court approved the Parties’ proposed Notice Plan, finding it met the requirements of Rule 23 and due process. *See* ECF No. 75 ¶ 11. The Plan has now been fully carried out by professional settlement administrator Epiq. Pursuant to the Settlement, Defendant provided Epiq with a list of 232,074 available names, email addresses. *See* Epiq Decl. ¶ 27. Epiq sent the Court-approved notice via email to 230,603 class members with potentially valid email addresses. *See id.* ¶ 28. A total of 222,002 notices were delivered via

email. *Id.* ¶ 34. On July 18, 2025, Epiq commenced sending 1,303 Postcard Notices to 1,303 identified Settlement Class Members with an associated mailing address for whom a valid email address was not available. Subsequently, on July 24, 2025, Epiq commenced sending 23,285 Postcard Notices to identified Settlement Class Members for whom the Email Notice was returned as undeliverable after multiple attempts. As a result, individual Court-approved notice successfully reached 95.6% of the identified Settlement Classes directly, and 70% of the Settlement Classes as of September 11, 2025.<sup>4</sup> *Id.* These summary notices also directed Settlement Class Members to the Settlement Website, where they were able to submit claims online; access important court filings, including the Motion for Attorneys’ Fees; and see deadlines and answers to frequently asked questions. *See id.* ¶ 48. Moreover, Epiq has send reminder notices prior to the Claims Deadline to all Settlement Class Members who have yet to file a claim at that time. Settlement § 4.1(d); Epiq Decl. ¶ 54. As of September 15, 2025, Epiq has received 121,806 Claim Forms, of which 120,691 are Performance Issue Claims. Epiq Decl. ¶ 53. These figures are subject to change as Epiq reviews the claims for verification. *Id.* Given the broad reach of the notice, and the detailed information provided, the requirements of due process and Rule 23 are easily met.

#### **D. The Settlement Class Should Be Finally Certified**

At the preliminary approval stage, the Court certified the following Settlement Class for settlement purposes:

- a. **“Performance Issue Claim Class”** is defined as (1) all Persons in the United States (including its states, districts or territories) who are not excluded below in this paragraph and who lodged complaints to Keurig claiming that a Coffee Maker experienced the Defect within the first 12 months of purchase between October 1, 2020 to the date of Preliminary Approval and were not provided with a remedy by Keurig pursuant to its Limited Warranty and (2) all Persons

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<sup>4</sup> Defendant, through Epiq, also notified the appropriate state and federal officials pursuant to CAFA. *See* Epiq Decl. ¶¶ 23-24.

in the United States (including its states, districts or territories) who are not excluded below in this paragraph, and who can demonstrate valid claims that a Coffee Maker manifested operational issues associated with the descaling process. Excluded from the Performance Issue Claim Class are (1) any Persons whose Coffee Makers are still within Defendant's original Limited Warranty period or the extended Limited Warranty period set forth below in paragraph 2.1(a); (2) any Judge or Magistrate presiding over this Action and members of their families; (3) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (4) Persons who properly execute and file a timely request for exclusion from the class; and (5) the legal representatives, successors or assigns of any such excluded Persons.

- b. **"Coffee Maker Purchaser Class"** which is defined as all Persons in the United States (including its states, districts or territories) who purchased one of the Coffee Makers, or Descaling Solution for use with the Coffee Makers, from two years prior to the date of Preliminary Approval up to the date of Preliminary Approval, excluding Performance Issue Claim Class Members and all Persons in the United States (including its states, districts or territories) who lodged complaints to Keurig claiming that a Coffee Maker experienced the Defect during the Class Period and who were provided with a remedy by Keurig pursuant to its Limited Warranty. Also excluded from the Coffee Maker Purchaser Class are (1) any Judge or Magistrate presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, and attorneys; (3) Persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors or assigns of any such excluded Persons.

ECF No. 75 ¶ 9. The Court's preliminary approval order also appointed Philip L. Fraietta of Bursor & Fisher, P.A. as Class Counsel and Plaintiffs Doreen Cahill and Janet Christman as Class Representatives, both for settlement purposes. *Id.* ¶ 8.

In doing so, the Court set forth an extensive analysis of the propriety of certification under Rule 23, following the argument presented in the preliminary approval motion. *Id.* ¶ 4. This Court was correct in certifying the Class for settlement purposes pursuant to Rules 23(a) and 23(b)(3), and nothing has changed to alter the propriety of the Court's certification. The Court should now grant final certification of the Settlement Class.

**CONCLUSION**

For the reasons set forth above, Plaintiffs respectfully requests that the Court grant his Motion for Final Approval of the Settlement and enter Final Judgment in the form submitted herewith.

Dated: September 16, 2025

Respectfully submitted,

**BURSOR & FISHER, P.A.**

By: /s/ Philip L. Fraietta  
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**CERTIFICATION OF WORD COUNT**

I hereby certify that the word count of this memorandum of law complies with the word limits set by Local Civil Rule 7.1(c) (the “Rule”). According to Microsoft Word, the word-processing system used to prepare this memorandum, the total word count for all printed text that counts towards the limits imposed in the Rule is 7,128.

By: /s/ Philip L. Fraietta  
Philip L. Fraietta