UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Jamaal Lloyd and Anastasia Jenkins, as representatives of a class of similarly situated persons, and on behalf of the W BBQ Holdings, Inc. Employee Stock Ownership Plan, Plaintiffs, v. Argent Trust Company, Herbert Wetanson, Gregor Wetanson, Stuart Wetanson, BBQ Trust and its trustees and beneficiaries, Gregor Wetanson 2015 Gift Trust and its trustees and beneficiaries, Defendants.	Case No. 1:22-cv-04129-DLC

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

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INTRODUCTION

This Settlement provides substantial relief to the approximately 1,600 participants and beneficiaries of the W BBQ Holdings, Inc. Employee Stock Ownership Plan (the "Plan" or "ESOP").[1] If approved, the Settlement will deliver more than $22.5 million in total economic value through a combination of cash, loan reductions, and liquidity provisions. The Settlement provides meaningful immediate benefits to Class Members while avoiding the risks, expense, and delay associated with continued litigation, trial, and appeal.

On May 4, 2026, the Court preliminarily approved the Parties' Class Action Settlement Agreement (the "Settlement" or "Settlement Agreement"), which resolves Plaintiffs and Class Representatives Jamaal Lloyd and Anastasia Jenkins' claims against Defendants Argent Trust Company ("Argent"), Herbert Wetanson, Gregor Wetanson, Stuart Wetanson, the BBQ Trust and its trustees (the "BBQ Trust"), and the Gregor Wetanson 2015 Gift Trust and its trustees (the "Greg Wetanson Gift Trust") (collectively, "Defendants").

Since that time, an independent fiduciary, Fiduciary Counselors Inc. ("FCI"), reviewed the Settlement and concluded that it is reasonable and in the best interests of the Plan and its participants. *See* Declaration of Michelle C. Yau ("Yau Decl."), Ex. 1 ("FCI Report").

In addition, notice of the Settlement was disseminated to Class Members in accordance with the Court's Preliminary Approval Order. As of the filing of this Motion, no Class Member has objected to the Settlement. The absence of objections, the Independent Fiduciary's approval, and the substantial relief obtained all confirm that the Settlement is fair, reasonable, and adequate under Rule 23(e).

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[1] Unless otherwise indicated, all capitalized terms used herein have the same meaning as in the Settlement Agreement. Dkt. 380-1.

Accordingly, Plaintiffs respectfully request that the Court enter an Order granting Plaintiffs' Unopposed Motion for Final Approval.

BACKGROUND[2]

I. Pleadings, Motions Practice, and the Department of Labor Action

Plaintiff Jamaal Lloyd filed this class action on May 20, 2022, alleging that Defendants caused the Plan to overpay for W BBQ stock in violation of ERISA. Dkt. 1. Plaintiff Anastasia Jenkins was later added as a plaintiff in the First Amended Complaint. Dkt. 49.

Early in the litigation, Defendants moved to compel arbitration, and in the alternative, to dismiss for lack of standing. Dkt. 50. The Court denied that motion, which Defendants appealed. Dkts. 60, 63. Following the Supreme Court's decision in *Coinbase, Inc. v. Bielski*, 599 U.S. 736 (2023), the Court stayed the action pending appeal of the arbitration decision. Dkt. 90. On January 27, 2025, the Second Circuit summarily affirmed this Court's decision and issued its mandate. Dkt. 98. Following remand, the Parties conducted full merits discovery.

Separately, on December 19, 2024—more than two years after this Action was filed—the Secretary of Labor initiated an ERISA enforcement action against Defendants Argent, Herbert Wetanson, and Gregor Wetanson. *See Chavez-Deremer v. Argent Tr. Co.*, No. 1:24-cv-09809-DLC (S.D.N.Y. Dec. 20, 2024), Dkt. 2 (hereinafter, "the DOL Action").

On July 10, 2025, the Court granted Plaintiffs' opposed motion to amend the complaint to add the BBQ Trust and Greg Wetanson Gift Trust as Defendants for claims related to transfers of Seller Notes to them. Dkt. 152. Plaintiffs filed the Second Amended Complaint on July 14, 2025. Dkt. 153.

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[2] Much of Subsections I – IV of this Background section were previously discussed in Plaintiffs' briefing in support of their Motion for Preliminary Approval of Class Action Settlement (Dkt. 379). For ease of reference, those parts are recounted or summarized here.

On February 17, 2026, the Court entered a consent order and judgment resolving the DOL Action. *Chavez-Deremer*, 24-cv-09809 (S.D.N.Y. Feb. 17, 2026), Dkt. 109 (hereinafter, "DOL Judgment"). The DOL Judgment required defendants to contribute $1 million to the ESOP over an 18-month period, with those funds solely allocated to the ESOP Accounts of participants who worked 1,000 hours and were actively employed at year-end 2026 or 2027. *Id.*; Dkt. 380-2 § 4.1(b). The DOL Judgment also reduced the principal balance of the Seller Notes by $14 million, increasing the value of the W BBQ stock owned by ESOP participants. *See* DOL Judgment. The DOL Judgment, however, contained no liquidity provisions. *See id*. Shortly after the DOL Judgment was entered, Defendants argued that it rendered Plaintiffs' claims moot and sought dismissal of this Action. Dkts. 342, 348. Plaintiffs vigorously opposed those motions, which remained pending when the Parties reached their settlement. Dkts. 362, 363.

II. Discovery, Class Certification, and Pretrial Proceedings

The Settlement was reached only after the Parties had completed virtually every significant phase of the litigation. By the time settlement discussions proved successful, the Parties had completed class certification proceedings, fact discovery, expert discovery, Daubert briefing, motions *in limine* briefing, trial briefing, and substantial trial preparation. *See* Dkt. 379 at 4-5. As a result, Class Counsel possessed a thorough understanding of the strengths and weaknesses of the claims and were well positioned to evaluate the Settlement.

Fact discovery was extensive. Plaintiffs conducted a comprehensive review of the documentary record, and Class Counsel took and participated in 16 fact depositions of party and third-party witnesses.[3] *See* Dkt. 379 at 4. Fact discovery closed on August 29, 2025. Dkt. 105.

[3] Class Counsel led questioning for 14 of the 16 depositions. Dkt. 380 ¶ 29.

Expert discovery was likewise substantial. Defendants disclosed two affirmative expert witnesses and one rebuttal expert witness, while Plaintiffs disclosed two affirmative experts. Dkt. 380 ¶ 30. Class Counsel took the lead on all three defense expert depositions and defended the depositions of their own two experts. *Id*.

Plaintiffs also successfully obtained class certification. Defendants principally opposed certification by challenging the adequacy of Class Counsel. Dkts. 155, 200. The Court rejected those arguments and certified the requested class under Rule 23(b)(1)(B). Dkt. 240.

The case then proceeded through intensive pretrial preparation. Plaintiffs submitted their pretrial materials, opposed Defendants' Daubert motions against both of Plaintiffs' experts and Defendants' three-part motion *in limine*, and responded to Defendants' trial brief. *See* Dkt. 379 at 5; Dkts. 297, 300, 311, 319. By the time a settlement was reached, Class Counsel had substantially prepared for trial, including by preparing their witnesses for live cross-examination, preparing to cross-examine Defendants' twelve trial witnesses, and completing substantial trial logistics and strategy preparations. *See* Dkt. 379 at 5.

The Parties filed their Notice of Settlement on March 9, 2026, before the Court ruled on these motions. *See* Dkt. 369.

III. Settlement Discussions

The Settlement is the product of extensive, arm's-length negotiations conducted with the assistance of the Honorable Stewart D. Aaron acting as the mediator. The Parties participated in three formal settlement conferences on September 30, 2025, January 29, 2026, and February 13, 2026. Dkts. 109, 249, 307. Those settlement conferences did not result in resolution. Dkt. 380 ¶¶ 35-37.

Less than two weeks before trial, and with the involvement of Judge Aaron, the Parties exchanged additional settlement offers. *Id.* ¶ 38. These negotiations culminated in an agreement in principle on March 9, 2026, memorialized in an executed term sheet. *See* Dkt. 373.

Thereafter, the Parties engaged in further negotiations to finalize the detailed terms of the Settlement Agreement, including the plan of allocation. Those negotiations were hotly contested and required further involvement by Judge Aaron as contemplated by the Term Sheet. *See* Dkt. 373-1 ¶ 26. The Parties ultimately entered into the Settlement Agreement dated April 8, 2026, and Plaintiffs moved for preliminary approval on April 17, 2026. Dkts. 378 & 379. The Court granted preliminary approval on May 4, 2026. *See* Dkt. 392.

The Court also afforded the Department of Labor ("DOL") an opportunity to express its views on the Plan of Allocation "and its impact on certain beneficiaries of the DOL Judgment." Dkt. 389. The DOL elected not to submit a position regarding the proposed allocation.

IV. Overview of Settlement Terms

A. Settlement Recovery

The Settlement provides substantial benefits to the Class, with the total economic value exceeding $22.5 million. Dkt. 390 ¶¶ 10-11. That value is delivered through three components.

First, Defendants will pay $10,000,000 into the non-reversionary Settlement Fund Account. Settlement §§ 1.1, 6.1. After deduction of any Court-approved attorneys' fees and expenses, service awards, and administrative costs, the "Net Settlement Fund" (also referred to as the "Net Cash Payment") will be distributed to eligible Class Members pursuant to the Plan of Allocation. *Id.* § 7.9.

Second, the Seller Defendants will eliminate $9.7 million in accrued interest (the "Interest Elimination") and reduce the principal balance on the Seller Notes by $12 million (the "Principal

Reduction").[4] This reduces the ESOP-owned Company's outstanding debt obligations and thereby increases the value of W BBQ stock held by ESOP participants. *See* Dkt. 390 ¶¶ 8-9. The Interest Elimination is worth its face value ($9.7 million) because the accrued interest is a current liability for W BBQ that is immediately payable to the Sellers. *Id.* ¶ 8. The $12 million Principal Reduction has a present value of approximately $2.8 million because the value of this long-term debt has significantly depreciated since the ESOP Transaction. *See id.* ¶ 9; Dkt. 368-2.

Third, the Settlement requires amendments to the ESOP Plan Document to provide enhanced liquidity to certain participants. Specifically, (i) participants who have separated from employment as of the Final Settlement Date, and (ii) participants who separate during the calendar year following the Final Settlement Date and have vested ESOP Account balances below $5,000 will receive distributions of their vested ESOP Accounts in five equal annual installments (collectively, the "Liquidity Provisions"). Settlement § 6.6. These Liquidity Provisions provide meaningful additional value to Class Members by allowing them to access and monetize the value of W BBQ stock in their accounts ***decades*** earlier than allowed under the current Plan Document. Currently, ESOP participants may not receive ***any*** distributions for their stock until the Company completes payment of the Seller Notes (or until a participant dies or reaches normal retirement age).[5] Dkt. 380-2 § 7.5. The Liquidity Provisions also enable participants to realize the benefit of the increases in stock value resulting from this Settlement and the DOL Judgment's debt reductions. *See* Dkt. 390 ¶ 11.

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[4] The $9.7 million of accrued interest and $12 million of principal debt forgiveness is separate from and in addition to the $14,000,000 principal reduction on the Seller Notes set forth in the DOL Judgment. *See* Settlement § 6.3.

[5] For context, as of the end of 2024, approximately $72.3 million in Seller Note debt remained to be paid. Dkt. 368-2 ¶¶ 26-27.

B. Plan of Allocation

The Plan of Allocation equitably allocates the Net Settlement Fund among Class Members based on their relative economic interests while accounting for the differing ways in which Class Members are affected by both this Settlement and the DOL Judgment.

First, Class Members whose vested W BBQ stock were previously cashed out will receive a cash payment of $24.70 per cashed-out share.[6] *See* Dkt. 380-1, Ex. 1 ("Plan of Allocation" or "POA") § 3(a). By contrast, Class Members who continued to hold vested W BBQ shares in their ESOP Account after December 31, 2025 will receive an increase in stock value from the Interest Elimination and Principal Reduction. *Id.*

Second, all Class Members will receive a *pro rata* share of the $10 million cash payment after reduction for any Court-approved attorneys' fees, expenses, and service awards.[7] *Id.* § 3(b).

Third, the Plan of Allocation accounts for the DOL Judgment by reducing each Class Member's pro rata cash distribution by any amounts allocated to that Class Member from the DOL Judgment's 2026 cash payment.[8] *Id.* §§ 3(c)-(d). This offset prevents duplicative recovery while ensuring that the DOL Judgment's cash relief is fairly integrated into the overall recovery.

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[6] The ESOP's records indicate that less than 4,000 shares have or will be cashed out from Class Members based on a share price as of December 31, 2025 or earlier. Settlement § 4.2.

[7] Each Class Member's *pro rata* share will be calculated based on the number of shares allocated to the Class Member's ESOP Account in each year from year-end December 31, 2016 through December 31, 2025, divided by the sum total of all such vested shares to all Class Members' ESOP Accounts.

[8] The remaining $400,000 cash allocations in the DOL Judgment will be allocated in 2028, and thus, this $400,000 cash cannot be feasibly offset from this Settlement without substantial delay in administration. *See* DOL Judgment § II.A.1 (providing that cash settlement amount payments will occur over a span of 18 months).

Fourth, any amounts resulting from these offsets will be re-allocated *pro rata* among all Class Members. *Id.* § 3(e). Accordingly, each Class Member's individual recovery will consist of (i) any payment for cashed-out-shares, (ii) a *pro rata* share of the remaining Net Cash Payment (net any applicable offset), and (iii) any re-allocation amounts. *Id.* § 3(f).

The Settlement Administrator will distribute each Class Member's share of the Net Cash Payment via check or direct rollover. *Id.* § 4. To the extent that Class Members do not cash their check within 90 days of issuance, the Settlement Administrator will contact the Class Members to remind them that their check will expire within 30 days. *Id.* § 5(a). If a Class Member still does not cash his/her check, the funds will be transferred to the ESOP and allocated to that Class Member's account, where they will be invested in a money market fund. *Id.* § 5(b). If a Class Member no longer maintains an ESOP Account, unclaimed funds will be re-distributed on a *pro rata* basis to Class Members with active ESOP Accounts. *Id*. § 5(c).

C. Release of Claims

In exchange for the consideration provided by the Settlement, Plaintiffs, all Class Members, and the Plan will provide a release that is appropriately limited to claims arising from the facts at issue in this litigation and which does not extend to unrelated claims. Settlement § 3.2. The release excludes claims to enforce the Settlement Agreement. *Id*.

V. Class Notice and Reaction to Settlement

Consistent with the Court's Preliminary Approval Order, Atticus Administration, LLC ("Atticus"), the Court-appointed Settlement Administrator, mailed the Class Notices to the Class Members identified by the Plan's recordkeeper on May 21, 2026. Declaration of Bryn Bridley ("Bridley Decl.") ¶ 6. In total, 1,617 Class Notices were sent via mail or email, each with a copy of the rollover form. *Id.* ¶ 7.[9]

Prior to sending the Class Notices, Atticus processed the class data through the National Change of Address ("NCOA") database maintained by the U.S. Postal Service and updated addresses as needed. *Id.* ¶¶ 5-6. Where Class Notices were returned without forwarding addresses, Atticus conducted a search to ascertain a valid address for the affected Class Member, including by emailing Class Members for whom the class data included their emails. *Id.* ¶ 6. Out of 1,614 Class Notices that were mailed, 208 were undeliverable via U.S. Mail, however, for 112 Class Members, Atticus was able to email them the Class Notice and rollover form. *Id.* ¶¶ 8-10, 11-12. Atticus also emailed the Class Notice and rollover form to three (3) Class Members for whom the class data did not include a mailing address. *Id.* ¶ 11. And, of the 115 emails sent, 102 of the emails were successfully transmitted. *Id.* ¶ 12. Through this Notice program, Class notice was successfully disseminated to over 93% of the Settlement Class. *Id.* ¶ 13.

The Class Notice provided information regarding all material aspects of the Settlement, including: (1) the nature of the claims; (2) the definition of the Class; (3) the material terms of the Settlement, including the Plan of Allocation; (4) Class Members' right to object to the Settlement and the applicable deadline; (5) the scope of the Released Claims; (6) the identity of Class Counsel and the attorneys' fees and expenses that may be sought; (7) the potential amount of requested Class Representative service awards; (8) the date, time, and location of the Fairness Hearing; and

[9] The class data provided by Defendants includes 1,617 Class Members. Bridley Decl. ¶ 4. The class data did not include, and Atticus was unable to obtain, mailing addresses for three (3) of the Class Members. *Id.* ¶ 6. Atticus requested mailing addresses from these three individuals using their email addresses provided in the class data. *Id.* After not hearing back, Atticus emailed the individuals the Class Notice and rollover form. *Id.* ¶ 11.

(9) Class Members' right to appear and be heard at the Fairness Hearing.[10] *See* Bridley Decl., Ex. B ("Class Notice").

Atticus also established and maintained a dedicated settlement website and toll-free telephone support line to answer Class Member questions and provide access to important settlement documents. *See* Bridley Decl. ¶¶ 17, 19. This telephone number was referenced in the Class Notice and also appears on the Settlement website. *See id.* ¶ 17; Class Notice. Several Class Members have contacted Atticus via the toll-free telephone number and email provided in the Class Notice. *See id.* ¶¶ 18, 20. Specifically, as of the date of this filing, Atticus received 53 calls to its telephone support line and 27 email inquiries regarding the Settlement. *Id.* The Settlement website has also been visited 1,076 times. *Id.* ¶ 16.

The deadline to submit objections to the Settlement is July 24, 2026. *See* Dkt. 392 ¶ 10. As of the filing of this motion, neither Class Counsel nor Atticus has received any objections to the Settlement. Yau Decl. ¶ 10; Bridley Decl. ¶ 22.

VI. Independent Fiduciary Review

Consistent with Sections 2.2 and 10.1 of the Settlement and the requirements of DOL's Prohibited Transaction Exemption 2003-39 (the "PTE 2003-39"), the Settlement was reviewed by an independent fiduciary. *See* "Release of Claims and Extensions of Credit in Connection with Litigation," 68 Fed. Reg. 75632 (Dec. 31, 2003), as amended, 75 Fed. Reg. 33830 (June 15, 2010). PTE 2003-39 permits an ERISA plan to release claims against plan fiduciaries only if an independent fiduciary determines, among other things, that the settlement is reasonable in light of

[10] The Notice does not contain information regarding opting out of the Class because the Class is properly certified under Rule 23(b)(1).

the plan's likelihood of full recovery, the risks and costs of litigation, and the value of the claims being released. 75 Fed. Reg. 33830 at 33836-37.

To satisfy those requirements, the Plan retained FCI to conduct an independent evaluation of the Settlement. As part of its review, FCI evaluated the Settlement Agreement, including (i) the scope of the release of claims, (ii) the Settlement recovery, (iii) the Plan of Allocation, (iv) the requested attorneys' fees, litigation expenses, and service awards, (v) whether the Settlement terms are reasonable, and (vi) whether the Settlement complied with all relevant requirements set forth in PTE 2003-39. *See* FCI Report.

As part of its investigation, the team from FCI spoke at length with Class Counsel and Defendants' counsel about the litigation, the proposed Settlement, and counsel's evaluation of the risks, including the costs of litigation versus the likelihood of full recovery. Yau Decl. ¶ 7.

Following its investigation, FCI issued its report, which approved and authorized the Settlement based on its determination that the Settlement satisfied the requirements of PTE 2003-39. *See* FCI Report. FCI found, among other things, that:

- The Settlement terms, including the scope of the release and the amount of cash and other consideration received by the ESOP are reasonable in light of the ESOP's likelihood of full recovery, the risks and costs of continued litigation, and the value of the claims being released.

- The requested amounts for attorneys' fees, expenses, and service awards to the Class Representatives are reasonable.

- The terms and conditions of the transaction are no less favorable to the ESOP than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.

- The total economic value of the Settlement—including the non-cash consideration—exceeds what could have been recovered in an all-cash

> settlement and thus is in the interest of the Plan's participants and beneficiaries.

FCI Report at 1, 9-10, 13. In sum, the review and approval of the Settlement by FCI, an independent fiduciary with expertise in ERISA, provides additional support that the Settlement is fair and reasonable.

ARGUMENT

I. Standard of Review

Rule 23(e) requires court approval of any settlement agreement that would bind absent class members. After notice to class members and a fairness hearing, the Court may approve a class action settlement if it is "fair, adequate, and reasonable, and not a product of collusion." *Joel A. v. Giuliani*, 218 F.3d 132, 138-39 (2d Cir. 2000).

In making that determination, Rule 23(e)(2) directs courts to consider whether: (1) the class representatives and class counsel have adequately represented the class; (2) the proposal was negotiated at arm's length; (3) the relief provided for the class is adequate after considering the costs, risks, and delay of trial and appeal, the effectiveness of the proposed distribution method, the terms of any requested attorneys' fees, and any side agreements; and (4) the proposal treats class members equitably relative to one another. Fed. R. Civ. P. 23(e)(2).

The decision whether to approve a proposed class action settlement rests within the sound discretion of the Court. *See Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2d Cir. 1995). In exercising that discretion, courts recognize that there is a "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quotation omitted). Accordingly, courts will "stop short of the detailed and thorough investigation that [they] would undertake if [they] were actually trying the case" because "[s]uch procedure would emasculate the very purpose for which settlements are made." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

As discussed below, the Settlement readily satisfies Rule 23(e). It was reached only after the Parties completed class certification, extensive fact and expert discovery, Daubert briefing, motions *in limine* briefing, and substantial trial preparation. *See supra* Background §§ I-III. The Settlement resulted from arm's-length negotiations conducted with the assistance of Judge Stewart D. Aaron, was independently reviewed and approved by the Independent Fiduciary pursuant to PTE 2003-39 and has drawn no objections from any Class Member. *See supra* Background §§ V-VI. Under these circumstances, final approval is warranted.

II. The Settlement Meets the Standard for Final Approval

Each of the Rule 23(e)(2) factors supports final approval of the Settlement. [11]

A. The Named Plaintiffs and Class Counsel Adequately Represented the Class

Rule 23(e)(2)(A) requires the Court to determine whether "the class representatives and class counsel have adequately represented the class." This requirement is satisfied here. Indeed, when certifying the Class, the Court necessarily determined that the Named Plaintiffs would fairly and adequately protect the interests of the Class under Rule 23(a)(4) and appointed Cohen

[11] The Rule 23(e) factors "supplement rather than displace the[] '*Grinnell*' factors" previously applied in this circuit. *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *1 (S.D.N.Y. Dec. 16, 2019). The nine *Grinnell* factors are (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. *Grinnell Corp.*, 495 F.2d at 463 (citations omitted). Consistent with the intent of the 2018 amendments, only those *Grinnell* factors that are relevant to this Settlement are addressed here.

Milstein Sellers & Toll LLP ("Cohen Milstein") as Class Counsel pursuant to Rule 23(g). *See* Dkt. 240. Nothing has occurred since class certification that calls those findings into question.

The Named Plaintiffs diligently fulfilled their responsibilities throughout nearly four years of litigation. At the outset of the case, Plaintiffs Lloyd and Jenkins each signed written acknowledgements of their duties as class representatives. *See* Dkt. 381 ¶ 3; Dkt. 382 ¶ 3. Throughout the litigation, they remained actively involved by, among other things: (1) reviewing the pleadings; (2) communicating extensively with Class Counsel; (3) providing sworn responses to Defendants' interrogatories; (4) producing documents in response to Defendants' document requests; (5) attending or participating in three half-day settlement conferences; (6) preparing for trial with Counsel; (7) reviewing and discussing with Counsel settlement offers from Defendants, counter-offers in response, and the deal terms in the Settlement Agreement; and (8) approving the Settlement terms on behalf of the Class. Dkt. 381 ¶ 5; Dkt. 382 ¶ 5; Dkt. 397 ¶ 3; Dkt. 398 ¶ 3. Plaintiffs are not aware of any conflicts between themselves and any other Class Members. Dkt. 381 ¶ 4; Dkt. 382 ¶ 4.

Class Counsel also vigorously represented the Class's interests throughout this Action. Over the course of nearly four years, Class Counsel successfully defeated Defendants' motion to compel arbitration, prevailed on appeal before the Second Circuit, obtained certification of the Settlement Class, completed extensive fact and expert discovery, opposed Defendants' Daubert motions and motions *in limine*, prepared the case for trial, and ultimately negotiated a Settlement providing more than $22.5 million in total economic value to the Settlement Class. *See* Dkt. 379 at 16-18; Dkt. 390 ¶ 10. The Settlement provides approximately 71% of the ESOP's remaining losses after accounting for the recovery obtained in the parallel DOL Action. *See* Dkt. 379 at 17-18. In addition to substantial monetary relief, the Settlement secures prospective relief in the form of changes to the ESOP's governance documents, which permit eligible Class Members to realize the increased value of their ESOP accounts decades earlier than would otherwise be possible under the existing ESOP terms. *See* Dkt. 379 at 6-8; Dkt. 390 ¶ 11. This result was achieved only after extensive motion practice, comprehensive fact and expert discovery, contested class-certification proceedings, and substantial completion of trial preparation. *See* Dkt. 379 at 2-5; Dkt. 380 ¶¶ 27-31, 34-41.

The Court had ample opportunity throughout this litigation to observe the quality of Class Counsel's representation firsthand. In addition, Cohen Milstein's experience and reputation further supports a finding of adequacy. Cohen Milstein is nationally recognized for its ERISA and class action practice and has litigated employee benefits cases for more than twenty-five years. Dkt. 380 ¶ 5. Cohen Milstein was selected as the Plaintiff Law Firm of the Year – 2025 by *The National Law Journal*, and Michelle Yau—lead Plaintiffs' Counsel on this matter—was selected as one of the "Elite Women of the Plaintiffs Bar" in 2025. *Id.* ¶ 7; Dkt. 395-1. Cohen Milstein has also previously been named one of the ten "Most Feared Plaintiffs Firms" by *Law360* and a "class action powerhouse" by Forbes. Dkt. 380 ¶ 5. Cohen Milstein's ERISA practice group was named by *Law360* as "Practice Group of the Year—Benefits" in 2025, 2022, 2021 and 2019. Dkt. 380 ¶ 6; Dkt. 395-1.

The record demonstrates that both the Named Plaintiffs and Class Counsel diligently and effectively represented the interests of the Settlement Class throughout this litigation. Rule 23(e)(2)(A) is therefore satisfied.

B. The Settlement was Negotiated at Arm's Length After Extensive Discovery

Rule 23(e)(2)(B) requires the Court to consider whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). The record leaves little doubt that this requirement is satisfied.

The Settlement is the product of hard-fought, arm's-length negotiations between experienced counsel. *See* Dkt. 380 ¶¶ 34-39. Plaintiffs were represented by Cohen Milstein, and Defendants were represented by Groom Law Group, both of which possess substantial experience litigating complex ERISA class actions.

The Parties' negotiations were conducted with the assistance of Judge Aaron, who served as mediator throughout the settlement process. The Parties participated in three formal settlement conferences before Judge Aaron over the course of more than four months, but those efforts did not initially result in a resolution. Dkt. 380 ¶¶ 35-37. Only after continued negotiations less than two weeks before trial—and with Judge Aaron's continued involvement—did the Parties reach an agreement in principle on March 9, 2026. *Id.* ¶ 38; Dkts. 369, 373. Even then, the Parties engaged in further contested negotiations regarding the detailed terms of the Settlement Agreement on April 8, 2026. *See* Dkt. 380 ¶ 39. This history strongly demonstrates that the Settlement was the product of arm's-length negotiations rather than collusion. *See Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012) ("The involvement of [an] experienced and well-known class action mediator[] is a strong indicator of procedural fairness.").

The timing of the Settlement further confirms that the negotiations were informed. By the time the Parties reached agreement, they had completed class certification proceedings, extensive fact and expert discovery, Daubert briefing, motions *in limine* briefing, trial briefing, and substantial trial preparation. *See supra* Background §§ I-III; Dkt. 379 at 2-5. As a result, Class

Counsel possessed a comprehensive understanding of the factual record, the legal issues, and the strengths and weaknesses of both Plaintiffs' claims and Defendants' defenses when evaluating the Settlement. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016) (citation omitted) (holding that "the stage of the proceedings and the amount of discovery completed" also weigh strongly in favor of approval).

These circumstances establish that the Settlement resulted from informed, arm's-length negotiations between experienced counsel and fully satisfies Rule 23(e)(2)(B).

C. The Settlement Provides Significant Relief to the Class and Is Adequate Under Rule 23(e)(2)(C)

The Settlement provides more than $22.5 million in total economic value to the Settlement Class and recovers approximately **71% of the ESOP's remaining losses**[12] after accounting for the relief obtained in the parallel DOL Action. *See* Dkt. 390 ¶ 10; Dkt. 379 at 17-18.

The Settlement's recovery of 71% of alleged losses far exceeds typical recoveries in comparable ERISA class actions. *See, e.g.*, *Kohari v. MetLife Grp., Inc.*, 2025 WL 100898, at *10 (S.D.N.Y. Jan. 15, 2025) (**19−27%** of total losses "is well within the range found to be fair and reasonable"); *Krohnengold v. N.Y. Life Ins. Co.*, No. 1:21-cv-01778 (S.D.N.Y. Feb. 26, 2024), Dkt. 194 at 13, *approved by* (S.D.N.Y. July 18, 2024), Dkt. 202 (ERISA settlement represented between **20−25%** of total losses); *Jacobs v. Verizon Commc'ns, Inc.*, No. 1:16-cv-01082 (S.D.N.Y. October 19, 2023), Dkt. 240 at 20 (settlement represented approximately **13−29.2%** of losses), *approved by* (S.D.N.Y. Nov. 21, 2023), Dkt. 247; *Bhatia v. McKinsey & Co., Inc.*, No.

[12] Plaintiffs' valuation expert opined that the ESOP suffered approximately $36 million in economic damages. *See* Dkt. 326 ¶ 249. After accounting for the relief obtained in the related DOL Action—valued by Plaintiffs' expert at approximately $4.3 million—the estimated remaining losses to the ESOP were approximately $31.7 million at the time of Settlement. Dkt. 368-2 ¶ 51. The Settlement thus represents a recovery of approximately 71% of remaining losses, a result that far exceeds typical recoveries in comparable ERISA class actions.

1:19-cv-01466 (S.D.N.Y. Feb. 3, 2021), Dkt. 101 at 15 (settlement represented **21–22%** of disputed fees paid to McKinsey affiliate), *approved by* (S.D.N.Y. Feb. 17, 2021), Dkt. 110; *see also Foster v. Adams & Assocs., Inc.*, No. 3:18-cv-02723 (N.D. Cal. Jan. 13, 2022), Dkt. 241 at 12 (ESOP case representing **28.5%** of maximum loss where parties settled shortly before trial commenced), *approved by* (N.D. Cal. Feb. 11, 2022), Dkt. 244.

The absolute value of the recovery likewise compares favorably to other ESOP settlements, which frequently involve materially smaller recoveries than that here. *See, e.g.*, *Allen v. GreatBanc Tr. Co.*, No. 1:15-cv-03053 (N.D. Ill. May 6, 2019), Dkt. 108 (final approval of $2.25 million ESOP settlement); *Foster v. Adams & Assocs., Inc.*, No. 3:18-cv-02723 (N.D. Cal. Feb. 11, 2022), Dkt. 244 (final approval of $3.0 million ESOP settlement); *Scalia v. Prof. Fid. Servs., LLC*, No. 7:19-cv-07874 (S.D.N.Y. Jan 12, 2021), Dkt. 30 (DOL consent judgment recovering $750,000 in cash to ESOP).

Moreover, a combination of cash and non-cash consideration is particularly appropriate in the ESOP context because reducing the company's debt directly increases the value of company stock owned by ESOP participants. For this reason, courts routinely approve ESOP settlements that include non-cash relief. *See, e.g.*, *Chea v. Lite Star ESOP Comm.*, 2026 WL 383318, at *9 (E.D. Cal. Feb. 11, 2026) (approving settlement consisting of cash payment and loan reduction); *Smith v. GreatBanc Tr. Co.*, No. 1:20-cv-02350 (N.D. Ill. Aug. 23, 2023), Dkt. 163 (same); *c.f.* DOL Judgment (entering consent order and judgment comprised of a cash payment, loan reduction, and elimination of warrants); *Scalia v. The Farmers Nat'l Bank of Danville*, No. 1:20-cv-00674 (S.D. Ind. April 3, 2020), Dkt. 5 at 3-4 (similar); *Acosta v. Mueller*, No. 2:13-cv-01302 (E.D. Wis. Dec. 20, 2017), Dkt. 226-1 at 2-10 (similar). Each of the Rule 23(e)(2)(C) subfactors support approval of the Settlement.

i. The Risks, Costs, and Delay of Further Litigation Were Significant

Rule 23(e)(2)(C)(i) directs courts to consider "the costs, risks, and delay of trial and appeal" when evaluating the adequacy of a proposed settlement. Fed. R. Civ. P. 23(e)(2)(C)(i). Here, those considerations strongly support final approval. Although Plaintiffs believe they had strong claims, they would have faced risks at multiple stages, including trial, appeal, and collection of any judgment in their favor. *See In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (observing that there is a "general risk inherent in litigating complex claims such as these to their conclusion"). Success at trial and on appeal, as well as the collection of any affirmed judgment, could not be assured.

First, while Class Counsel were prepared to proceed to trial, establishing liability was not guaranteed. Defendants vigorously disputed liability throughout the litigation, and courts have entered judgment in favor of defendants in similar ERISA cases following trial. *See, e.g.*, *Gamache v. Hogue*, 2026 WL 867506 (M.D. Ga. Mar. 30, 2026) (entering judgment for defendants following bench trial in ESOP class action); *Fish v. Greatbanc Tr. Co.*, 2016 WL 5923448 (N.D. Ill. Sept. 1, 2016) (entering judgment in favor of defendants after 34-day trial in ESOP class action).

Second, even if Plaintiffs established liability, substantial issues remained regarding the amount of recoverable losses. *See Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273, 280 (S.D.N.Y. 2018) (finding deficiencies in fiduciary process but concluding plaintiffs failed to prove resulting losses resulting from the fiduciary failures), *aff'd*, 9 F.4th 95 (2d Cir. 2021). Those issues were further complicated by the DOL Judgment. Following entry of that judgment, Defendants argued that the DOL's recovery either eliminated or substantially reduced the Class's losses and sought dismissal on mootness grounds just weeks before trial. *See* Dkts. 342, 348. Plaintiffs vigorously disputed those arguments, but the motions remained pending when the Parties settled. *See* Dkts. 362, 363. Continued litigation therefore carried significant uncertainty regarding both the proper measure of damages and the effect of the DOL Judgment on any recovery. *See Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015) (noting that ERISA cases such as this are "particularly complex").

Third, even a complete victory at trial would almost certainly have been followed by appellate proceedings, delaying any recovery for years and creating the possibility that a favorable judgment could be modified or reversed. *See, e.g.*, *Wit v. United Behav. Health*, 79 F.4th 1068, 1088 (9th Cir. 2023) (reversing judgment for ERISA plaintiffs); *PA Chiropractic Ass'n v. Indep. Hosp. Indem. Plan, Inc.*, 802 F.3d 926 (7th Cir. 2015) (same). Even successful plaintiffs frequently face multi-year delays before obtaining a final, non-appealable recovery. *See, e.g.*, *Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (affirming district court's decision nearly four years after trial judgment); *Brundle v. Wilmington Tr. N.A.*, 241 F. Supp. 3d 610 (E.D. Va. 2017) (finding that trustee defendant breached its fiduciary duty after bench trial), *aff'd*, 919 F.3d 763 (4th Cir. 2019), *as amended* (Mar. 22, 2019).

Fourth, Plaintiffs also faced risks associated with collecting any judgment ultimately obtained. Those risks were not merely theoretical. During this litigation, Plaintiffs successfully moved to amend the Complaint to add the BBQ Trust and the Greg Wetanson Gift Trust based on transfers of Seller Notes to those entities. *See* Dkt. 152. Collectability challenges have borne out in other ERISA cases, including those litigated by Class Counsel, where defendants transferred their assets to family members, making it difficult for plaintiffs to collect multi-million judgments. *See, e.g.*, *Severstal Wheeling, Inc. Ret. Comm. v. WPN Corp.*, 119 F. Supp. 3d 240 (S.D.N.Y. 2015) (awarding a judgment in favor of plaintiffs after bench trial), *aff'd sub nom. Severstal Wheeling, Inc. v. WPN Corp.*, 659 F. App'x 24 (2d Cir. 2016) & Joint Status Report, *Severstal Wheeling v. WPN Corp.*, No. 1:10-cv-00954 (S.D.N.Y. July 31, 2019), Dkt. 323 (describing extensive efforts by plaintiffs to collect on judgment); *Chesemore v. All. Holdings, Inc.*, 2014 WL 4415919, at *12 (W.D. Wis. Sept. 5, 2014) (entering judgment in favor of plaintiffs), *aff'd sub nom.* 829 F.3d 803 (7th Cir. 2016) & Am. Compl., *Chesemore v. Fenkell*, No. 3:18-cv-00724 (W.D. Wis. Nov. 2, 2020), Dkt. 101 (explaining that plaintiffs' efforts to enforce the judgment were frustrated by defendant's transfer of assets and property to his wife).

The Settlement eliminates these significant litigation risks while providing immediate and substantial relief to the Settlement Class. Courts have recognized that settlement is appropriate even at advanced stages of litigation, including on the eve of trial. *See In re Worldcom, Inc. Sec. Litig.*, 2005 WL 2319118, at *15 (S.D.N.Y. Sept. 21, 2005) (Cote, J.) (nothing that, even at "late stages of the litigation," such as on the eve of trial, there are significant risks on all sides).

ii. The Proposed Method of Distributing Relief to the Class Is Effective

Rule 23(e)(2)(C)(ii) directs courts to consider "the effectiveness of any proposed method of distributing relief to the class." Fed. R. Civ. P. 23(e)(2)(C)(ii). Here, the Settlement provides a straightforward, objective, and readily administrable method for distributing relief that maximizes the likelihood that Settlement Class Members receive the benefits of the Settlement.

Most significantly, the Settlement does not require Class Members to submit claim forms or otherwise establish their eligibility for relief. Instead, distributions will be calculated automatically using the Plan's existing business records, which identify eligible Class Members and their respective recoveries under the Court-approved Plan of Allocation. *See generally* POA. Cash payments will then be distributed either by check or by direct rollover to a qualified retirement account (where timely requested). POA § 4. By relying on existing Plan records rather than a claims process, the Settlement minimizes administrative costs, eliminates unnecessary procedural hurdles, and ensures efficient distribution of the Settlement proceeds.

The Settlement also includes procedures designed to maximize participation and ensure that the Settlement proceeds ultimately benefit the Settlement Class. If a Settlement check remains uncashed, the Settlement Administrator will provide reminder notices prior to the expiration of Settlement checks. POA § 5. Should any Class Members nevertheless fail to cash their checks, the corresponding funds will not revert to Defendants; rather, their funds will be deposited into their respective ESOP accounts (if active). *Id.* For Class Members who do not cash their checks and no longer have ESOP accounts, the uncashed recoveries will be distributed on a *pro rata* basis to all Class Members with active accounts. *See id.* These procedures ensure that the Settlement proceeds benefit the Class.

The Settlement's non-cash relief is also self-executing. The Interest Elimination and Principal Reduction automatically increase the value of the W BBQ stock owned by the ESOP, which benefits all Class Members with vested shares. *See supra* Background § IV(A). Further, the Liquidity Provisions will automatically unlock the ability for former and recently terminated Class Members to receive increased value in the stock they hold. *See id.* Because these forms of relief are self-executing, Class Members need not take action to receive their benefits.

Accordingly, the Settlement's distribution methodology is effective, efficient, and designed to ensure that the full value of the Settlement is delivered to the Settlement Class. The proposed method of distributing relief therefore satisfies Rule 23(e)(2)(C)(ii).

iii. The Settlement Terms Regarding Attorneys' Fees Are Reasonable

Rule 23(e)(2)(C)(iii) directs courts to consider "the terms of any proposed award of attorney's fees." Fed. R. Civ. P. 23(e)(2)(C)(iii). The Settlement's fee provisions strongly support approval because they preserve the Court's complete discretion over any fee award, are not the product of collusion, and provide for a reasonable fee structure. *See* Settlement § 9.2; *see also*

Dkt. 394. Importantly, the Settlement will remain effective regardless of the amount of attorneys' fees ultimately awarded by the Court. *See* Settlement § 9.2.

Class Counsel has limited their fee request to no more than $6.2 million, representing approximately 27.6% of the Settlement's estimated value, and less than Class Counsel's lodestar. *See id.* § 9.1; Dkt. 394 at 4, 14-16. The requested percentage is below the one-third fee awards commonly approved in similar ERISA class actions. *See, e.g.*, *Kohari*, 2025 WL 100898, at *11 (approving 1/3 fee in ERISA case); *Krohnengold*, No. 1:21-cv-01778 (S.D.N.Y. July 18, 2024), Dkt. 201 (approving 33% fee in ERISA case); *Beach v. JPMorgan Chase Bank*, No. 1:17-cv-00563 (S.D.N.Y. Oct. 7, 2020), Dkt. 232 (same); *Jacobs*, No. 1:16-cv-01082 (S.D.N.Y. Nov. 21, 2023), Dkt. 247 (same); *Andrew-Berry v. Weiss*, 2025 WL 2687993, at *6-7 (D. Conn. Sept. 19, 2025) (same); *In re M&T Bank Corp. ERISA Litig.*, No. 1:16-00375 (W.D.N.Y. Sept. 3, 2020), Dkt. 190 (same); *McCutcheon v. Colgate-Palmolive Co.*, 2026 WL 444748, at *1-2 (S.D.N.Y. Feb. 17, 2026) (approving 29% attorneys' fee in ERISA case, in part based on empirical studies of ERISA fee awards).

The timing of any fee award likewise supports the fairness of the Settlement terms. No attorneys' fees will be paid unless and until the Settlement receives final approval and any appeals are resolved or waived. *See* Settlement §§ 9.1, 9.2. This structure aligns Class Counsel's interest with those of the Settlement Class by conditioning any fee award on final approval of the Settlement.

The Settlement's fee provisions also demonstrate the absence of collusion. The Settlement does not require Defendants to support or refrain from opposing Class Counsel's fee request, and no portion of any unawarded fees will revert to Defendants. Settlement §§ 7.7, 9.1. These features confirm that the fee arrangement was not the product of collusion and does not detract from the fairness of the Settlement.

Lastly, FCI, acting as an independent fiduciary to the ESOP, determined that the requested attorneys' fees were reasonable after independently evaluating "the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and multiplier."[13] FCI Report at 9. That independent assessment provides further support that the Settlement's fee provisions satisfy Rule 23(e)(2)(C)(iii).

iv. There Are No Separate Agreements

Rule 23(e)(2)(C)(iv) directs the Court to consider any agreement made in connection with the Settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv). There are no separate agreements, which weighs in favor of final approval of the Settlement.

D. The Settlement Treats Class Members Equitably

The Settlement satisfies Rule 23(e)(2)(D) because it equitably allocates relief among Class Members in a manner that reflects their relative economic interests while appropriately accounting for material differences among them. The Second Circuit has held that "Rule 23(e)(2)(D) requires that class members be treated equitably, not identically." *Moses v. New York Times Co.*, 79 F.4th 235, 245 (2d. Cir. 2023).

First, the Plan of Allocation distributes the Net Settlement Fund on a *pro rata* basis based on each Class Member's shares of vested W BBQ stock during the relevant period. POA § 3(b). This approach ties each Class Member's recovery directly to his or her exposure to the alleged overpayment and is a commonly approved allocation method in ESOP settlements. *Chea*, 2026

[13] FCI recognized that "the most common [attorneys' fees'] award in similar cases nationwide is one-third of the settlement amount" rather than the 27.6% fee award Plaintiffs' counsel seeks here. FCI Report at 9.

WL 383318, at *9 (approving allocation of settlement proceeds based on each class member's proportional number of vested shares); *Smith*, No. 1:20-cv-02350 (N.D. Ill. July 17, 2023), Dkt. 157 at 14 (similar), *approved by* Dkt. 163.

Second, the Plan of Allocation equitably addresses the different circumstances of Class Members who previously cashed out their vested W BBQ shares. *See supra* Background § IV(B). Because those participants no longer hold W BBQ stock, they will not benefit from the increased stock value resulting from the Interest Elimination, Principal Reduction, and the debt reduction from the DOL settlement. To account for that difference, the Plan of Allocation provides a fixed payment of $24.70 per previously redeemed share to compensate those Class Members for the value they otherwise would have realized through the increased value of W BBQ stock. POA § 3(a).

Third, the Plan of Allocation appropriately accounts for the fact that the DOL Judgment allocates its $1 million of cash to just a subset of Class Members—current employees who work 1,000 hours and through year end in 2026 or 2027. *Id.* §§ 3(c)-(d); Dkt. 380-2 § 4.1(b). As a result, the POA includes an offset mechanism to account for the cash payments participants receive under the DOL Judgment.[14] POA §§ 3(c)-(d). This mechanism helps prevent the relatively small subset of participants eligible for the DOL's cash payment from receiving a disproportionate share of the combined cash recoveries available through the DOL Judgment and this Settlement.

Courts routinely approve plans of allocation that distribute recovery on a *pro rata* basis while accounting for material differences among class members. *See Beach*, No. 1:17-cv-00563

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[14] Because Defendants' payments—made pursuant to the DOL Judgment—stretch over 18 months, they will not conclude until 2027 and will not be fully allocated to participant accounts until sometime in **2028**. DOL Judgment § II.A.1 These payments could not be addressed in the POA. However, by the end of 2026, Defendants will have paid $600,000 into the ESOP, which will be allocated to participants by March 15, 2027. The POA takes into account these payments.

(S.D.N.Y. May 22, 2020), Dkt. 211 at 22 ("Based on the loss calculations of Plaintiffs' damages expert, the Net Settlement Amount will be allocated among all eligible Class Members on a pro rata basis in proportion to their respective portion of damages based on their holdings in each of the Disputed Investments."), *approved* 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020); *see also In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 669 (E.D. Va. 2001) (approving plan of allocation where it awarded a *pro rata* share to each claimant but made interclass distinctions).

The fairness of the Plan of Allocation is further confirmed by the absence of any objection from either Defendants or the DOL. After preliminarily approving the Settlement, the Court specifically afforded the DOL an opportunity to express its views regarding the proposed Plan of Allocation and its interaction with the DOL Judgment. *See* Dkt. 389. The DOL elected not to express any position and neither it nor Defendants have objected to the Plan of Allocation or the manner in which it accounts for the DOL Judgment. *See* Dkt. 386. Those circumstances provide further support that the Plan of Allocation treats Settlement Class Members equitably and satisfies Rule 23(e)(2)(D).

III. The Support of the Independent Fiduciary and Class Members Confirm the Fairness of the Settlement

Beyond satisfying each of Rule 23(e)'s requirements, the favorable reaction of the Settlement Class and the approval by an independent fiduciary confirm the reasonableness of the Settlement.

The Settlement has received a favorable response from the Settlement Class. To date, no Class Member has objected to the Settlement. Yau Decl. ¶ 10; Bridley Decl. ¶ 22. The absence of objections strongly supports approval because it demonstrates that the Settlement has been well received by those whose rights will be affected. *Wal-Mart*, 396 F.3d at 118; *see also, e.g.*, *EB v. New York City Dep't of Educ.*, 2015 WL 13707092, at *2 (E.D.N.Y. July 24, 2015) ("No class member has objected, which demonstrates that the class approves and supports its final approval.”).[15]

Moreover, FCI, acting as the Independent Fiduciary pursuant to PTE 2003-39, conducted a review of the Settlement as required by ERISA. *See* FCI Report. After evaluating the Settlement, including the scope of the release, the Settlement consideration, the Plan of Allocation, the requested attorneys' fees, litigation expenses, and service awards, FCI concluded that each of these aspects of the Settlement was reasonable. *See id.* As discussed above, *see supra* Background § VI, that independent review is a safeguard unique to ERISA litigation because the ESOP may release its claims only after an independent fiduciary determines that the Settlement is reasonable and satisfies the requirements of PTE 2003-39. FCI's report therefore provides additional support for final approval.

IV. The Class Notice Plan Satisfies Rule 23 and Due Process

The Settlement Administrator implemented a comprehensive notice program that successfully reached over 93% of the Settlement Class and fully satisfies the requirements of Rule 23 and due process. *See* Fed. R. Civ. P. 23(e)(1)(B). The notice program provided individualized notice through first-class mail and was supplemented by email, a dedicated Settlement website, and a toll-free telephone support line. Notice by first class mail is presumptively reasonable. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *accord*

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[15] *See also Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 198 (S.D.N.Y. 2012) (“The Court cannot help but conclude that the silence and acquiescence of 99% of the Class Members speaks more loudly in favor of approval than the strident objections of the 1% against it.”), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013); *In re Merrill Lynch & Co., Inc. Rsch. Reports Sec. Litig.*, 246 F.R.D. 156, 167−68 (S.D.N.Y. 2007) (“[T]he relatively small number of objections militate in favor of approving the settlement as be [sic] fair, adequate, and reasonable.”).

Langford v. Devitt, 127 F.R.D. 41, 45 (S.D.N.Y. 1989) ("[N]otice mailed by first class mail has been approved repeatedly as sufficient notice of a proposed settlement.").

As discussed above, before mailing the Court-approved Notice, the Settlement Administrator, Atticus, updated all mailing addresses by running it through the NCOA and made other reasonable efforts designed to maximize delivery.[16] *See supra* Background § V. Atticus also emailed the Class Notice and rollover form to Class Members for whom mail delivery proved unsuccessful but for whom email addresses were available. *See id.*; Bridley Decl. ¶ 11. As a result, the notice program successfully reached over 93% of the Class. Bridley Decl. ¶ 13.

The Court-approved Notice advised Class Members of the material terms of the Settlement, the proposed Plan of Allocation, the proposed attorneys' fees, litigation expenses, and service awards, their right to object, and the date and location of the Fairness Hearing. Class Notice; *see O'Dell v. AMF Bowling Ctrs., Inc.*, 2009 WL 6583142, at *3 (S.D.N.Y. Sept. 18, 2009) (Cote, J.) (finding notice adequate where it "describe[d] the terms of the settlement, inform[ed] the class about the allocation of attorneys' fees, and provide[d] specific information regarding the date, time, and place of the final approval hearing").

In addition, the Settlement website—which was visited more than 1,000 times—provided Class Members with access to the Settlement Agreement, Plan of Allocation, Court orders, and other case materials, while the toll-free telephone support line provided an additional avenue for obtaining information. Bridley Decl. ¶¶ 15-18. These facts further demonstrate that Class Members received meaningful notice and a full opportunity to evaluate the Settlement and present any objections.

[16] With the exception of three (3) individuals for whom the class data did not include mailing addresses, Atticus initially mailed the Class Notice to the last known address of all Class Members. Bridley ¶ 6; *see supra* at 9 n.9.

Accordingly, the Court should find that the notice program satisfied Rule 23 and the requirements of due process.

CONCLUSION

Plaintiffs respectfully request that the Court enter an order granting final approval of the Settlement in the form submitted herewith.

Dated: July 17, 2026

Respectfully Submitted,
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WORD COUNT COMPLIANCE CERTIFICATION

The undersigned certifies that this brief contains 8,698 words, which complies with the word limit of Local Rule 7.1(c) and Rule 4.B of this Court's Individual Practices.

Dated: July 17, 2026

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