UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

Jonathan Corrente, *et al*., Plaintiffs, v. The Charles Schwab Corporation, Defendant.	Case No. 4:22-cv-470-ALM Hon. Amos L. Mazzant, III

DECLARATION OF WARREN T. BURNS
IN SUPPORT OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES

Pursuant to 28 U.S.C. § 1746, I, Warren Burns, declare:

1. I am currently a partner in the law firm of Burns Charest LLP. I am an attorney admitted to practice in the United States District Court for the Eastern District of Texas, as well as all state and federal courts in Texas. I am over the age of 18 and am personally familiar with and have personal knowledge of the facts contained herein, which I could and would testify competently thereto.

2. My law firm, Burns Charest LLP, is headquartered in Dallas with offices in New Orleans, New York and Washington, D.C. A copy my firm's resume is attached as Exhibit 1.

3. The primary focus of my practice is complex litigation including class actions asserting claims under the antitrust laws, the securities laws, and RICO.

4. While I am active trial lawyer in Texas, and specifically the Dallas-Fort Worth area, including the Eastern District of Texas, the cases I prosecute on behalf of my clients are often national in scope as the conduct being challenged is often nationwide in scope. .As a result, I regularly appear in federal courts across the country.

5. The following is a precis of the awards and recognition I have received. Every year since 2019, I have been named a Texas Super Lawyer. Every year since 2014, I have been named to the International Who's Who of Competition Lawyers. Since 2015, I have been included in the Top 100 National Trial Lawyers. In 2016, I was elected to the American Law Institute. The American Law Institute is the leading independent organization in the United States producing scholarly work to clarify, modernize, and improve the law. In 2020, I was named one of the Best Lawyers in Dallas by D Magazine and recognized among the Best Lawyers in America 2019-2023 for my work in antitrust and commercial litigation. Since 2021, I have been named as one of Lawdragon's 500 Leading Plaintiff Consumer Lawyers and Lawdragon's 500 Leading Plaintiff Financial Lawyers. In 2025, I was named to Lawdragon's inaugural list of 500 Leading Global Antitrust and Competition Lawyers, and their list of 500 Leading Global Plaintiff Lawyers. In 2022, I received the Outstanding Achievement in Private Law Practice from the American Antitrust Institute for litigation involving EpiPens. I am a Fellow of the American Bar Foundation. I am an active member of the Dallas Bar Association and the ABA. I am also a member of the American Association for Justice and the Texas Trial Lawyers Association. And I am a Fellow in the Southern Trial Lawyers Association.

6. I have been asked by Plaintiffs' counsel in this matter to provide the Court with my understanding of the usual and customary rates charged in an action of this type, a complex antitrust class action asserting claims under federal law with a nationwide class in the many millions, and the likelihood of local lawyers undertaking such work.

7. My firm routinely litigates cases like the matter before the Court. Our billing rates range from $1,100 to $1,500 for partners and $700 to $900 for associates depending on years of practice, type of experience, and professional standing. These rates have been approved by courts

in numerous federal jurisdictions around the country. We apply the same rates consistently without regard to jurisdiction. Attached as Exhibit 2(a-c), 3(a-c), and 4(a-c) are exemplar fee applications and accompanying court orders approving the hourly rates of the timekeepers involved in comparable matters

8. I am familiar with the Eastern District of Texas legal market and the number of firms practicing in this area on a regular basis. There are very few firms located in this market that routinely handle complex, nationwide antitrust class actions. The nature and risk of this litigation, private enforcement of the Clayton Act for purposes of challenging a merger of large financial institutions, after the DOJ antitrust division declined to challenge the merger, on a purely contingent basis whittles that number down even further.

9. Finally, it is my observation based on my decades of experience that there is a relatively small bar of plaintiffs' lawyers who practice in this area because of the necessary experience, skill, and appetite for risk. Their practices are, by necessity, national in scope, as the laws they seek to enforce are likewise national in scope.

I certify under penalty of perjury that the foregoing is true and correct. Executed this 17th day of July, 2025 in Dallas, Texas.

Warren T. Burns
Burns Charest LLP
900 Jackson Street, Suite 500
Dallas, Texas 75202
wburns@burnscharest.com

Exhibit 1

Billing Number	Name	Billing Code	Title	Title Code	Contingent	Horly
1001	Korey Nelson	KNEL	Partner	1	$ 1,500	$ 1,050
1002	Daniel Charest	DCHA	Partner	1	$ 1,500	$ 1,050
1003	Warren Burns	WBUR	Partner	1	$ 1,500	$ 1,050
1005	Christopher Cormier	CCOR	Partner	1	$ 1,400	$ 950
1006	Darren Nicholson	DNIC	Partner	1	$ 1,400	$ 950
1007	Matthew Tripolitsiotis	MTRI	Partner	1	$ 1,400	$ 950
1008	Spencer Cox	SCOX	Partner	1	$ 1,050	$ 725
1009	Amanda Klevorn	AKLE	Partner	1	$ 1,200	$ 900
1010	Larry Vincent	LVIN	Partner	2	$ 1,300	$ 900
1011	Rick Yelton	RYEL	Partner	3	$ 1,100	$ 900
2001	Kyle Oxford	KOXF	Associate	3	$ 900	$ 625
2009	Ryan Gaddis	RGAD	Associate	3	$ 800	$ 550
2012	Leila Abu-Orf	LABU	Staff Attorney	4	$ 700	$ 700
2014	Claire Curwick	CBOS	Associate	3	$ 800	$ 550
2015	Chase Hilton	CHIL	Partner	3	$ 900	$ 625
2018	Mike Haas	MHAA	Associate	3	$ 850	$ 575
2019	Connor Weldon	CWEL	Associate	3	$ 700	$ 475
2021	Quinn Burns	QBUR	Associate	3	$ 750	$ 525
2022	Jayde Encalade	JENC	Associate	3	$ 800	$ 525
2026	Mohini Tangri	MTAN	Associate	3	$ 700	$ 475
2029	Adrienne Allen	ALLE	Associate	3	$ 700	$ 475
2030	Anna Nguyen	ANGU	Associate	3	$ 700	$ 475
2032	Elizabeth Perryman	EPER	Associate	3	$ 700	$ 475
2035	Anna Kate Benedict	ABEN	Associate	3	$ 700	$ 475
2038	Max Sternberg	MSTE	Associate	3	$ 700	$ 475
2039	Barbara Bates	BDUF	Associate	3	$ 800	$ 550
2040	Hannah Crowe	HCRO	Associate	3	$ 750	$ 525
2041	Laura Seggerman	LSEG	Associate	3	$ 700	$ 475
2042	Clarence T. Roby	CROB	Associate	3	$ 700	$ 475
2043	Logan Fontenot	LFON	Associate	3	$ 700	$ 475
2044	Natalie Earles	NEAR	Associate	3	$ 700	$ 475
2046	Matt Strauser	MSTR	Associate	3	$ 700	$ 475

2058	Ian Baize	IBAI	Associate	3	$ 800	$ 550
2059	Ellen Short	ESHO	Associate	3	$ 700	$ 475
3005	Alessandro Steinhaus	ASTE	Staff Attorney	4	$ 700	$ 500
3007	Chase Charbonnet	CCHA	Staff Attorney	4	$ 750	$ 500
3009	Leslie Carbajal	LCAR	Staff Attorney	4	$ 600	$ 400
3010	Laura Guliuzo	LGUL	Staff Attorney	4	$ 600	$ 400
3011	Brook Hathaway	BHATH	Staff Attorney	4	$ 600	$ 400
4004	Martin Barrie	MBAR	Of Counsel	2	$ 1,300	$ 900
4005	Cristina Delise	CDEL	Of Counsel	2	$ 1,050	$ 725
4006	Brandi Halmilton	BHAL	Of Counsel	2	$ 1,050	$ 725
4007	Clay Mahaffey	CMAH	Of Counsel	2	$ 1,400	$ 975
5001	Renée Licon	LREN	Admin	7	$ 500	$ 325
5006	Anna Newton	ANEW	Admin	7	$ 400	$ 275
6001	Paula Bruns	PBRU	Admin	7	$ 500	$ 275
6003	Dominique Adevereaux	ADOM	Admin	7	$ 400	$ 275
7003	Andrew Bynum	ABYN	Paralegal	5	$ 600	$ 400
7005	Elizabeth Rayner	ERAY	Case Manager	6	$ 500	$ 325
7007	Karina Barron	KBAR	Admin	7	$ 400	$ 275
7012	Julianna Gravois	JGRA	Paralegal	5	$ 600	$ 400
7015	Jordan Soyka	JSOY	Paralegal	5	$ 550	$ 375
7019	Andino Gabriella	GAND	Paralegal	5	$ 600	$ 400
7025	Ashley Sylvester	ASYL	Case Manager	6	$ 500	$ 325
7028	Vanessa Aldrete	AVAN	Paralegal	5	$ 500	$ 325
7029	Mike Valeriano	MVAL	Paralegal	5	$ 500	$ 325
7031	Kirsten Keller	KKEL	Admin	7	$ 400	$ 275
7032	Erin O'Neill	EONE	Admin	7	$ 400	$ 275
7033	Johanna Ortiz	JORT	Case Manager	6	$ 500	$ 325
7034	Lauren Medrano	LMED	Case Manager	6	$ 500	$ 325
7035	Abigail Provost	APRO	Paralegal	5	$ 500	$ 325
7036	Kamri Gordon	KGOR	Case Manager	6	$ 500	$ 325
7037	Keegan McCalmont	KMCA	Case Manager	6	$ 500	$ 325
7038	Jennifer Denney	JDEN	Case Manager	6	$ 500	$ 325
7039	Nicole Garza	NGAR	Paralegal	5	$ 500	$ 325

Exhibit 2A

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

CHRISTOPHER GUIDA, *on behalf of himself and all others similarly situated*, Plaintiffs, v. GAIA, INC., Defendant.	Case No. 1:22-cv-02350-GPG-MEH Hon. Gordon P. Gallagher

PLAINTIFF'S UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MEMORANDUM IN SUPPORT THEREOF

I. INTRODUCTION

Pursuant to Federal Rule of Civil Procedure 23 ("Rule 23"), the Class Action Settlement Agreement (Dkt. 75-2 at 16), and this Court's Preliminary Approval Order (Dkt. 76), Plaintiff Christopher Guida ("Plaintiff") respectfully requests that this Court grant final approval of the Settlement. The Settlement is the product of arm's-length negotiation and mediation after robust informal discovery. It will fully resolve this litigation, create a $2,000,000 non-reversionary cash fund for the benefit of the Settlement Class, and require Gaia to suspend operation of the Facebook Pixel on portions of its website relevant to compliance with the Video Privacy Protection Act ("VPPA")—*i.e.*, webpages that include video content and have a URL that identifies the video content viewed—thereby providing Settlement Class Members with valuable injunctive relief. Based on the views of experienced counsel, who were informed by the strengths and weaknesses of their respective clients' cases and defenses, these benefits are immediate and substantial, especially considering the costs, risks, and delay of continued litigation, trial, and possible appeals.

The notice program has been highly successful. Following preliminary approval of the Settlement, Class Counsel worked to ensure that the notice terms were clear and would provide fair notice to Class Members. (*See* Dkts. 79, 81.) The Settlement Administrator thereafter successfully disseminated Notice to the Settlement Class, reaching 96.06% of the Class. (Appendix of Evidence in Support of Plaintiff's Motion for Final Approval, filed concurrently herewith ("Appx."), p. 40, ¶ 13 (Declaration of Baro Lee Re: Notice and Administration ("Lee Decl.")).) The reach achieved by this notice effort surpasses the high end of the Federal Judicial Center's standard of 70–95%.

The exclusion and objection deadline has been extended to October 24, 2024, and the deadline for filing claims has been extended to December 2, 2024. (Dkt. 84.) To date, the Settlement Administrator has not received any request for exclusion or objections to the Settlement. Class Counsel will provide an update on implementation of the notice plan and the claims process, report on any requests for exclusion, and respond to any substantive objections by November 25, 2024, and provide a proposed order prior to the Final Approval Hearing on December 9, 2024.

In sum, the Settlement satisfies all criteria for final approval. Plaintiff thus respectfully requests this Court: (i) grant final approval of the Settlement as fair, reasonable, and adequate; (ii) certify the Settlement Class; (iii) find that the Notice Plan satisfies the requirements of Rule 23(c) and due process and constitutes the best notice practicable under the circumstances; and (iv) enter final judgment. Gaia has represented that it does not oppose this motion.

II. INCORPORATION BY REFERENCE

In the interest of judicial efficiency, for the factual and procedural background on this case, Plaintiff refers the Court to and hereby incorporates Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and the accompanying Appendix of Evidence in support thereof. (Dkts. 75 & 75-2.) Plaintiff also incorporates by reference Plaintiff's Motion for Award of Attorneys' Fees, Litigation Costs & Service Award, filed concurrently herewith.

III. SUMMARY OF SETTLEMENT

A. Class Definition

The proposed Settlement Class consists of all individuals residing in the United States who, during the Class Period (September 12, 2020, to the date of Preliminary Approval), subscribed or otherwise signed up for access to Gaia's services, and requested or obtained any prerecorded (including on-demand replay) videos available on Gaia's Websites (gaia.com and yogainternational.com) while they had a Facebook account. (Dkt. 75-2, p. 16, ¶ 1.33 (Settlement).)

B. Monetary Relief

Gaia has agreed to pay $2,000,000 to create a non-reversionary Settlement Fund for the benefit of Class Members. (*Id.,* pp. 16, 18, ¶¶ 1.33 & 2.1.1.) Class Members who submit valid claims will receive a *pro rata* payment after the deduction of settlement-related costs, including the expenses of the settlement administrator and the costs of notice to the Class, taxes and tax-related expenses, and any Court-awarded attorneys' fees, expense reimbursements, and named plaintiff service award. (*Id.*, pp. 12, 19, ¶¶ 1.18, 2.1.2–2.1.3.)

C. Business Practice Changes

Gaia also has agreed to implement meaningful business practice changes designed to remediate the alleged VPPA violations going forward. Gaia agreed to suspend operation of the Pixel on any web pages that both include video content and have a URL that identifies the video content viewed, unless and until the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United

States Supreme Court or the Tenth Circuit Court of Appeals. (*Id.*, p. 20, ¶ 2.2.) This provision does not prevent Gaia from obtaining VPPA-compliant consent in the future should it wish to reinstitute use of the Pixel. (*Id.*)

IV. ARGUMENT

The Tenth Circuit has long maintained a strong policy favoring settlements. *See American Home Assurance Co. v. Cessna Aircraft Co.,* 551 F. 2d 804, 808 (10th Cir. 1977) ("The inveterate policy of the law is to encourage, promote, and sustain the compromise and settlement of disputed claims."). "The 'presumption in favor of voluntary settlement agreements' is especially strong in class actions." *O'Dowd v. Anthem, Inc.*, 2019 WL 4279123, at *12 (D. Colo. Sept. 9, 2019) (quoting *Tuten v. United Airlines, Inc.,* 41 F. Supp. 3d 1003, 1007 (D. Colo. 2014)).

Pursuant to Rule 23(e)(2), a class action settlement should be approved if the Court finds it "fair, reasonable, and adequate." Traditionally, the Tenth Circuit has instructed courts to analyze four factors when making this determination: (1) whether the proposed settlement was fairly and honestly negotiated; (2) whether serious questions of law and fact exist; (3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and (4) the judgment of the parties that the settlement is fair and reasonable. *See, e.g., Rutter & Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188 (10th Cir. 2002).

Following amendment of Rule 23(e) in 2018, courts also must consider whether: (A) plaintiffs and counsel have adequately represented the class; (B) the settlement was negotiated at arm's-length; (C) the relief 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 fee award, 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. *See* Fed. R. Civ. P. 23(e)(2).

Courts in the Tenth Circuit continue to apply the traditional factors when evaluating the fairness of the settlement of a class action. *See O'Dowd*, 2019 WL 4279123, at *12 (the court "first addresses the relevant factors the Tenth Circuit applies [] and then, to the extent that they do not overlap, considers the factors identified in Rule 23(e)(2)").

As outlined below, the proposed Settlement easily satisfies this standard and should be finally approved.

A. The Settlement Should Be Approved as Fair, Reasonable and Adequate

1. The Settlement Was Fairly and Honestly Negotiated.

Where a settlement results from arm's-length negotiations between experienced counsel, "the Court may presume the settlement to be fair, adequate and reasonable." *O'Dowd*, 2019 WL 4279123, at *13. Moreover, where the parties are assisted by a "professional, experienced mediator," there is a presumption that the settlement was reached without collusion and that the settlement agreement should be approved as fair, adequate, and reasonable. *Stanley v. Panorama Orthopedics & Spine Ctr., P.C.*, 2024 WL 1743497, at *7 (D. Colo. Apr. 23, 2024) (quotations omitted).

Here, settlement negotiations included an intensive mediation process, overseen by Hon. Suzanne H. Segal, a former United States Magistrate Judge for the United States

District Court for the Central District of California and a neutral at Signature Resolution. The parties prepared detailed mediation statements before participating in a day-long mediation with Judge Segal. (Dkt. 75-2, pp. 66, 68, ¶¶ 14, 21 (Joint Declaration of Class Counsel in Support of Motion for Preliminary Approval ("Joint Decl. re Preliminary Approval").) Only after months of additional, determined negotiations facilitated by Judge Segal did the parties reach an agreement in principle via a mediator's proposal. (*Id.*, pp. 66–67, ¶¶ 14, 17.) These efforts were unquestionably at arms' length and non-collusive. Moreover, the Settlement itself bears no indicia of collusion: attorneys' fees were *not* negotiated separately, there is *no* "clear sailing" provision, and under no circumstances will any amount of the Settlement Fund revert to Gaia. There can be no doubt that the Settlement is fair and worthy of final approval.

Further, the parties engaged in meaningful formal discovery in this case before informally exchanging more information during the mediation. That information included direct communications between counsel regarding Gaia's data bearing on the merits of Plaintiff's claims, the size of the class, and Gaia's ability to satisfy an adverse judgment. (*Id.*, p. 66, ¶ 16.) Plaintiff's counsel—attorneys with considerable experience in assessing the strengths and weaknesses of VPPA cases—came away from the mediation well informed about the strengths and risks the claims, as well as their value. (*Id.*, p. 68, ¶ 23.) This informal exchange supports the presumption that the Settlement Agreement should be approved as fair, adequate, and reasonable. *Diaz v. Lost Dog Pizza, LLC*, 2019 WL 2189485, at *2 (D. Colo. May 21, 2019).

2. Serious Questions of Law and Fact Exist, Placing the Ultimate Outcome of the Litigation in Doubt.

"[S]erious questions of law and fact exist where disputes between the parties...could significantly impact this case if it were litigated." *O'Dowd*, 2019 WL 4279123, at *13. Before the Settlement was reached here, Gaia asserted multiple credible defenses to the merits of Plaintiff's claims, each of which presented grave risks and easily could have resulted in either a substantially lower or no recovery at all.

Gaia asserted in its motion to dismiss that Plaintiff lacks standing to pursue a claim under the VPPA because he did not suffer a concrete injury under binding Supreme Court precedent. (Dkt. 20 at 5–7.) Gaia also argued that (1) Gaia did not disclose any of its subscribers' personally identifiable information (PII) through its use of the Pixel; (2) Facebook IDs do not constitute PII under the VPPA; and (3) Gaia did not knowingly disclose PII to Facebook. (*Id.* at 7–15.) Plaintiff recognizes that this litigation is novel and claims applying the VPPA to operation of the Pixel are still relatively untested. Courts have denied motions to dismiss in substantially similar cases, but no Pixel-based VPPA case has yet proceeded to summary judgment, let alone trial.

Had Gaia prevailed on any of these arguments, the Class's recovery would have been severely limited, or eliminated altogether. Taken collectively, Gaia's arguments threatened the viability of the entire action—risks that would have persisted throughout the litigation and inevitable appeals. Thus, "[t]he Settlement Agreement ensures the class members will receive reasonable compensation in light of the uncertainties of litigating to a judgment." *Ramos v. Banner Health*, 2020 WL 6585849, at *3 (D. Colo. Nov. 10, 2020). In the face of these significant risks, Plaintiff and Class Counsel were able to achieve both

significant monetary relief and forward-looking business changes addressing the alleged privacy violations. Accordingly, the Settlement represents an excellent result for the Settlement Class.

3. The Value of an Immediate Recovery Outweighs the Mere Possibility of Future Relief.

In assessing a settlement, courts in this District weigh the recovery "against the possibility of some greater relief at a later time, taking into consideration the additional risks and costs that go hand in hand with protracted litigation." *O'Dowd*, 2019 WL 4279123, at *13. Here, there is no question that the Settlement provides robust relief to the Class, and that continued litigation would have been risky, costly, and protracted.

The $2 million Settlement Fund represents a significant monetary recovery. Gaia's data indicates that approximately 478,000 U.S.-based Gaia users accessed prerecorded videos on the Websites during the relevant time period. (Dkt. 75-2, p. 66, ¶ 16 (Joint Decl. re Preliminary Approval).) Assuming 68% of those users also had Facebook accounts,[1] and that 5% of eligible Class Members will submit claims,[2] *pro rata* payments from the

[1] *See, e.g.*, Pew Research Center, *5 Facts about how Americans use Facebook, two decades after its launch* (Feb. 2, 2024) (reporting that 68% of U.S. adults use Facebook), https://www.pewresearch.org/short-reads/2024/02/02/5-facts-about-how-americans-use-facebook-two-decades-after-its-launch/ (last accessed Sept. 30, 2024).

[2] Plaintiff uses a 5% claims rate for illustrative purposes only. Actual claims rates in class settlements can vary widely depending on factors that are not easily predictable, including media reporting on the settlement, individual class members' reactions to the underlying cause of action, the size of the class, effectiveness of the notice program, the relative ease of submitting a claim, and the nature or amount of potential relief available to claimants. One analysis of 149 consumer class actions conducted by the FTC concluded that "[a]cross all cases in our sample requiring a claims process, the median calculated claims rate was 9%, and the weighted mean (*i.e.*, cases weighted by the number of notice recipients) was 4%." *See* Fed. Trade Comm'n, *Consumers & Class Actions: A Retrospective & Analysis of Settlement Campaigns* 11 (Sept. 2019), *available at* https://www.ftc.gov/system/files/documents/reports/consumers-class-

Net Settlement Fund[3] would amount to approximately $77 to each claimant. That benefit alone would be substantial—and comparable to what plaintiffs recently have obtained in other VPPA cases. *See, e.g.*, *Ambrose v. Boston Globe Media Partners, LLC*, No. 1:22-cv-10195-RGS (D. Mass. May 25, 2023), Dkt. 52 (Prelim. Approval Order) (assuming 10%–20% claims rate, estimating $22–$44 payment to each claimant); *In re Facebook, Inc. Consumer Privacy User Profile Litigation*, 18-md-02843 (N.D. Cal. July 11, 2023), Dkt. 1145 (Mot. for Final Approval) (preliminary estimate of $35 average payment to claimants for release of numerous claims, including under the VPPA).

In addition to monetary relief, the Settlement also includes valuable injunctive relief—namely, that Gaia will cease use of the Pixel (or otherwise obtain users' informed, written consent) to prevent further violations of the VPPA and its users' privacy. This is the same injunctive relief Plaintiff would have sought following trial. *See Lopez v. City of Santa Fe*, 206 F.R.D. 285, 292 (D.N.M. 2002) (finding value of immediate injunctive relief through settlement outweighed possibility of future relief where "[p]laintiffs could not have received a better resolution had there been protracted litigation"). Accordingly, the Settlement represents a very favorable result for Settlement Class Members, who will benefit from not only monetary relief but also forward-looking business practice changes.

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actions-retrospective-analysis-settlement-campaigns/class_action_fairness_report_0.pdf (last accessed Sept. 30, 2024).

[3] The Net Settlement Fund is the amount to be distributed to the Class after deducting administration expenses, any plaintiff service award ordered by the Court, and any award of attorneys' fees and costs ordered by the Court. (Dkt. 75-2, p. 12, ¶ 1.18 (Settlement).)

The relief provided through the proposed Settlement is particularly significant considering the costs and risks Plaintiff would face if litigation were to proceed in this case. Plaintiff recognizes that this novel litigation is inherently risky, including because of the defenses Gaia has raised to date. Assuming Plaintiff survived Gaia's motion to dismiss and summary judgment—in which Gaia likely would raise many of the same arguments—Plaintiff would need to certify and maintain a class over Gaia's opposition. Plaintiff then would need to prevail at trial and secure an affirmance on appeal before recovering damages. Ultimately, continued litigation could add several more years before there is a resolution.

The Court's acceptance and approval of the Settlement is preferable in comparison to the continuation of lengthy and expensive litigation, which would only increase risk of a substantially lower recovery (or no recovery at all).

4. <u>The Settlement Class is Adequately Represented, and in the Judgment of All Parties, the Settlement is Fair, Adequate and Reasonable.</u>

There is no question here that—as the Court previously recognized—Plaintiff adequately represented the Settlement Class. (*See* Dkt. 76 at 4.) Plaintiff has no interests in conflict with those of the Class, but rather has been equally interested in obtaining relief for Gaia's alleged misconduct, and for ensuring that Gaia reforms its business practices. *See CO Craft, LLC v. Grubhub Inc.*, 2023 WL 3763525, at *8 (D. Colo. June 1, 2023) (adequacy requirement met where there was "no indication in the record that there is an obvious interclass conflict" and the Plaintiff had "overlapping interests with the class members"). Plaintiff has vigorously represented his fellow Class Members, assisting his counsel by, among other things, providing pertinent information regarding his Gaia

subscription and Facebook account. (Dkt. 75-2, p. 68, ¶ 22 (Joint Decl. re Preliminary Approval).)

As the Court also previously recognized, Class Counsel have fairly and adequately represented Plaintiff and the Settlement Class in this case. (*See* Dkt. 76 at 4.) Class Counsel have extensive experience litigating, trying, and settling class actions, including consumer privacy cases like this one, throughout the country. (Dkt. 75-2, pp. 70–79, ¶¶ 30–53 (Joint Decl. re Preliminary Approval).) Courts across the country have recognized Class Counsel's experience in complex class litigation and their skilled and effective representation. (*Id.*)

Class Counsel have vigorously represented the Class for over two years, including by: (i) conducting a thorough pre-suit investigation that resulted in the preparation of a detailed complaint; (ii) opposing Gaia's motion to dismiss; (iii) pursuing formal discovery from Gaia; (iv) pursuing third-party discovery from Meta; (v) gathering Plaintiff's documents and relevant information; (vi) preparing a detailed mediation statement; (vii) analyzing relevant informal discovery during mediation; (viii) participating in mediation and extensive subsequent settlement discussions; and (ix) achieving a very favorable Settlement on behalf of the Settlement Class. (*See generally* Dkt. 75-2, pp. 65, 67–68, ¶¶ 9–11, 21 (Joint Decl. re Preliminary Approval).) After preliminary approval of the Settlement, Class Counsel have continued to vigorously advocate on behalf of the Class, including by ensuring the notice materials gave adequate notice to Class Members. (*See* Appx., p. 11, ¶ 25 (Joint Declaration of Class Counsel in Support of Plaintiff's (1) Motion for Final Approval of Class Action Settlement and (2) Motion for

Award of Attorneys' Fees, Litigation Costs & Service Award); *see also* Dkts. 79, 81.) In sum, Class Counsel are "seasoned and experienced class action attorneys" who have been "conscientiously and vigorously representing [Plaintiff's] rights for the past two years in this litigation." *Miller v. Basic Rsch., LLC*, 285 F.R.D. 647, 656 (D. Utah 2010).

Based on their collective experience, Class Counsel have concluded that the Settlement provides exceptional results for the Class, while avoiding the costs, delays, and uncertainties of continued litigation. (Dkt. 75-2, pp. 68–69, ¶¶ 23–26 (Joint Decl. re Preliminary Approval).) Before agreeing to a mediator's proposal, Class Counsel had sufficient information at their disposal to adequately assess the strengths and weaknesses of Plaintiff's case and balance the benefits of settlement against the risks of litigation. (*Id.*, p. 68, ¶ 23.) In light of their substantial extensive experience and success in prosecuting class actions such as this one, Class Counsel's judgment that the Settlement is fair and adequate should be given substantial weight. *See O'Dowd*, 2019 WL 4279123, at *14 ("'the recommendation of a settlement by experienced plaintiff[s'] counsel is entitled to great weight.'") (quoting *Wilkerson v. Martin Marietta Corp.*, 171 F.R.D. 273, 284 (D. Colo. 1997)).

5. Additional Factors Also Support Final Settlement Approval.

Multiple additional considerations also warrant final approval of the Settlement. *First*, the Settlement satisfies Rule 23(e)(2)(D) because it treats all Settlement Class Members equally by distributing the Net Settlement Fund on a *pro rata* basis.

Second, the Settlement readily meets the requirements of Rule 23(e)(2)(C). The Notice complied in all respects with the requirements set forth in this Court's Preliminary

Approval Order and was successful in reaching 96.06% of the Class. Indeed, the Court-approved Notice "gave the Settlement Class notice of the terms of the proposed Settlement Agreement; the rights of Class Members under the Settlement Agreement—including the rights to opt-out, object, and be heard at a Final Fairness Hearing; the application for counsel fees, costs and expenses; and the proposed service award payments to the Class Representatives." *Gordon v. Chipotle Mexican Grill, Inc.*, 2019 WL 6972701, at *2 (D. Colo. Dec. 16, 2019) (notice of these items "constitutes due and sufficient notice").

The Notice also contained all the information required by Rule 23(c)(2)(B) and due process because it sufficiently apprised the Class of, among other things, the nature of the Action and the claims asserted; the Settlement's basic terms; and notice of the binding effect of a judgment on Class Members. The Notice also provided information on how to submit a Claim Form and informed Class Members of the avenues available to them to obtain any additional information necessary to make an informed decision, including by directly contacting Class Counsel or visiting the Settlement website. *See Elna Sefcovic, LLC v. TEP Rocky Mountain, LLC*, 807 Fed. App'x. 752, 764 (10th Cir. 2020) (holding requirements of Rule 23 and due process satisfied where similar notice was provided).

Third, the terms of the proposed award of attorneys' fees are discussed in the accompanying Motion for Award of Attorneys' Fees, Litigation Costs & Service Award (the "Fee Motion"). Class Counsel has applied for a fee representing approximately 31.5% of the Settlement Fund. As detailed in the Fee Motion, such a fee is highly reasonable in light of the results obtained, and is in line with the "customary fee to class counsel in a

common fund settlement" in the Tenth Circuit of "approximately one-third of the economic benefit bestowed on the class." *Aragon v. Clear Water Prod. LLC*, 2018 WL 6620724, at *5 (D. Colo. Dec. 18, 2018) (cleaned up; quotation omitted) (fee award between 32% and 33% of total settlement was "in line with the customary fees and awards in similar cases"); *see also In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, 2022 WL 2663873, at *5 (D. Kan. July 11, 2022) ("Our court consistently has recognized that a one-third fee is customary in contingent-fee cases" and "is consistent with fees awarded in comparably high-risk, high potential damage, complex class actions resulting in creation of a common fund, such as here.") (cleaned up, quotations omitted).

Finally, pursuant to this Court's August 28, 2024 order, any Settlement Class Member who desires to be excluded from the Settlement or to object to any aspect of the Settlement, the Plan of Allocation, or to the attorneys' fees and expense award request, is required to submit such exclusion request or objection by October 24, 2024. (Dkt. 84.) To date, no Settlement Class Member has objected to any aspect of the Settlement or submitted a required for exclusion from the Class. (*See* Appx., p. 40, ¶ 13 (Lee Decl.).) The positive reaction of the Settlement Class to the Settlement thus favors approval by the Court. *See Diaz*, 2019 WL 2189485, at *3 ("The fact that no class member objects shows that the class also considers this settlement fair and reasonable.").

B. <u>The Court Should Certify the Settlement Class</u>

In the Preliminary Approval Order, the Court conditionally certified the Settlement Class under Rules 23(a) and (b)(3) "as the prerequisites thereunder have been met, including (1) that the Settlement Class is so numerous that joinder of all members is

impracticable; (2) that there are questions of law and fact common to members of the Settlement Class that predominate over questions affecting only individual members (*e.g.*, whether Gaia unlawfully disclosed to third parties Plaintiff's and Settlement Class Members' personally identifiable information without consent in a manner that violated the [VPPA], and whether Plaintiff and the Settlement Class Members are entitled to uniform statutory damages under the VPPA); (3) that Plaintiff's claims are typical of the claims of the Settlement Class; that Plaintiff and his counsel will fairly and adequately protect the interests of the Settlement Class; and (4) that a settlement class action is a superior method of fairly and efficiently adjudicating this Action." (Dkt. 76 at 3–4.)

Nothing has occurred since then to cast doubt on the propriety of class certification for settlement purposes, and no objections to certification have been received. For all the reasons stated in the Preliminary Approval Order and Plaintiff's unopposed motion for preliminary approval of the Settlement (Dkt. 75), Plaintiff respectfully requests that the Court grant final certification to the Settlement Class under Rules 23(a) and (b)(3).

V. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that this Court enter an order: (i) granting final approval of the Settlement as fair, reasonable, and adequate; (ii) certifying the Settlement Class; (iii) finding that the Notice Plan satisfies the requirements of Rule 23(c) and due process and constitutes the best notice practicable under the circumstances; and (iv) entering final judgment.

Dated: October 2, 2024

Respectfully submitted,

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Counsel for Plaintiff and the Settlement Class

CERTIFICATE OF SERVICE

I, Shawn M. Kennedy, hereby certify that a copy of this Plaintiff's Unopposed Motion for Final Approval of Class Action Settlement and Memorandum In Support Thereof was sent to counsel of record via the federal court's e-filing system.

Dated: October 2, 2024

/s/ Shawn Kennedy
Shawn M. Kennedy

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Exhibit 2B

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

CHRISTOPHER GUIDA, *on behalf of himself and all others similarly situated*, Plaintiffs, v. GAIA, INC., Defendant.	Case No. 1:22-cv-02350-GPG-MEH Hon. Gordon P. Gallagher

PLAINTIFF'S APPENDIX OF EVIDENCE IN SUPPORT OF: (1) UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION COSTS & SERVICE AWARD

Plaintiff Christopher Guida respectfully submits the following Appendix of Evidence in support of his (1) Unopposed Motion for Final Approval of Class Action Settlement and (2) Motion for Award of Attorneys' Fees, Litigation Costs & Service Award:

APPENDIX EXHIBIT	BEGINNING PAGE NUMBER	DESCRIPTION
1	4	Joint Declaration of Class Counsel in Support of Plaintiff's (1) Unopposed Motion for Final Approval of Class Action Settlement; and (2) Motion for Award of Attorneys' Fees, Litigation Costs & Service Award
1.A	28	Summary Lodestar Chart for Burns Charest LLP

1.B	31	Summary Lodestar Chart for Lieff Cabraser Heimann & Bernstein, LLP
1.C	34	Summary Lodestar Chart for Herrera Kennedy LLP
2	38	Declaration of Baro Lee Re: Notice and Administration

APPENDIX EXHIBIT 1

Joint Declaration of Class Counsel in Support of Plaintiff's (1) Unopposed Motion for Final Approval of Class Action Settlement; and (2) Motion for Award of Attorneys' Fees, Litigation Costs & Service Award Agreement

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

CHRISTOPHER GUIDA, *on behalf of himself and all others similarly situated*, Plaintiffs, v. GAIA, INC., Defendant.	Case No. 1:22-cv-02350-GPG-MEH Hon. Gordon P. Gallagher

JOINT DECLARATION OF CLASS COUNSEL IN SUPPORT OF PLAINTIFF'S (1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND (2) MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION COSTS & SERVICE AWARD

We, Rachel Geman, Christopher Cormier, and Shawn Kennedy jointly declare and state as follows:

1. Rachel Geman is an attorney duly licensed to practice law in the State of New York who is admitted to practice before this Court. Ms. Geman is a partner at the law firm Lieff Cabraser Heimann & Bernstein, LLP ("LCHB") and also serves as co-counsel of record for Plaintiff in the Action.

2. Christopher Cormier is an attorney duly licensed to practice law in Washington, D.C. and the State of Colorado who is admitted to practice before this Court. Mr. Cormier is a partner at the law firm Burns Charest LLP ("BC") and serves as co-counsel of record for Plaintiff in the above-captioned case (the "Action").

3. Shawn Kennedy is an attorney duly licensed to practice law in the States of Texas and California who is admitted to practice before this Court. Mr. Kennedy is a

partner at Herrera Kennedy LLP ("HK") and also serves as co-counsel of record for Plaintiff in the Action.

4. Throughout this litigation, we and our respective law firms have been responsible for the prosecution of Plaintiff's claims on behalf himself and of the Settlement Class. We make this Joint Declaration in support of Plaintiff's (i) Motion for Final Approval of Class Action Settlement; and (ii) Motion for Award of Attorneys' Fees, Litigation Costs & Service Award. Except where otherwise stated, we each have personal knowledge of the facts set forth in this Joint Declaration based on active participation in all aspects of the prosecution and resolution of the Action. If called upon to testify, we each could and would testify competently to the truth of the matters stated herein.

Overview of the Litigation and Settlement

5. Plaintiff filed this case on behalf of himself and other subscribers of defendant Gaia, Inc. ("Gaia") on September 12, 2022, alleging one claim for violation of the Video Privacy Protection Act, 18 U.S.C. § 2710 ("VPPA"). (Dkt. 1.) On November 9, 2022, Gaia moved to dismiss the class action complaint under Rules 12(b)(1) and 12(b)(6) arguing, *inter alia*, that Plaintiff lacked standing and the complaint failed to state a claim upon which relief could be granted. (Dkt. 20.) Plaintiff filed an opposition to Gaia's motion to dismiss on December 9, 2022. (Dkt. 24.) Gaia filed a reply in support of its motion on December 21, 2022. (Dkt. 25.)

6. On August 19, 2023, the Court granted the parties' joint request to stay the litigation for the purpose of engaging in formal mediation. (Dkts. 49–50.) The Court also ruled the motion to dismiss moot. (Dkt. 51.) The Court subsequently extended the stay

multiple times at the parties' request. (Dkts. 52–57.) On March 1, 2024, the Court granted the parties' joint request to lift the stay and modify the Scheduling Order. (Dkts. 60–61.) On March 8, 2024, Gaia re-filed its motion to dismiss. (Dkt. 62.) Plaintiff re-filed his opposition on March 11, 2024 (Dkt. 63), and Gaia re-filed its reply on March 13, 2024. (Dkt. 66.)

7. As Plaintiff alleged in the Complaint, Gaia, a subscription-based digital video streaming service, intentionally installed the Facebook Pixel ("Pixel") on its websites, gaia.com and yogainternational.com (together, the "Websites"), and selected the specific categories of information the Pixel would capture and transmit. (Dkt. 1 (Complaint) ¶¶ 2, 5-8, 53–56.) Gaia also knowingly configured the Pixel such that when a subscriber accesses a particular video on its website, Gaia sends to third party Meta Platforms, Inc. ("Meta") the subscriber's personally identifiable information ("PII"), including (a) the title and URL of the video, and (b) the subscriber's Facebook ID (or "FID"). (*Id.* ¶¶ 29–30, 38, 49–56, 60, 95.)

8. Early in the case, including while Gaia's motion to dismiss was pending and the parties conducted discovery, the parties engaged in direct communications and, as part of their obligations under Rule 26, discussed the prospect of resolution. Those discussions led to an agreement between the parties to engage in mediation, which they agreed would take place before The Honorable Suzanne H. Segal, a former United States Magistrate Judge for the United States District Court for the Central District of California and a neutral at Signature Resolution who has substantial experience mediating various types of complex litigation, including privacy cases and class actions. The mediation took

place on November 29, 2023. While the parties engaged in good-faith negotiations, which at all times were at arms' length, they failed to reach an agreement that day.

9. Over the following weeks and months, the parties engaged in additional rounds of arm's length negotiations facilitated by Judge Segal. These negotiations included both direct discussions between counsel for both parties and mediated communications through Judge Segal.

10. During the mediation, the parties exchanged mediation statements and follow-up correspondence, and informally shared additional relevant information regarding, among other topics, the strengths and weaknesses of Plaintiffs' claims and Gaia's defenses, arguably similar digital privacy class settlements approved by other courts, Gaia's data bearing on the merits of Plaintiff's claims and the size and nature of the proposed class, including via direct communications between counsel in the presence of the mediator. Gaia ultimately estimated that approximately 478,000 Gaia subscribers accessed prerecorded videos on Gaia's websites during the relevant time period, although not every one of those subscribers necessarily is a Settlement Class Member (for example, some may not have had a Facebook account). Even so, the proposed Settlement Class likely numbers in the hundreds of thousands.

11. On May 31, 2024, Judge Segal made a double-blind mediator's proposal for monetary relief covering a full, class-wide settlement of the Action. On June 5, 2024, Judge Segal informed the parties that they had both agreed to her proposal.

12. On June 25, 2024, the parties executed a term sheet covering material terms and proceeded to negotiate and draft a long form settlement agreement.

13. On July 3, 2024, the parties executed the Settlement.

14. On July 8, 2024, Plaintiff filed an Unopposed Motion for Preliminary Approval of the Settlement (Dkt. 75) along with a supporting Appendix (Dkt. 75-2). On July 19, 2024, the Court granted preliminary approval of the Settlement (Dkt. 76 ("PAO")).

15. Following entry of the Court's PAO, the Settlement Administrator, Angeion Group, LLC ("Angeion"), began implementation of the court-approved Notice Plan, and Class Counsel has worked with Angeion to effectuate the court-ordered Notice Plan and address any issues that may arise.

16. On July 18, 2024, Angeion disseminated CAFA Notice mailings ("CAFA Notice") pursuant to the Class Action Fairness Act of 2005 (CAFA), 28 U.S.C. § 1715. (Appendix of Evidence in Support of Plaintiff's (1) Motion for Final Approval; and (2) Motion for Award of Attorneys' Fees, Litigation Costs & Service Award, filed concurrently herewith ("Appx."), ¶ 6 (Declaration of Baro Lee Re: Notice and Administration ("Lee Decl.")).) Thereafter, on September 9, 2024, Angeion sent 649,276 email notices to identified potential Settlement Class Members for whom a valid email address was available, established a dedicated website for the Settlement with the URL www.GaiaVPPASettlement.com (the "Settlement Website"), and established a toll-free telephone number (1-844-279-5979) for the Settlement. (*See id.*, ¶¶ 10, 14, 17.)

17. On September 18, 2024, Angeion discovered that the initial email notices had an unusually high volume of soft bounces: of the 649,276 email notices sent, 151,129 were delivered and 498,147 bounced back as undeliverable. (*Id.*, ¶ 12.) Angeion informed counsel, identified the likely cause (the timing of this email dissemination with another

high-volume email project), and re-noticed the soft bounces with supplemental email notices. (*Id.*)

18. Through Angeion's initial and supplemental email notice efforts, individual notice has reached approximately 96.06% of the identified potential Settlement Class Members. (*Id.*, ¶ 13.)

19. The content of the court-approved notices provided Settlement Class Members a detailed summary of the relevant information about the Settlement, including, among other things: (1) a plain and concise description of the nature of the Action and the proposed Settlement; (2) the right of Settlement Class Members to request exclusion from, or object to, the Settlement and the deadline for doing so; (3) the process for submitting a claim form and the deadline for doing so; (4) specifics on the date, time and place of the Final Fairness Hearing; and (5) information regarding Class Counsel's anticipated fee application and the anticipated request for the Class Representative's service award. (*See id.*, ¶ 10 & Ex. B.)

20. Class Counsel will provide an update on implementation of the notice plan and the claims process, report on any requests for exclusion, and respond to any substantive objections by November 25, 2024, and provide a proposed order prior to the Final Approval Hearing on December 9, 2024.

21. The court-approved Notice Plan also permits Angeion, at the election of Class Counsel, to send one to two reminder notices via email to Settlement Class Members at least seven calendar days before the end of the claims submission period. (Dkt. 75-2, p. 22 ¶ 4.1.3 (Settlement).) Class Counsel anticipates that at least one

reminder email notice will be sent to provide a second chance to potential Settlement Class Members who (i) read the initial email notice but forgot or failed to submit a claim due to the hectic ongoings of life, or (ii) for whatever reason did not open, view, or receive the initial email notice.

Factors Supporting Final Approval

22. The Settlement provides for both monetary and injunctive relief for the benefit of the Settlement Class. As for the monetary relief, the Settlement provides for a cash common fund in the amount of $2,000,000 for the benefit of the Settlement Class. As for the injunctive relief, the Settlement provides for important business practice changes designed to remediate the alleged VPPA violations going forward: namely, the Settlement requires Gaia to suspend operation of the Pixel on each page of its website that both includes video content and has a URL that identifies the video content viewed. The injunctive relief shall remain in place unless and until the VPPA is: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a decision on the use of website pixel technology by the United States Supreme Court or the Tenth Circuit Court of Appeals. Thus, the benefits achieved through the Settlement are substantial and extend well beyond the dollar figure representing the common fund.

23. The Parties agreed to the terms of the Settlement after protracted, arms-length negotiations conducted under an experienced mediator's supervision by experienced counsel who vigorously represented their clients' interests and possessed all the information necessary to properly evaluate the case, determine the contours of the proposed class, and reach a fair and reasonable compromise.

24. Class Counsel have invested significant time and resources into this action. Class Counsel performed such tasks as: (i) conducting a thorough pre-suit investigation into the relevant facts and law that resulted in the preparation of a detailed, well-pled complaint; (ii) opposing Gaia's motion to dismiss; (iii) pursuing and reviewing formal discovery from Gaia; (iv) pursuing third-party discovery from Meta; (v) gathering and storing Plaintiff's relevant documents and electronically stored information; (vi) preparing a detailed mediation statement; (vii) requesting and analyzing relevant informal discovery during mediation; (viii) participating in a full-day mediation and extensive subsequent settlement discussions; (ix) achieving a favorable Settlement on behalf of the Settlement Class; and (x) negotiating and executing a comprehensive set of settlement papers.

25. After the Court issued the PAO, Class Counsel negotiated with Gaia's counsel regarding changes that Gaia wanted to make to the notice materials. Class Counsel agreed to certain non-material changes, but opposed other changes which they concluded were likely to make the notice materials less clear for Settlement Class Members. (*See* Dkt. 79.) The Court agreed with Class Counsel's position and denied Gaia's request to include the disputed changes in the notice materials. (*See* Dkt. 81.)

26. From the outset of the case, Plaintiff and Class Counsel recognized that the case presented substantial and novel litigation risks. For example, in its motion to dismiss, Gaia asserted that Plaintiff lacked standing to pursue a claim under the VPPA because he did not suffer a concrete injury under binding Supreme Court precedent. (Dkt. 20 at 5–7.) Gaia also argued that (1) Gaia did not disclose any of its subscribers' personally identifiable information (PII) through its use of the Pixel; (2) Facebook IDs do not

constitute PII under the VPPA; and (3) Gaia did not knowingly disclose PII to Facebook. (*Id.* at 7–15.) An adverse decision or finding on any of these contentions at any point in the litigation would deprive Plaintiff and the Settlement Class of any recovery whatsoever.

27. Additionally, other Facebook Tracking Pixel-based VPPA cases have failed at the motion to dismiss stage. *See, e.g., Gardener v. MeTV*, 2023 WL 4365901, at *5 (N.D. Ill. July 6, 2023) (granting the motion to dismiss and "find[ing] dispositive MeTV's argument that Plaintiffs are not consumers under the Act"); *Carter v. Scripps Networks, LLC*, 2023 WL 3061858, at *6 (S.D.N.Y. Apr. 24, 2023) (granting motion to dismiss because "[t]he Complaint describes plaintiffs as subscribers of hgtv.com newsletters, but does not plausibly allege that they were subscribers of hgtv.com video services"); *Martin v. Meredith Corp.*, 2023 WL 2118074, at *3 (S.D.N.Y. Feb. 17, 2023) ("The plaintiff's VPPA claim is dismissed because the complaint itself shows that the defendants do not disclose information showing that a person has 'requested or obtained specific video materials or services.'"); *Hunthausen v. Spine Media, LLC*, 2023 WL 4307163, at *3 (S.D. Cal. June 21, 2023) (granting motion to dismiss because "[r]enting, purchasing or subscribing for goods or services from a third party connected to a [video tape service provider] is insufficient to make someone a 'consumer' under the VPPA"); *Cantu v. Tapestry, Inc.*, 2023 WL 4440662, at *10 (S.D. Cal. July 10, 2023) ("[T]he Court finds Plaintiff has failed to state a claim on the basis that he has not properly alleged that Defendant is a 'video tape service provider.'"); *Carroll v. General Mills, Inc.*, 2023 WL 4361093, at *3 (C.D. Cal. June 26, 2023) (granting motion to dismiss because "[p]laintiffs do not allege any facts suggesting that the delivery of audiovisual material is General

Mills' particular field of endeavor or that General Mills' products are specifically tailored to serve audiovisual material").

28. Plaintiff and Class Counsel are unaware of any decision that has been issued by the Tenth Circuit Court of Appeals or the District of Colorado in a Pixel-based VPPA case related to any of the VPPA-based arguments Gaia raised in support of its motion to dismiss.

29. Notably, similar Pixel and VPPA cases have failed at the class certification and summary judgment stages of the litigation. *See, e.g., Doe v. Medstar Health, Inc.*, 23-C-20-000591, Dkt. Nos. 70-71, at p. 1 (Md. Cir. Ct. 2023) (denying a motion for class certification in Pixel case); *In re Hulu Priv. Litig.*, 86 F. Supp. 3d 1090, 1097 (N.D. Cal. 2015) (denying a motion for summary judgment in VPPA Facebook cookie case because "there [was] no evidence that Hulu knew that Facebook might combine a Facebook user's identity (contained in the c_user cookie) with the watch-page address"). Plaintiff and Class Counsel are unaware of any court decision granting class certification or denying a defendant's motion for summary judgment in a Pixel-based VPPA case.

30. Gaia also is represented by highly experienced attorneys who made clear that absent a settlement, they were prepared to continue their vigorous defense of this case and would continue to challenge liability.

31. Class Counsel are also aware that Gaia would oppose class certification vigorously, and that Gaia would prepare a competent defense at trial. Looking beyond trial, Plaintiff is aware that Gaia could appeal the merits of any adverse decision, and that in light of the statutory damages in play, Gaia would argue—in both the trial and appellate

courts—that the award of any statutory damages would not be warranted or for a reduction of damages based on due process concerns, resulting in additional delay, added costs, and a potentially overturned verdict.

32. While confident in Plaintiff's claims, Class Counsel acknowledges that obtaining a post-trial recovery larger than that obtained through settlement would be uncertain at best. For example, in *In re Apple Computer Sec. Litig.*, 1991 WL 238298 (N.D. Cal. Sept. 6, 1991), the jury rendered a verdict in favor of plaintiffs and found recoverable damages in excess of $100 million. Nonetheless, the trial court disagreed and overturned the verdict, entering a judgment notwithstanding the verdict for the individual defendants and ordering a new trial with regard to the corporate defendant. *Id.*

33. The injunctive relief obtained through the Settlement is the same injunctive relief that Plaintiff would have achieved after a successful trial.

34. Plaintiff and Class Counsel believe that the monetary and injunctive relief provided by the Settlement weighs heavily in favor of finding that the Settlement is fair, reasonable, and adequate, and well within the range of final approval.

35. Since the Court entered its PAO, Class Counsel has worked with Angeion to carry out the Court-approved Notice Plan. As detailed in the Lee Declaration, notice has reached approximately 96.06% of the Settlement Class. (Appx., ¶ 13.) A 96.06% notice reach is an excellent, and certainly reasonable, result. *See In re Packaged Seafood Prod. Antitrust Litig.*, 2023 WL 2483474, at *2 (S.D. Cal. Mar. 13, 2023) ("The Federal Judicial Center has concluded that a notice plan that reaches at least 70% of the class is reasonable.") (citing *Chinitz*, 2020 WL 7042871, at *2, 2020 U.S. Dist. LEXIS 224999, at

*5 and Fed. Jud. Ctr., *Judges' Class Action Notice and Claims Process Checklist and Plain Language Guide* 3 (2010)).

36. The current deadline to object to the Settlement is October 24, 2024. To date, neither Angeion nor Class Counsel have received an objection to the Settlement. *See* Lee Decl. at ¶ 19.

37. The current deadline to opt-out of the Settlement is also October 24, 2024. To date, there have been no requests for exclusion from the Settlement. *Id*.

38. As noted above, Class Counsel will provide an update on implementation of the notice plan and the claims process, report on any requests for exclusion, and respond to any substantive objections by November 25, 2024, and provide a proposed order prior to the Final Approval Hearing on December 9, 2024.

39. Class Counsel have significant experience in litigating class actions of similar size, scope, and complexity to the instant action. Class Counsel regularly engage in major complex litigation involving consumer privacy, have the resources necessary to conduct litigation of this nature, and have frequently been appointed lead class counsel by courts throughout the country. (*See* Dkt. 75-2, pp. 70–79, ¶¶ 30–53 (Joint Decl. re Preliminary Approval).)

40. Based on Class Counsel's experience litigating similar class actions, Class Counsel believe that the Settlement is fair, reasonable, and adequate, and in the best interests of the Settlement Class.

41. As discussed above and throughout Plaintiff's Motion for Final Approval of Class Action Settlement, the Settlement reached in this case was the product of

negotiations conducted at arms' length by experienced counsel representing adversarial parties with the assistance of a neutral mediator. Thus, there is absolutely no evidence of fraud or collusion.

42. Further, there are no separate agreements to be identified pursuant to Federal Rule of Civil Procedure 23(e)(3).

43. Class Counsel believe that Plaintiff's active involvement in this case was critical to its ultimate resolution. He took his role as class representative seriously, devoting significant amounts of time and effort in regularly communicating and fully cooperating with Class Counsel to adequately protect the interests of the Class. Without his willingness to assume the risks and responsibilities of serving as Class Representative, we do not believe such a favorable result could have been achieved.

Factors Supporting an Award of Attorneys' Fees, Litigation Costs, and Service Award

44. Despite the numerous significant risks involved in pursing this litigation (*see supra*), Class Counsel undertook this matter on a contingency basis with no guarantee of recovery and have committed substantial resources of attorney and staff time, in addition to out-of-pocket costs, towards investigating, litigating, and settling the matter. In doing so, Class Counsel also assumed the risk of the significant delay associated with achieving a final resolution through trial or any appeals.

45. The Parties agreed to the terms of the Settlement through experienced counsel who possessed all the information necessary to properly evaluate the case, determine all the contours of the proposed class, and reach a fair and reasonable compromise after negotiating the terms of the Settlement at arm's length and with the

assistance of a neutral mediator. As noted above, Class Counsel have significant experience in litigating class actions of similar size, scope, and complexity to the instant action.

46. Gaia has presented a vigorous defense throughout the litigation and has been represented by highly experienced lawyers from Foley & Lardner LLP, a prominent law firm with more than 1,100 attorneys across 26 offices. *See* https://foley.com. Notwithstanding this formidable opposition, Class Counsel vigorously pursued and pressed Plaintiff's claims at every turn and ultimately negotiated a favorable settlement that brings substantial relief to Settlement Class Members. *See Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *30 (N.D. Tex. Nov. 8, 2005) ("The ability of plaintiffs' counsel to obtain such a favorable settlement for the Class in the face of such formidable legal opposition confirms the superior quality of their representation.").

47. Plaintiff and Class Counsel recognize that despite their belief in the strength of Plaintiff's claims, the expense, duration, and complexity of protracted litigation would be substantial and the outcome uncertain. Indeed, as identified above, the arguments raised by Gaia in its motion to dismiss, the uncertainties associated with sufficiently pleading the VPPA claim, achieving and maintaining class certification, surviving summary judgment, and prevailing at trial and on appeal posed very real and sustained risks to the successful class-wide resolution of this litigation.

48. Absent a settlement, the success of any of Gaia's various defenses would deprive Plaintiff and the Settlement Class Members of any potential relief whatsoever.

49. Class Counsel have expended substantial time and effort in the litigation and settlement of this Action. Collectively, based on their audited time records, Class Counsel have devoted 1,296 hours, yielding a lodestar of $1,122,322.50.

50. The following table summarizes Class Counsel's reasonable lodestar:

Firm	Hours	Lodestar
LCHB	496.2	$360,193.50
BC	647.1	$602,092.50
HK	152.7	$160,036.50
Total	**1,296**	**$1,122,322.50**

51. At the outset of the case, Class Counsel agreed to follow a time and expense reporting protocol of the type they have successfully used in other class actions. This protocol provided clear instructions and guidelines governing the appropriate and uniform recording and reporting of time and costs reasonably incurred in connection with the efficient and effective prosecution of the claims of Plaintiff and the Class.

52. In performing the audit of Class Counsel's time records and in the exercise of their discretion, Class Counsel excluded, *inter alia*, the following categories of time entries: (i) duplicative, unnecessary, or irrelevant time entries; (ii) time entered by timekeepers who recorded a *de minimis* amount of time; and (iii) time spent in connection with the preparation of Plaintiff's Motion for Final Approval and Motion for Award of Attorneys' Fees, Litigation Costs & Service Award. As a result, the lodestar forming the basis for Plaintiff's request for attorneys' fees does not include substantial past and future time committed to the litigation of this Action, including time to be spent obtaining final approval and overseeing implementation of the Settlement.

53. Furthermore, over the course of litigation, Class Counsel took reasonable efforts to minimize inefficiency and to prevent the duplication of work. Particular tasks and areas of responsibility were assigned and allocated by and among Class Counsel to promote efficient and non-duplicative efforts and to ensure that appropriately skilled personnel performed each task. Class Counsel also routinely communicated with each other to monitor progress, provide necessary updates, and ensure that tasks were being performed in a timely and effective manner.

54. Based on Class Counsel's lodestar to date in this action, the requested fee yields a negative multiplier of 0.556, which is well below the typical range of multipliers routinely approved by courts in this District. *See, e.g., In re Crocs, Inc. Sec. Litig.*, 2014 WL 4670886, at *4 (D. Colo. Sept. 18, 2014) (referencing District cases approving multipliers from 2.5 to 4.6).

BC's Reasonable Lodestar and Litigation Costs.

55. Only Mr. Cormier attests to the facts set forth in this Section.

56. I have personal knowledge of the hourly rates charged by BC attorneys and support staff included in the exhibits to this declaration. The hourly rates for the attorneys and professional support staff in my firm are the usual and customary rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by other courts in other class actions. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023). My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work and that have been approved by courts in other class actions within this Circuit and nationwide. Different

timekeepers within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

57. Federal courts, including courts within this Circuit, have approved the hourly rates of BC attorneys and paralegals, including myself, in issuing fee and expense reimbursement awards. *See, e.g., Fiorentino v. FloSports, Inc.,* No. 1:22-cv-11502-AK (D. Mass. Mar. 5, 2024), Dkt. 69 at 16-17 and Dkt. 76 at ¶12 (awarding fees in amount requested in plaintiff's fee motion and supporting declaration that was based on the hourly rates of Class Counsel's lawyers and paralegals, including the same BC lawyers and staff involved in this case); *Cottle v. Plaid Inc.*, 2022 WL 2829882, at *11 (N.D. Cal. July 20, 2022) (finding the hourly rates of BC lawyers, including Mr. Cormier, "are reasonable and in line with prevailing rates in this community for similar services performed by attorneys of comparable skill and experience" and that "similar rates" to those of the firm's paralegals "have been awarded by courts in other class action litigation, including courts in this district"); *In re Broiler Chicken Grower Antitrust Litig. (No. II)*, Case No. 6:20-MD-02977-RJS-CMR (E.D. Okla. Feb. 18, 2022), Dkts. 488-13 and 531 (approving BC lawyer and paralegal hourly rates in connection with class plaintiffs' attorneys' fee petition); *In re EpiPen (Epinephrine Injection, USP) Marketing, Sales Practices and Antitrust Litig.,* MDL No. 2785, 2021 WL 5369798, at *4-5 (D. Kan. Nov. 17, 2021) and Dkt. 2435-2 at ¶¶ 63-

65 (awarding requested attorney fees representing a specified multiplier of the hourly rates of the lawyers and paralegals of BC and other co-lead counsel in Pfizer settlement).

58. Attached hereto as **Exhibit A** is a true and correct summary lodestar chart that reflects, for each BC timekeeper: (i) their title or position (*e.g.*, partner, associate, staff attorney, paralegal); (ii) the total number of hours they worked; (iii) their current hourly rate; and (iv) their lodestar. For attorneys or support staff who no longer work with BC, the current hourly rate is the rate for that individual in his or her final year of work with the firm.

59. I am prepared to provide the Court with any further documentation or explanation regarding BC's lodestar, including detailed daily time records, upon request by the Court.

LCHB's Reasonable Lodestar and Litigation Costs.

60. Only Ms. Geman attests to the facts set forth in this Section.

61. I have personal knowledge of the hourly rates charged by LCHB attorneys and support staff included in the exhibits to this declaration. The hourly rates for the attorneys and professional support staff in my firm are the usual and customary rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by courts in other class action litigation including courts in this Circuit. My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work and that have been approved by courts in other class actions within this Circuit and nationwide. Different timekeepers within the same employment category (*e.g.*, partners, associates, paralegals, etc.) may have different rates based on a variety of

factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

62. LCHB's hourly rates have been accepted by courts in other contingent complex litigation and class actions, both for purposes of "crosschecking" a proposed fee based on the percentage method, as well as for determining fees primarily under the lodestar method. *See, e.g.*, *Grey Fox, LLC v. Plains All-Am. Pipeline, L.P.*, No. CV 16-03157 PSG (JEMX), 2024 WL 4267431, at *5 (C.D. Cal. Sept. 17, 2024) (finding reasonable LCHB's "partners with hourly rates in the range of $745 to $1,380, associates in the range of $345 to $720, and paralegals/research staff in the range of $345 to $535"); *Vela, et al. v. AMC Networks, Inc.*, No. 1:23-cv-02524-ALC, at *6 (S.D.N.Y May 16, 2024), ECF No. 64 (approving LCHB's 2024 billing rates); *Czarnionka, et al. v. The Epoch Times Association, Inc.*, No. 1:22-cv-06348-AKH, at *6 (S.D.N.Y. July 10, 2024), ECF No. 106 (same); *In re Google Location Hist. Litig.*, No. 18-cv-05062-EJD, 2024 WL 1975462, at *15 (N.D. Cal. May 3, 2024) (finding class counsel's rates ranging from $550–$1,300 for partners, $420–$720 for associates, and $535 for paralegals and other support staff "fall within the range of those approved in other similar cases . . . ") (citations omitted); Final Order & Judgment at 9, *In re Arizona Theranos, Inc. Litig.*, No. 2:16-cv-02138-DGC (D. Ariz. Feb. 6, 2024), ECF No. 619 (approving LCHB's 2023 rates); *Corker v. Costco Wholesale Corp.*, No. 19-00290, 2023 WL 6215108, at *1 (W.D. Wash. Sept. 25, 2023) (approving rates); *Chen-Oster v. Goldman Sachs & Co.*, No. 10 CIV. 6950 (AT) (RWL), 2023 WL 7325264, at *5 (S.D.N.Y. Nov. 7, 2023) (approving attorneys' fee award based

in part on the hourly rates of proposed Co-Lead Class Counsel Rachel Geman); *Ramirez v. Trans Union, LLC*, No. 12-00632, 2022 WL 17722395, at *9 (N.D. Cal. Dec. 15, 2022) (finding that LCHB's rates, at the time, "from $1,325 to $560 for partners and associates, and $485-$455 for 'litigation support' and paralegals" were "generally in line with rates prevailing in this community for similar services"); *Vianu v. AT&T Mobility LLC*, No. 19-03602, 2022 WL 16823044, at *11 (N.D. Cal. Nov. 8, 2022) (finding LCHB's "billing rates are normal and customary for timekeepers with similar qualifications and experience in the relevant market"); *Cottle v. Plaid Inc.*, No. 20-03056, 2022 WL 2829882, at *11 (N.D. Cal. July 20, 2022) (approving rates; including of attorneys Rachel Geman and Mike Sheen); *Pulmonary Assocs. of Charleston PLLC, et al. v. Greenway Health, LLC, et al.*, No. 19-00167, at *5–8 (N.D. Ga., Dec. 2, 2021) (approving rates); *Roberts v. AT&T Mobility LLC*, No. 15-03418, 2021 WL 9564449, at *4 (N.D. Cal. Aug. 20, 2021); *In re Samsung Top-Load Washing Mach. Mktg., Sales Practices & Prods. Liab. Litig.*, No. 17-2792, 2020 WL 9936692, at *7 (W.D. Okla. June 11, 2020) *aff'd,* 997 F.3d 1077 (10th Cir. 2021) ("Class Counsel's billing rates are reasonable for their respective geographic areas in comparable cases."); *Nashville Gen. Hosp. v. Momenta Pharms., Inc.*, No. 15-1100, 2020 WL 3053468, at *1 (M.D. Tenn. May 29, 2020) (approving LCHB's rates).

63. Attached hereto as **Exhibit B** is a true and correct summary lodestar chart that reflects, for each LCHB timekeeper: (i) their title or position (*e.g.*, partner, associate, staff attorney, paralegal); (ii) the total number of hours they worked; (iii) their current hourly rate; and (iv) their lodestar. For attorneys or support staff who no longer work with

LCHB, the current hourly rate is the rate for that individual in his or her final year of work with the firm.

64. I am prepared to provide the Court with any further documentation or explanation regarding LCHB's lodestar, including detailed daily time records, upon request by the Court.

HK's Reasonable Lodestar and Litigation Costs.

65. Only Mr. Kennedy attests to the facts set forth in this Section.

66. I have personal knowledge of the hourly rates charged by HK attorneys and support staff included in the exhibits to this declaration. The hourly rates for the attorneys in my firm are the usual and customary rates set by the firm for each individual. These hourly rates are the same as, or comparable to, the rates accepted by other courts in other class actions. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, 2023 WL 3679031, at *2 (D. Mass. Mar. 31, 2023). My firm's rates are set based on periodic analysis of rates charged by firms performing comparable work and that have been approved by courts in other class actions within this Circuit and nationwide. Different timekeepers within the same employment category may have different rates based on a variety of factors, including years of practice, years at the firm, year in the current position (*e.g.*, years as a partner), relevant experience, relative expertise, and the rates of similarly experienced peers at our firm or other firms.

67. Federal courts have approved the hourly rates of HK attorneys, including myself, in issuing fee and expense reimbursement awards. *See, e.g., Fiorentino v. FloSports, Inc.,* No. 1:22-cv-11502-AK (D. Mass. Mar. 5, 2024), Dkt. 69 at 16-17 and Dkt.

76 at ¶ 12 (awarding fees in amount requested in plaintiff's fee motion and supporting declaration that was based on the hourly rates of Class Counsel's lawyers, including the same HK lawyers involved in this case); *Cottle v. Plaid Inc.*, 2022 WL 2829882 (N.D. Cal. July 20, 2022).

68. Attached hereto as **Exhibit C** is a true and correct summary lodestar chart that reflects, for each HK timekeeper: (i) their title or position; (ii) the total number of hours they worked; (iii) their current hourly rate; and (iv) their lodestar.

69. I am prepared to provide the Court with any further documentation or explanation regarding HK's lodestar, including detailed daily time records, upon request by the Court.

Class Counsel's Reasonably Incurred Litigation Costs

70. Over the course of the litigation, Class Counsel kept records of all litigation expenses. The following table summarizes Class Counsel's reasonably incurred litigation expenses:

Expense Category	Amount
Expert/Consultant/Mediation Fees	$30,879.93
Electronic Database	$3,720.77
Court Fees	$952
Federal Express/Courier	$492.22
Computer Research	$3,338.18
Travel	$2,869
Photocopying/Printing	$426.40
Telephone Services	$25.12
Total	**$42,703.62**

71. With the assistance of attorneys and staff working under our direction and supervision, we conducted a comprehensive audit of all litigation expenses incurred by

Class Counsel in the prosecution of this Action. In performing the audit of Class Counsel's litigation expenses, we exercised our discretion in removing any expenses we considered unnecessary or irrelevant.

72. We are prepared to provide the Court with any further documentation or explanation regarding Class Counsel's litigation expenses, including detailed invoice and payment records, upon request by the Court.

Class Representative's Service Award

73. The Class Representative devoted resources and energy to litigating and settling this Action. He provided information to Class Counsel that informed the class action complaints, and throughout the litigation, regularly communicated with Class Counsel about strategy and major case developments. He also provided documents and information, including information from his computer and Gaia and Facebook accounts, and was willing to present his devices to Class counsel for preservation and forensic imaging, if needed. Moreover, he carefully reviewed and considered the Settlement, and consulted with Class Counsel, before approving it. In light of his work, the requested service award of $2,000 is eminently reasonable.

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

Executed on this 2nd day of October 2024, at Washington, DC, Brooklyn, New York, and McKinney, Texas.

By: */s/ Christopher Cormier*
Christopher J. Cormier

By: */s/ Rachel Geman*
Rachel Geman

By: */s/ Shawn Kennedy*
Shawn M. Kennedy

EXHIBIT A
TO JOINT DECLARATION
OF CLASS COUNSEL

Gaia VPPA Litigation - Guida v. Gaia, Inc. (D. Colo.)

VPPA Gaia 22026.01 Time Report

Firm Name: Burns Charest LLP
Reporting Period: 08/2022 Thru 8/2024

(1) Lead Counsel Calls / Meetings
(2) Investigations / Factual Research
(3) Discovery (Draft / Respond / Meet & Confer)
(4) Discovery (Document Review)
(5) Discovery (Depositions)
(6) Pleadings, Briefs, Motions
(7) Court Appearances & Prepara
(8) Settlement
(9) Class Certification
(10) Trial Preparation
(11) Trial
(12) Case Management & Litigation Strategy
(13) Legal Research
(14) Experts / Consultants
(15) Appeal

1012 1023

Name	Status	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Current Hourly Rate	Cumulative Hours	Cumulative Lodestar
Chris Cormier	P	9.3	7.4	49.3			49.8						146.5		22.4	3.2		$1,300.00	287.9	$374,270.00
Hannah Crowe	A	31.9	2.2	63.8	1.5		36.2	2.2					27.8	1.4	5.0			$700.00	172.0	$120,400.00
Andrew Bynum	PL	1.9		17.8	1.6		6.8	5.0					35.3					$600.00	68.4	$41,040.00
Abu-Orf, Leila 2023	LC	2.8		10.8	0.1								17.4					$700.00	31.1	$21,770.00
Lauren Cross	LC	9.4	14.0	0.7	1.2		3.5						14.1	28.5	0.2			$550.00	71.6	$39,380.00
Tenacia Whiteside	LC			7.1			1.0						7.7	0.3				$325.00	16.1	$5,232.50
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
																		$0.00	0.0	$0.00
TOTALS		**55.3**	**23.6**	**149.5**	**4.4**	**0.0**	**97.3**	**7.2**	**0.0**	**0.0**	**0.0**	**0.0**	**248.8**	**30.2**	**27.6**	**3.2**	**0.0**	$0.00	**647.1**	**602,092.5**

Partner (P)
Of Counsel (OC)
Associate (A)
Paralegal (PL)
Law Clerk (LC)

Gaia VPPA Litigation - Guida v. Gaia, Inc. (D. Colo.)

VPPA Gaia 22026.01 Expense Report

Firm Name: Burns Charest LLP
Reporting Period: 8/2022 - 8/2024

** DO NOT ADD CATEGORIES TO CHART**

Disbursement	Description (If Necessary)	Prior Costs	Current Costs	Cumulative Costs
Electronic Research (Lexis/Westlaw/PACER)			$7.90	$7.90
Assessment Fees				$0.00
Investigation Fees/Service Fees				$0.00
Court Costs - Filing Fees				$0.00
Litigation Fund Contribution			$0.00	$0.00
Federal Express/Overnight Delivery/Messengers			$492.22	$492.22
Photocopies - In House				$0.00
Photocopies - Outside				$0.00
Mileage				$0.00
Air Travel				$0.00
Meals				$0.00
Deposition Costs				$0.00
Hotels				$0.00
Postage				$0.00
Service of Process Fees				$0.00
Telephone/Fax				$0.00
Transportation				$0.00
Co-Counsel Fees				$0.00
Expert/Consultant/Mediator Fees			$11,523.70	$11,523.70
Court Reporter Service/Hearing Transcript Fees				$0.00
Misc. (Describe)				$0.00
TOTAL		**$0.00**	**$12,023.82**	**$12,023.82**

EXHIBIT B
TO JOINT DECLARATION
OF CLASS COUNSEL

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 09/26/2024 10:42:24 PM

From	**Inception**
To	**08/31/24**

Matter Number: 4256-0001 **VPPA - GAIA, INC. - General Matter**

PARTNER

NAME	HOURS	RATE	TOTAL
DOUGLAS CUTHBERTSON	31.50	895.00	28,192.50
RACHEL GEMAN	48.60	1,145.00	55,647.00
MIKE SHEEN	206.60	800.00	165,280.00
	286.70		**249,119.50**

ASSOCIATE

NAME	HOURS	RATE	TOTAL
NABILA ABDALLAH	134.10	530.00	71,073.00
NICHOLAS HARTMANN	12.20	755.00	9,211.00
	146.30		**80,284.00**

LAW CLERK

NAME	HOURS	RATE	TOTAL
LIVIA JARAMILLO	14.00	470.00	6,580.00
TERIN PATEL-WILSON	13.00	470.00	6,110.00
	27.00		**12,690.00**

PARALEGAL/CLERK

NAME	HOURS	RATE	TOTAL
ARIANA DELUCCHI	36.20	500.00	18,100.00
	36.20		**18,100.00**

MATTER TOTALS	**496.20**		**360,193.50**

LIEFF CABRASER HEIMANN & BERNSTEIN, LLP

Report created on 09/26/2024 06:00:48 PM

Current = 09/01/24 To Present
Matter-to-Date = Inception To Present

VPPA - GAIA, INC. - General Matter **Matter Number: 4256-0001**

Soft Costs Incurred

	Current	Matter-to-Date
Print	$0.00	$426.40
Telephone	$0.00	$21.42
Total Soft Costs:	**$0.00**	**$447.82**

Hard Costs Incurred

	Current	Matter-to-Date
Computer Research	$2.20	$1,205.46
Cost Funds	$0.00	$5,074.35
Electronic Database	$5.59	$3,720.77
Experts/Consultants	$0.00	$2,544.68
Mediation Expenses	$0.00	$2,983.34
Other Charges	$0.00	$506.00
Telephone	$0.00	$3.70
Travel	$0.00	$2,869.00
Total Hard Costs:	**$7.79**	**$18,907.30**
Total Matter Costs:	**$7.79**	**$19,355.12**
Total Cost Receipts:	**$0.00**	**$0.00**
Net Costs:	**$7.79**	**$19,355.12**

EXHIBIT C
TO JOINT DECLARATION
OF CLASS COUNSEL

Gaia VPPA Litigation - Guida v. Gaia, Inc. (D. Colo.)

Lodestar by Time Code

Firm Name: Herrera Kennedy LLP
Reporting Period: Inception through 8/31

(1) Lead Counsel Calls / Meetings
(2) Investigations / Factual Research
(3) Discovery (Draft / Respond / Meet & Confer)
(4) Discovery (Document Review)
(5) Discovery (Depositions)
(6) Pleadings, Briefs, Motio
(7) Court Appearances & P
(8) Settlement
(9) Class Certificat
(10) Trial Preparat
(11) Trial
(12) Case Management & Litigation Strategy
(13) Legal Research
(14) Experts / Consultants
(15) Appeal

Name		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	Rate	Hours	Lodestar
Shawn M. Kennedy (P)		1.9	8.9	#			6.4	0.3	100.1				8.6	0.5	1.2			$1,045.00	143.4	$149,853.00
Nicomedes Sy Herrera (P)		4.1		0.4			2.2	0.5	1.5				0.6					$1,095.00	9.3	$10,183.50
TOTALS		**6.0**	**8.9**	**#**			**8.6**	**0.8**	**101.6**				**9.2**	**0.5**	**1.2**				**152.7**	**160,036.5**

Partner (P)

Gaia VPPA Litigation - Guida v. Gaia, Inc. (D. Colo.)

Litigation Costs

Firm Name: Herrera Kennedy LLP
Reporting Period: Inception through 08/31/2024

Disbursement	Current Costs
Electronic Research (Lexis/Westlaw/PACER)	$2,124.82
Assessment Fees	
Investigation Fees / Service Fees	
Court Costs - Filing Fees	$446.00
Litigation Fund Contribution	
Federal Express/Overnight Delivery/Messengers	
Photocopies - In House	
Photocopies - Outside	
Mileage	
Air Travel	
Meals	
Deposition Costs	
Hotels	
Postage	
Service of Process Fees	
Telephone / Fax	
Transportation	
Co-Counsel Fees	
Experts/Consultant Fees	$8,753.86
Court Reporter Service/Hearing Transcript Fees	
Misc. (Describe)	
TOTAL	**$11,324.68**

APPENDIX EXHIBIT 2

Declaration of Baro Lee Re: Notice and Administration

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

CHRISTOPHER GUIDA, on behalf of himself and all others similarly situated, Plaintiff, v. GAIA, INC., Defendant.	Case No.: 1:22-cv-02350-GPG-MEH **DECLARATION OF BARO LEE RE: NOTICE AND ADMINISTRATION**

I, **BARO LEE**, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge:

1. I am a Project Manager with Angeion Group, LLC ("Angeion"), the Settlement Administrator retained in this matter, with headquarters located at 1650 Arch Street, Suite 2210, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein.

2. Angeion is not related to or affiliated with the Plaintiff, Class Counsel, the Defendant or Defendant's Counsel.

3. The purpose of this Declaration is to provide the Court with a summary of the work performed by Angeion thus far to effectuate notice pursuant to the Court's July 19, 2024, Preliminary Approval Order ("Order").

4. Angeion was retained to serve as the Settlement Administrator to, among other tasks, implement the Notice Plan; process Claim Forms; establish and maintain a dedicated Settlement Website; and perform other duties as specified in the Order and Class Action Settlement Agreement ("Agreement") that this Court preliminarily approved on July 19, 2024 (Dkt. No. 76).

SUMMARY OF THE NOTICE PLAN

5. The Notice Plan approved by the Court provides individual direct notice to all reasonably identifiable Class Members via email. The Notice Plan also includes the implementation of a dedicated website where Class Members can learn more about their rights and options pursuant to the terms of the Settlement.

DISTRIBUTION OF CAFA NOTICE

6. On July 18, 2024, pursuant to 28 U.S.C. §§ 1715(b), Angeion caused Notice regarding the Settlement to be sent to the Attorneys General of all states and territories and the Attorney General of the United States ("CAFA Notice"). The CAFA Notice mailings directed counsel and officials to the Angeion CAFA website where settlement related documents could be reviewed. A true and correct copy of the CAFA Notice is attached hereto as Exhibit A.

CLASS DATA

7. On or about August 7, 2024, Angeion received from Defense Counsel, two data files containing a total of 688,814 records ("Class List"). The data files contained the names and email addresses of Settlement Class Members.

DIRECT NOTICE

E-mail Notice

8. Prior to disseminating notice, Angeion performed a cleansing process to help ensure the accuracy of the recipient email addresses on the Class List. The email cleansing process removes extra spaces, fixes common typographical errors in domain name, and corrects insufficient domain suffixes (e.g., gmal.com to gmail.com, gmail.co to gmail.com, yaho.com to yahoo.com, etc.). After the cleansing process standardizes the email addresses, the email addresses were subjected to an email validation process whereby each email address was compared to known bad email addresses. Additionally, the email addresses were then further verified by contacting the Internet Service Provider ("ISP") to determine if the email addresses exist.

9. As a result of the email cleansing and verification processes, 649,276 email addresses were confirmed as valid and 39,538 email addresses were invalid.

10. On September 9, 2024, Angeion caused E-mail Notice to be disseminated to the 649,276 Settlement Class Members who had a valid email address. A true and accurate copy of the E-mail Notice is attached hereto as Exhibit B.

11. On September 10, 2024, Angeion discovered that Class Members entering the online claim filing portal were unable to submit a claim form. The inability to submit an online claim form was identified as a bug in the code that prevented successful submission. Angeion identified the 2,371 Class Members that logged into the claims portal and sent a clarifying email notice which summarized the issue, confirmed the bug had been resolved, and asked the Class Member to re-enter the online claim portal to re-submit their claim. Of the 2,371 E-mail Notices sent, 2,351 were delivered and 20 bounced back as undeliverable. As of October 2, Angeion has received claim forms from 763 Class Members of the 2,371 E-mail Notices sent.

12. On September 18, 2024, Angeion discovered that the email dissemination on September 9, 2024, had an unusually high volume of soft bounces. Angeion found the cause of the soft bounces was the concurrent timing of this email dissemination with another project sending millions of email notices each day. The high volume of email dissemination from Angeion resulted in our email domains receiving a poor reputation score and soft bounces. Of the 649,276 E-mail Notices sent, 151,129 were delivered and 498,147 bounced back as undeliverable. Angeion informed counsel and re-noticed the soft bounces on September 18, 2024.

13. The email disseminations resulted in a cumulative successful delivery rate of 623,706 (96.06%) and undeliverable rate of 25,570 (3.94%). Email noticing is now complete.

SETTLEMENT WEBSITE

14. On or before September 9, 2024, Angeion established the following website devoted to this Settlement: www.GaiaVPPASettlement.com ("Settlement Website"). The Settlement Website contains general information about the Settlement, including answers to frequently asked questions, important dates and deadlines pertinent to this matter, and copies of important documents. Visitors to the Settlement Website can download (1) a Long Form Notice, (2) a Claim Form, (3) the Settlement Agreement, and (4) the Class Action Complaint. The Settlement Website also has a "Contact Us" page whereby Class Members can submit questions

regarding the Settlement to a dedicated email address: info@GaiaVPPASettlement.com. The Settlement Website address was set forth in the Long Form Notice, Claim Form, and Settlement Agreement. A true and correct copy of the Long Form Notice is attached hereto as Exhibit C.

15. On or before September 9, 2024, Angeion established an online claim filing portal (on the Submit a Claim page of the Settlement Website) whereby Class Members can complete and submit their Claim Form via the Settlement Website, or where they can download a PDF of the Claim Form to complete and submit by mail. A true and correct copy of the Claim Form is attached hereto as Exhibit D.

16. As of October 2, 2024, the Settlement Website has had 39,061 page views and 25,131 sessions, which represents the number of individual sessions initiated by all users.

TOLL-FREE HOTLINE

17. On or before September 9, 2024, Angeion activated the following toll-free number dedicated to this Settlement: 1-844-279-5979. The toll-free hotline utilizes an interactive voice response ("IVR") system to provide Settlement Class Members with responses to frequently asked questions and provide essential information regarding the Settlement. This hotline is accessible 24 hours a day, 7 days a week. As of the date of this declaration, Angeion has received 69 calls totaling 219 minutes.

CLAIM FORM SUBMISSIONS

18. The deadline for members of the Settlement Class to submit a claim form is December 2, 2024. As of October 2, 2024, Angeion has received approximately 3,808 claim form submissions. These claim form submissions are still subject to final audits, including the full assessment of each claim's validity and a review for duplicate submissions. Angeion will continue to keep the parties apprised of the number of claim form submissions received.

REQUESTS FOR EXCLUSION AND OBJECTIONS TO THE SETTLEMENT

19. The deadline for members of the Settlement Class to request exclusion from the Settlement or object to the Settlement is October 24, 2024. As of October 2, 2024, Angeion has not received any requests for exclusion or objection from the Settlement. Angeion will inform the parties of any requests for exclusion or objection it receives.

CONCLUSION

20. The Notice Plan described herein included direct notice to all reasonably identifiable members of the Settlement Class via email and the implementation of a dedicated Settlement Website and Toll-Free Hotline to further inform members of the Settlement Class of their rights and options pursuant to the terms of the Settlement.

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

Dated: October 2, 2024

Baro Lee

BARO LEE

Exhibit A

ANGEION GROUP
Writing the Rules

1650 Arch Street, Suite 2210
Philadelphia, PA 19103
www.angeiongroup.com
215.563.4116 (P)
215.525.0209 (F)

July 18, 2024

VIA USPS GROUND ADVANTAGE

United States Attorney General &
Appropriate Officials

Re: Notice of Class Action Settlement
Christopher Guida v. Gaia, Inc.

Dear Counsel or Official:

Angeion Group, an independent claims administrator, on behalf of the defendant in the below-described action, hereby provides your office with this notice under the provisions of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715, to advise you of the following proposed class action settlement:

Case Name: *Christopher Guida v. Gaia, Inc.*
Index Number: 1:22-cv-02350-GPG-MEH
Jurisdiction: United States District Court, District of Colorado
Date Settlement Filed with Court: July 8, 2024

In accordance with the requirements of 28 U.S.C. § 1715, copies of the following documents associated with this action are available at https://www.angeiongroup.com/cafa/.

1. **28 U.S.C. § 1715(b)(1)-Complaint:** The *Class Action Complaint* was filed with the Court on September 12, 2022.

2. **28 U.S.C. § 1715(b)(2)-Notice of Any Scheduled Judicial Hearings:** There are currently no scheduled hearings for this case as of the date of this Notice.

3. **28 U.S.C. § 1715(b)(3)-Notification to Class Members:** The proposed *Claim Form, Long Form Notice,* and *Email Notice* were filed with the Court on July 8, 2024.

4. **28 U.S.C. § 1715(b)(4)-Class Action Settlement Agreement:** The *Class Action Settlement Agreement* was filed with the Court on July 8, 2024.

5. **28 U.S.C. § 1715(b)(5)-Any Settlement or Other Agreements:** Other than the *Class Action Settlement Agreement*, no other settlements or other agreements have been contemporaneously made between the parties.

6. **28 U.S.C. § 1715(b)(6)-Final Judgment:** The Court has not issued a Final Judgement or notice of dismissal as of the date of this CAFA Notice.

7. **28 U.S.C. § 1715(b)(7)(B)-Estimate of Class Members:** It is not feasible to provide an estimate of the number of Class Members by State. The Settlement Class is comprised of, "all individuals residing in the United States who, during the Class Period, subscribed or otherwise signed up for access to Gaia's services, and requested or obtained any prerecorded (including on-demand replay) videos available on Gaia's Websites while they had a Facebook account." Given the nature of the Settlement Class in this Settlement, the Defendant does not have mailing address information for Class Members and cannot provide a breakdown of Class Members by State. Accordingly, the estimated proportionate share of claims of Class Members (by State in comparison) to the entire Settlement cannot be determined.

8. **28 U.S.C. §1715(b)(8)-Judicial Opinions Related to the Settlement:** The Court has not issued a judicial opinion to the Settlement at this time. *Plaintiff's Unopposed Motion for Preliminary Approval of Class Action Settlement and Memorandum in Support Thereof* and the *[Proposed] Preliminary Approval Order* are available at https://www.angeiongroup.com/cafa/.

If you have questions or concerns about this notice, the proposed settlement, or difficulty accessing the associated documents, please contact this office.

Sincerely,

Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
(p) 215-563-4116
(f) 215-563-8839

Exhibit B

TO: «Class Member Email»
FROM: Settlement Administrator
RE: Legal Notice of Class Action Settlement – Gaia VPPA Settlement

Notice ID: «Notice ID»
Confirmation Code: «Confirmation Code»

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Guida v. Gaia, Inc., Case No. 1:22-cv-02350-GPG-MEH
United States District Court for the District of Colorado

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

You May Be Entitled to a Payment from a Class Action Settlement. The settlement only affects people in the United States who watched a video on the Gaia or Yoga International websites (gaia.com and yogainternational.com) using a web browser from September 12, 2020, to July 19, 2024, and who had a Facebook account during that period. If you did not watch a video on the Gaia or Yoga International websites using a web browser during that period, did not have a Facebook account during that period, or only accessed Gaia or Yoga International using Gaia's or Yoga International's app, this settlement does not apply to you.

Claims Forms Must be Submitted no Later Than December 2, 2024.

I WANT TO SUBMIT MY CLAIM

This notice is to inform you that a settlement has been reached in a class action lawsuit alleging that Defendant Gaia, Inc. ("Gaia") disclosed personally identifiable information to Facebook via the Facebook Tracking Pixel that identifies an account holder as having requested or obtained specific video materials in violation of the Video Privacy Protection Act (the "VPPA"). Gaia denies that it violated any law and the court has not determined who is right. However, the parties have agreed to the settlement to avoid the uncertainties and expenses associated with continuing to litigate the case.

Am I a Settlement Class Member?

Records indicate you may be a Settlement Class Member. The Settlement Class includes all individuals residing in the United States who, from September 12, 2020, to and through July 19, 2024, subscribed or otherwise signed up for access to Gaia's services, and requested or obtained any prerecorded (including on-demand replay) videos available on Gaia's Websites (gaia.com and yogainternational.com) using a web browser while they had a Facebook account.

What are the Settlement Benefits?

If approved by the Court, Gaia will create a Settlement Fund of **$2,000,000** for the benefit of the Settlement Class. The Settlement Fund will be distributed to Settlement Class Members who file a timely and complete claim on a *pro rata* basis (meaning equal share), after deducting Settlement Administration Expenses; any taxes due on earnings on the Settlement Fund, and any expenses related to the payment of such taxes; any Fee Award awarded by the Court; any Service Award awarded by the Court; and any other Court-approved deductions.

The Settlement also requires Gaia to suspend operation of the Facebook Tracking Pixel on any pages on Gaia's Websites that both include video content and have a URL that identifies the video content viewed, unless and until the VPPA were to be: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United States Supreme Court or the Tenth Circuit Court of Appeals.

How Do I Get a Payment?

Visit www.GaiaVPPASettlement.com to submit your claim online or to download a Claim Form to complete and submit by mail. Your Claim Form must be submitted online or mailed with a postmark date no later than **December 2, 2024**.

What are My Other Options?

You may exclude yourself from the Settlement Class by sending a written request to the Settlement Administrator postmarked no later than **October 24, 2024**. If you exclude yourself, you cannot receive a settlement payment, but you will keep any rights you may have to sue Gaia regarding the issues in the lawsuit.

You may object to the proposed settlement, and you and/or your lawyer have the right to appear before the Court. Your written objection must be filed with the Court with copies sent to Class Counsel and Defendant's Counsel no later than **October 24, 2024**.

Specific instructions about how to exclude yourself from, or object to, the Settlement are available at www.GaiaVPPASettlement.com. If you file a claim, submit an objection, or do nothing, and the Court approves the Settlement, you will be bound by all of the Court's orders and judgments. In addition, your claims against Gaia relating to issues in this case will be released.

Who Represents Me?

The Court has appointed lawyers Shawn M. Kennedy of Herrera Kennedy LLP, Christopher J. Cormier of Burns Charest LLP, and Rachel Geman of Lieff Cabraser Heimann & Bernstein LLP, to represent the Settlement Class. These lawyers are called Class Counsel. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

The Court's Final Approval Hearing

The Court will hold the Final Approval Hearing at 1:00 p.m. MT on December 9, 2024 in Courtroom 323 at the Wayne Aspinall Federal Building, 400 Rood Avenue, Grand Junction, CO 81501. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for a Service Award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

How Do I Get More Information?

For more information, including the full Notice, Claim Form, and the Class Action Settlement Agreement, visit www.GaiaVPPASettlement.com, contact the Settlement Administrator:
Mail: Gaia VPPA Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103
Email: info@GaiaVPPASettlement.com
Toll-Free: 1-844-279-5979

Unsubscribe

Exhibit C

NOTICE OF PROPOSED CLASS ACTION SETTLEMENT

Guida v. Gaia, Inc., Case No. 1:22-cv-02350-GPG-MEH
United States District Court for the District of Colorado

A court authorized this notice. You are not being sued. This is not a solicitation from a lawyer.

You May Be Entitled to a Payment from a Class Action Settlement. The settlement only affects people in the United States who watched a video on the Gaia or Yoga International websites (gaia.com and yogainternational.com) using a web browser from September 12, 2020, to July 19, 2024, and who had a Facebook account during that period. If you did not watch a video on the Gaia or Yoga International websites using a web browser during that period, did not have a Facebook account during that period, or only accessed Gaia or Yoga International using Gaia's or Yoga International's app, this settlement does not apply to you.

Claims Forms Must be Submitted no Later Than December 2, 2024.

- A settlement has been reached in a class action lawsuit alleging that Defendant Gaia, Inc. ("Gaia") disclosed personally identifiable information to Facebook via the Facebook Tracking Pixel that identifies an account holder as having requested or obtained specific video materials in violation of the Video Privacy Protection Act (the "VPPA"). Gaia denies that it violated any law and the court has not determined who is right. However, the parties have agreed to the settlement to avoid the uncertainties and expenses associated with continuing to litigate the case.
- The Settlement Class includes all individuals residing in the United States who, from September 12, 2020, to and through July 19, 2024, subscribed or otherwise signed up for access to Gaia's services, and requested or obtained any prerecorded (including on-demand replay) videos available on Gaia's Websites (gaia.com and yogainternational.com) using a web browser while they had a Facebook account.
- Individuals included in the Settlement will be eligible to receive a cash payment *pro rata* (meaning equal) portion of the **$2,000,000.00 Settlement Fund**, after deducting Settlement Administration Expenses; any taxes due on earnings on the Settlement Fund, and any expenses related to the payment of such taxes; any Fee Award awarded by the Court; any Service Award awarded by the Court; and any other Court-approved deductions.
- Read this notice carefully. Your legal rights are affected whether you act, or do not act.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
SUBMIT A CLAIM FORM BY DECEMBER 2, 2024	This is the only way to receive a cash payment from the Settlement. Visit www.GaiaVPPASettlement.com to submit a Claim Form online or download a Claim Form to complete and return by mail.
EXCLUDE YOURSELF BY OCTOBER 24, 2024	You will receive no benefits, but you will retain any rights you currently have to sue Gaia regarding the claims in this case.

OBJECT BY OCTOBER 24, 2024	Write to the Court explaining why you don't like the Settlement.
GO TO THE HEARING ON DECEMBER 9, 2024	Ask to speak in Court about your opinion of the Settlement.
DO NOTHING	You won't get a share of the Settlement benefits and will give up your rights to sue Gaia regarding the claims in this case.

Your rights and options—**and the deadlines to exercise them**—are explained in this Notice.

BASIC INFORMATION

1. Why was this Notice issued?

A Court authorized this notice because you have a right to know about a proposed Settlement of this class action lawsuit and about all your options, before the Court decides whether to give final approval to the Settlement. This Notice explains the lawsuit, the Settlement, and your legal rights.

The Honorable Gordon P. Gallagher of the U.S. District Court for the District of Colorado is overseeing this case. The case is called ***Guida v. Gaia, Inc.*, Case No. 1:22-cv-02350-GPG-MEH**. The individual who sued is called the Plaintiff. The entity being sued, Gaia, is called the Defendant.

2. What is a class action?

In a class action, one or more people called "class representatives" (in this case, Plaintiff Christopher Guida) sue on behalf of a group or a "class" of people who have similar claims. In a class action, the court resolves the issues for all class members, except for those who exclude themselves from the class.

3. What is this lawsuit about?

This lawsuit alleges that Gaia violated the Video Privacy Protection Act, 18 U.S.C. § 2710, *et seq.* ("VPPA") by disclosing its subscribers' personally identifiable information ("PII") to Facebook via the Facebook Tracking Pixel that identifies an account holder as having requested or obtained specific video materials. The VPPA defines PII to include information which identifies a person as having requested or obtained specific video materials or services from a video tape service provider. Gaia denies that it violated any law. The Court has not determined who is right. Rather, Plaintiff and Gaia have agreed to settle the lawsuit to avoid the uncertainties and expenses associated with ongoing litigation.

4. Why is there a Settlement?

The Court has not decided whether the Plaintiff or Gaia should win this case. Instead, both sides agreed to a Settlement. That way, they avoid the uncertainties and expenses associated with ongoing litigation, and Settlement Class Members will get compensation.

WHO'S INCLUDED IN THE SETTLEMENT?

5. How do I know if I am in the Settlement Class?

The **Settlement Class** is defined as:

All individuals residing in the United States who, from September 12, 2020, to and through July 19, 2024, subscribed or otherwise signed up for access to Gaia's services, and requested or obtained any prerecorded (including on-demand replay) videos available on Gaia's Websites (gaia.com and yogainternational.com) using a web browser while they had a Facebook account.

Excluded from the Settlement Class are (1) any judge presiding over this Action and members of their families; (2) Defendant, its 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, attorneys, and employees; (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.

THE SETTLEMENT BENEFITS

6. What does the Settlement provide?

***Monetary Relief*:** If approved by the Court, Gaia will create a Settlement Fund of **$2,000,000** for the benefit of the Settlement Class. The Settlement Fund will be distributed to Settlement Class Members who file a timely and complete claim on a *pro rata* basis (meaning equal share), after deducting Settlement Administration Expenses; any taxes due on earnings on the Settlement Fund, and any expenses related to the payment of such taxes; any Fee Award awarded by the Court; any Service Award awarded by the Court; and any other Court-approved deductions.

***Prospective Relief*:** The Settlement also requires Gaia to suspend operation of the Facebook Tracking Pixel on any pages on Gaia's Websites that both include video content and have a URL that identifies the video content viewed, unless and until the VPPA were to be: (a) amended to expressly permit (and not prohibit) the Released Claims, (b) repealed, or (c) invalidated by a judicial decision on the use of website pixel technology by the United States Supreme Court or the Tenth Circuit Court of Appeals.

A detailed description of the settlement benefits can be found in the Class Action Settlement Agreement available at www.GaiaVPPASettlement.com.

7. How much will my payment be?

After deducting from the Settlement Fund any Settlement Administration Expenses; any taxes due on earnings on the Settlement Fund, and any expenses related to the payment of such taxes; any Fee Award awarded by the Court; any Service Award awarded by the Court; and any other Court-approved deductions, the Net Settlement Fund will be distributed to Settlement Class Members as a cash payment on a *pro rata* basis. This means each Settlement Class Member who submits a valid claim will be paid an equal share from the Net Settlement Fund. The amount of the payments to individual Settlement Class Members will depend on the number of valid claims that are filed. Because the final

payment amount cannot be calculated before all claims are received and verified, it will not be possible to provide an accurate estimate of the payment amount before the deadline to file claims.

8. When will I get my payment?

The Court will hold a hearing to consider the fairness of the settlement on December 9, 2024. If the Court approves the Settlement, eligible Settlement Class Members whose claims were approved by the Settlement Administrator will receive payment within 90 days after the Effective Date (*i.e.*, after the Settlement has been finally approved and any appeals are resolved or the time to file an appeal has expired). In submitting their claims, Settlement Class Members can choose whether to receive their payment via one of several digital payment options or by paper check.

Funds remaining after checks have expired shall be redistributed on a *pro rata* basis (after first deducting any necessary settlement administration expenses from such uncashed check funds) to all Settlement Class Members who cashed checks or received digital payments during the initial distribution, as long as each Settlement Class Member would receive at least $5.00 in any such secondary distribution and if otherwise feasible.

HOW TO GET BENEFITS

9. How do I get a payment?

If you are a Settlement Class Member and you want to receive a payment, **you must complete and submit a Claim Form**. Visit www.GaiaVPPASettlement.com to submit your claim online or to download a Claim Form to complete and submit by mail. Your Claim Form must be submitted online by **December 2, 2024,** or mailed with a postmark date no later than **December 2, 2024**.

REMAINING IN THE SETTLEMENT

10. What am I giving up if I stay in the Settlement Class?

If the Settlement becomes final, you will give up (or "release") your rights to sue Gaia and certain of its affiliates ("Released Parties") regarding the Released Claims, which are described and defined in Paragraphs 1.26 and 1.27 of the Class Action Settlement Agreement. Unless you exclude yourself (*see* Question 14), you will release the Released Claims, regardless of whether you submit a Claim Form or not. You may access the Class Action Settlement Agreement through the Important Documents link on the Settlement Website www.GaiaVPPASettlement.com.

The Class Action Settlement Agreement describes the Released Claims with specific descriptions, so please read it carefully. If you have any questions you may speak to the lawyers representing the Settlement Class listed in Question 12 for free or you may, of course, speak to your own lawyer at your own expense.

11. What happens if I do nothing at all?

If you do nothing, you will not receive any monetary benefit (cash payment) from this Settlement. Further, if you do not exclude yourself, you will be unable to start a lawsuit or be part of any other

lawsuit brought against Gaia regarding the Released Claims.

THE LAWYERS REPRESENTING YOU

12. Do I have a lawyer in the case?

The Court has appointed lawyers Shawn M. Kennedy of **Herrera Kennedy LLP**, Christopher J. Cormier of **Burns Charest LLP**, and Rachel Geman of **Lieff Cabraser Heimann & Bernstein LLP**, to represent the Settlement Class. These lawyers are called **Class Counsel**. You will not be charged for these lawyers. If you want to be represented by your own lawyer in this case, you may hire one at your expense.

13. How will the lawyers be paid?

Class Counsel's attorneys' fees and costs will be paid from the Settlement Fund in an amount determined and awarded by the Court ("Fee Award"). Class Counsel will ask for no more than one-third of the $2 million Settlement Fund, but the Court may award less than this amount.

Class Counsel may also seek a Service Award of up to $2,000.00 for the Class Representative for his service in helping to bring and settle the case. The Service Award will be paid out of the Settlement Fund, but the Court may award less than this amount.

EXCLUDING YOURSELF FROM THE SETTLEMENT

14. How do I get out of the Settlement?

To exclude yourself from the Class, you must mail a letter to the Settlement Administrator stating that you want to be excluded. Your letter must include:

a. The name and number of this case, *Guida v. Gaia, Inc.,* Case No. 1:22-cv-02350-GPG-MEH;

b. Your full name and mailing address;

c. A statement that you wish to be excluded; and

d. Your exclusion must be personally signed.

You must mail your exclusion letter, so it is postmarked or received no later than October 24, 2024, to:

Gaia VPPA Settlement
Attn: Exclusion Requests
P.O. Box 58220
Philadelphia, PA 19102

A request to be excluded that does not include all of this information, or that is sent to an address other than that designated in the Notice, or that is not postmarked within the time specified, shall be invalid, and the Person(s) serving such a request shall be a member(s) of the Settlement Class and shall be bound as a Settlement Class Member by this Agreement, if approved. Any member of the Settlement Class who validly elects to be excluded from this Agreement shall not: (i) be bound by any orders or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by

virtue of this Agreement; or (iv) be entitled to object to any aspect of this Agreement. The request for exclusion must be personally signed by the Person requesting exclusion. **So-called "mass" or "class" opt-outs shall not be allowed.**

15. If I don't exclude myself, can I sue the Defendant for the same thing later?

No. Unless you exclude yourself, you give up any right to sue Gaia for the Released Claims being resolved by this Settlement.

16. If I exclude myself, can I get anything from this Settlement?

No. If you exclude yourself, you may not submit a Claim Form to receive a monetary benefit (cash payment).

OBJECTING TO THE SETTLEMENT

17. How do I object to the Settlement?

If you are a Settlement Class Member, you may ask the Court to deny approval of the Settlement by filing an objection. You may object to any aspect of the Settlement, Class Counsel's request for attorneys' fees and expenses, or the request for a Service Award. You can give reasons why you think the Court should not give its approval. The Court will consider your views.

If you choose to make an objection, you must mail or file with the Court a letter or brief stating that you object to the Settlement. Your letter or brief must include:

1. The name and number of this case, *Guida v. Gaia, Inc.,* Case No. 1:22-cv-02350-GPG-MEH;
2. Your full name and address;
3. An explanation of the basis upon which you claim to be a Settlement Class Member, including information sufficient to identify your current Facebook page or a screenshot showing that you were a Facebook member during the Class Period;
4. All grounds for your objection, including all citations to legal authority and evidence supporting your objection;
5. The name and contact information of any and all attorneys representing, advising, or in any way assisting you in connection with the preparation or submission of the objection or who may profit from your pursuit of the objection;
6. A statement indicating whether you intend to appear at the Final Approval Hearing (either personally or through counsel who files an appearance with the Court in accordance with the Local Rules); and
7. Your handwritten or electronically imaged written signature.

You must mail or deliver your written objection, postmarked no later than **October 24, 2024**, to:

Clerk of the Court

United States District Court for the District of Colorado
Wayne Aspinall Federal Building
400 Rood Avenue
Grand Junction, CO 81501

You must also mail or otherwise deliver a copy of your written objection to Class Counsel and Defendant's counsel at the following addresses:

Class Counsel	**Class Counsel**
Shawn M. Kennedy **Herrera Kennedy LLP** 5900 S. Lake Forest Dr., Suite 300 McKinney, TX 75070	Christopher J. Cormier **Burns Charest LLP** 4725 Wisconsin Avenue, NW, Suite 200, Washington, DC 20016
Class Counsel	**Defendant's Counsel**
Rachel J. Geman **Lieff Cabraser Heimann & Bernstein LLP** 250 Hudson Street, 8th Floor New York, NY 10013	Thomas J. Krysa **Foley & Lardner LLP** 1400 16th Street, Ste. 200 Denver, Colorado 80202

No "mass" or "class" objections will be allowed.

18. What's the difference between objecting and excluding myself from the Settlement?

Objecting simply means telling the Court that you do not like something about the Settlement. You can object only if you stay in the Settlement Class. Excluding yourself from the Settlement Class is telling the Court that you do not want to be part of the Settlement Class. If you exclude yourself, you have no right to object or file a Claim Form because the case no longer affects you.

THE COURT'S FINAL APPROVAL HEARING

19. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Approval Hearing at 1:00 p.m. MT on December 9, 2024, in Courtroom 323 at the Wayne Aspinall Federal Building, 400 Rood Avenue, Grand Junction, CO 81501. The purpose of the hearing will be for the Court to determine whether to approve the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class; to consider the Class Counsel's request for attorneys' fees and expenses; and to consider the request for a Service Award to the Class Representative. At that hearing, the Court will be available to hear any objections and arguments concerning the fairness of the Settlement.

The hearing may be postponed to a different date or time without notice, so it is a good idea to check www.GaiaVPPASettlement.com. If, however, you timely objected to the Settlement and advised the Court that you intend to appear and speak at the Final Approval Hearing, you will receive notice of any change in the date of such Final Approval Hearing.

20. Do I have to attend to the hearing?

No. Class Counsel will answer any questions the Court may have. But you are welcome to come at your own expense. If you send an objection or comment, you do not have to attend the hearing to talk about it. As long as you filed and mailed your written objection on time, the Court will consider it. You may also retain your own lawyer (at your own expense) to attend, but it's not required.

21. May I speak at the hearing?

Yes. You may ask the Court for permission to speak at the Final Approval Hearing. To do so, you must include in your letter or brief objecting to the Settlement a statement saying that you or your lawyer intends to appear at the Final Approval Hearing.

GETTING MORE INFORMATION

22. Where do I get more information?

For more information, including the full Notice, Claim Form, and the Class Action Settlement Agreement, visit www.GaiaVPPASettlement.com or contact the Settlement Administrator:
Mail: Gaia VPPA Settlement Administrator, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103
Email: info@GaiaVPPASettlement.com
Toll-Free: 1-844-279-5979

PLEASE DO NOT TELEPHONE THE COURT OR THE COURT'S CLERK OFFICE REGARDING THIS NOTICE.

Exhibit D

Your claim must be submitted online or postmarked by: DECEMBER 2, 2024

Guida v. Gaia, Inc.
Case No. 1:22-cv-02350-GPG-MEH
United States District Court for the District of Colorado
GAIA VPPA SETTLEMENT CLAIM FORM

GAIA-CLAIM

GENERAL INSTRUCTIONS

You are eligible to submit a Claim Form if you are a Settlement Class Member.

The **Settlement Class** includes all individuals residing in the United States who, from September 12, 2020, to July 19, 2024, and who had a Facebook account during that period. If you did not watch a video on the Gaia or Yoga International websites using a web browser during that period, did not have a Facebook account during that period, or only accessed Gaia or Yoga International using Gaia's or Yoga International's app, this settlement does not apply to you.

Excluded from the Settlement Class are (1) any judge presiding over this Action and members of their families; (2) Defendant, its 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, attorneys, and employees; (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 CLASS MEMBER BENEFITS

If approved by the Court, Gaia will create a Settlement Fund of **$2,000,000** for the benefit of the Settlement Class. The Settlement Fund will be distributed to Settlement Class Members who file a timely and complete claim on a *pro rata* basis (meaning equal share), after deducting Settlement Administration Expenses; any taxes due on earnings on the Settlement Fund, and any expenses related to the payment of such taxes; any Fee Award awarded by the Court; any Service Award awarded by the Court; and any other Court-approved deductions.

SUBMITTING YOUR CLAIM FORM

To submit a Claim for payment, you may submit a Claim Form:

(1) **Online**: visit www.GaiaVPPASettlement.com to submit a Claim Form online no later than **December 2, 2024**; ***OR***

(2) **By mail**: print, complete, and submit this Claim Form by mail so it is postmarked no later than **December 2, 2024,** and sent to Gaia VPPA Settlement Administrator, Attn: Claim Submissions, 1650 Arch Street, Suite 2210, Philadelphia, PA 19103.

Your claim must be submitted online or postmarked by: DECEMBER 2, 2024

Guida v. Gaia, Inc.
Case No. 1:22-cv-02350-GPG-MEH
United States District Court for the District of Colorado
GAIA VPPA SETTLEMENT CLAIM FORM

GAIA-CLAIM

I. CLAIMANT CONTACT INFORMATION

Provide your contact information below. It is your responsibility to notify the Settlement Admininstrator of any changes to your contact information after the submission of your Claim Form.

First Name **Last Name**

Street Address

City **State** **Zip Code**

Email Address **Phone Number** **Notice ID Number**

II. PAYMENT SELECTION

Please select **one** of the following payment options:

☐ **Prepaid Mastercard**
Enter the email address you want the Prepaid Mastercard sent to:

☐ **Venmo**
Enter the mobile number associated with your Venmo account:

☐ **PayPal**
Enter the email address associated with your PayPal account:

☐ **Zelle**
Enter the email address or phone number associated with your Zelle account:

☐ **Check (**Payment will be mailed to the address provided in Section I above)

III. CERTIFICATION & SIGNATURE

By signing below and submitting this Claim Form, I hereby certify that:

(1) Between September 12, 2020, to July 19, 2024:

(a) I watched a video on the Gaia or Yoga International websites using a web browser during this period; and

(b) I had a Facebook account during this period.

Your claim must be submitted online or postmarked by: DECEMBER 2, 2024

Guida v. Gaia, Inc.
Case No. 1:22-cv-02350-GPG-MEH
United States District Court for the District of Colorado
GAIA VPPA SETTLEMENT CLAIM FORM

GAIA-CLAIM

(2) The information I provided on this Claim Form is true and correct to the best of my knowledge, and this is the only claim I will submit in connection with this Settlement. I understand the Settlement Administrator may contact me to request further verification of the information provided in this Claim Form.

Signature: _____ **Printed Name:** _____ **Date:** _____

CERTIFICATE OF SERVICE

I, Shawn M. Kennedy, hereby certify that a copy of this Plaintiff's Appendix of Evidence In Support of Plaintiff's (1) Unopposed Motion for Final Approval of Class Action Settlement; and (2) Motion for Award of Attorneys' Fees, Litigation Costs & Service Award was sent to counsel of record via the federal court's e-filing system.

Dated: October 2, 2024

/s/ Shawn Kennedy

Shawn M. Kennedy
HERRERA KENNEDY LLP
5900 S. Lake Forest Dr., Suite 300
McKinney, TX 75070
Telephone: (949) 936-0900

Email: skennedy@herrerakennedy.com

Exhibit 2C

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

CHRISTOPHER GUIDA, *on behalf of himself and all others similarly situated*, Plaintiffs, v. GAIA, INC., Defendant.	Case No. 1:22-cv-02350-GPG-MEH Hon. Gordon P. Gallagher

FINAL APPROVAL ORDER AND JUDGMENT

This matter is before the Court on Plaintiff Christopher Guida's ("Plaintiff") unopposed Motions for (1) Final Approval of Class Action Settlement (the "Final Approval Motion") and (2) Award of Attorneys' Fees, Litigation Costs, and Service Award (the "Fee Motion") (collectively, the "Motions"). The Motions reference and incorporate a Class Action Settlement Agreement (the "Settlement") that sets forth the terms and conditions for the settlement of claims, on a classwide basis, against Defendant Gaia, Inc. ("Gaia" and, along with Plaintiff, the "Parties").

Having carefully considered the Motions and the Settlement, and all the files, records, and proceedings herein, including arguments set forth at the Final Approval Hearing on the Settlement, and finding good cause,

NOW, THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. This Final Approval Order and Judgment ("Order and Judgment") incorporates by reference the definitions in the Settlement, and unless otherwise

indicated, capitalized terms herein shall have the same meaning as set forth in the Settlement.

2. The Court has jurisdiction over the subject matter of this action ("Action") and personal jurisdiction over the Parties and the members of the Settlement Class described below.

Certification of the Settlement Class

3. Under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure, and solely for purposes of judgment on the proposed Settlement, the Court certifies the following Settlement Class:

> All individuals residing in the United States who, during the Class Period [September 12, 2020, to and through July 19, 2024], subscribed or otherwise signed up for access to Gaia's services, and requested or obtained any prerecorded (including on-demand replay) videos available on Gaia's Websites [gaia.com and yogainternational.com] while they had a Facebook account. Excluded from the Settlement Class are (1) any judge presiding over this Action and members of their families; (2) Defendant, its 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, attorneys, and employees; (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.

The Settlement Class, which will be bound by this Order and Judgment, shall include all members of the Settlement Class who did not submit a timely and valid request for exclusion.

4. The Court finds that the requirements of Federal Rules of Civil Procedure 23(a) and (b)(3) are satisfied for the following reasons: (1) the Settlement Class is so numerous that joinder of all members is impracticable; (2) there are questions of law and fact common to members of the Settlement Class that predominate over questions

affecting only individual members (*e.g.*, whether Gaia unlawfully disclosed to third parties Plaintiff's and Settlement Class Members' personally identifiable information without consent in a manner that violated the Video Privacy Protection Act, 18 U.S.C. § 2710 ("VPPA"), and whether Plaintiff and the Settlement Class Members are entitled to uniform statutory damages under the VPPA); (3) Plaintiff's claims are typical of the claims of the Settlement Class; (4) Plaintiff and his counsel have and will continue to fairly and adequately protect the interests of the Settlement Class; and (5) a class action settlement is a superior method of fairly and efficiently adjudicating this Action.

5. Pursuant to Federal Rule of Civil Procedure 23, Plaintiff Christopher Guida is appointed Class Representative and the following are hereby appointed as Class Counsel: Rachel Geman of Lieff Cabraser Heimann & Bernstein, LLP; Christopher Cormier of Burns Charest LLP; and Shawn Kennedy of Herrera Kennedy LLP.

Final Approval of the Settlement Agreement and Notice Program

6. Pursuant to Federal Rule of Civil Procedure 23(e)(2), the Court approves the Settlement as fair, reasonable, and adequate and in the best interests of the Settlement Class Members. The Court has specifically considered the factors relevant to class settlement approval under Rule 23(e), as well as other factors relevant to class settlement approval. *See, e.g., O'Dowd v. Anthem, Inc.*, 2019 WL 4279123, at *12 (D. Colo. Sept. 9, 2019).

7. Having considered the terms of the Settlement and the record before it, including that there were no objections to the Settlement and no requests for exclusion from the Settlement Class, the Court finds that the Settlement Class Representative and Class Counsel have adequately represented the interests of Settlement Class Members; the settlement consideration provided under the Settlement constitutes fair value given in exchange for the release of the Released Claims against the Released

Parties; the Settlement is the result of arm's-length negotiations by experienced, well-qualified counsel that included a mediation conducted by respected mediator Honorable Suzanne H. Segal (Ret.); the Settlement provides meaningful monetary and non-monetary benefits to Settlement Class Members and such benefits are not disproportionate to the attorneys' fees and expenses sought by Class Counsel; the benefits provided treat Settlement Class Members equitably; and the Settlement is reasonable and appropriate under the circumstances of this Action, including the risks, complexity, expense and duration of the Action, and the reaction of the Settlement Class. The Court further finds that these facts, in addition to the Court's observations throughout the litigation, demonstrate that there was no collusion present in the reaching of the Settlement, implicit or otherwise.

8. The Court finds that the notice program set forth in the Settlement and effectuated pursuant to the Court's July 19, 2024 Preliminary Approval Order (Dkt. 76) and the Court's August 28, 2024 order granting Gaia's unopposed motion to amend the schedule for approving the Settlement (Dkt. 84), satisfies the requirements of Federal Rule of Civil Procedure 23(c) and due process and constitutes the best notice practicable under the circumstances and shall constitute due and sufficient notice to the Settlement Class of (i) the pendency of the Action and of the Settlement, including the terms thereof; (ii) Settlement Class Members' rights to object to or exclude themselves from the Settlement, including the procedure for objecting to or opting out of the Settlement, and to appear at the Final Approval Hearing; (iii) contact information for Class Counsel, the Settlement Administrator, the Settlement Website, and a toll-free number to ask questions about the Settlement; (iv) important dates in the settlement approval process, including the date of the Final Approval Hearing; (v) Class Counsel's request for an award of reasonable attorneys' fees and expenses; and (vi) the Class

Representative's application for a service award.

9. The Court hereby reaffirms its appointment of Angeion Group, LLC to perform the functions and duties of the Settlement Administrator set forth in the Settlement—including providing notice to the Settlement Class, processing Claim Forms, and administering distributions from the Settlement Fund—and to provide such other administration services as are reasonably necessary to facilitate the completion of the Settlement. Accordingly, Class Counsel and the Settlement Administrator are directed to administer the Settlement in accordance with its terms and provisions, and Class Counsel is authorized to reimburse the Settlement Administrator from the Settlement Fund for the reasonable expenses consistent with those terms and provisions.

10. No members of the Settlement Class have requested exclusion from the Settlement Class, and no members of the Settlement Class objected to the Settlement.

11. The Court hereby approves the Settlement in all respects and orders that the Settlement Agreement shall be consummated and implemented in accordance with its terms and conditions.

Attorneys' Fees, Litigation Costs and Service Award

12. The Court has also considered Plaintiff's Fee Motion, as well as the supporting memorandum of law and declarations, and adjudges that the payment of attorneys' fees and costs in the aggregate amount of $666,666.66 is reasonable. Such payment shall be made pursuant to and in the manner provided by the terms of the Settlement.

13. The Court further finds that the requested service award to the Class Representative is fair and reasonable. As such, the Court approves a service award to the Class Representative in the amount of $2,000, to be paid from the Settlement Fund

in the manner and at the times set forth in the Settlement.

Dismissal and Final Judgment

14. The Action is hereby dismissed with prejudice, with each party to bear its own costs.

15. The Parties are hereby directed to implement and consummate the Settlement according to its terms and provisions. The Settlement Agreement is hereby incorporated into this Final Judgment and shall have the full force of an Order of the Court.

16. Upon the Effective Date and by operation of this Order and Judgment, the Releasing Parties (including Plaintiff and those Settlement Class Members who did not timely exclude themselves from the Settlement Class and whether or not such members submitted claims), and each of them, shall be deemed to have, and by operation of the Order and Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against the Released Parties, and each of them. Further, upon the Effective Date, and to the fullest extent permitted by law, each Settlement Class Member shall, either directly, indirectly, representatively, or in any capacity, be permanently barred and enjoined from filing, commencing, prosecuting, intervening in, or participating (as a class member or otherwise) in any lawsuit, action, or other proceeding in any jurisdiction (other than participation in the Settlement) against the Released Parties based on the Released Claims.

17. Upon the Effective Date and by operation of this Order and Judgment, the Settlement will be binding on, and will have *res judicata* and preclusive effect in all pending and future lawsuits or other proceedings maintained by or on behalf of Plaintiff and Releasing Parties.

18. The Parties, without further approval from the Court, are hereby permitted

to agree and adopt such amendments, modifications, and expansions of the Settlement and its implementing documents (including all exhibits to the Settlement) so long as they are consistent in all material respects with this Order and Judgment and do not limit the rights of Settlement Class Members.

19. The Court shall retain exclusive, continuing jurisdiction to resolve any disputes or challenges that may arise as to compliance with the Settlement, or any challenge to the performance, validity, interpretation, administration, enforcement, or enforceability of the notice program, this Order and Judgment, or the Settlement.

20. In the event that this Order and Judgment is reversed upon appeal or otherwise does not become final, (i) this Order and Judgment shall be rendered null and void and shall be vacated *nunc pro tunc*; (ii) as specified in the Settlement, the Settlement and other related orders shall be rendered null and void and shall be vacated *nunc pro tunc*; (iii) the Settlement Fund shall be refunded to Gaia, less reasonable settlement administrative expenses actually incurred and paid; and (iv) the Action shall proceed as if no settlement had occurred and as otherwise provided for in the Settlement.

21. Neither the Settlement, the negotiation thereof, nor any proceeding or document executed pursuant to or in furtherance thereof (i) is or shall be construed as an admission of, or evidence of, the truth of any allegation or of any liability or the validity (or lack thereof) of any claim or defense, in whole or in part, on the part of any party in any respect, or (ii) is or shall be admissible in any action or proceeding for any reason, other than an action or proceeding to enforce the terms of the Settlement or this Order and Judgment.

22. This Court hereby directs entry of this Order and Judgment pursuant to Federal Rule of Civil Procedure 58 based upon the Court's finding that there is no just

reason for delay of enforcement or appeal of this Final Judgment. The Clerk of the Court shall close the file in this matter.

IT IS SO ORDERED.

DATED: December 10, 2024

Honorable Gordon P. Gallagher
United States District Judge

Exhibit 3A

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SAN MIGUEL HOSPITAL CORPORATION d/b/a ALTA VISTA REGIONAL HOSPITAL, on behalf of itself and all others similarly situated, Plaintiff v. JOHNSON & JOHNSON, *et al.*, Defendants	Case No. 1:23-cv-00903-KWR-JFR The Hon. Judge Kea Riggs

MEMORANDUM OF LAW IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR FINAL CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, FINAL APPROVAL OF SETTLEMENTS, APPROVAL OF PLAN OF ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

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INTRODUCTION

Class Plaintiffs,[1] on behalf of themselves and the preliminarily certified settlement classes of similarly situated entities described below (collectively, the "Settlement Classes"), and the Distributor Defendants[2], Janssen Defendants[3], Teva Defendants[4], and Allergan Defendants[5] (collectively, "Settling Defendants"; together with the Plaintiff, the "Settling Parties") have reached four separate Settlements totaling $651 million to resolve claims against the Settling Defendants for the benefit of the preliminarily certified Settlement Classes. The Settlements[6]

[1] As ordered by the Court, Class Plaintiffs for the Settlements consist of Plaintiff San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital and the plaintiff acute care hospitals in the following related state court cases: *Florida Health Sciences Center, Inc., et al. v. Richard Sackler, et al.*, Case No. 19-018882 (Cir. Ct. Broward Cnty., Fla.); *The DCH Health Care Authority, et al. v. Purdue Pharma, L.P., et al.*, Case No. CV-19-07 (Cir. Ct. Conecuh Cnty., Ala.); *Fort Payne Hospital Corporation, et al. v. McKesson Corporation, et al.*, Case No. 21-cv-2021-900016.00 (Cir. Ct. Conecuh Cnty., Ala.); and *Lester E. Cox Medical Centers d/b/a Cox Medical Centers, et al. v. Amneal Pharmaceuticals, LLC, et al.*, No. 6:22-cv-3192 (W.D. Mo.). Orders, ECF Nos. 277, 278. 279, 280. A list of Class Plaintiffs is attached as Exhibit A.

[2] Distributor Defendants means Cencora, Inc. ("Cencora," formerly AmerisourceBergen Corporation), Cardinal Health, Inc., ("Cardinal"), and McKesson Corporation ("McKesson"), including all Released Entities specified in the Distributor Class Action Settlement Agreement with Acute Care Hospitals ("Distributors Settlement Agreement") (ECF No. 276-1).

[3] Janssen Defendants means Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., including all Released Entities specified in the Janssen Class Action Settlement Agreement with Acute Care Hospitals ("Janssen Settlement Agreement") (ECF No. 276-2).

[4] Teva Defendants means Teva Pharmaceuticals Industries, Ltd., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Actavis Pharma, Inc., Actavis LLC, Watson Laboratories, Inc. and Anda, Inc., including all Released Entities specified in the Teva Defendants Class Action Settlement Agreement with Acute Care Hospitals ("Teva Settlement Agreement") (ECF No. 276-3).

[5] Allergan Defendants means Allergan Finance, LLC (f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.); Allergan Sales, LLC; and Allergan USA, Inc., including all Released Entities specified in the Allergan Defendants' Class Action Settlement Agreement with Acute Care Hospitals ("Allergan Settlement Agreement") (ECF No. 276-4).

[6] All capitalized terms not otherwise defined herein shall have the meaning given to them in the Distributors' Settlement Agreement, the Janssen Settlement Agreement, the Teva Settlement Agreement, and the Allergan Settlement Agreement (collectively, "the Settlement Agreements" or "Settlements"). ECF Nos. 276-1, 276-2, 276-3, 276-4. All emphasis is added, and all citations are omitted, unless otherwise noted.

resulted from well-informed and arm's-length negotiations between highly experienced counsel possessing a thorough understanding of the strengths and weaknesses of the claims after years of extensive opioids-related litigation between acute care hospitals and the Settling Defendants. The Settling Parties reached their respective Settlements after comprehensive mediation processes conducted by a prominent national mediator, Fouad Kurdi, as well as, in the case of the Settling Distributors, Judge Sidney Schenkier.

The Court granted preliminary approval of the Settlements on October 30, 2024 and directed that notice of the Settlements be disseminated to the preliminarily certified Settlement Classes. The Court also preliminarily certified the respective Settlement Classes for settlement purposes only and appointed the undersigned as Interim Settlement Class Counsel. Class Plaintiffs now seek final certification of the Settlement Classes under each Settlement and Interim Settlement Class Counsel seek to be appointed as Settlement Class Counsel for each Settlement Class.

In its Orders, the Court held that the Settlements appeared fair, reasonable, and adequate, subject to further consideration at the Fairness Hearing. Orders, ECF Nos. 277, 278, 279, 280. The Court's assessment of the Settlements at preliminary approval was correct and should be extended to final approval. Interim Settlement Class Counsel have ensured that the Notice and Notice Package the Court ordered distributed in accordance with the Notice Plan were timely implemented by the Notice and Settlement Administrators, A.B. Data, Ltd. ("A.B. Data") and Cherry Bekaert Advisory, LLC ("Cherry Bekaert").[7]

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[7] *See* Declaration of Brian Devery of A.B. Data, Ltd. In Support of Class Plaintiffs' Motion for Final Approval of Settlement and Plan of Allocation ("Devery Decl.") *generally*, attached as Exhibit B-1 to Declaration of Warren T. Burns in Support of Class Plaintiffs' Motion for Final Class Certification, Appointment of Class Counsel, Final Approval of Settlement, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses ("Burns Decl.").

The Notice and Notice Package also set forth the Plan of Allocation that governs how Claims will be considered and how the net settlement proceeds will be allocated to Settlement Class Members who submit timely and valid claim forms to the Settlement Administrator ("Eligible Claimants"). The Plan of Allocation was prepared based on information provided by Plaintiffs' experts and in consultation with A.B. Data and Cherry Bekaert. The plan allocates funds between Eligible Claimants in two ways: (1) A Settlement Class Member may select a "Quick Pay" option under which the Settlement Class Member will receive a default amount of $5,000 total from all four Settlements,[8] or (2) A Settlement Class Member may elect to participate in the more detailed damages calculation using the Model set forth in the Plan of Allocation, which may result in an Allocated Amount greater (but not less) than the Settlement Class Member's Quick Pay Amount. Interim Settlement Class Counsel anticipate that all funds will be distributed to Settlement Class Members pursuant to the Plan of Allocation.

Interim Settlement Class Counsel have concluded that the Settlements and Plan of Allocation are fair, reasonable, and adequate, and in the best interest of each of the Settlement Classes. Burns Decl. at ¶ 26.[9] Fouad Kurdi, having mediated the Settlements, support them as being an excellent result for the Settlement Classes. *See* Kurdi Decl. at ¶ 8.[10] The Settlements and Plan of Allocation warrant the Court's final approval. Indeed, to date, no one has submitted an objection to any of the Settlements or the Plan of Allocation, and to date, no hospitals have opted out of any

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[8] If one or more Settlements is not approved, or if a Class Member is ineligible for one or more Settlements, then the Quick Pay Amount owed shall be reduced, proportionally, based upon a comparison of the Up-Front Settlement Amount contributed by the Settling Defendant(s) in the Settlement(s) at issue with the total Up-Front Settlement Amounts of the four Settlements.

[9] Declaration of Warren T. Burns in of Class Plaintiffs' Motion for Final Class Certification, Appointment of Class Counsel, Final Approval of Settlement, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses ("Burns Decl.") attached as Exhibit B.

[10] Declaration of Fouad Kurdi In Support of Class Plaintiffs' Motion for Final Approval of Settlements ("Kurdi Decl.") attached as Exhibit C.

of the Settlements. Accordingly, Class Plaintiffs respectfully request the Court grant final approval of the Settlements and the Plan of Allocation as fair, reasonable, and adequate.

The Settlements were reached only after the sustained effort of Plaintiffs' counsel—on a fully contingent basis with substantial risk and out-of-pocket expenses—including, but not limited to: surviving Defendants' motions to dismiss in multiple cases and *fora*; analyzing millions of pages of documents; taking and defending a great deal of depositions; briefing and arguing numerous discovery disputes; working closely with over a dozen experts; briefing and arguing issues on appeal; and vigorously preparing for trial in Alabama state court in July 2024. All this effort not only advanced the litigation, but it laid the foundation for Class Plaintiffs and the Settling Defendants to negotiate, and ultimately reach, the Settlements.

As compensation for their persistent and effective advocacy in the face of considerable opposition and risk, Interim Settlement Class Counsel respectfully request an award of the standard one-third fee of the $651 million total Settlement Amount plus interest earned on that Amount[11] (equating to a 1.58 multiplier to their collective lodestar).[12] Interim Settlement Class Counsel also request the Court award their incurred expenses and charges in the amount of $35,330,637.54 and order the amount of $72,569.85 to be paid to A.B. Data and $239,187.81 to be paid to Cherry Bekaert for costs incurred to implement the notice of pendency from the Settlement Funds. As shown below, these attorneys' fees and expenses requests are eminently justifiable under the facts and

[11] Together, the "Settlement Funds." The Settlement Funds include the Settlement Amount plus any interest that may accrue on the Settlement Amount from the date the Settlings Defendant(s) pay the Settlement Amount or any portion thereof. *See* Distributors Settlement Agreement (ECF No. 276-1) at § I(SS); Janssen Settlement Agreement (ECF No. 276-2) at § I(TT); Teva Settlement Agreement (ECF No. 276-3) at § I(SS); Allergan Settlement Agreement (ECF No. 276-4) at § I(WW).

[12] For the avoidance of doubt, Interim Settlement Class Counsel seeks one-third of the Settlement Funds in each Settlement Agreement individually, totaling to $217 million (plus interest) if all four Settlements become Final.

circumstances of this case, application of the *Johnson* factors, and the law and precedent in this District and the Tenth Circuit. *See Johnson v. Georgia Highway Express, Inc*., 488 F.2d 714 (5th Cir. 1974). For all the reasons set forth below and in the accompanying declarations, Interim Settlement Counsel respectfully submit that the requested attorneys' fees and expenses are fair and reasonable under the applicable legal standards and should be awarded by the Court.

FACTUAL BACKGROUND[13]

I. ACH OPIOIDS LITIGATION

On October 16, 2023, Plaintiff San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital ("San Miguel"), an acute care hospital in Las Vegas, New Mexico, filed this putative class action against the Distributors, Janssen, Teva, and Allergan Defendants, amongst others. ECF No. 1. Plaintiff alleged, *inter alia*, that Defendants participated in a conspiracy that resulted in an epidemic of opioid addiction throughout the United States. *See id.* ¶ 2. Plaintiff alleged that it and the putative class were injured as a result of Defendants' actions. *See id.* ¶ 22. Defendants have and continue to deny Plaintiff San Miguel's allegations and any associated liability.

Interim Settlement Class Counsel represent hundreds of acute care hospitals throughout the nation, including the Class Plaintiffs. Burns Decl. at ¶¶ 3-6. Since 2017, acute care hospitals represented by Interim Settlement Class Counsel have been litigating claims similar to those alleged in this suit against these Defendants in numerous state and federal courts, including in the federal MDL proceedings, *In re National Prescription Opiate Litigation*, Case No. 1:17-md-2804, MDL 2804, (N.D. Ohio). *Id.* Collectively, Class Plaintiffs will refer to their ongoing litigation

[13] The facts summarized throughout this memorandum are generally set forth, and sometimes in more detail, in the accompanying Declaration of Warren T. Burns ("Burns Decl.") attached as Exhibit B.

related to the opioid crisis in multiple *fora* against Defendants as the ACH Opioids Litigation (or "Litigation").

Since 2017, Plaintiffs in the ACH Opioids Litigation have vigorously pursued their claims. *Id.* at ¶ 7. Their efforts have included multiple rounds of dispositive briefing as well as interlocutory and other appeals. *Id.* at ¶ 27. Some Plaintiffs have produced millions of pages of documents, and terabytes of data related to their treatment of patients diagnosed with opioid use disorder or related conditions. *Id.* Plaintiffs in the ACH Opioids Litigation have likewise reviewed voluminous discovery produced by Defendants. *Id.* Certain Plaintiffs have provided depositions of corporate representatives and employee witnesses. *Id.* During the ongoing ACH Opioids Litigation, Plaintiffs have also engaged over a dozen experts to provide testimony on issues relating to alleged liability and damages. *Id.* Before reaching the Settlement Agreements, the Settling Parties were preparing vigorously for a July 2024 trial of certain Settlement Class Members' claims in Alabama state court. *Id.* at ¶ 28.

Since 2022, Interim Settlement Class Counsel have been engaged in negotiations with Settling Defendants. *Id.* at ¶ 9. These negotiations involved numerous in-person and remote presentations to elucidate Plaintiffs' claims and the Settling Defendants' defenses. *Id.* Interim Settlement Class Counsel have participated in a total of over a dozen in-person mediation sessions and additional remote negotiation sessions with the different groups of Settling Defendants. *Id.* The Settling Parties were assisted in their negotiations through the dogged efforts of a prominent national mediator, Fouad Kurdi, as well as, in the case of the Settling Distributors, Judge Sidney Schenkier. *Id.* Mr. Kurdi was instrumental in settling disputes involving other litigants involved in *In re National Prescription Opiate Litigation*, *id.*, while Judge Schenkier is a former federal magistrate judge and well-respected Chicago-based mediator. After reaching agreement on key

terms, the Settling Parties have spent months negotiating and documenting final Settlement Agreements. *Id.* at ¶ 9-10. The Settling Parties are now before this Court to seek final approval of their Settlement Agreements.

II. TERMS OF THE SETTLEMENTS

A. Distributors' Settlement Agreement

The Distributors' Settlement Agreement provides that Plaintiffs and the certified Settlement Class will settle and release their claims against the Distributor Defendants in exchange for a non-reversionary $390 million cash payment from the Distributor Defendants (the "Distributors' Settlement Amount"). *See generally* Distributors' Settlement Agreement (ECF No. 276-1). The Distributors' total Settlement Amount was deposited into an Escrow Account on November 27, 2024. *Id.* at ¶ 11.

B. Janssen Settlement Agreement

The Janssen Settlement Agreement provides that Plaintiffs and the certified Settlement Class will settle and release their claims against the Janssen Defendants in exchange for a non-reversionary $110 million cash payment from the Janssen Defendants (the "Janssen Settlement Amount"). *See generally* Janssen Settlement Agreement (ECF No. 276-2). The Janssen Settlement Amount was deposited into an Escrow Account on November 27, 2024. *Id.* at ¶ 12.

C. Teva Settlement Agreement

The Teva Settlement Agreement provides that Plaintiffs and the certified Settlement Class will settle and release their claims against the Teva Defendants in exchange for a non-reversionary $126 million cash payment from the Teva Defendants (the "Teva Settlement Amount") and distribution of certain amounts of Naloxone Hydrochloride Nasal Spray. *See generally* Teva Settlement Agreement (ECF No. 276-3). On November 29, 2024, $1 million of the Teva Settlement Amount was deposited into an Escrow Account. *Id.* at ¶ 13. The remaining $125 million

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will be deposited in accordance with the payment schedule set forth in Section IV(B) of the Teva Settlement Agreement. *Id.* The Teva Settlement Agreement also provides for the distribution of Naloxone Hydrochloride Nasal Spray, a medication designed to rapidly reverse opioid overdose, to Settlement Class Members valued at up to $49 million. *Id.*

D. Allergan Settlement Agreement

The Allergan Settlement Agreement provides that Plaintiffs and the certified Settlement Class will settle and release their claims against the Allergan Defendants in exchange for a non-reversionary $25 million cash payment from the Allergan Defendants (the "Allergan Settlement Amount"). *See generally* Allergan Settlement Agreement (ECF No. 276-4). On November 22, 2024, $1 million of the Allergan Settlement Amount was deposited into an Escrow Account. *Id.* at ¶ 14. The remaining $24 million will be deposited in accordance with the payment schedule set forth in Section IV(B) of the Allergan Settlement Agreement. *Id.*

E. General Terms

The Settlement Funds, which consist of the Settlement Amounts provided for in each Settlement, and all interest and accretions thereto, will be used to pay for notice and administrative costs,[14] reasonable fees and costs to the Escrow Agent, taxes and tax expenses, costs and expenses reasonably and actually incurred in soliciting claims and assisting with the filing and processing of such claims, and Plaintiffs' attorneys' fees and litigation expenses, as allowed by the Court.[15] The balance of the Settlement Funds (the "Net Settlement Funds") will be distributed pursuant to the Plan of Allocation to Settlement Class Members who submit timely and valid Claim Forms and/or Registration Forms to the Settlement Administrator.

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[14] Up to an amount specified in each Settlement Agreement. *See infra*, note 15.

[15] *See* Distributors Settlement Agreement (ECF No. 276-1) at § VII(B); Janssen Settlement Agreement (ECF No. 276-2) at § VII(B); Teva Settlement Agreement (ECF No. 276-3) at § VII(B) Allergan Settlement Agreement (ECF No. 276-4) at § VII(B).

Interim Settlement Counsel anticipate that all funds will be distributed to Settlement Class Members pursuant to the Plan of Allocation. Burns Decl. at ¶ 15. There is no right of reversion under the Settlements and under no circumstances will any portion of a Settlement Amount be returned to the respective Settling Defendant(s) once that Settlement becomes Final. *Id.*

III. PRELIMINARY APPROVAL AND CLASS NOTICE

Plaintiff San Miguel filed its motion for preliminary approval of the Settlements on October 25, 2024, which the Court granted on October 30, 2025. ECF Nos. 277, 278, 279, 280. In the orders granting preliminary approval, the Court also appointed A.B. Data and Cherry Bekaert as the Notice and Claims Administrators and approved the form and manner of notice to Settlement Class Members. *Id.* The Notice Package approved by the Court has been implemented by A.B. Data and Cherry Bekaert. Since entry of the preliminary approval order, A.B. Data has (i) mailed 5,732 copies of the Court-approved Notice Packet to potential Settlement Class Members (ii) emailed 1,224 copies (of which 1,201 were successfully delivered) of the Notice Packet to potential Settlement Class Members, and (iii) implemented the media plan to publish notice of the Settlement on certain websites, e-newsletters, and email blasts. Devery Decl. at ¶¶ 3-6. Moreover, Cherry Bekaert published a dedicated website, www.acutecarehospitalsettlement.com. *Id.* at ¶ 10. The settlement website provides information to Settlement Class Members about the Action and the Settlements and contains links to important case and settlement documents. *Id.* at ¶ 11. A.B. Data has also maintained a toll-free telephone number, with an interactive voice response system to provide potential Settlement Class Members with responses to frequently asked questions and important information regarding the litigation. *Id.* at ¶ 12. The banner ad notices also have resulted in more than 5,648,783 impressions served. *See id.* ¶¶ 7-9.

IV. CAFA NOTICE

Pursuant to 28 U.S.C. § 1715(b), "[n]ot later than 10 days after a proposed settlement of a class action is filed in court, each defendant that is participating in the proposed settlement shall serve upon the appropriate State official each State in which a class member resides and the appropriate Federal official, a notice of the proposed settlement . . . ." In its orders preliminarily approving the Settlements, the Court ordered the Settling Defendants to provide this notice by November 4, 2024. EFC Nos. 277, 278, 279, 280. Accordingly, the Settling Defendants have complied with the Court's orders and the notice requirements of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. Burns Decl. at ¶ 18.

V. RESPONSE OF THE SETTLEMENT CLASSES TO DATE

The deadline for Settlement Class Members to object to the Settlement is January 6, 2025, and the deadline for Settlement Class Members to file a claim is March 4, 2025. Interim Settlement Class Counsel will provide the Court with a final update on the response of the Settlement Classes in their February 3, 2025 filing, well before the March 4, 2025 final approval hearing. *Id.* at ¶ 22. To date, A.B. Data has received no Opt-Out Forms. Devery Decl. at ¶ 14.

VI. PROSECUTION OF THIS LITIGATION REQUIRED AN ENORMOUS AND RISKY INVESTMENT OF RESOURCES AND LABOR

As described above, for nearly eight years, Interim Settlement Class Counsel devoted an enormous amount of time, energy, and resources prosecuting the ACH Opioids Litigation on a completely contingent basis to a successful resolution with the Settling Defendants. Burns Decl. at ¶ 42. They did so knowing these cases would require years of discovery, extensive motion practice, substantial dispositive motion challenges, and difficult and lengthy trials on the merits—all with a substantial risk of no recovery. *Id.* As further detailed in Sections VI and VII, Interim Settlement Class Counsel and their co-counsel worked a collective 211,938 hours and fronted over $35,330,637 in expenses prosecuting the ACH Opioids Litigation. *Id.* at ¶¶ 44, 48.

Regarding the Settlements, Interim Settlement Class Counsel prepared for and attended multiple mediation sessions with mediators Fouad Kurdi and Judge Sidney Schenkier, successfully negotiated the Settlements, drafted the Settlement Agreements with Settling Defendants' counsel, sought and obtained preliminary approval of the Settlements, retained and oversaw the Settlement Administrator and notice program, and prepared the pending motion for final approval of the Settlements. *Id.* at ¶¶ 9, 43. Interim Settlement Class Counsel have also been communicating with Settlement Class Members about the Settlements since the notice was distributed. *Id.* at ¶ 43. And Interim Settlement Class Counsel will continue to ensure proper distribution of the settlement proceeds and address any issues that arise after final approval of the Settlements. *Id.*

ARGUMENT

I. THE COURT SHOULD CERTIFY THE SETTLEMENT CLASSES FOR SETTLEMENT PURPOSES ONLY.

In its orders preliminarily approving the Settlements, the Court preliminarily found that the proposed Settlement Classes satisfy all relevant requirements under Federal Rules of Civil Procedure 23(a) and 23(b)(3), for certification for settlement purposes only. *See* ECF Nos. 277, 278, 279, 280. Plaintiffs now seek final certification of the Settlement Classes.

In considering a proposed class action settlement, federal courts determine whether certification of a settlement class would be appropriate under Rule 23. *See, e.g., Tennille v. Western Union Co.*, 785 F.3d 422, 430 (10th Cir. 2015). Rule 23 has four factors for class certification: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. *See* Fed. R. Civ. P. 23(a). Rule 23(b) also examines whether common questions predominate over individual issues, and whether a class action is superior to other methods of litigation. *See* Fed. R. Civ. P. 23(b).

Federal courts have "considerable discretion" in making class certification decisions. *DG v. Devaughn*, 594 F.3d 1188, 1194 (10th Cir. 2010). The Tenth Circuit defers to a trial court's certification ruling where "it applies the proper Rule 23 standard and its decision falls within the bounds of rationally available choices given the facts and law involved in the matter at hand." *Id.* (citation and internal quotations omitted).

Each Settlement Agreement provides that the parties to that Agreement stipulate to: (1) the certification of the Settlement Class for settlement purposes; (2) the appointment of Plaintiff and other identified acute care hospitals as the Settlement Class Representatives; and (3) the appointment of John W. ("Don") Barrett, Warren Tavares Burns, Steven A. Martino, Robert A. Clifford, Charles J. LaDuca, and Stephen B. Farmer as Settlement Class Counsel for the Settlement Class. Interim Settlement Class Counsel therefore seeks that the Court certify for each Settlement, a Settlement Class defined as follows:

> All Acute Care Hospitals in the United States that (i) are not owned or operated by a federal, state, county, parish, city, or other municipal government; and (ii) treated patients diagnosed with opioid use disorder and/or other opioid-related conditions at any time from January 1, 2009, through the date of entry of the Preliminary Approval Order.

See, e.g., Distributors Settlement Agreement, ECF No. 276-1, § III.A.1. For the avoidance of doubt and as agreed between the Settling Parties to each Settlement Agreement, each proposed Settlement Class includes all entities listed on Exhibit A and all Plaintiffs in the Other Actions listed on Exhibit B to each of the Settlement Agreements. Exhibits A and B are non-exhaustive lists and do not purport to identify all members of the proposed Settlement Classes.

> Excluded from the Class[es] are any Acute Care Hospitals whose Released Claims have been released by any other settlement with the Settling Defendants.

Id. § III.A.2.

Certification of the Settlement Classes for settlement purposes furthers the interests of Settlement Class Members and the Settling Defendants by allowing the case to be settled on a class-wide basis. The proposed Settlement Classes satisfy the requirements of Rule 23, and thus the Court should grant class certification for settlement purposes only.

A. Numerosity

Rule 23(a)(1) requires "the class [be] so numerous that joinder of all members is impracticable." *See Horn v. Associated Wholesale Grocers, Inc.*, 555 F.2d 270, 275 (10th Cir. 1977) (holding class as small as 46 members is sufficient). Here, each of the Settlement Classes consists of potentially over five thousand acute care hospitals dispersed throughout the nation, making joinder of all Settlement Class Members impracticable. Devery Decl. at ¶ 4; *see Cline v. Sonoco, Inc.*, 333 F.R.D. 676, 682 (E.D. Okla. 2019) ("[T]he proposed class encompasses thousands of interest owners, which easily satisfies the numerosity requirement under Rule 23(a)(1)."). Numerosity, therefore, is satisfied.

B. Commonality

Rule 23(a)(2) requires the existence of "questions of law or fact common to the class." A "common question is one where 'the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof.'" *Tyson Foods, Inc. v. Bouaphakeo,* 136 S. Ct. 1036, 1045 (2016) (citation omitted). "Factual differences in the claims of class members should not result in a denial of class certification where common questions of law exist." *Milonas v. Williams*, 691 F.2d 931, 938 (10th Cir. 1982). The plaintiff need only show a single issue common to all members of the class. *See DG*, 594 F.3d at 1195; William B. Rubenstein, 4 *Newberg On Class Actions* § 3:10, at 272-73 (5th ed. 2011).

As detailed fully in its complaint, Plaintiffs' claims involve numerous common questions of law and fact, including, depending on the Settling Defendant in question, *inter alia*:

- Did the Settling Defendants manufacture prescription opioids?
- Did Settling Defendants make misleading statements regarding the risks and benefits of prescription opioids?
- Did Settling Defendants distribute prescription opioids?
- Did Settling Defendants distribute prescription opioids without conducting adequate due diligence?
- What is the scope of Settling Defendants' duties under the Controlled Substances Act?
- Did Settling Defendants receive suspicious orders for prescription opioids?
- Did Settling Defendants fill suspicious orders of prescription opioids?
- Did Settling Defendants report suspicious orders of prescription opioids to DEA and other regulators?
- Did Settling Defendants engage in wire fraud?
- Did Settling Defendants engage in mail fraud?
- Did Settling Defendants corrupt an official proceeding?

First Amended Class Action Complaint, ECF No. 144, ¶ 1167. Accordingly, there is sufficient commonality as amongst the members of each of the Settlement Classes to warrant certification for settlement purposes.

C. Typicality

Rule 23(a)(3) requires "the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class." To meet this requirement, "[e]very member of the class need not be in a situation identical to that of the named plaintiff." *DG*, 594 F.3d at 1195 (citation omitted). Rather, "[p]rovided the claims and Named Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality." *Id.* at 1198-99.

The Class Plaintiffs' claims are typical of the claims of each of the Settlement Classes, because the Class Plaintiffs are acute care hospitals who treated patients diagnosed with opioid use disorder and/or other opioid-related conditions. The same legal theories and issues of fact underlie the claims of each of the Settlement Classes and the Class Plaintiffs. Accordingly, each of the Settlement Classes satisfy typicality.

D. Adequacy of Representation

Rule 23(a)(4) requires plaintiffs to show they "will fairly and adequately protect the interests of the class." In the Tenth Circuit, adequacy is satisfied when (1) neither the plaintiff nor its counsel has interests that conflict with the interests of other class members, and (2) the plaintiff will prosecute the action vigorously through qualified counsel. *See Rutter Wilbanks Corp. v. Shell Oil Co.*, 314 F.3d 1180, 1188-89 (10th Cir. 2002). No conflicts exist between Plaintiffs or their counsel and other members of any of the Settlement Classes. To the contrary, Class Plaintiffs share the same incentive as the Settlement Classes to vigorously prosecute this case and obtain recovery.

Plaintiffs and Interim Settlement Class Counsel have vigorously prosecuted this case and related cases in multiple state and federal jurisdictions throughout the country. Interim Settlement Class Counsel are highly experienced in class actions. *See* Burns Decl. at ¶ 5. Interim Settlement Class Counsel have been appointed as lead counsel in multiple previous class actions. *Id.* The Class Plaintiffs and Interim Settlement Class Counsel satisfy adequacy of representation.

E. Predominance

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members." "The predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation" by asking "whether the common, aggregation-enabling, issues in the case are more prevalent or

important than the non-common, aggregation-defeating, individual issues." *Tyson Foods*, 136 S. Ct. at 1045 (citation omitted); *see also, e.g.*, *CCG Holding Co. v. Hutchens*, 773 F.3d 1076, 1087 (10th Cir. 2014) (same). "Classwide proof is not required for all issues." *In re Urethane Antitrust Litig.*, 768 F.3d 1245, 1255 (10th Cir. 2014). "Instead, Rule 23(b)(3) simply requires a showing that the questions common to the class predominate over individualized questions." *Id.* Thus, when "one or more of the central issues in the action are common to the class and can be said to predominate, the action may be considered proper under Rule 23(b)(3) even though other important matters will have to be tried separately, such as damages or some affirmative defenses peculiar to some individual class members." *Tyson Foods*, 136 S. Ct. at 1045 (citation omitted). Where, as here, Class Plaintiffs and the Settlement Classes' claims stem from a "'common nucleus of operative facts,'" common issues predominate and certification is appropriate. *Arkalon Grazing Ass'n v. Chesapeake Operating, Inc.*, 275 F.R.D. 325, 331 (D. Kan. 2011) (citation omitted).

Each of the Settlement Classes readily satisfy predominance. Common questions regarding the existence of a RICO conspiracy, Settling Defendants' participation in the same, and causation all predominate over potential individual issues, to the extent any may be identified. Damages, too, will be subject to common proof. Burns Decl. at ¶ 27. Under the circumstances, predominance is satisfied in this case.

F. Superiority

Rule 23(b)(3) requires a class action to be "superior to other available methods for fairly and efficiently adjudicating the controversy." In considering the superiority of a class action, courts consider:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). "In deciding whether to certify a settlement class, the Court need not inquire whether the case, if tried, would present difficult management problems under Rule 23(b)(3)(D)." *In re Motor Fuel Temperature Sales Pracs. Litig.*, 271 F.R.D. 263, 269 (D. Kan. 2010).

Superiority is satisfied here. The claims asserted in the ACH Opioids Litigation are highly complex and require significant investment of time and capital by the acute care hospitals and their counsel. Burns Decl. at ¶ 8. Any individual case may take years to reach trial and then be subject to additional years of subsequent appeals. *Id.* Litigating individual cases likewise requires a significant commitment of court resources. A class action is the superior method of fair and efficient adjudication in this matter for purposes of implementing the Settlements.

II. INTERIM SETTLEMENT CLASS COUNSEL SHOULD BE APPOINTED AS SETTLEMENT CLASS COUNSEL

Under Rule 23(g)(1)(A), the Court, when appointing class counsel, must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." The Court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

Here, Interim Settlement Class Counsel have gone above and beyond merely identifying and investigating potential claims—they have been pursuing the ACH Opioids Litigation for nearly eight years. Cases in the ACH Opioids Litigation resolved by the Settlement Agreements have been litigated between the Settling Parties in numerous federal and state *fora.* Burns Decl. at ¶ 30. Class Plaintiffs and Interim Settlement Class Counsel have responded to multiple rounds of

motion practice, including appeals of both dispositive and non-dispositive rulings. *Id.* at ¶ 27. Interim Settlement Class Counsel have reviewed voluminous discovery and taken depositions of representatives of certain of the Settling Defendants and third parties. *Id.* Further, Class Plaintiffs and Interim Settlement Class Counsel have retained and worked closely with over a dozen experts in preparing the underlying cases for trial. *Id.* Finally, the Settlement Agreements are the product of over two years of negotiations, mediated by one or more experienced mediators. *Id.* at ¶ 9. Given these years of litigation, Interim Settlement Class Counsel's knowledge of the applicable laws is comprehensive.

Moreover, Interim Settlement Class Counsel have significant experience prosecuting complex class actions, including RICO and antitrust class actions, in this district and circuit and throughout the country. *Id.* at ¶ 23. Courts around the country recognize the expertise and ability of proposed Settlement Class Counsel to effectively litigate complex class actions.[16]

Lastly, Interim Settlement Class Counsel have already committed considerable time and resources in prosecuting the ACH Opioids Litigation. As detailed further in Section VI, Interim Settlement Class Counsel have collectively devoted hundreds of thousands of hours to this Litigation and fronted tens of millions of dollars in expenses. Burns Decl. at ¶¶ 44, 48.

III. PLAINTIFFS PROVIDED SUFFICIENT NOTICE TO THE PRELIMINARILY CERTIFIED SETTLEMENT CLASSES IN COMPLIANCE WITH RULE 23 AND DUE PROCESS

[16] *See, e.g.*, *In re Insulin Pricing Litig.*, No. 3:17-CV-699-BRMLHG, 2020 WL 5642002, at *7 (D.N.J. Sept. 22, 2020) (recognizing that Mr. Barrett has "substantial experience litigating complex commercial disputes including class action and antitrust matters"); *Kjessler v. Zaappaaz, Inc.*, No. 4:17-CV-3064, 2018 WL 8755737, at *5 (S.D. Tex. Aug. 31, 2018) (recognizing that "Mr. Burns and his firm have significant experience in anti[t]rust class actions"); *Buttonwood Tree Value Partners, L.P. v. Sweeney*, No. SA-CV-1000537-CJCMLGX, 2014 WL 12586788, at *3 (C.D. Cal. May 15, 2014) (agreeing with class counsel that the Cuneo Gilbert & Laduca firm has significant "experience with securities fraud class actions").

Under Rule 23(e)(1), a district court approving a class action settlement "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(c)(2)(B) also provides notice of a class settlement must be "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) (class notice designed to fulfill due process requirements). Notice "must be reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Tennille*, 785 F.3d at 436.

As explained in Plaintiff San Miguel's motion for preliminary approval (ECF No. 276 at § III), the Court-approved Notice, Registration Form, Claim Form, and Summary Notice (the latter three together, the "Notice Package") satisfy these standards and have informed Settlement Class Members of all relevant case and settlement-related information. For these reasons, the Court's Preliminary Approval Orders found that the form and content of the notice program here, as well as the methods for notifying the Settlement Classes upon preliminary approval, "constitute the best notice to Settlement Class Members practicable under the circumstances" and "satisfy all applicable requirements of the Federal Rules of Civil Procedure (including Rule 23(c)-(e)), the United States Constitution (including the Due Process Clause), the Rules of this Court, and other applicable law." ECF Nos. 277, 278, 279, 280, at ¶ 13.

Here, the combination of: (i) mailing 5,732 copies of the Court-approved Notice Packet to potential Settlement Class Members; (ii) emailing 1,224 copies (of which 1,201 were successfully delivered) of the Notice Package to potential Settlement Class Members; (iii) implementing the media plan to publish notice of the Settlement on certain websites, e-newsletters, and email blasts; (iv) maintaining a toll-free telephone number, with an interactive voice response system and live

operators to provide potential Settlement Class Members with responses to frequently asked questions and important information regarding the litigation, and (v) establishing and managing the settlement website, www.acutecarehospitalsettlement.com,[17] is typical of notice plans approved in class action settlements, and likewise, was "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

In sum, the form, manner, and content of the Notice and Notice Package were the best practicable notice. Their contents were reasonably calculated to, and did, apprise Settlement Class Members of the pendency and nature of the Settlements and afforded them an opportunity to object.

IV. THE SETTLEMENTS ARE FAIR, REASONABLE, AND ADEQUATE AND MERIT FINAL APPROVAL

Settlement is strongly favored as a method for resolving disputes. *See Sears v. Atchison, Topeka & Santa Fe Ry., Co.*, 749 F.2d 1451, 1455 (10th Cir. 1984); *see also Trujillo v. State of Colo.*, 649 F.2d 823, 826 (10th Cir. 1981) (citing "important public policy concerns that support voluntary settlements"); *Amoco Prod. Co. v. Fed. Power Comm'n*, 465 F.2d 1350, 1354 (10th Cir. 1972). This is particularly true in large, complex class actions such as the current case. *See Acevedo v. Sw. Airlines Co.*, No. 1:16-CV-00024-MV-LF, 2019 WL 6712298, at *2 (D.N.M. Dec. 10, 2019) ("In the class action context in particular, there is an overriding public interest in favor of settlement because settlement of complex disputes minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources." (cleaned up)), *report and recommendation adopted*, No. 1:16-CV-00024-MV-LF, 2020 WL 85132 (D.N.M. Jan. 7, 2020). "In most situations, unless the settlement is clearly inadequate, its

[17] *See generally* Devery Decl.

acceptance and approval are preferable to lengthy and expensive litigation with uncertain results." *Montgomery v. Cont'l Intermodal Grp.-Trucking LLC*, No. 19-940 GJF, 2021 WL 1339305, at *3 (D.N.M. Apr. 9, 2021) (citation and internal quotations omitted).

Fed. R. Civ. P. 23(e)(2) provides that a class action settlement may be approved by the court "only after a hearing and only on finding that it is fair, reasonable, and adequate," and identifies the following factors to be considered by courts at final approval:

> (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).

Additionally, in deciding whether a settlement is "fair, reasonable, and adequate," courts in the Tenth Circuit traditionally consider whether:

> (1) the settlement was fairly and honestly negotiated, (2) serious legal and factual questions placed the litigation's outcome in doubt, (3) the immediate recovery was more valuable than the mere possibility of a more favorable outcome after further litigation, and (4) the parties believed the settlement was fair and reasonable.

Anderson Living Tr. v. Energen Res. Corp., No. CV 13-909 WJ/CG, 2021 WL 1686491, at *2 (D.N.M. Apr. 29, 2021), *report and recommendation adopted*, No. CV 13-909 WJ/CG, 2021 WL 1686492 (D.N.M. Apr. 29, 2021) (citing *Rutter & Wilbanks Corp.*, 314 F.3d at 1188 and *In re Integra Realty Res., Inc.*, 354 F.3d 1246, 1266 (10th Cir. 2004)). The Tenth Circuit's additional factors overlap with the Rule 23(e)(2) factors, with "[t]he fourth [] factor [being] the only factor that does not directly overlap with the Rule 23(e)(2) factors." *Cisneros v. EP Wrap-It Insulation, LLC*, No. CV 19-500 GBW/GJF, 2022 WL 2304146, at *11 (D.N.M. June 27, 2022). As a result, courts in this District primarily consider the Rule 23(e)(2) factors and separately discuss only the Tenth Circuit's fourth factor. *See, e.g., id.*

The Court preliminarily determined that the Settlements totaling $651 million in cash meet these standards and are fair, reasonable, and adequate. ECF Nos. 277, 278, 279, 280, at ¶ 1. As discussed below, the Court's initial disposition was correct, as the Settlements easily satisfy each of the Rule 23(e)(2) and Tenth Circuit factors. Accordingly, Plaintiffs request the Court now grant final approval of the Settlements.

G. The Settlements Satisfy the Rule 23(e)(2) Factors

1. Class Plaintiffs and Interim Settlement Counsel Have Adequately Represented the Settlement Classes

Under this factor, the Court should consider that "the nature and amount of discovery in this or other cases, or the actual outcomes of other cases, may indicate whether counsel negotiating on behalf of the class had an adequate information base." Fed. R. Civ. P. 23 advisory committee's notes to 2018 amendment. Here, the breadth and volume of the work performed by the Class Plaintiffs and Interim Settlement Class Counsel cannot be understated.

Class Plaintiffs and Interim Settlement Class Counsel have adequately represented the preliminarily certified Settlement Classes as required by Rule 23(e)(2)(A). Cases in the ACH

Opioids Litigation resolved by the Settlement Agreements have been litigated between the Settling Parties in numerous federal and state *fora* for nearly eight years. Burns Decl. at ¶¶ 6, 42. Class Plaintiffs and Interim Settlement Class Counsel have responded to multiple rounds of motion practice, including appeals of both dispositive and non-dispositive rulings. *Id.* at ¶ 27. Class Plaintiffs have produced millions of pages of documents and have been deposed. *Id.* Interim Settlement Class Counsel have reviewed voluminous discovery and taken depositions of representatives of certain of the Settling Defendants and third parties. *Id.* Further, Class Plaintiffs and Interim Settlement Class Counsel have retained and worked closely with over a dozen experts to provide testimony on issues relating to alleged liability and damages. *Id.* Finally, the Settlement Agreements are the product of over two years of negotiations. *Id.* at ¶¶ 9-10. As a result of these extensive efforts, spanning thousands of hours of work and several years, Interim Settlement Class Counsel have achieved significant Settlements, totaling $651 million, with the Settling Defendants, which will provide immediate relief to the certified Settlement Classes. *See generally* Burns Decl.

Collectively, Interim Settlement Class Counsel have significant experience prosecuting complex class actions, including RICO class actions, in this district and circuit and throughout the country. *Id.* at ¶ 5. Interim Settlement Class Counsel have been appointed as lead counsel in multiple previous class actions. *Id.* Courts around the country recognize the expertise and ability of proposed Settlement Class Counsel to effectively litigate complex class actions. *See supra,* note 16.

In deciding adequacy of representation, "courts consider whether: (1) the named plaintiffs and their counsel have any conflicts of interest with other class members; and (2) the named plaintiffs and their counsel have prosecuted the action vigorously on behalf of the class." *Cisneros,*

2022 WL 2304146, at *4 (internal citations omitted). Here, no conflicts exist, and the collective tenacity and sophistication of Interim Settlement Class Counsel were instrumental in achieving the substantial settlements, which will provide over $651 million, Naloxone product, and significant and immediate relief to the Settlement Classes. Therefore, Class Plaintiffs and Interim Settlement Class Counsel have provided adequate representation to the Settlement Classes.

2. The Settlements Were Fairly Negotiated at Arm's Length

The second factor under Rule 23(e)(2)(B) overlaps with the first factor considered by courts in the Tenth Circuit and assesses whether the settlement was fairly and honestly negotiated. *See Lowery v. City of Albuquerque*, No. CIV 09-0457 JB/WDS, 2013 WL 1010384, at *36 (D.N.M. Feb. 27, 2013); *Anderson Living Tr.*, 2021 WL 3076910, at *3. Settlements reached after real negotiations through representation by experienced counsel well-versed in the legal and factual issues of the case support a finding of fair and honest negotiation. *See, e.g.*, *Montgomery*, 2021 WL 1339305 at *9; *Acevedo*, 2019 WL 6712298, at *2; *Lowery*, 2013 WL 1010384, at *36; *Anderson Living Tr*, 2021 WL 3076910, at *3.

"[T]here is a presumption in favor of a finding that negotiations were fair when they were conducted before a third-party mediator." *Cisneros*, 2022 WL 2304146, at *5. An experienced mediator's involvement "in the settlement negotiations strongly supports a finding that they were conducted at arm's-length and without collusion." *In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001) (noting that a "mediator's involvement in . . . settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure").

Here, the Settlements are the product of arm's-length negotiations between the Settling Parties, advised by their sophisticated counsel, who possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their

respective cases. Burns Decl. at ¶ 29; Kurdi Decl. at ¶ 6. During mediation, the relevant legal issues were fully presented for the Settling Parties to effectively evaluate liability and damages. Burns Decl. at ¶ 29. As a result, the Settling Parties were well prepared for the serious negotiations that led to the Settlement Agreements and were well informed of the respective parties' arguments. *See Montgomery*, 2021 WL 1339305, at *9; *Acevedo*, 2019 WL 6712298, at *2; *Lowery*, 2013 WL 1010384, at *36; *Anderson Living Tr*, 2021 WL 3076910, at *3.

Moreover, the Settlement negotiations were conducted under the direct supervision of Fouad Kurdi, a highly experienced and well-respected mediator with highly relevant experience settling disputes associated with the *In re National Opiate Prescription Litigation* MDL. Burns Decl. at ¶ 9; Kurdi Decl. at 3. The negotiations with the Settling Distributors began with another mediator, Judge Sidney Schenkier, a former federal magistrate judge, who then worked together with Mr. Kurdi to bring the Settling Distributor negotiations to a conclusion. Settlement negotiations between Plaintiffs and the various Settling Defendants spanned a period of over two years, during which the parties to each mediation provided multiple presentations to each other and Plaintiffs met over a dozen times in person with different groups of Settling Defendants to facilitate discussions. Burns Decl. at ¶ 29. Accordingly, the Settlements achieved here should be presumed to be the result of arm's-length, fair, and honest negotiations. *See Cisneros*, 2022 WL 2304146, at *5.

3. The Settlements Are Adequate in Light of the Costs, Risks, and Delay of Trial and Appeal

"Although it is not the role of the Court at this stage of the litigation to evaluate the merits . . . it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated." *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693-94 (D. Colo. 2006) (citation and internal quotations omitted).

As strongly as the Settling Parties feel about the merits of their positions, each side recognizes that serious questions of law and fact exist in this case.

In assessing the Settlement Agreements, the Court should also balance the benefits afforded to the Settlement Classes, including the immediacy and certainty of a recovery, against the significant costs, risks, and delay of proceeding with the Litigation. *See* Rule 23(e)(2)(C)(i). This third factor is based on the premise that the Settlement Classes "[are] better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted." *See Acevedo*, 2019 WL 6712298, at *3 (citing *McNeely v. Nat'l Mobile Health Care, LLC*, No. CIV-07-933-M, 2008 WL 4816510, at *13 (W.D. Okla. Oct. 27, 2008)). This consideration largely overlaps with the second ("'whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt'") and third factors ("'whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation'") traditionally considered by courts in the Tenth Circuit. *Chavez Rodriguez v. Hermes Landscaping, Inc.*, No. 17-2142-JWB-KGG, 2020 WL 3288059, at *2-3 (D. Kan. June 18, 2020); *see Cisneros*, 2022 WL 2304146, at *5 (explaining that all but the Tenth Circuit's fourth factor overlap with Rule 23's factors). Thus, courts consider these factors to be "subsumed under Rule 23's requirement that the settlement agreement's adequacy be measured against the 'costs, risks, and delay of trial and appeal' of the underlying case." *Chavez Rodriguez*, 2020 WL 3288059, at *2-3; *see, e.g.*, *Cisneros*, 2022 WL 2304146, at *5 (incorporating analysis of Rule 23 factors by reference into analysis of Tenth Circuit factors).

a. Serious Legal and Factual Questions Placed the Litigation's Outcome in Doubt.

The presence of serious legal and factual questions concerning the outcome of the ACH Opioids Litigation weighs heavily in favor of settlement, as "settlement outweighs the mere

possibility of future relief after protracted and expensive litigation." *See Montgomery*, 2021 WL 1339305, at *6; *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1133, 1138 (D. Colo. 2009). "Although it is not the role of the Court at this stage of the litigation to evaluate the merits, 'it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated.'" *See Montgomery*, 2021 WL 1339305, at *9 (quoting *Lucas v. Kmart Corp.*, 234 F.R.D. at 693-94). The presence of questions of law and fact "tips the balance in favor of settlement because settlement, creates a certainty of some recovery, and eliminates doubt, meaning the possibility of no recovery after long and expensive litigation." *McNeely, LLC*, 2008 WL 4816510, at *13; *see also Tennille*, 785 F.3d at 435 (affirming final approval of settlement where "serious disputed legal issues" rendered "the outcome of th[e] litigation . . . uncertain and further litigation would have been costly").

The current proposed Settlements notwithstanding, there remain numerous factual and legal issues on which the Settling Parties intensely disagree. Settling Defendants deny that they have engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of the claims alleged by Plaintiffs, and deny that Plaintiffs have suffered any injuries or damages. Conversely, Plaintiffs have advanced numerous complex legal and factual issues under federal RICO statutes and various state laws in other *fora*.

The issues on which the Settling Parties disagree are many, but include: (1) whether any of the Settling Defendants engaged in conduct that would give rise to any liability under the federal RICO statutes; (2) whether the Settling Defendants have valid defenses to any such claims of liability; (3) the amount of damages suffered by reason of the Settling Defendants' alleged wrongdoing, as well as the methodology for estimating any such damages; (4) whether the Court

may properly certify a class for purposes of litigation; and (5) whether the Settling Defendants had other meritorious defenses to the alleged claims. Although Class Plaintiffs believe their claims would be borne out by the evidence presented at trial, they recognize that there are significant hurdles to proving liability or even proceeding to trial. Had the parties not reached the Settlement Agreements, the Court or a jury would ultimately be required to decide these issues, placing the litigation's ultimate outcome in doubt.

b. Immediate Recovery Is More Valuable than the Mere Possibility of a More Favorable Outcome After Further Litigation

Considering the risks associated with continued litigation, as discussed above, the immediate, substantial relief offered by the Settlements "outweigh an uncertain result several years in the future." *Montgomery*, 2021 WL 1339305, at *10; *see id.* at *6 ("'[I]t has been held proper "to take the bird in the hand instead of a prospective flock in the bush.'"); *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d 1178, 1244 (D.N.M. 2012) ("'[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now'") (quoting *Reynolds v. Beneficial Nat'l Bank*, 288 F.3d 277, 284 (7th Cir. 2002)).

The ACH Opioids Litigation has been pending for nearly eight years. Burns Decl. at ¶ 31. The Settling Parties and courts in this and other jurisdictions will likely expend significant additional time, resources, and costs to proceed to trial, and the inevitable appeals will likely extend years into the future. *See Acevedo*, 2019 WL 6712298, at *3 ("Many more months and significant costs would be required for the parties and Court to complete the pretrial proceedings[.] … In short, the ultimate resolution of this action on the merits (and in turn, compensation to Settlement Class Members) via trial and appeal is indefinite at best."); *Chavez Rodriguez*, 2020 WL 3288059, at *3 (observing that "the costs and time of moving forward in litigation would be substantial"); *Lucas*, 234 F.R.D. at 694 ("If this case were to be litigated, in all probability it would be many

years before it was resolved."). Considering the complex legal and factual issues associated with continued litigation, there is an undeniable and substantial risk that, after years of continued litigation, the proposed Settlement Classes could receive an amount significantly less than the over $651 million provided by the Settlement Agreements, or nothing at all, for their claims against the Settling Defendants.

"By contrast, the proposed settlement agreement[s] provide the class[es] with substantial, guaranteed relief" now and in the future. *Acevedo*, 2019 WL 6712298, at *3 (D.N.M. Dec. 10, 2019) (quoting *Lucas*, 234 F.R.D. at 694 and citing *McNeely*, 2008 WL 4816510, at *13 (finding that the class "is better off receiving compensation now as opposed to being compensated, if at all, several years down the line, after the matter is certified, tried, and all appeals are exhausted.")). "[The] immediate recovery in this case outweighs the time and costs inherent in complex [] litigation, especially when the prospect is some recovery versus no recovery." *In re Crocs, Inc. Sec. Litig.*, 306 F.R.D. 672, 691 (D. Colo. 2014); *In re King Res. Co. Sec. Litig.*, 420 F. Supp. 610, 625 (D. Colo. Aug. 10, 1976); *accord Tennille v. W. Union Co.*, No. 09-cv-00938- JLK-KMT, 2014 WL 5394624, at *4 (D. Colo. Oct. 15, 2014), *appeal dismissed*, 809 F.3d 555 (10th Cir. 2015). Thus, the recoveries under the Settlement Agreements, particularly when viewed in the context of the risks, costs, delay, and the uncertainties of further proceedings, weighs in favor of final approval of each of the Settlements.

4. The Method for Distributing Relief is Effective

As demonstrated in Section III above and discussed in more detail in the Declaration of Brian Devery, the notice program and claims administration process have been and are effective. As also described in Section III, Class Plaintiffs and Interim Settlement Class Counsel provided the best notice practicable under the circumstances in accordance with the Preliminary Approval Orders (ECF Nos. 277, 278, 279, 280) and the requirements of Rule 23 and due process. The

settlement notice program approved by the Court included individual notice by email or First-Class Mail to all Settlement Class Members who could be identified through reasonable efforts and appearing on a list of nearly 5,800 hospitals providing emergency services. *See* Devery Decl. at ¶ 4. AB Data, Ltd. has also conducted targeted notice through relevant media. *Id. at* ¶¶ 6-9. In addition, a case-designated website has been created where settlement-related and other key documents are posted, including the Settlement Agreements, Notices, Plan of Allocation, Claims and Registration Forms, and Preliminary Approval Orders. *Id. at* ¶ 11.

Plaintiffs have proposed a fair and orderly claims administration process in which Settlement Class Members who wish to participate in one or more of the Settlements will complete and submit Registration and Claims Forms[18] in accordance with the instructions contained therein. Plan of Allocation, attached to Distributors Settlement Agreement (ECF No. 276-1) as associated Exhibit C. The Settlement Administrator will distribute the Net Settlement Funds to Authorized Claimants under a Court-approved Plan of Allocation. *See id*. As described in Section V below, the Plan of Allocation proposed here was prepared with information provided by Plaintiffs' experts, in consultation with the proposed Special Master, the Hon. Thomas Hogan, and is consistent with the ACH plans of allocation developed in the Purdue Pharma bankruptcy proceedings (Case No. 19-23649), and utilized thereafter in the Mallinckrodt, plc (Case No. 20-12522) and Endo (Case No. 22-22549) bankruptcy proceedings. The notice program, claims administration process, and Plan of Allocation are a thorough and effective method of distributing relief and further support final approval.

5. Attorneys' Fees and Expenses

[18] Class Members that opt to receive a "Quick Pay" Amount, *see supra* Section I, need only fill out a Registration Form. Class Members opting to receive a payment calculated from the Model must fill out a Registration Form and Claim Form.

Rule 23(e)(2)(C)(iii) addresses "the terms of any proposed award of attorney's fees, including timing of payment." Fed. R. Civ. P. 23(e)(2)(C)(iii). Interim Settlement Class Counsel seek an award of attorneys' fees of a standard one-third of the total Settlement Funds, plus payment of Interim Settlement Class Counsels' expenses incurred in connection with the underlying litigation, plus interest earned on these amounts at the same rate as earned by the total Settlement Funds.

As detailed in Section VI below, the fee request is in line with fee awards that other courts in this District and the Tenth Circuit have approved in complex class actions. *See, e.g.*, *Cisneros*, 2022 WL 2304146, at *8 (approving attorneys' fees amounting to "one-third of the gross settlement amount" and explaining that "a contingent fee of one-third of the settlement amount in a class action is standard in this Court and other district courts in the Tenth Circuit."); *Anderson Living Tr.*, 2021 WL 3076910, at *7, *9 (approving attorneys' fees "constituting 40% of the settlement fund); *Montgomery*, 2021 WL 1339305, at *7 (approving of attorneys' fees amounting to "approximately 31.47% of the settlement fund"); *Acevedo*, 2019 WL 6712298, at *4 (approving attorneys' fees amounting to "33.33% of the gross recovery"); *In re Thornburg Mortg., Inc.*, 912 F. Supp. 2d at 1257 ("Fees in the range of 30-40% of any amount recovered are common in complex and other cases taken on a contingency fee basis.").

6. The Settling Parties Have No Additional Agreement

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. Plaintiffs do not have any additional agreements with any of the Settling Defendants.

7. Settlement Class Members Are Treated Equitably

The final factor, Rule 23(e)(2)(D), looks at whether certified Settlement Class Members are treated equitably. As reflected in the Plan of Allocation, Settlement Class Members are treated equitably here. The Plan of Allocation provides all Settlement Class Members the opportunity to

submit a claim for an expedited Quick Pay amount. *See, e.g.*, Plan of Allocation, attached to Distributors Settlement Agreement (ECF No. 276-1) as associated Exhibit C, at 3. In the alternative, all Settlement Class Members may elect to participate in a more detailed damages calculation and allocation process utilizing objective factors detailed in the Plan of Allocation for one or more Settlements. *Id.* at 3-4. The Plan of Allocation does not discriminate among Settlement Class Members, treating all Settlement Class Members fairly.

H. The Settlements Satisfy the Remaining Factor Considered by Courts in the Tenth Circuit

The final, additional factor courts in the Tenth Circuit consider is "'the judgment of the parties that the settlement is fair and reasonable.'" *Cisneros*, 2022 WL 2304146, at *11 (quoting *Rutter*, 314 F.3d at 1188). "Under this factor, 'the recommendation of a settlement by experienced plaintiffs[']counsel is entitled to great weight.'" *Id.* (internal citations omitted).

Interim Settlement Class Counsel—all senior attorneys at law firms with considerable experience in complex class actions—only agreed to settle the ACH Opioids Litigation after extensive investigation and rigorous arm's-length negotiations. Burns Decl. at ¶ 29. Additionally, as noted above, Class Plaintiffs and Interim Settlement Class Counsel have compared the substantial recovery the certified Settlement Classes will receive from the Settlements against the risks, delays, and uncertainties of continued litigation and appeals. Class Plaintiffs and Interim Settlement Class Counsel believe the Settlements are fair, adequate, and reasonable and should be approved. The Settling Defendants likewise believe that the Settlement to which each is a party should be approved. Because the above factors weigh in favor of the Settlements, Plaintiffs respectfully request that the Court grant final approval of the Settlements.

V. THE PLAN OF ALLOCATION IS FAIR, REASONABLE, AND ADEQUATE

The proposed Plan of Allocation (attached to Distributors Settlement Agreement (ECF No. 276-1) as associated Exhibit C) details how the Net Settlement Funds are to be allocated among Eligible Claimants. The standard for approval of a plan of allocation is the same as the standard for approving a settlement: whether it is "fair, reasonable, and adequate." *See Lucas*, 234 F.R.D. at 695. In making this determination, courts give great weight to the recommendation of experienced counsel. *See id*. ("An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." (internal quotations and citation omitted)).

Here, the plan allocates funds between Eligible Claimants in two ways: (1) A Settlement Class Member may select a "Quick Pay" option under which the Settlement Class Member will receive a default amount of $5,000 total from all four Settlements,[19] or (2) a Settlement Class Member may elect to participate in the more detailed damages calculation using the Model set forth in the Plan of Allocation, which may result in an Allocated Amount greater (but not less) than the Settlement Class Member's Quick Pay Amount. Interim Settlement Class Counsel anticipate that all funds will be distributed to Settlement Class Members pursuant to the Plan of Allocation. Burns Decl. at ¶ 15.

The Plan of Allocation was prepared based on information provided by Plaintiffs' experts, in consultation with the Special Master, the Hon. Thomas Hogan, and is consistent with the ACH plans of allocation developed in the Purdue Pharma bankruptcy proceedings (Case No. 19-23649), and utilized thereafter in the Mallinckrodt, plc (Case No. 20-12522) and Endo (Case No. 22-22549)

[19] If one or more Settlements is not approved, or if a Class Member is ineligible for one or more Settlements by reason of a prior release, then the Quick Pay Amount owed shall be reduced, proportionally, based upon a comparison of the Up-Front Settlement Amount contributed by the Settling Defendant(s) in the Settlement(s) at issue with the total Up-Front Settlement Amounts of the four Settlements.

bankruptcy proceedings. There is no right of reversion under the Settlements and under no circumstances will any portion of a Settlement Amount be returned to the respective Settling Defendant(s) once that Settlement becomes final. *Id.* at ¶ 15.

Interim Settlement Class Counsel submit that this method of distributing settlement funds is fair, reasonable, and adequate, and warrants this Court's final approval.

VI. THE REQUESTED COMMON FUND FEE IS REASONABLE AND SHOULD BE APPROVED

Rule 23 provides that "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of the common fund doctrine is to compensate class counsel fairly and adequately for services rendered on the theory "that persons who obtain the benefit of a lawsuit without contributing to its costs are unjustly enriched at the successful litigant's expense." *In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1193 (10th Cir. 2023) (quoting *Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994)) (internal quotations omitted). Accordingly, the Court has authority to award attorneys' fees and expenses from the Settlement Funds in this case.

A. The Requested Fee is a Reasonable Percentage of the Common Fund

The prevailing method for determining attorneys' fees in common fund cases is awarding a percentage of the fund. *See* Manual for Complex Litigation, Fourth, § 14.121 ("The vast majority of courts . . . use the percentage-fee method in common-fund cases."). The Supreme Court has directed that "under the 'common fund doctrine,' . . . a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). And in this

Circuit, a percentage-of-the-fund is the preferred method of awarding attorney fees in common fund cases. *See In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th at 1193; *Anderson Living Tr.*, 2021 WL 3076910, at *7 ("In the Tenth Circuit, there is a preference for determining the reasonableness of a fee award in common fund cases utilizing 'the percentage of fund' method."); *Fowler v. Med. Man Techs., Inc.*, No. CV 23-640 WJ/SCY, 2024 WL 3498587, at *3 (D.N.M. July 18, 2024), *report and recommendation adopted*, No. CV 23-640 WJ/SCY, 2024 WL 3495063 (D.N.M. July 22, 2024) ("The Tenth Circuit has expressed a preference for the percentage-of-the-fund approach in common fund cases."); *Charlie v. Rehoboth McKinley Christian Health Care Servs.*, No. CV 21-652 SCY/KK, 2023 WL 4591167, at *6 (D.N.M. July 18, 2023); *Cisneros*, 2022 WL 2304146, at *7; *Rosenbaum v. MacAllister*, 64 F.3d 1439, 1445 (10th Cir. 1995); *Gottlieb*, 43 F.3d at 482-83.

"The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis, as in this case." *Shaw v. Interthinx, Inc.*, No. 13-CV-01229-REB-NYW, 2015 WL 1867861, at *5 (D. Colo. Apr. 22, 2015) (internal quotations and citation omitted). And in making a "percentage-fee determination, the court need not conduct a lodestar analysis to assess reasonableness." *Nakamura v. Wells Fargo Bank, Nat'l Ass'n*, No. 17-4029-DDC-GEB, 2019 WL 2185081, at *3 (D. Kan. May 21, 2019) (citations omitted); *Cisneros*, 2022 WL 2304146, at *7 (when determining reasonableness, "the Tenth Circuit neither requires a lodestar cross-check nor prefers it to the percentage of the fund method"). Indeed, "[d]istrict courts in New Mexico routinely approve attorneys' fees based on a percentage of fund method without a lodestar cross-check." *Montgomery*, 2021 WL 1339305, at *7 n.5 (collecting cases).

An award of attorneys' fees of one-third of the $651 million total Settlement Amount amounts to $217 million[20] and is consistent with this District's law and the Tenth Circuit's requirement that the fee be reasonable under review of the 12 *Johnson* factors.[21]

B. The *Johnson* Factors Support the Reasonableness of Interim Settlement Class Counsel's Fee Request

Courts in this jurisdiction analyze the reasonableness of fee awards under Rule 23(h) using the well-known factors originally set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and approved by the Tenth Circuit:

(1) the time and labor involved;
(2) the novelty and difficulty of the questions;
(3) the skill requisite to perform the legal services properly;
(4) the preclusion of other employment by the attorney due to acceptance of the case;
(5) the customary fee;
(6) any prearranged fee—this is helpful but not determinative;
(7) time limitations imposed by the client or other circumstances;
(8) the amount involved and results obtained;
(9) the experience, reputation, and ability of the attorneys;
(10) the undesirability of the case;
(11) the nature and length of professional relationship with the client; and
(12) awards in similar cases.

Brown v. Phillips Petroleum Co., 838 F.2d 451, 454-55 (10th Cir. 1988) (citing *Johnson*, 488 F.2d 717-19, and noting that "federal courts have relied heavily on the [*Johnson*] factors . . . in

[20] To be sure, Interim Settlement Class Counsel seek an award of one-third of the total Settlement Funds, which includes interest accrued on the $651 million total Settlement Amount. *See supra*, note 11.

[21] The percentage-of-the-fund Class Counsel requests equates to a 1.58 multiplier to their collective lodestar, which is eminently reasonable. *See In re: Urethane Antitrust Litig.*, No. 04-1616-JWL, 2016 WL 4060156, at *7 (D. Kan. July 29, 2016) ("even if the Court were to reduce the lodestar a small amount, such that the multiplier here increased to 4 or 5, that multiplier would fall within the range of multipliers accepted by a number courts in megafund cases"); *see also In re Miniscribe Corp.*, 309 F.3d 1234, 1245 (10th Cir. 2002) (noting that "[t]he 2.57 multiplier . . . finds some support in other lodestar multiplier cases."); *Rothe v. Battelle Mem'l Inst.*, 2021 WL 2588873, at *11 (D. Colo. June 24, 2021) (awarding fee equating to a "3.61 multiplier on counsel's lodestar amount.").

calculating and reviewing attorneys' fees awards"). The weight to be given to each of the *Johnson* factors varies from case to case, and each factor is not always applicable. *See id.* at 456 ("rarely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation"); *see also Gudenkauf v. Stauffer Communications, Inc.*, 158 F.3d 1074, 1083 (10th Cir. 1998) ("We have never held that a district court abuses its discretion by failing to specifically address each *Johnson* factor."). The relevant *Johnson* factors are examined below and demonstrate that a one-third fee award is appropriate here.[22]

1. The significant monetary award obtained for the Settlement Classes supports the reasonableness of the fee award. (Factor 8)

Here, the result obtained for the Settlement Classes is the most important factor in determining an appropriate fee. *See Acevedo*, 2019 WL 6712298, at *4 ("Courts have consistently held that the most important factor within this analysis is what results were obtained for the class." (quoting *Lane v. Page*, 862 F. Supp. 2d 1182, 1254 (D.N.M. 2012)); *In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th at 1193 ("[T]he amount involved and the results obtained—may be given greater weight when . . . the trial judge determines that . . . the efforts of counsel were instrumental in realizing recovery on behalf of the class" (quoting *Brown*, 838 F.2d at 456)) (ellipses in original); *Nakamura*, 2019 WL 2185081, at *2 ("the result obtained deserves greater weight than

[22] The following factors are not generally applicable to class action litigation: (7) time limitations imposed by the client or the circumstances, and (11) the nature and length of the professional relationship with the client. Thus, this Motion does not analyze these factors. *See* 5 Newberg on Class Actions § 15:77 n.15 (5th ed. 2015) (relationship with client "has little relevance in the class setting given that the 'client' is the class."); *In re: Motor Fuel Temperature Sales Practices Litig.*, 07-MD-1840- KHV, 2016 WL 4445438, at *9 (D. Kan. Aug. 24, 2016) (noting that in the class action context, nature and length of the professional relationship with the client did not apply); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *4 (noting that in evaluating class action settlement approval, the seventh and eleventh *Johnson* factors did not apply). However, it should be noted that Interim Settlement Class Counsel has represented most of the Class Plaintiffs for years, and some for nearly eight years.

the other *Johnson* factors." (citing *Brown*, 838 F.2d at 456)). In common fund cases, the factor "given the greatest emphasis is the size of the fund created, because a common fund is itself the measure of success and represents the benchmark from which a reasonable fee will be awarded." Manual For Complex Litigation 4th § 14:121 (2004) (internal quotation marks and citation omitted); *see also* Fed. R. Civ. P. 23(h) Adv. Comm. Note (explaining for a "percentage" or contingency-based approach to class action fee awards, "results achieved is the basic starting point"); *see also Anderson v. Merit Energy Co.*, 07-CV-00916-LTB-BNB, 2009 WL 3378526, at *4 (D. Colo. Oct. 20, 2009) ("Numerous courts have recognized that in evaluating the various *Johnson* factors, the greatest weight should be given to the monetary results achieved for the benefits of the class." (citing *Brown*, 838 F.2d at 456)); *Cecil v. BP America Prod. Co.*, No. 16-CV-410-KEW, 2018 WL 8367957, at *4 (E.D. Okla. Nov. 19, 2018) ("[T]he eighth *Johnson* factor—the amount involved in the case and the results obtained—is the most important and weighs most heavily in support of the requested fee.").

The result obtained by the Settlements fully supports the requested fee. First, the Settlements avoid future uncertainties as to the claims against the Settling Defendants and collectively provide a guaranteed, non-reversionary cash recovery totaling $651 million. *See Koehler v. Freightquote.com, Inc.*, 12-2505- DDC-GLR, 2016 WL 3743098, at *7 (D. Kan. July 13, 2016) (settlement "avoids the uncertainty and rigors of trial and produces a favorable result for plaintiffs. This factor favors approval of the fee award."). Second, the Net Settlement Funds will be distributed to the Settlement Classes, with no funds reverting to the Settling Defendants. Burns Decl. at ¶ 15. In this RICO class action against the Settling Defendants—as in every RICO action—there was a significant risk that Plaintiffs would not be able to establish the elements of their claims, prove damages, or protect any award on appeal. The same is true for the other cases that

comprise the ACH Opioids Litigation. Additionally, the fact that the Settlement Classes were able to avoid the considerable uncertainty that any "battle of experts" at trial would inevitably have introduced further supports the reasonableness of the proposed fee award. *See Ressler v. Jacobson*, 822 F. Supp. 1551, 1554 (M.D. Fla. 1992) (observing that, '[i]n the 'battle of experts,' it is impossible to predict with any certainty which arguments would find favor with the jury"). Furthermore, the Settling Defendants have a strong belief in the merits of their arguments and pressed them at every available turn. For example, Interim Settlement Class Counsel and the Distributor Defendants did not reach an agreement until just weeks before a 12-week trial was set to begin in Alabama state court in July 2024. Burns Decl. at ¶ 28. That Interim Settlement Class Counsel secured such a result in the face of the significant risks demonstrates that the requested fee of one-third is reasonable and fair.

Finally, the recovery here is sizeable, and against several of the most admired and recognized pharmaceutical companies in the world. This further confirms the reasonableness of the requested fee.

2. The requested fee is consistent with fees awarded in similar cases. (Factor 12)

An attorneys' fee award of one-third of the common fund is consistent with fees awarded by this Court,[23] as well as others in this Circuit and across the country,[24] in comparably high-risk complex class actions resulting in creation of an exceptional common fund. Indeed, "[c]ustomarily, courts in this District award fees in the range of 30% to 40% of any amount recovered." *Anderson Living*

[23] *See, e.g.*, *Anderson Living Tr.*, 2021 WL 3076910 (40%); *Acevedo*, 2019 WL 6712298, at *4 (33.33%); *Candelaraia v. Health Care Serv. Corp.*, No. 2:17-cv-404-KG-SMV, 2020 WL 6875828, at *3 (D.N.M. Nov. 4, 2020) (35%); *Bhasker v. Financial Indemnity Co.*, No. 1:17-cv-00260-KWR-JHR, 2023 WL 4534548 (D.N.M. July 13, 2023) (33%).

[24] *See* Table 1: Examples of Fee Awards of 33.33% or Greater Within Tenth Circuit *and* Table 2: Examples of Fee Awards of 33.33% or Greater Outside Tenth Circuit, Exhibit D hereto.

Tr., 2021 WL 3076910, at *8; *see also Montgomery* 2021 WL 1339305, at *7 n. 6 (approving a fee request of 31.47% and citing twelve cases from districts in the Tenth Circuit awarding fees in the range of 30% to 40%). A one-third fee here is consistent with fees awarded in similar cases.

3. The requested fee is consistent with a customary fee. (Factor 5)

"Class actions typically involve a contingent fee arrangement because it insulates the class from the risk of incurring legal fees and shifts that risk to counsel." *Nakamura*, 2019 WL 2185081, at *2 (quoting *Nieberding v. Barrette Outdoor Living, Inc.*, 129 F. Supp. 3d 1236, 1250 (D. Kan. 2015)). In complex contingent fee cases, one-third of the recovery is par or lower than a standard fee arrangement. *See id.* at *3 (33% "is within the range of customary fees awarded in similar cases" and "some courts in the Tenth Circuit have awarded fees based on 40% of the common fund."). In fact, "[f]ees in the range of 30–40% of any amount recovered are common in complex and other cases taken on a contingency fee basis." *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d at 1257 (citing *Robles v. Brake Masters Sys., Inc.*, No. CIV 10-0135 JB/WPL, 2011 WL 9717448, at *19 (D.N.M. Jan. 31, 2011)); *Acevedo*, 2019 WL 6712298, at *5. Courts in this Circuit consistently find that "a one-third fee is customary in contingent-fee cases, and indeed that figure is often higher for complex cases or cases that proceed to trial." *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *5; *Nieberding*, 129 F. Supp. 3d at 1250 (recognizing a one-third fee of the common fund was "well within the range typically awarded in class actions."); *Anderson v. Merit Energy Co.*, 2009 WL 3378526, at *3 ("The customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed on the class.").

"[A] contingent fee of one-third of the settlement amount in a class action is standard in this Court and other district courts in the Tenth Circuit." *Cisneros*, 2022 WL 2304146, at *8. Here, the proposed fee award is comfortably within the customary fee range. *See Anderson Living*

Tr., 2021 WL 3076910, at *8 (40% fee was within customary fee range); *see also Montgomery* 2021 WL 1339305, at *7 n. 6 (collecting cases).

4. These cases presented difficult factual issues and raised novel and complex questions of law. (Factor 2)

"Courts emphasize the risk undertaken by counsel" in awarding fees, with "complex cases justify[ing] higher fees, and simple cases lower fees." *Been v. O.K. Indus., Inc.*, CIV-02-285-RAW, 2011 WL 4478766, at *7 (E.D. Okla. Aug. 16, 2011), *report and recommendation adopted*, CIV-02- 285-RAW, 2011 WL 4475291 (E.D. Okla. Sept. 26, 2011).

In terms of complexity and difficulty, the ACH Opioids Litigation certainly satisfies this *Johnson* factor. These cases presented complex and novel issues of law. The ACH Opioids Litigation has consisted of federal and state RICO claims, which require a high burden of proof and present both factual and legal challenges. In this RICO class action against the Settling Defendants, for example, there was a risk that Plaintiffs would not be able to establish the elements of their claims, prove damages, or protect any award on appeal. Moreover, the state law claims presented throughout the ACH Opioids Litigation have raised novel issues of law, which required appeal to the supreme courts of Alabama, Missouri, Arizona, Maine, and Arkansas, for example. Burns Decl. at ¶ 47.

5. Plaintiffs' team of attorneys have substantial experience in prosecuting high-stakes, complex litigation and pursued the case with extraordinary skill, zeal, and expertise. (Factors 3 & 9)

As discussed, this complex litigation raised exceptionally difficult factual and legal issues. Prior to the Settlements, Interim Settlement Class Counsel had litigated these cases aggressively for nearly eight years, engaging in voluminous document and deposition discovery, as well as extensive motion practice. Guiding these cases through years of intense litigation and then complex negotiation to a successful settlement with the Settling Defendants required the

sustained effort of many highly experienced and respected lawyers in the fields of tort law, RICO, and class action litigation. Plaintiffs have been represented by some of the nation's top law firms, including, but not limited to, Barrett Law Group P.A.; Cuneo Gilbert & LaDuca, LLP; Farmer Cline & Campbell, PLLC; Burns Charest LLP; Taylor Martino, P.C.; and Clifford Law Offices, P.C., consisting of highly experienced attorneys with stellar reputations earned over decades of legal practice.[25] Burns Decl. at ¶¶ 4-5.

Of course, it was not only Plaintiffs and the Settlement Classes that have been well-represented in this litigation. "In evaluating the quality of representation by Class Counsel, the Court should also consider the quality of opposing counsel." *Lunsford v. Woodforest Nat'l Bank*, No. 1:12-CV-103- CAP, 2014 WL 12740375 at *13 (N.D. Ga. May 19, 2014); *see also Chieftain Royalty Co. v.. XTO Energy, Inc.*, 2018 WL 2296588, at *5 (E.D. Okla. Mar. 27, 2018) ("[T]he fact that Class Counsel litigated such difficult issues against the vigorous opposition of highly skilled defense counsel and obtained a significant recovery for the Settlement Class further supports the fee request in this case."); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *5 ("Litigation of this case required great skill in a highly specialized field (third factor), against highly skilled opposing counsel, and plaintiffs' attorneys, who had great experience and superior national reputations, demonstrated great skill throughout (ninth factor)."); *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d at 1256 ("Given the high quality of defense counsel, there was simply no way that this case could have been prosecuted successfully without a high level of skill exhibited on the part of Class Counsel." (internal quotations and citation omitted)). Defendants have been vigorously represented throughout this litigation by some of the nation's most experienced litigators from several of the nation's top law firms, including, but not limited

[25] *See supra*, Section II.

to: Wachtell, Lipton, Rosen & Katz; Williams & Connolly; Cravath, Swaine & Moore LLP; Reed Smith; Jenner & Block LLP; Covington & Burling LLP; O'Melveny & Myers LLP; Morgan, Lewis & Bockius LLP; and Kirkland & Ellis LLP. The ACH Opioids Litigation demanded—and received—a team of experienced, diligent, highly skilled, and reputable attorneys to meet the challenges from Defendants' well-qualified and well-funded opposing counsel. That Interim Settlement Class Counsel obtained a favorable settlement against such well-represented defendants, confirms the reasonableness of the requested fee award.

6. The fee being contingent on obtaining relief for the class and the significant risk undertaken by counsel justifies the fee request. (Factor 6)

Along with the results obtained, the degree of risk associated with the litigation of a complex contingent fee case is among the most significant of the *Johnson* factors. *See Cecil*, 2018 WL 8367957, at *8 ("Courts consistently recognize that the risk of receiving little or no recovery is a major factor in considering an award of attorneys' fees."). When Interim Settlement Class Counsel brought the ACH Opioids Litigation cases, they knew, no matter how much they believed in the actions' merits, "there would be no fee without a successful result and that such a result would be realized only after lengthy and difficult effort." *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 356 (N.D. Ga. 1993). "This factor weighs in favor of the requested attorneys' fees award, because '[s]uch a large investment of money [and time] place[s] incredible burdens upon . . . law practices and should be appropriately considered." *In re Thornburg Mortg., Inc. Sec. Litig.*, 912 F. Supp. 2d at 1256 (citing *Feerer v. Amoco Prod. Co.*, No. 95–0012, 1998 U.S. Dist. LEXIS 22248, at *33 (D.N.M. May 28, 1998)); *Been v. O.K. Indus., Inc.*, 2011 WL 4478766, at *9 ("Courts agree that a larger fee is appropriate in contingent matters where payment depends on the attorney's success.").

Thus, Plaintiffs' counsel assumed a very real risk that they would "advance all expenses and attorney time to litigate a hard-fought case against highly experienced counsel hired by [defendants] with ample resources," without ever receiving any compensation for their time and expense. *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *4; *see also Lane v. Page*, 862 F. Supp. 2d at 1256 ("Class counsel assumed the risk that the litigation would yield no recovery and for five years have received no compensation for the time and expenses they have spent during the course of the litigation."). That risk deserves to be compensated. "Lawyers who are to be compensated only in the event of victory expect and are entitled to be paid more when successful than those who are assured of compensation regardless of result." *Jones v. Diamond*, 636 F.2d 1364, 1382 (5th Cir. 1981) (en banc); *see also Freebird, Inc. v. Merit Energy Co.*, No. 10-1154-KHV, 2013 WL 1151264, at *4 (D. Kan. Mar. 19, 2013) ("The contingent fee nature of the representation . . . supports the requested award [because it] shifts the risk of loss from plaintiff to plaintiff's counsel.").

While Interim Settlement Class Counsel have always believed in the importance and merit of the RICO and other claims asserted in this litigation, they had no illusions when they commenced these actions that the trail would be either short or smooth. Interim Settlement Class Counsel knew the claims they were asserting—for example, that the Defendants participated in a conspiracy that resulted in an epidemic of opioid addiction throughout the United States—would be time-consuming and resource-intensive to develop and prove. Burns Decl. at ¶ 42. Counsel further knew these cases would require years of discovery, extensive motion practice, substantial dispositive motions challenges, and difficult and lengthy trials on the merits. *Id.* Counsel were well-aware, moreover, that their claims would have to survive difficult challenges at several different stages of the case—on motions to dismiss, on motions for summary judgment,

at trials, or on appeal—and that there was thus "a substantial risk of no recovery." *In re Syngenta AG MIR 162 Corn Litig.*, 357 F. Supp. 3d 1094, 1114 (D. Kan. 2018). Counsel nevertheless devoted the enormous time and resources necessary to obtain the relief provided by the Settlements for the Settlement Classes.

7. Interim Settlement Class Counsel's expended time and labor were enormous. (Factor 1)

As one might expect given the important and complex factual and legal issues presented by this litigation, Interim Settlement Class Counsel devoted an enormous amount of time and effort to their representation of the Settlement Classes. Specifically, Interim Settlement Class Counsel and their co-counsel dedicated over 211,938 hours resulting in over $137.7 million of lodestar. Burns Decl. at ¶ 44. Interim Settlement Class Counsel had to investigate and develop novel factual and legal theories, review millions of pages of documents, take and defend numerous depositions, and more. *Id.* at ¶ 27. Motion practice has been extensive, including motions to dismiss, discovery disputes, and summary judgment. And a substantial amount of the work preparing for and leading up to trial in Alabama—including briefing on summary judgment and expert witnesses—was completed by the time the Settlement with Distributor Defendants was reached. *Id.* at ¶ 28. Moreover, Interim Settlement Class Counsel's lodestar does not include the substantial amount of time and effort they will continue to expend through the Settlement approval and claims process. This factor, though of lesser importance in a common fund case, favors the requested fee.

8. Given the enormous time and resource commitments, and the significant risk to develop and litigate the ACH Opioids Litigation, few attorneys would have been willing to take it on. (Factor 10)

Simply put, "the time and effort that th[ese] case[s] ha[ve] taken and the complexity of the issues would make it undesirable to many attorneys." *Acevedo*, 2019 WL 6712298; *Lane v. Page*,

862 F. Supp. 2d at 1258; *Been v. O.K. Indus., Inc.*, 2011 WL 4478766, at *10 (finding that the time and effort expended in an expensive litigation made a class action undesirable for class counsel). Here, this factor too weighs in support of the reasonableness of the proposed fee.

9. The demands of this case precluded Interim Settlement Class Counsel from other employment. (Factor 4)

Finally, attorneys' fees are justified where the engagement "precluded or reduced [the attorneys'] opportunity for other employment." *Brown*, 838 F.2d at 455. "This guideline involves the dual consideration of otherwise available business which is foreclosed because of conflicts of interest which occur from the representation, and the fact that once the employment is undertaken the attorney is not free to use the time spent on the client's behalf for other purposes." *Johnson*, 488 F.2d at 718. "It is, of course, always true that while an attorney is spending time on one case, he is not spending the same time on another case." *Wiggins v. Roberts*, 551 F. Supp. 57, 61 (N.D. Ala. 1982).

The ACH Opioids Litigation has involved years of nearly non-stop document discovery and scores of depositions, punctuated by numerous contentious discovery disputes. Interim Settlement Class Counsel expended enormous time and effort drafting multiple complaints, opposing motions to dismiss, responding to motions for summary judgment, as well as completing a significant portion of pretrial schedule and trial preparation work in Alabama state court. Interim Settlement Class Counsel worked diligently to negotiate the Settlement Agreements with the Settling Defendants, an effort that required Interim Settlement Class Counsel to address and resolve many legal, factual, and administrative questions that arose during the negotiation process. For Interim Settlement Class Counsel, the significant commitment of time and resources required to litigate these cases (of necessity) limited their ability to pursue numerous other engagements. This significant opportunity cost has been incurred for nearly eight

years, and will continue to be incurred beyond final approval, as Interim Settlement Class Counsel fulfill their obligation to ensure proper distribution of the Settlement proceeds and address any issues that arise following final approval. Burns Decl. at ¶ 43. This factor undoubtedly supports the requested fee. *See, e.g., In re Syngenta*, 357 F. Supp. 3d. at 1113 ("plaintiffs' counsel have confirmed that the demands of this litigation . . . precluded other employment for these attorneys (factor 4)."); *In re Urethane Antitrust Litig.*, 2016 WL 4060156, at *5 ("The amount of time expended over a protracted period leaves little doubt that these attorneys were forced to forego other work during this case").

VII. THE COURT SHOULD AWARD PLAINTIFFS' COUNSEL'S EXPENSES AND NOTICE AND ADMINISTRATIVE COSTS

A. Plaintiffs' Counsel's Expenses

Interim Settlement Class Counsel request the Court also award the reasonable expenses incurred in successfully prosecuting and resolving the ACH Opioids Litigation against the Settling Defendants. "As with attorney fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred . . . in addition to the attorney fee percentage." *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000) (citation omitted); *see Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv-404-KG-SMV, 2020 WL 6875828 at *4 (D.N.M. 2020) (in addition to awarding the cost of hiring a settlement administrator, court awarded class counsel all "actual out-of-pocket litigation expenses and costs incurred in prosecuting th[e] case"). Rule 23(h) authorizes courts to reimburse counsel for "non-taxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). And the Settlement Agreements expressly authorize Interim Settlement Class Counsel to seek "reimbursement of expenses incurred in connection with prosecuting the Action and the Other Actions brought by the Class Representatives," *e.g.*

Distributor Settlement Agreement (ECF No. 276-1) at VIII(A), and provides that these expenses "shall be paid from the Settlement Funds." *Id.*

Interim Settlement Class Counsel and their co-counsel have collectively incurred $35,330,637.54 in reasonable expenses. Burns Decl. at ¶ 48. These expenses include items typically borne by clients in non-contingent fee litigation, such as filing fees, expert costs, court reporting services and transcripts, document management, travel, electronic research, photocopying, overnight delivery, phone charges, and mediation fees, among others.[26] *Id.* at ¶ 49. All expenses were directly related and necessary to Interim Settlement Class Counsel's prosecution of the ACH Opioids Litigation, and typical of large, complex actions such as this. *Id.* Interim Settlement Class Counsel and their co-counsel have advanced or incurred these expenses and maintained careful records to document them. *Id.* at ¶ 50. These expenses are summarized in the Declaration of Warren Burns and its attached exhibits. Interim Settlement Class Counsel request that these expenses be assessed amongst the approved Settlements proportional to their respective total Settlement Funds contribution.

B. Notice and Administrative Costs and Mechanisms for Submitting Future Expenses

In addition, the Notice and Claims Administrators, A.B. Data and Cherry Bekaert have incurred costs and submitted corresponding invoices totaling $311,757.66 for implementation of the Class notice plan commenced on November 20, 2024, pursuant to the Court's October 30, 2024 Orders. Burns Decl. at ¶¶ 52-53. Interim Settlement Class Counsel requests the Court approve and order payment from the Settlement Funds of $72,569.85 to A.B. Data and $239,187.81 to Cherry

[26] *See In re Bank of America Wage and Hour Employment Litig.*, 10-MD-2138-JWL, 2013 WL 6670602, at *4 (D. Kan. Dec. 18, 2013) (awarding class counsel expenses "typically borne by clients in non-contingent fee litigation") (citing *Case v. Unified Sch. Dist. No. 233*, 157 F.3d 1243, 1257 (10th Cir. 1998)).

Bekaert for these necessary case expenses, and that these expenses be assessed amongst the approved Settlements proportional to their respective total Settlement Funds contribution. Interim Settlement Class Counsel request that Notice and Claims Administrators and the Escrow Agent be allowed to submit itemized statements of fees and expenses for the Court's approval on a monthly basis.

Finally, Interim Settlement Class Counsel propose a mechanism for compensating the Special Master Hon. Thomas Hogan. From time to time, on approximately a monthly basis, the Special Master and his counsel shall file under seal an itemized statement of fees and expenses.[27] Such itemized statements may include confidential communications between the Special Master and the Court and others; accordingly, the Court shall maintain these itemized statements under seal and they shall not be made available to the public or counsel. Instead, the Special Master and his counsel shall also file with the itemized statements a summary statement which shall list only the total amount billed, which summary shall not be filed under seal, and shall contain a signature line for the Court accompanied by the statement "Approved for Disbursement." If the Court determines the itemized statement is regular and reasonable, the Court will sign the corresponding summary statement and have it entered on the docket. The Escrow Agent shall then remit to the Special Master and his counsel approved fees from the Settlement Funds within 10 calendar days after Court approval.

The Court should approve an award of Interim Settlement Class Counsel's and their co-counsel's expenses in the amount of $35,330,637.54, with the interest earned on that amount at

[27] The Special Master will be compensated for his services at the rate of $500 per hour, plus reimbursement of all ordinary and necessary expenses. The Special Master's counsel, Taft Stettinius & Hollister LLP, will be compensated at its standard hourly rates, plus reimbursement of all ordinary and necessary expenses, as described in its engagement letter with the Special Master.

the same rate earned on the Settlement Funds, and order payment to A.B. Data in the amount of $72,569.85, payment to Cherry Bekaert in the amount of $239,187.81. Additionally, Class Plaintiffs ask that the Court grant the proposed mechanism for payment of Special Master Hon. Thomas Hogan and allow the Notice and Claims Administrators and the Escrow Agent to submit itemized statements of fees and expenses for the Court's approval on a monthly basis.

CONCLUSION

For the reasons above and in the supporting declarations, Class Plaintiffs respectfully request the Court grant Class Plaintiffs' Motion for Final Class Certification, Appointment of Class Counsel, Final Approval of Settlements, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses and to enter the proposed orders, submitted in Word format herewith.

Dated: December 21, 2024

Respectfully submitted,

/s/ Warren T. Burns

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CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of Court and served to all counsel of record via the Court's CM/ECF system.

/s/ Warren T. Burns
Warren T. Burns

Exhibit 3B

EXHIBIT B

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

SAN MIGUEL HOSPITAL CORPORATION d/b/a ALTA VISTA REGIONAL HOSPITAL, on behalf of itself and all others similarly situated, Plaintiff v. JOHNSON & JOHNSON, *et al.*, Defendants	Case No. 1:23-cv-00903-KWR-JFR The Hon. Judge Kea Riggs

DECLARATION OF WARREN T. BURNS IN SUPPORT OF CLASS PLAINTIFFS' MOTION FOR FINAL CLASS CERTIFICATION, APPOINTMENT OF CLASS COUNSEL, AND FINAL APPROVAL OF SETTLEMENTS, APPROVAL OF PLAN ALLOCATION, AND AWARD OF ATTORNEYS' FEES AND EXPENSES

Pursuant to 28 U.S.C. § 1746, I declare and state as follows:

1. I am a partner with the law firm Burns Charest LLP and represent counsel for Settlement Class Representatives (hereinafter, "Class Plaintiffs" or "Plaintiffs") in the above-captioned litigation. I submit this declaration in support of Class Plaintiffs' Motion for Final Class Certification, Appointment of Class Counsel, Final Approval of Settlement, Approval of Plan of Allocation, and Award of Attorneys' Fees and Expenses.

2. This declaration is based upon my personal knowledge, unless otherwise indicated. If called upon to testify as to the matters stated herein, I could and would competently do so.

I. THE ACH OPIOIDS LITIGATION

3. I represent numerous acute care hospitals, including Plaintiff San Miguel Hospital Corporation d/b/a Alta Vista Regional Hospital Corporation, in active litigation against opioid manufacturers, pharmaceutical distributors, and retail pharmacies. In their suits, the acute care hospitals generally allege that the defendants participated in a conspiracy that resulted in an

epidemic of opioid addiction throughout the United States. My clients further allege that acute care hospitals throughout the country were injured as a result of defendants' actions.

4. Since 2017, I have participated in an informal leadership committee coordinating acute care hospitals suits throughout the country. Our committee is chaired by John W. ("Don") Barrett. Mr. Barrett has also been appointed as the hospital representative on the Plaintiffs' Executive Committee before the federal court overseeing the opioids multi-district litigation, *In re National Prescription Opiate Litigation*, Case No. 1:17-md-2804, MDL 2804, (N.D. Ohio). Other members of the informal acute care hospital leadership committee include Steven A. Martino, Robert A. Clifford, Charles J. LaDuca, and Stephen B. Farmer. The Court appointed this team of lawyers as Interim Settlement Class Counsel in its October 30, 2024 orders preliminarily approving the Settlements. *See* ECF Nos. 277, 278, 279, 280.

5. As reflected in their resumes and *curriculum vitae*, our leadership team is comprised of highly experienced lawyers who have represented plaintiffs in complex class actions throughout the country. Many of the leadership team members have been appointed lead or co-lead counsel in multiple other class actions. For the convenience of the Court, I attach the following to this declaration:

- Exhibit B-1, a true and correct copy of the *Curriculum Vitae* of Warren Tavares Burns, of Burns Charest LLP;
- Exhibit B-2, a true and correct copy of the resume of Stephen B. Farmer, of Farmer Cline & Campbell, PLLC;
- Exhibit B-3, a true and correct copy of the *Curriculum Vitae* of Robert A. Clifford, of Clifford Law Offices;
- Exhibit B-4, a true and correct copy of the biography of Charles J. LaDuca, of Cuneo Gilbert & LaDuca, LLP, and associated firm biography;
- Exhibit B-5, a true and correct copy of the *Curriculum Vitae* of Steven A. Martino, of Taylor Martino, P.C.; and
- Exhibit B-6, a true and correct copy of the declaration of Don Barrett, of Barrett Law Group

P.A.

6. Collectively, our leadership team represents hundreds of acute care hospitals across the country. We have pursued numerous cases in federal and state courts, including, among others, the following:

- *Florida Health Sciences Center, Inc., et al. v. Richard Sackler, et al.*, Case No. 19-01882, In the Circuit Court of the Seventeenth Judicial Circuit in and for Broward County, Florida;
- *The DCH Health Care Authority, et al. v. Purdue Pharma L.P., et al.*, Case No. 21-cv-2019-000007.00, In the Circuit Court of Conecuh County, Alabama;
- *Lester E. Cox Medical Centers d/b/a Cox Medical Centers, et al. v. Amneal Pharmaceuticals, LLC, et al.*, Case No. 6:22-cv-03192, In the United States District Court for the Western District of Missouri–Southern Division;
- *West Boca Medical Center, Inc. v. AmerisourceBergen Drug Corporation, et al.*, Case No. 1:18-op-45530, In the United States District Court for the Norther District of Ohio–Eastern Division;
- *Fayetteville Arkansas Hospital Company, LLC, et al. v. Amneal Pharmaceuticals, LLC, et al.*, Case No. 72-cv-20-156, In the Circuit Court of Washington County, Arkansas; and
- *Eastern Maine Medical Center, et al. v. Teva Pharmaceuticals USA, Inc.*, Docket No. BDC-CIV-2022-00025, In the Business and Consumer Court of the State of Maine.

Collectively, I will refer to these and other cases in which we have represented our clients as the ACH Opioids Litigation.

7. As detailed below, Class Plaintiffs and Interim Settlement Class Counsel (hereinafter "Class Counsel") have vigorously pursued acute care hospitals' claims in the ACH Opioids Litigation.

8. The claims asserted in the ACH Opioids Litigation are highly complex and require

significant investment of time and capital by our clients and their lawyers. Collectively, our lawyers have invested tens of thousands of hours of attorney time in litigating our clients' claims on a contingency fee basis. Litigating individual cases requires dozens of lawyers and may take years to reach trial, without regard to subsequent appeals.

II. SETTLEMENT NEGOTIATIONS WITH SETTLING DEFENDANTS

9. Beginning in 2022, Class Counsel engaged in numerous negotiations with Settling Defendants to resolve the parties' disputes on a global basis. These negotiations involved numerous in-person and remote presentations to elucidate Plaintiffs' claims and the Settling Defendants' defenses. Our lawyers participated in a total of over a dozen in-person mediation sessions and additional remote negotiating sessions with the different groups of Settling Defendants, culminating in the settlements before the Court. During mediation, the relevant legal issues were fully presented for the Settling Parties to effectively evaluate liability and damages. The parties were assisted in their negotiations through the dogged efforts of a prominent national mediator, Fouad Kurdi, as well as, in the case of the Distributor Defendants, former Judge Sidney Schenkier. Mr. Kurdi was instrumental in settling disputes involving other litigants involved in *In re National Prescription Opiate Litigation*, while Judge Schenkier is a former federal magistrate judge and respected Chicago-based mediator. After reaching agreement on key terms, our leadership team and the Settling Defendants have spent months negotiating final Settlement Agreements.

10. Class Counsel and Settling Defendants have extensively negotiated and drafted the Settlement Agreements and their related documents, which included the form of final judgment, the proposed preliminary approval orders, the Registration Form, the Claim Form, the Plan of Allocation, and the forms of notice to the Classes of the Settlements.

III. THE SETTLEMENTS

11. The Distributors Settlement Agreement provides that Plaintiffs and the certified Class will settle and release their claims against the Distributor Defendants in exchange for a non-reversionary $390 million cash payment (the "Distributors' Settlement Amount") from the Distributor Defendants. The Distributors' total Settlement Amount was deposited into the Escrow Account on November 27, 2024.

12. The Janssen Settlement Agreement provides that Plaintiffs and the certified Class will settle and release their claims against the Distributor Defendants in exchange for a non-reversionary $110 million cash payment. The Janssen Settlement Amount was deposited into the Escrow Account on November 27, 2024.

13. The Teva Settlement Agreement provides that Plaintiffs and the certified Class will settle and release their claims against the Teva Defendants in exchange for a non-reversionary $126 million cash payment from the Teva Defendants (the "Teva Settlement Amount") and distribution of Naloxone Hydrochloride Nasal Spray, a medication designed to rapidly reverse opioid overdose, to Settlement Class Members valued at up to $49 million. $1 million was deposited into an Escrow Account on November 29, 2024. The remaining $125 million will be deposited in accordance with the payment schedule set forth in Section IV(B) of the Teva Settlement Agreement.

14. The Allergan Settlement Agreement provides that Plaintiffs and the certified Class will settle and release their claims against the Allergan Defendants in exchange for a non-reversionary $25 million cash payment from the Allergan Defendants (the "Allergan Settlement Amount"). $1 million of the Allergan Defendants' Settlement Amount was deposited into an Escrow Account on November 22, 2024. The remaining $24 million will be deposited accordance with the payment schedule set forth in Section IV(B) of the Allergan Settlement Agreement.

15. Funds will be distributed to Class Members who submit timely and valid Claim Forms and/or Registration Forms to the Settlement Administrator ("Eligible Claimants") in accordance with the Plan of Allocation. Class Counsel anticipate that all funds will be distributed to Class Members pursuant to the Plan of Allocation. There is no right of reversion under the Settlements and under no circumstances will any portion of a Settlement Amount be returned to the respective Settling Defendant(s) once that Settlement becomes final.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENTS

16. On October 25, 2024, Plaintiff San Miguel moved for preliminary approval of the Settlements. ECF No. 276. The Court granted preliminary approval of all four Settlements on October 30, 2024. ECF Nos. 277, 278, 279, 280.

17. In the orders granting preliminary approval of the Settlements, the Court also (i) preliminarily certified, for settlement purposes only, the Settlement Classes; (ii) appointed Interim Class Settlement Class Counsel; (iii) appointed the Settlement Class Representatives; (iv) appointed the Hon. Thomas Hogan (Ret.) as Special Master; (v) appointed Pinnacle Bank as Escrow Agent and approved the respective Escrow Agreements; (vi) established the respective Escrow Accounts as "Qualified Settlement Funds"; (vii) appointed A.B. Data Ltd. ("A.B. Data") and Cherry Bekaert Advisory, LLC ("Cherry Bekaert") as the Notice and Claims Administrators; (viii) approved the form and manner of notice to Class Members; and (iv) stayed all proceedings brought by Releasors in the Action and Other Actions in any forum as to the Settling Defendants, and an enjoined against the filing of any new such proceedings for Released Claims. ECF Nos. 277, 278, 279, 280.

18. In those orders, the Court also required that Settling Defendants provide Class Action Fairness Act notice to Attorneys General under 28 U.S.C. § 1715 by November 4, 2024. *Id.* Settling Defendants have confirmed with Class Counsel that they have complied with such

notice requirements.

V. CLASS NOTICE AND SETTLEMENT ADMINISTRATION

19. The notice program proposed by Plaintiff in its motion for preliminary approval of the Settlements (ECF No. 276) and approved by the Court in the preliminary approval orders (ECF Nos. 277, 278, 279, 280) has been implemented by A.B. Data and Cherry Bekaert, the Notice and Claims Administrators.

20. As set forth in the accompanying Declaration of Brian Devery of A.B. Data ("Devery Decl."),[1] since the entry of the preliminary approval order, A.B. Data has (i) mailed 5,732 copies of the Court-approved Notice Packet to potential Class Members (ii) emailed 1,224 copies (of which 1,201 were successfully delivered) of the Notice Packet to potential Class Members, and (iii) implemented the media plan to publish notice of the Settlement on certain websites, e-newsletters, and email blasts. See Devery Decl. at ¶¶ 3-9. Moreover, Cherry Bekaert published a dedicated website, www.acutecarehospitalsettlement.com. *Id*. at ¶ 10. The settlement website provides information to Class Members about the Action and the Settlements and contains links to important case and settlement documents. *Id*. at ¶ 11. A.B. Data has also maintained a toll-free telephone number, with an interactive voice response system and live operators to provide potential Class Members with responses to frequently asked questions and important information regarding the litigation. *Id*. at ¶ 12.

VI. RESPONSE OF THE CLASSES TO DATE

21. The deadline for Class Members to object to the Settlement is January 6, 2025, and the deadline for Class Members to file a claim is March 4, 2025.

22. Class Counsel will provide the Court with an update on the response of the Classes in their February 3, 2025 filing, which is after the January 6, 2025 objection deadline and before

[1] Attached hereto as Exhibit B-7.

the March 4, 2025 final approval hearing. As of December 20, 2024, there have been no objections.

VII. THE SETTLEMENT IS FAIR, REASONABLE, AND ADEQUATE

23. Class Counsel are all senior attorneys at law firms with considerable experience in complex class actions including RICO and antitrust class actions, in this district and circuit and throughout the country. Class Counsel only agreed to settle with the Settling Defendants after extensive investigation, written discovery, voluminous document production, motion practice, extensive deposition testimony by fact and expert witnesses, expert reports, data analysis, trial preparation, and rigorous arm's-length negotiations.

24. Class Counsel have compared the substantial recovery the Classes will receive from the Settlements against the risks, delays, and uncertainties of continued litigation, trial, and appeals. Class Counsel also considered the timing of the Settlements in light of ongoing litigation against non-settling Defendants and weighed this fact in assessing the value of the Settlements to the Class.

25. Class Counsel conferred with the Class Plaintiffs regarding the Settlements and all the Class Plaintiffs support and approve the Settlements. Although Class Plaintiffs are not seeking Service Awards, Class Plaintiffs' participation in the ACH Opioids Litigation will be taken into account when calculating damages using the Model set forth in the Plan of Allocation.

26. Class Counsel sincerely believe the Settlements are fair, adequate, and reasonable, meet all the standards for approval under Rule 23(e) and Tenth Circuit law, and should be granted for final approval for the reasons discussed below.

A. Standards for Approval

1. Class Plaintiffs and Class Counsel Have Adequately Represented the Classes

27. Class Plaintiffs share the same interests and types of alleged injuries as the absent Class Members. They have participated in extensive discovery and kept informed of the

developments of the cases. And Class Plaintiffs have selected well-qualified counsel who are highly experienced and capable of handling class action and RICO litigation. In many cases, we have responded to multiple rounds of dispositive briefing and interlocutory and other appeals. For those cases that have proceeded to discovery, Class Plaintiffs have produced millions of pages of documents, and terabytes of data related to their treatment of patients diagnosed with opioid use disorder or related conditions. On behalf of our clients in those active cases, we have reviewed voluminous discovery produced by Defendants. Many of our clients have provided corporate representative deposition testimony, as well as employee depositions. And we have taken similar depositions of certain of the Settling Defendants. As part of the ACH Opioids Litigation, our clients have engaged over a dozen experts to provide testimony on issues relating to alleged liability and damages. As part of those efforts, our experts developed a common damages model for our clients that has been utilized in bankruptcy litigation related to the opioid crisis. The claims asserted in the ACH Opioids Litigation are highly complex and require significant investment of time and capital by our clients and their lawyers. Collectively, our lawyers and other lawyers under our supervision have invested tens of thousands of hours of attorney time in litigating our clients' claims on a contingency fee basis. Litigating individual cases requires dozens of lawyers and may take years to reach trial, without regard to subsequent appeals.

28. Prior to reaching the settlements that are the subject of the instant motion, our team was actively preparing for a 12-week trial in July 2024 against Cencora, Inc., Cardinal Health, Inc., McKesson Corporation, Janssen Pharmaceuticals, Inc., Teva Pharmaceuticals Industries, Inc., and Allergan Finance, Inc., and/or other related entities (the "Settling Defendants") in *The DCH Health Care Authority, et al. v. Purdue Pharma L.P., et al.*, Case No. 21-cv-2019-000007.00, In the Circuit Court of Conecuh County, Alabama. Class Counsel and Settling Distributors did not reach an agreement until just weeks before this trial was set to begin, and after major briefing on

experts and summary judgment had already been completed. Litigation continues against non-settling defendants in other *fora*.

2. The Proposed Settlements Were Negotiated at Arm's Length.

29. The Settlement is the product of extensive, vigorous arm's-length negotiations between Plaintiffs and the Settling Defendants, advised by their sophisticated counsel, who possessed more than sufficient evidence and knowledge to allow them to make informed decisions about the strengths and weaknesses of their cases. Our lawyers participated in a total of over a dozen in-person mediation sessions and additional remote negotiating sessions with the different groups of Settling Defendants, where they exchanged their opposing views on the merits of Plaintiffs' claims, issues for appeal, and the terms of the Settlements. The parties were assisted in their negotiations by prominent national mediator Fouad Kurdi, as well as, in the case of the Distributor Defendants, former Judge Sidney Schenkier. As a result, the Settling Parties were well prepared for the serious negotiations that led to the Settlement and were well-informed of the parties' arguments. After reaching agreement on key terms, Class Counsel and the Settling Defendants spent months negotiating final Settlement Agreements.

3. The Proposed Settlement Is Adequate Considering the Costs, Risks, and Delay of Trial and Appeal.

30. The current proposed Settlements notwithstanding, there remain many factual and legal issues on which Plaintiffs and the Settling Defendants still intensely disagree. The Settling Defendants deny that they have engaged in any wrongdoing as alleged by Plaintiffs, deny any liability whatsoever for any of Plaintiffs' alleged claims, and deny that Plaintiffs have suffered any injuries or damages. On the other hand, Plaintiffs have advanced many complex legal and factual issues under federal RICO statutes and various state laws in other *fora*. The issues on which the parties disagree are many, but include: (1) whether any of the Settling Defendants engaged in conduct that would give rise to any liability under the federal RICO statutes; (2) whether the

Settling Defendants have valid defenses to any such claims of liability; (3) the amount of damages suffered by reason of the Settling Defendants' alleged wrongdoing, as well as the methodology for estimating any such damages; (4) whether the Court may properly certify a class for purposes of litigation; and (5) whether the Settling Defendants had other meritorious defenses to the alleged claims. Although the proposed Settlement Class Representatives believe their claims would be borne out by the evidence presented at trial, they recognize that there are significant hurdles to proving liability or even proceeding to trial. Had the parties not reached the Settlement Agreements, the Court or a jury would ultimately be required to decide these issues, placing the litigation's ultimate outcome in doubt.

31. The ACH Opioids Litigation has been going on for nearly eight years and the parties would expend significant additional time, resources, and costs to proceed to trial, and the inevitable appeals likely extending years into the future. Considering the complex legal and factual issues associated with continued litigation, there is an undeniable and substantial risk that, after years of continued litigation, Plaintiffs could receive an amount significantly less than the Settlement Amounts, or nothing for their claims against the Settling Defendants.

32. Thus, the $651 million recovery, particularly when viewed in the context of the risks, costs, delay, and the uncertainties of further proceedings, favors approval of the Settlement.

4. The Proposed Method for Distributing Relief Is Effective.

33. The settlement notice plan approved by the Court includes individual notice direct notice by email or First-Class Mail to all Settlement Class Members identified through reasonable efforts and appearing on a list of nearly 5,800 hospitals providing emergency services. A.B. Data also conducted targeted notice through relevant media. In addition, a case-designated website was created where settlement-related and other key documents are posted, including the Settlement Agreements, Notices, Registration Forms, Proofs of Claim (Claim Forms), and Preliminary

Approval Orders.

34. Class Plaintiffs have proposed a fair and orderly claims administration process in which Settlement Class Members who wish to participate in one or more of the Settlements will complete and submit Proofs of Claim in accordance with the instructions contained therein. *See* Plan of Allocation, attached to Ex. 1, Distributors Settlement Agreement, as associated Exhibit C. The Settlement Administrator will distribute the Net Settlement Funds to Authorized Claimants under a Court-approved Plan of Allocation. *See* Plan of Allocation, attached to Ex. 1, Distributors Settlement Agreement, as associated Exhibit C. The Plan of Allocation proposed here was prepared with information provided by Plaintiffs' experts, in consultation with the Special Master, the Hon. Thomas Hogan, and is consistent with the ACH plans of allocation developed in the Purdue Pharma bankruptcy proceedings (Case No. 19-23649), and utilized thereafter in the Mallinckrodt, plc (Case No. 20-12522) and Endo (Case No. 22-22549) bankruptcy proceedings. Therefore, Plaintiffs' proposed methodology for distributing relief is effective.

5. Attorneys' Fees and Expenses.

35. Class Counsel seek an award of one-third of the Settlement Amounts, plus payment of Plaintiffs' counsel's expenses incurred in connection with the underlying litigation, plus interest earned on these amounts at the same rate as earned by the Settlement Funds. Class Counsel further seek the discretion to allocate the fees among themselves and other counsel under their supervision who have materially contributed to the prosecution of the Class's claims.

36. The Settlement Agreements provide that any Plaintiffs' attorneys' fees and expenses, as awarded by the Court, will be paid from the Settlement Funds consistent with the provisions of each Settlement Agreement. *See* Distributor Settlement Agreement (ECF No. 276-1), Section VIII; Janssen Settlement Agreement (ECF No. 276-2), Section VIII; Teva Defendant (ECF No. 276-3), Section VIII; Allergan Settlement Agreement (ECF No. 276-4), Section VIII.

6. The Settling Parties Have No Additional or Side Agreements

37. Plaintiffs do not have any additional agreements with any of the Settling Defendants.

7. Settlement Class Members Are Treated Equitably Under the Plan of Allocation.

38. Settlement Class Members are treated equitably here. The Plan of Allocation provides all Settlement Class Members the opportunity to submit a claim for an expedited Quick Pay amount. *See, e.g.*, Plan of Allocation, associated Exhibit C to Distributors Settlement Agreement (ECF 276-1) at 3. In the alternative, all Settlement Class Members may elect to participate in a more detailed damages calculation and allocation process utilizing objective factors detailed in the Plan of Allocation for one or more Settlements. *Id.* at 3-4. The Plan of Allocation does not discriminate among Settlement Class Members, treating all Settlement Class Members fairly.

VIII. ATTORNEYS' FEES AND LITIGATION EXPENSES

39. Class Counsel, on behalf of themselves and certain co-counsel under their supervision who have represented Class Plaintiffs in the ACH Opioids Litigation (altogether, "Plaintiffs' Counsel"), seek a fee award of one-third of the $651 million total Settlement Amounts plus interest earned on that Amount[2] contemplated by the four separate Settlement Agreements, or $217 million in attorneys' fees, and $35,330,637.54 in litigation expenses, plus interest earned on these amounts at the same rate as earned by the total Settlement Funds.

40. The amount of attorneys' fees requested by Class Counsel is consistent with the

[2] Together, the "Settlement Funds." The Settlement Funds include the Settlement Amount plus any interest that may accrue on the Settlement Amount from the date the Settlings Defendant(s) pay the Settlement Amount or any portion thereof. *See* Distributors Settlement Agreement (ECF No. 276-1) at § I(SS); Janssen Settlement Agreement (ECF No. 276-2) at § I(TT); Teva Settlement Agreement (ECF No. 276-3) at § I(SS); Allergan Settlement Agreement (ECF No. 276-4) at § I(WW).

information disclosed in Plaintiff's motion for preliminary approval of the Settlements. *See* ECF No. 276 at 21-22.

41. The amount of attorneys' fees requested also was disclosed to Class Members in the settlement Notice, which states that counsel will seek attorneys' fees up to one-third of the Settlement Funds, as well as reimbursement of litigation expenses. *See* Form of Notice, attached as associated Exhibit H to Distributors' Settlement Agreement (ECF No. 276-1), at 8.

A. Attorneys' Fees Incurred by Class Counsel

42. As described above, for nearly eight years, Class Counsel have taken the lead in prosecuting the ACH Opioids Litigation on a completely contingent basis to a successful resolution with the Settling Defendants on behalf of Plaintiffs and the Classes. Class Counsel have always believed in the importance and merit of RICO and state law claims asserted in this litigation, and knew the claims asserted would be time-consuming and resource-intensive to develop and prove. We also knew these cases would require years of discovery, extensive motion practice, substantial dispositive motion challenges, and difficult and lengthy trials on the merits. We fully anticipated, moreover, that the claims would have to survive difficult challenges at several different stages of the litigation—on motions to dismiss, motions for summary judgment, at trial, and on appeal—and appreciated that there was a substantial risk of no recovery.

43. As for the Settlements, Class Counsel successfully negotiated the Settlements, drafted the Settlement Agreements with Settling Defendants' counsel, sought and obtained preliminary approval of the Settlements, retained and oversaw the Settlement Administrator and Notice program, and prepared the pending motion for final approval of the Settlements. Class Counsel have also been communicating with Class Members about the Settlement since the notice was distributed. And Class Counsel will continue to ensure proper distribution of the settlement proceeds and address any issues that arise after final approval of the Settlements.

44. A conservative estimate of Class Counsel's and their co-counsel's collective lodestar, based on a blended hourly fee estimate of $650, exceeds $137.7 million based on more than 211,938 hours billed. To determine this lodestar calculation, Class Counsel and their co-counsel were asked to submit their billing records and corresponding hourly rates for each case they worked on that is included in the ACH Opioids Litigation. Burns Charest LLP and Barrett Law Group P.A. compiled, and I have reviewed, this lodestar amount, which is detailed by firm in the attached Exhibit B-8.

45. Class Counsel are seeking an award of one-third of the total Settlement Funds, or approximately $217 million in attorneys' fees,[3] which amounts to an aggregate multiplier of 1.58.

46. An award of attorneys' fees of one-third of the $651 million total Settlement Amounts, amounting to $217 million,[4] is consistent with this District's law and the Tenth Circuit's requirement that the fee be reasonable under review of the 12 *Johnson* factors set forth in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974).

47. *Johnson* Factors: The 12 *Johnson* factors must be considered differently depending on whether the case is (a) a common fund contingent fee case, or (b) a fee-shifting, lodestar/multiplier case. In a lodestar/multiplier case—unlike this case, the important factors are in the order below because the starting base is time and rates. Factor 1 sets the time, and Factors 2-7 and 9-11 set the rate:

(1) the time and labor involved
(2) the novelty and difficulty of the questions;
(3) the skill requisite to perform the legal services properly;
(4) the preclusion of other employment by the attorney due to acceptance of the case;
(5) the customary fee;
(6) any prearranged fee

[3] For the avoidance of doubt, Class Counsel seeks one-third of the Settlement Funds in each Settlement Agreement individually, totaling to $217 million (plus interest) if all four Settlements become Final.

[4] Plus interest earned on the total Settlement Amounts. *See supra*, note 2.

(7) time limitations imposed by the client or other circumstances;
(8) the amount involved and results obtained;
(9) the experience, reputation, and ability of the attorneys;
(10) the undesirability of the case;
(11) the nature and length of professional relationship with the client; and
(12) awards in similar case.

But in a contingent fee, common fund case, the standard 33 1/3% fee is applied by looking mainly at Factors 8 and 12, and the other factors that are not as important can be looked at to enhance or detract from that standard fee. With this understanding, I address the *Johnson* Factors in numerical order, not by importance in this common fund case.

(1) Time and labor required. In a common fund, contingent fee case when everyone knows at the outset of the case that Plaintiffs' counsel will only get paid for results, and not how much time or labor it takes to get those results, this factor is important to show the case was not a lay-down winner involving little effort or risk. Here, given the battle across various cases and *fora* and the over 211,938 hours billed by Plaintiffs' Counsel, this factor warrants an enhancement above the standard one-third fee.

(2) The novelty and difficulty of the question. The cases that make up the ACH Opioids Litigation presented complex and novel issues of law—including, for example, federal and state RICO claims that require high burdens of proof and state law claims that have required appeals to the supreme courts of Alabama, Missouri, Arizona, Maine, and Arkansas. Again, this factor supports an enhancement above the standard one-third fee.

(3) The skill requisite to perform the legal services properly. The complexity of the ACH Opioids Litigation—procedurally, factually, and substantively—required highly skilled counsel. To prosecute these claims against large corporate defendants, represented by highly capable defense counsel with extensive resources, required assembling a team of Counsel skilled in RICO and complex litigation. The qualifications, skills, and experience of the attorneys here are well known throughout the legal community; we are highly skilled and capable counsel who worked very hard to obtain an excellent result for the Classes. Again, this factor supports an enhancement above the standard one-third fee.

(4) The preclusion of other employment. Plaintiffs' Counsel are engaged in the ongoing practice of law. Committing to take one major case—much less several major cases—necessarily precludes taking on other cases. With the commitment of time and resources to this case, Plaintiffs' Counsel could not accept many other matters. The prosecution of these cases has substantially reduced Plaintiffs' Counsel's opportunity for employment in other matters. Again, this factor supports an enhancement above the standard one-third fee.

(5) The customary fee. Class action cases are usually handled on a contingent fee basis.

The fee percentage in these types of cases is customarily 40% of the gross fund. Again, this factor supports an enhancement above the standard one-third fee.

(6) Any prearranged fee. Class Plaintiffs engaged counsel here on a contingency fee basis. Plaintiffs' Counsel agreed to advance litigation costs to pursue the claims on behalf of Plaintiffs and to recover litigation expenses only if Plaintiffs' Counsel was successful in recovering money. Plaintiffs' Counsel bore the risk of no recovery of expenses or time invested if they were unsuccessful. Again, this factor supports an enhancement above the standard one-third fee.

(7) Time limitations imposed by client or circumstances. Although Plaintiffs nor the Class imposed time limitations on Plaintiffs' Counsel, courts' orders, their local rules, the Federal Rules of Civil Procedure, state rules of civil procedure, and circumstances imposed many. Plaintiffs' Counsel had to meet rigorous deadlines to move the cases toward settlement or trial. Again, this factor supports an enhancement above the standard one-third fee.

(8) The amount involved and results obtained. The Classes and Plaintiffs' Counsel had no assurance of any recovery, much less a substantial recovery as in this case. Defendants raised many defenses to the Plaintiffs' claims. But for the efforts of Class Counsel, no Settlement Funds would exist. The results obtained for the Classes are excellent. Again, this factor supports an enhancement above the standard one-third fee.

(9) Experience, reputation, and ability of counsel. As earlier stated, the ACH Opioids Litigation and this case required highly skilled counsel to represent the Classes. To prosecute class claims against large corporate defendants, represented by the very best defense counsel, required assembling a team of counsel qualified, skilled, and experienced in RICO and complex litigation. This factor supports an enhancement above the standard one-third fee.

(10) The undesirability of the case. Compared to most civil litigation that attracts counsel to represent plaintiffs on a contingent basis, this litigation with complex procedural and legal issues against large and zealously represented defendants fits the initially "undesirable" test. Few law firms are willing to risk the investment of the time and expenses necessary to prosecute litigation of this sort to completion. The issues of liability and damages were all hotly contested. Certainly, the possibility of no recovery was a significant risk and made the case undesirable to all but a few firms. Again, this factor supports an enhancement above the standard one-third fee.

(11) Nature and length of the professional relationship with the client. While this factor is generally not applicable in class action litigation, it should be noted that Class Counsel has represented most of the Class Plaintiffs for years, and some for nearly eight years.

(12) Awards in similar cases. The awards in similar cases are discussed in Class Counsel's motion and exhibits, which are incorporated by reference. A one-third fee award of the common fund for attorneys' fees is consistent with fees awarded by this Court, in the Tenth Circuit, and other courts across the country. That said, the fee is often higher in complex cases such as this one. Again, this factor supports an enhancement above the

standard one-third fee, but only the one-third standard fee is being sought in these settlements.

B. Unreimbursed Costs and Litigation Expenses

48. Plaintiffs' Counsel have expended millions of dollars in costs, expenses, and charges in order to effectively prosecute the ACH Opioids Litigation against several well-funded Defendants. From inception through May 3, 2024, Plaintiffs' Counsel have incurred a collective $35,330,637.54 in costs, expenses, and charges (together, "expenses") in connection with the prosecution of the ACH Opioids Litigation. These expenses are detailed in the declarations of Plaintiffs' Counsel attached as Exhibits B-9 through B-23, and are summarized in the following chart:

ACH Opioid Litigation Expense Summary
Inception through May 3, 2024

Firm	Expenses
BLG Opioid Litigation Fund	$31,400,960.21
Barrett Law Group	$446,614.92
Burns Charest LLP	$2,015,897.32
Clifford Law Offices	$432,241.34
Cuneo Gilbert & LaDuca	$234,731.29
Farmer Cline and Campbell	$248,554.80
Taylor Martino, P.C.	$455,142.32
Abdalla Law, PLLC	$6,991.88
Harrison Davis Morrison Jones	$21,518.95
King Law	$10,257.82
Povall & Jeffreys, P.A.	$7,807.70
Roberts Law Firm, P.A.	$15,760.40
Rupp Pfalzgraf LLC	$8,732.57
Tanner & Associates	$765.04
Aleshire Robb & Rapp	$23,528.15
Linkous Law, PLLC	$1,132.83
TOTAL	**$35,330,637.54**

49. These expenses include items typically borne by clients in non-contingent fee litigation, such as expert costs, court reporting services and transcripts, document management, travel, electronic research, photocopying, overnight delivery, phone charges, and jury consultant

fees, among others, and are directly related and necessary to Plaintiffs' counsel's prosecution of this litigation and are typical of large, complex matters such as those that make up the ACH Opioids Litigation.

50. The expenses summarized in paragraph 48 above and itemized in Exhibits B-9 through B-23 were incurred on behalf of Plaintiffs and the Class by Plaintiffs' Counsel on a contingent basis and have not been repaid. All these costs and expenses are reflected in the books and records of each firm, which are prepared from expense vouchers, check records, invoices and other source materials, and represent an accurate recordation of the costs and expenses incurred in connection with this action. Copies and/or detailed summaries of all such records are available at the Court's request.

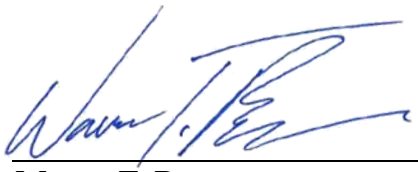
C. Notice and Administrative Expenses

51. Finally, the Notice and Claims Administrators and the Special Master have incurred expenses for their services effectuating notice to the Settlement Classes and administering the Settlements.

52. To date, Notice and Claims Administrator A.B. Data Ltd. has incurred expenses in the amount of $72,569.85. A true and accurate copy of A.B. Data's invoice is attached as Exhibit B-24.

53. Through December 17, 2024, Notice and Claims Administrator Cherry Bekaert Advisory, LLC has incurred expenses in the amount of $239,187.81. A true and accurate copy of Cherry Bekaert's invoice is attached as Exhibit B-25.

Dated: December 20, 2024



Warren T. Burns

Exhibit 3C

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

SAN MIGUEL HOSPITAL CORPORATION,
d/b/a ALTA VISTA REGIONAL HOSPITAL,
on behalf of itself and all others similarly situated,

Plaintiffs,

v. No. 1:23-cv-00903 KWR/JFR

PUBLIX SUPERMARKET, INC., HENRY SCHEIN, INC.,
WALGREEN CO., WALGREEN EASTERN CO., INC.,
CVS PHARMACY, INC., CVS Rx Services, Inc.,
CVS ORLANDO FL DISTRIBUTION, LLC,
WALMART, INC., *f/k/a Wal-Mart Stores, Inc.,*
ALBERTSONS COMPANIES, INC., ALBERTSONS, LLC,
SAFEWAY, INC., GIANT EAGLE, INC.,
HBC SERVICES COMPANY, KROGER LIMITED
PARTNERSHIP I, KROGER LIMITED PARTNERSHIP II,
THE KROGER CO., HIKMA PHARMACEUTICALS, INC.,
INDIVIOR, INC., ET AL.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court upon Plaintiff's Motion for Final Class Certification, Appointment of Class Counsel, Final Approval of Settlements, Approval of Plan of Allocation, and Award of Attorney's fees and Expenses **(Doc. 283)** (the "Motion"). The Motion seeks the approval of a global class settlement between various Acute Care Hospitals who brought cases against certain defendants, manufacturers and distributors of opioids. The motion seeks, *inter alia,* final certification of a settlement class, approval of certain settlements on behalf of the class, approval of the settlement allocation plan, and approval of certain fees and expenses.

Plaintiff settled on behalf of the proposed settlement class with the following four groups of Defendants and their affiliates:

- Defendants Teva Pharmaceuticals Industries, Ltd., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Actavis Pharma, Inc., Actavis LLC, Watson Laboratories, Inc. and Anda, Inc., along with other released entities specified in the Teva Defendants Class Action Settlement Agreement (Doc. 276-3) (collectively, "Teva Defendants");
- Defendants Cencora, Inc. ("*Cencora*") (formerly Amerisource Bergen Corporation), Cardinal Health, Inc. ("*Cardinal*"), and McKesson Corporation ("*McKesson*") (collectively, the "Settling Distributors"), along with other released entities identified in the Distributors Settlement Agreement (Doc. 276-1);
- Defendants Allergan Finance, LLC (f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.); Allergan Sales, LLC; and Allergan USA, Inc., along with released entities specified in the Allergan Defendants' Class Action Settlement Agreement (Doc. 276-4) (collectively, "Allergan Defendants"); and
- Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., including the released entities identified in the Janssen Settlement Agreement (Doc. 276-2) (collectively, "*Janssen*").

(collectively, the "Settling Defendants"). The Court held a hearing on the Motion on March 4, 2025. The motion is unopposed and no class member has filed an objection. Having reviewed the parties' pleadings and the applicable law, the Court finds that Plaintiffs' Motion for Class Certification is well-taken and, therefore, is **GRANTED.** The Court incorporates herein the eight orders or partial judgments entered concurrently herewith.

BACKGROUND

This motion seeks approval of a global settlement between various Acute Care Hospitals against certain opioid manufacturers and distributors. Since 2017, acute care hospitals represented by Interim Settlement Class Counsel have been litigating claims similar to those alleged in this suit in various proceedings in state and federal court. In this case, Plaintiffs brought a RICO claim seeking reimbursement from opioid manufacturers or distributors for the costs certain hospitals incurred in treating opioid users.

Plaintiffs seek the certification of a settlement class and the approval of settlements against four groups of Defendants. The settlements combined provide a $651 million common fund for the putative class. The Settlement Class generally consists of certain Acute Care Hospitals, but is more specifically defined as follows:

> (1) All Acute Care Hospitals in the United States that (a) are not owned or operated by a federal, state, county, parish, city, or other municipal government; and (b) treated patients diagnosed with opioid use disorder and/or other opioid related conditions at any time from January 1, 2009, through the date of entry of the Preliminary Approval Order;
>
> (2) all entities listed on Exhibit A to the Settlement Agreement; and
>
> (3) all Plaintiffs in the Other Actions listed on Exhibit B to the Settlement Agreement.
>
> Exhibits A and B to the Settlement Agreement are non-exhaustive lists and do not purport to identify all members of the Class.
>
> The following are excluded from the Settlement Class:
>
> (1) Any Acute Care Hospital whose Released Claims have been released by any other settlement with Teva Defendants.

See Doc. 277 at 3-4. Plaintiffs estimate the class consists of approximately 5,800 hospitals.

This motion seeks the approval of a settlement of claims against the following four groups of Defendants:

- Defendants Teva Pharmaceuticals Industries, Ltd., Teva Pharmaceuticals USA, Inc., Cephalon, Inc., Actavis Pharma, Inc., Actavis LLC, Watson Laboratories, Inc. and Anda, Inc., along with other released entities specified in the Teva Defendants Class Action Settlement Agreement (Doc. 276-3) (collectively, "Teva Defendants");
- Defendants Cencora, Inc. ("*Cencora*") (formerly Amerisource Bergen Corporation), Cardinal Health, Inc. ("*Cardinal*"), and McKesson Corporation ("*McKesson*") (collectively, the "Settling Distributors"), along with other released entities identified in the Distributors Settlement Agreement (Doc. 276-1);
- Defendants Allergan Finance, LLC (f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.); Allergan Sales, LLC; and Allergan USA, Inc., along with released entities specified in the Allergan Defendants' Class Action Settlement Agreement (Doc. 276-4) (collectively, "Allergan Defendants"); and
- Defendants Johnson & Johnson, Janssen Pharmaceuticals, Inc., Ortho-McNeil-Janssen Pharmaceuticals, Inc., and Janssen Pharmaceutica, Inc., including the released entities identified in the Janssen Settlement Agreement (Doc. 276-2) (collectively, "*Janssen*").

Plaintiffs in the following cases, in addition to this one, were appointed as Settlement Class Representatives: *Florida Health Sciences Center, Inc., et al. v. Richard Sackler, et al.*, Case No. 19-018882 (Cir. Ct. Broward Cnty., Fla.); *The DCH Health Care Authority, et al. v. Purdue Pharma, L.P., et al*., Case No. CV-19-07 (Cir. Ct. Conecuh Cnty., Ala.); *Fort Payne Hospital Corporation, et al. v. McKesson Corporation, et al.*, Case No. 21-cv-2021-900016.00 (Cir. Ct. Conecuh Cnty., Ala.); and *Lester E. Cox Medical Centers d/b/a Cox Medical Centers, et al. v. Amneal Pharmaceuticals, LLC, et al.*, No. 6:22-cv-3192 (W.D. Mo.). *See, e.g.,* Doc. 277 at 4.

Moreover, the Court appointed the following as interim class counsel:

John W. Barrett of Barrett Law Group, P.A.; Warren T. Burns of Burns Charest LLP; Robert A. Clifford of Clifford Law Offices, P.C.; Steven B. Farmer of Farmer Cline & Campbell, PLLC; Charles J. LaDuca of Cuneo, Gilbert, & LaDuca, LLP; and Steven A. Martino of Taylor Martino, P.C. Barrett was designated as Lead Counsel

See, e.g., Doc. 277 at ¶ 5.

LEGAL STANDARD

To certify a class under Fed. R. Civ. P. 23, Plaintiffs bear the burden of showing that "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims and defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a). Plaintiff must also show that the action is maintainable under Fed. R. Civ. P. 23(b)(1) – (3).

The Court must engage in a "rigorous analysis of whether the threshold requirements of Rule 23(a) are satisfied." *Shook v. El Paso County*, 3865 F.3d 963, 968 (10th Cir. 2004); *Wallace B. Roderick Revocable Living Trust v. XTO Energy, Inc.,* 725 F.3d 1213, 1218 (10th Cir. 2013). This is not a pleading standard, and Plaintiff must "affirmatively demonstrate" her compliance with the rules. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 131 S.Ct. 2541, 2551 (2011); *XTO Energy, Inc.,* 725 F.3d at 1218 (plaintiff has "strict burden of proof"). "Whether a case should be allowed to proceed as a class action involves intensely practical considerations, most of which are purely factual or fact-intensive. Each case must be decided on its own facts, on the basis of 'practicalities and prudential considerations." *Monreal v. Potter,* 367 F.3d 1224, 1238 (10th Cir.2004) (internal quotation marks omitted), *quoted in Trevizo v. Adams*, 455 F.3d 1155, 1163 (10th Cir. 2006).

DISCUSSION

Plaintiffs seek, *inter alia*, certification of a settlement class under Fed. R. Civ. P. 23(b)(3), approval of the class settlement under Fed. R. Civ. P. 23(e), approval of the attorneys' fees and costs, and the appointment of settlement class counsel. For the reasons described below, Plaintiff satisfies the requirements of certification under Fed. R. Civ. P. 23(a) and (b)(3). The Court therefore certifies the class for settlement purposes only and appoints counsel only for the settlement class. Moreover, the Court approves the requested fees and expenses.

I. No objections were filed and the motion is unopposed.

Initially, the Court notes that no objections were filed and the motion is therefore unopposed. Certain non-settling defendants filed responses, but these responses were primarily concerned with clarifying that any settlement class certification decision would not apply to them. *See* Pharmacy Defendants' Response, Doc. 289; Schein's Response, Doc. 290. Here, the Court only considers the certification of a *settlement* class involving the Settling Defendants. This decision has no bearing on whether a contested certification of a non-settlement class as to the non-settling defendants would be appropriate.

The settlement agreements and the orders preliminarily approving the settlement provided for a procedure to object to the settlements. Objections were required to be filed by January 6, 2025. *See, e.g.,* Order Preliminarily Approving Settlement, Doc. 277 at ¶ 25-27. Therefore, the Motion is unopposed.

II. Plaintiffs have satisfied all requirements of Fed. R. Civ. P. 23(a) for the settlement class.

Plaintiffs seek to certify a settlement class as follows:

> All Acute Care Hospitals in the United States that (i) are not owned or operated by a federal, state, county, parish, city, or other municipal government; and (ii) treated patients diagnosed with opioid use disorder and/or other opioid-related conditions

> at any time from January 1, 2009 through the date of entry of the Preliminary Approval Order.

Mot., Doc. 283-1 at 20, *citing* Distributors Settlement Agreement, Doc. 276-1 at III.A.1. The class includes all entities listed in Exhibit A and all other plaintiffs listed in Exhibit B to each settlement agreements. *Id.* Excluded from the classes are any Acute Care Hospitals whose Released Claims have been released by any other settlement with the Settling Defendants. *Id.*

The Court finds that Plaintiffs have satisfied the requirements of Rule 23(a).

A. Numerosity

Fed. R. Civ. P. 23(a)(1) requires that a "class is so numerous that joinder of all members is impracticable." There is "no set formula to determine if the class is so numerous that it should be so certified." *Rex v. Owens ex rel. State of Okla.,* 585 F.2d 432, 436 (10th Cir.1978), *quoted in Trevizo v. Adams*, 455 F.3d 1155, 1162 (10th Cir. 2006). "The numerosity requirement requires examination of the specific facts of each case and imposes no absolute limitations." *Gen. Tel. Co. of the Nw., Inc. v. Equal Emp't Opportunity Comm'n,* 446 U.S. 318, 330, 100 S.Ct. 1698, 64 L.Ed.2d 319 (1980).

Although Plaintiffs bear the burden of establishing numerosity, they need not establish any precise number of class members at this stage, or have already identified who is part of the class. *Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1214–15 (10th Cir. 2014); *Neiberger v. Hawkins*, 208 F.R. D. 301, 313 (D. Colo. 2002) ("the exact number of potential members need not be shown").

Here, Plaintiffs assert that the class includes over 5,000 acute care hospitals or entities. Therefore, the Court finds that Plaintiffs have established that a "class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1).

B. Commonality

Plaintiffs must also show that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury." *Wal-Mart*, 131 S.Ct. at 2551.

"For a common question of law to exist, the putative class must share a discrete legal question of some kind." *J.B. ex rel Hart*, 186 F.3d at 1289. "What matters to class certification ... is ... the capacity of a classwide proceeding to generate common *answers* apt to drive the resolution of the litigation." *Walmart*, 564 U.S. at 350, 131 S.Ct. at 2551. There must be a "common contention" that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Id*. "[E]ven a single common question will do." *Wal–Mart,* 131 S.Ct. at 2556; *see also Colorado Cross Disability Coal. v. Abercrombie & Fitch Co.*, 765 F.3d 1205, 1216 (10th Cir. 2014).

Plaintiffs assert the following common questions:

- Did the Settling Defendants manufacture prescription opioids?
- Did Settling Defendants make misleading statements regarding the risks and benefits of prescription opioids?
- Did Settling Defendants distribute prescription opioids?
- Did Settling Defendants distribute prescription opioids without conducting adequate due diligence?
- What is the scope of Settling Defendants' duties under the Controlled Substances Act?
- Did Settling Defendants receive suspicious orders for prescription opioids?
- Did Settling Defendants fill suspicious orders of prescription opioids?

- Did Settling Defendants report suspicious orders of prescription opioids to DEA and other regulators?
- Did Settling Defendants engage in wire fraud?
- Did Settling Defendants engage in mail fraud?
- Did Settling Defendants corrupt an official proceeding?

First Amended Class Action Complaint, Doc. 144 at ¶ 1167.

An answer to these questions would likely multiple issues which are central to the claim at issue. Therefore, Plaintiffs have established commonality.

C. Typicality

Rule 23(a)(3) requires "the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class." Fed R. Civ. P. 23(a)(3). The commonality and typicality requirements tend to merge. *Wal-Mart,* 131 S.Ct. at 2551 n. 5. "The interests and claims of Named Plaintiffs and class members need not be identical to satisfy typicality. Provided the claims of Named Plaintiffs and class members are based on the same legal or remedial theory, differing fact situations of the class members do not defeat typicality." *DG ex rel. Stricklin v. Devaughn*, 594 F.3d 1188, 1198–99 (10th Cir. 2010) (internal citations omitted).

Here, the Court finds that Plaintiffs are members of the proposed class and their interests align with the settlement class. Plaintiffs, as well as the proposed class, are acute care hospitals who treated patients diagnosed with opioids use disorder and/or other opioid-related conditions. The relief they seek is based on the same evidence and legal theories as the settlement class.

D. Adequacy.

Fed. R. Civ. P. 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class." "Resolution of these two questions determines legal adequacy:

(1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?'" *Rutter & Wilbanks Corp. v. Shell Oil Co.,* 314 F.3d 1180, 1187 (10th Cir. 2002), *quoting Hanlon v. Chrysler Corp*., 150 F.3d 1011, 1020 (9th Cir. 1998).

Plaintiffs are members of the class and Plaintiffs' interests align with the class interests.

There is nothing in the record to suggest that Plaintiffs or class counsel have any conflict of interest with the class members. Moreover, class counsel and Plaintiffs will clearly vigorously prosecute the action on behalf of the class. Class counsel are highly experienced in class actions. Burns. Decl. at ¶ 5.

Therefore, the Court finds that Plaintiffs have made an adequate showing under Fed. R. Civ. P. 23(a)(4).

III. Plaintiffs have satisfied the requirements under Fed. R. Civ. P. 23(b)(3) as to the settlement class.

Plaintiffs seek certification of a settlement class under Fed. R. Civ. P. 23(b)(3). Certification under that subsection is proper if "the court finds that the questions of law or fact common to class members *predominate* over any questions affecting only individual members, and that a class action is *superior* to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. R. 23(b)(3) (emphasis added). The Court finds that certification of the Settlement Class under Fed. R. Civ. P. 23(b)(3) is appropriate.

A. Predominance.

Rule 23(b)(3) requires a "rigorous analysis" into whether common questions predominate over individual ones. *Wallace B. Roderick Revocable Living Tr. v. XTO Energy, Inc.*, 725 F.3d 1213, 1220 (10th Cir. 2013). The predominance inquiry is "far more demanding than Rule 23(a)'s

commonality requirement." *Wallace B. Roderick Revocable Living Tr. v. XTO Energy, Inc.*, 725 F.3d 1213, 1220 (10th Cir. 2013). "Predominance is satisfied when common questions represent a significant aspect of a case and can be resolved for all members of a class in a single adjudication." *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1059 (7th Cir. 2016). "It is not necessary that all of the elements of the claim entail questions of fact and law that are common to the class, nor that the answers to those common questions be dispositive. Put differently, the predominance prong asks whether the common, aggregation-enabling, issues in the case are more prevalent or important than the non-common, aggregation-defeating, individual issues." *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014) (internal citations and quotation marks omitted).

"Considering whether 'questions of law or fact common to class members predominate' begins, of course, with the elements of the underlying cause of action." *Erica P. John Fund, Inc. v. Halliburton Co.,* —— U.S. ——, 131 S.Ct. 2179, 2184, 180 L.Ed.2d 24 (2011) (quoting Rule 23). The Court considers "(1) which of those elements are susceptible to generalized proof, and (2) whether those that are so susceptible predominate over those that are not." *CGC Holding Co., LLC v. Broad & Cassel*, 773 F.3d 1076, 1087 (10th Cir. 2014). "Stated another way, consideration of how the class intends to answer factual and legal questions to prove its claim—and the extent to which the evidence needed to do so is common or individual—will frequently entail some discussion of the claim itself." *Id.*

An individual question is one where "members of a proposed class will need to present evidence that varies from member to member," while a common question is one where "the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-wide proof." *Tyson Foods, Inc. v. Bouaphakeo*, 136 S. Ct. 1036, 1045, 194

L. Ed. 2d 124 (2016).

B. Common questions predominate over individual ones.

The Court finds that certification is appropriate under Fed. R. Civ. P. 23(b)(3) because questions common to the class predominate over those that are individualized.

The Court has reviewed the relevant claims and elements, and the record does not reflect that individualized inquiries would predominate over common questions. Common questions regarding the existence of a RICO conspiracy, Settling Defendants' participation in the conspiracy, and causation predominate over potential individual issues.

C. A class action is superior to other available methods of adjudication for this settlement.

Class actions certified under Rule 23(b)(3) must also be "superior to other available methods for the fair and efficient adjudication of the controversy." *Amchem,* 521 U.S. at 615 (quoting Fed.R.Civ.P. 23(b)(3)). "The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights." *Id.* at 617.

The Court may consider:

> (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3). The Court finds that a class action under Rule 23(b)(3) is superior to other available methods of adjudication. The claims asserted in the ACH Opioid Litigation are highly complex and require significant investment of time and capital by the acute care hospitals and their counsel. Therefore, the class members have little interest individually controlling the prosecution. Fed. R. Civ. P. 23(b)(3)(A). This is a global settlement involving the settlement of claims brought

by multiple plaintiffs, several of whom have been appointed as class representatives. No class member has objected to the settlement or the class certification or asserted that they wish to continue pursuing their claims outside of the settlement. Fed. R. Civ. P. 23(b)(3)(B). Finally, the difficulties in managing this class action do not appear to be great. Fed. R. Civ. P. 23(b)(3)(D).

IV. Court appoints Interim Settlement Class Counsel as Class Counsel.

Plaintiffs request that the Court appoint Interim Settlement Class Counsel as Settlement Class Counsel. The Court agrees.

Rule 23(g) of the Federal Rules of Civil Procedure governs the appointment of class counsel. Relevant here, the Rule provides that a court that certifies a class must appoint class counsel. It sets forth various factors the Court must or may consider. Fed. R. Civ. P. 23(g)(1)(A), (B). These factors include: (1) the work counsel has done in identifying or investigating potential claims in the action; (2) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (3) counsel's knowledge of the applicable law; and (4) the resources that counsel will commit to representing the class. Fed. R. Civ. P. 23(g)(1)(A). The court may also "consider any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B).

Here, these factors clearly favor appointment of Interim Settlement Class Counsel as Settlement class counsel. *First*, Interim Settlement Class Counsel identified and investigated the potential claims. They have been involved in Acute Care Hospital litigation against opioid manufacturers, distributors, or pharmacies for up to eight years in federal and state courts. Burns Decl. at ¶ 30.

Second, Interim Settlement Class Counsel are highly experienced in handling class actions and other complex litigation. *Third,* Interim Settlement Class Counsel are highly knowledgeable

in the relevant law. They have spent years pursuing ACH claims against opioid manufacturers and distributors, and are clearly experts in the prosecution of these cases. Finally, they dedicated an enormous amount of time and resources to the prosecution of these cases.

Therefore, the Court will appoint Interim Settlement Class Counsel as Settlement Class Counsel under Fed. R. Civ. P. 23(g)(1).

V. Court approves Settlement under Fed. R. Civ. P. 23(e).

Plaintiffs request that the Court approve the four settlement agreements. The Court finds the settlements proposed in this class action are fair, adequate and reasonable, and therefore approves the settlements. Under Fed. R. Civ. P. 23(e), a class action settlement is entitled to final approval where it is "fair, reasonable and adequate." *Gottlieb v. Wiles,* 11 F.3d 1004, 1014 (10th Cir.1993), *overruled in part on other grounds, Devlin v. Scardelletti,* 531 U.S. 1 (2002).

Approval of a class action settlement is committed to the sound discretion of the court. *Jones v. Nuclear Pharmacy, Inc.,* 741 F.2d 322, 324 (10th Cir.1984). "In exercising its discretion, the trial court must approve the settlement if it is fair and reasonable." *Id.* "It is the responsibility of the proponents of the settlement to provide sufficient evidence to support a conclusion that the settlement is fair, and where the proponents have failed in this regard, the district court may be justified in requiring more evidence, or in declining to approve the settlement." *Gottlieb,* 11 F.3d at 1015. The evidence must be independently analyzed by the court in making its determination, since the court "may not rely solely on the assertions of the proponents of the settlement as to what the evidence shows." *Id.*

Rule 23(e)(2) directs that the Court consider the following in determining whether a settlement is fair, reasonable, and adequate:

(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.

Rule 23(e)(2). The Court is required to consider these factors.

The Tenth Circuit has also set forth the following factors, which the Court should consider in assessing whether the settlement is fair, reasonable and adequate:

(1) whether the proposed settlement was fairly and honestly negotiated;

(2) whether serious questions of law and fact exist, placing the ultimate outcome of the litigation in doubt;

(3) whether the value of an immediate recovery outweighs the mere possibility of future relief after protracted and expensive litigation; and

(4) the judgment of the parties that the settlement is fair and reasonable.

*Rutter & Wilbanks Corp. v. Shell Oil Co.,*314 F.3d 1180, 1188 (10th Cir.2002) (quoting *Gottlieb,* 11 F.3d at 1014); *see also In Re Integra Realty Resources, Inc.,* 354 F.3d 1246, 1266 (10th Cir.2004). These factors mostly overlap with the above Rule 23(e) factors. Additional factors which may be relevant include: (1) the risk of establishing damages at trial; (2) the extent of discovery and the current posture of the case; (3) the range of possible settlement; and (4) the

reaction of class members to the proposed settlement. *In Re New Mexico Nat. Gas Antitrust Litig.,* 607 F.Supp. 1491, 1504 (D.Colo.1984).

In evaluating the fairness of the settlement, courts should not decide the merits of the case or resolve unsettled legal questions. *Carson v. American Brands, Inc.,* 450 U.S. 79, 88 n. 14 (1981); *see also New Mexico Natural Gas Antitrust Litig.,* 607 F.Supp. at 1497. This is because the essence of settlement is compromise. *E.E.O.C. v. Hiram Walker & Sons, Inc.,* 768 F.2d 884, 889 (10th Cir.1985). "It is well-settled, as a matter of sound policy, that the law should favor the settlement of controversies." *Grady v. De Ville Motor Hotel, Inc.,* 415 F.2d 449, 451 (10th Cir.1969).

Considering these factors, the Court concludes that the four settlements are fair, reasonable, and adequate.

First, Class Plaintiffs and Interim Settlement Class Counsel have adequately represented the settlement class. Fed. R. Civ. P. 23(e)(2)(A). Class representatives and interim class counsel have litigated these cases for approximately eight years. Burns Decl. at ¶¶ 6, 42. They have responded to multiple rounds of motions practice, litigated appeals, have produced millions of pages of documents, and have reviewed voluminous discovery and taken depositions. *Id.* at ¶27. They have retained and worked with over a dozen experts. The Settlement Agreements are the product of over two years of negotiations. *Id.* at ¶¶ 9-10. Through this effort, they achieved a $651 million common fund for the class. The class representative and interim class counsel have clearly vigorously represented the interests of the class. Moreover, there is no evidence in the record of any conflict of interest.

Second, the proposal was negotiated at arms' length. Fed. R. Civ. P. 23(e)(2)(B). The settlement was the result of multi-year negotiations between interim class counsel and the settling defendants, involving third-party mediators. Counsel was well-prepared for negotiation. Burns.

Decl. at ¶ 29. Moreover, negotiations were conducted with the supervision of mediators Fouad Kurdi and Judge Sidney Schenkier.

Third, the settlements are adequate in light of the costs, risks, and delay of trial and appeal. Fed. R. Civ. P. 23(e)(2)(C)(i). Although the court should not address the merits, "it is clear that the parties could reasonably conclude that there are serious questions of law and fact that exist such that they could significantly impact the case if it were litigated." *Lucas v. Kmart Corp.*, 234 F.R.D. 688, 693–94 (D. Colo. 2006). Here, there are clearly serious questions of law and fact which placed the litigation's outcome in doubt. The Defendants deny any liability or wrongdoing and deny that Plaintiffs have suffered any injuries or damages. Plaintiffs assert complex RICO and state law claims, and the outcome is in doubt. *See* Doc. 283-1 at 35 (listing disagreements between the parties).

Given the risks and costs, immediate recovery is more valuable than the possibility of a more favorable outcome after further litigation. The ACH opioid litigation has been pending for nearly eight years. Burns. Decl. at ¶ 31. Absent this global settlement, multiple cases would continue for years, expending additional time, resources, and costs, with an uncertain result. The additional time and costs for these cases would be substantial, and it is unclear whether there would be a better result than this settlement. As Plaintiffs note, there is a risk they may receive significantly less than the settlement or nothing at all. Doc. 283-1 at ¶ 37. Thus, the risks, costs, delay, and uncertainties of further proceedings weighs in favor of approving each of the settlements.

Fourth, the method for distributing relief appears to be effective. Fed. R. Civ. P. 23(e)(2)(C)(ii). The Court finds that Class Plaintiffs and Interim Settlement Class Counsel have provided adequate notice under the circumstances. Under the settlement class notice program, the

Plaintiffs provided individual notice by email or mail to all Settlement Class Members who could be identified, which amounted to approximately 5,800 hospitals providing emergency services. AB Data, Ltd also provided targeted notice through relevant media. Finally, a website was created where settlement-related documents are posted.

Moreover, the claims administration process appears to be effective. The plan of allocation is detailed below. In general, class members who wish to participate in a settlement will complete a registration and claims forms. Class members have two options, a (1) "quick pay" amount of $5,000 dollars, or (2) an amount based on a damages formula. The Settlement Administrator will distribute the Net Settlement Funds to authorized claims under the plan of allocation. The plan of allocation was developed in consultation with certain experts, and is consistent with ACH plans of allocations developed in other cases, such as the Purdue Pharma bankruptcy proceeding.

Fifth, the relief provided remains adequate when taking into account the proposed award of attorney's fees and costs. Fed. R. Civ. P. 23(e)(2)(C)(iii). Interim Class Counsel seek an award of attorney's fees of one-third of the total settlement funds, plus payment of expenses incurred in connection with the underlying litigation. As explained below, the attorneys' fees request is appropriate and approved. The relief requested remains adequate when taking into account the attorneys' fees and expenses.

Sixth, Plaintiffs assert that the settling parties have no additional agreement. Fed. R. Civ. P. 23(e)(2)(C)(iv).

Seventh, the Settlement Class Members are treated equitably relative to each other. Fed. R. Civ. P. (e)(2)(D). As explained in the Plan of Allocation, all settlement class members have the opportunity to (1) select a "Quick Pay" option, or (2) participate in a more detailed damages calculation and allocation process utilizing factors detailed in the Plan of Allocation, which in

general appears to attempt to compensate hospitals for the impact of opioids on the population each hospital treated.

The plan of allocation is attached as Exhibit C to the Settlement Agreements. *See, e.g.,* Doc. 276-1, Exhibit C at 66-68 (the "Plan of Allocation"). The plan of allocation involves a model and algorithm to allocate the amounts due. Plan of Allocation at ¶ A. The algorithm is consistent with the ones used in several other cases, including the Purdue Pharma bankruptcy proceeding. Plan of Allocation at ¶ B.

There are two main options. First, a class member may participate in the Quick Pay option and receive $5,000 total over the four settlements. *Id.* at ¶ D. Distribution of this amount will occur within forty-five days of the Effective Date of the approved settlements. Second, a class member may alternatively participate in a more detailed damages calculation using the model, which may result in a payout greater, but not less, than the Quick Pay amount. *Id.* at ¶ E.

The plan of allocation describes the damages calculation under the second option as follows:

> Under the Model, Cherry Bekaert Advisory, LLC shall determine the Allocated Amount distributable to each Qualifying Class Member who has not elected Quick Pay based on: (1) the diagnostic codes associated with operational charges incurred by the Qualifying Class Member in connection with the treatment of OUD patient encounters in (a) the Emergency Department, (b) Inpatient settings, and (c) Outpatient settings; (2) the portion of such charges that were not reimbursed; and (3) the following distribution determination factors and weights:

Factors	**Weighting %**
MMEs	10%
OUD Rates	10%
Opioid Deaths	5%
Operational Impact	35%
Opioid Patient %	15%
Litigation Participation	25%
Total	**100.00%**

The above factors are defined as follows:

> 1. Units of morphine milligram equivalents ("MMEs") shipped into the Qualifying Class Member's service area ("Service Area") during the period of January 1, 2006 through December 31, 2014 (the "Measurement Period");
>
> 2. Opioid use disorder rates ("OUD Rates") at the state level, prorated for each Qualifying Class Member;
>
> 3.Opioid overdose deaths in the Qualifying Class Member's Service Area ("Opioid Deaths");
>
> 4. Operational impact calculated using the Qualifying Class Member's opioid diagnoses codes, and charge and reimbursement data ("Operational Impact");
>
> 5. The Qualifying Class Member's opioid related patients as a percentage of its total patients ("Opioid Patient %");
>
> 6. Participation in active litigation against an Opioid Manufacturer and/or any Settling Defendant ("Litigation Participation") by commencing a civil action in a state or federal court and engaging in the following activities:
>
> > (a) Hosting expert visits for the purpose of enabling the experts to engage with hospital personnel on the opioid epidemic at the hospital, and to review hospital policies, procedures, and programs regarding opioids;
> >
> > (b) Producing claims data to the Settling Defendants;
> >
> > (c) Actively engaging in discovery by, e.g., responding to interrogatories and requests for production or admissions; supplying hospital financial documents, policies and procedures, custodial emails, and/or dispensing and discharge prescription data in response to requests by Settling Defendants or orders of a court; providing 30(b)(6) and/or fact witness testimony; propounding discovery to Settling Defendants; formally disclosing expert opinions consistent with federal and/or state court rules; or engaging in motion practice before a court and/or a special master; and
> >
> > (d) Obtaining a court-ordered trial date.

Id. at ¶ F (footnotes omitted). Qualifying class members will be paid no more than ninety days following the effective date on a pro rata basis, up to the available amounts in the net settlement funds. *Id.* at ¶ G. Finally, $3 million may be awarded to one class member for the development of "innovative and effective hospital-led abatement programs, " in the sole discretion of the special

master. *Id.* at ¶ I. The Court finds that the plan of allocation treats class members equitably and is fair, reasonable, and adequate.

Eighth, the parties agree that the settlement is fair and reasonable. In the Tenth Circuit, the Court considers whether the parties believe a settlement is fair and reasonable. *Rutter & Wilbanks Corp. v. Shell Oil Co.,* 314 F.3d 1180, 1187 (10th Cir. 2002). Class counsel and the Plaintiffs believe the settlements are fair, adequate, and reasonable and should be approved. *Id.* Finally, the Court notes that no party or class member objected to the settlement. There was only one attempted opt out submission. *Id.* at 1189 (considering the "extremely small percentage of class members who opted out").

Finally, under Rule 23(e)(1), a court approving a class actions settlement "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Moreover, class notice must be "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). Here, Plaintiffs (1) mailed 5,732 copies of the court-approved notice packet to potential settlement class members, (2) emailed 1,224 copies (of which 1,201 were successfully delivered") of the Notice Package to potential Settlement class members; (iii) implemented a media plan to publish notice of the Settlement on certain websites, e-newsletters, and email blasts; (4) maintained a toll-free telephone number; and (5) established and maintained a settlement website, www.acutecarehospitalsettlement.com. The Court finds that this notice procedure constitutes the best notice practicable under the circumstances.

Therefore, considering all relevant factors and the record, the Court concludes that the settlement is fair, reasonable, and adequate, and is approved.

VI. The Court approves Plaintiffs' requested attorneys' fees.

The Court approves Plaintiffs' requested attorneys' fees. Generally, in calculating attorneys' fees in common fund class actions, the Tenth Circuit applies the percentage-of-the-fund method, which awards class counsel a share of the benefit achieved for the class. *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 458 (10th Cir. 2017). District courts consider 12 factors - the *Johnson* factors - in determining the appropriate percentage. *Id.*, *citing Gottlieb v. Barry*, 43 F.3d 474, 482 & n.4 (10th Cir. 1994). Those factors include:

> [1] the time and labor required, [2] the novelty and difficulty of the question presented by the case, [3] the skill requisite to perform the legal service properly, [4] the preclusion of other employment by the attorneys due to acceptance of the case, [5] the customary fee, [6] whether the fee is fixed or contingent, [7] any time limitations imposed by the client or the circumstances, [8] the amount involved and the results obtained, [9] the experience, reputation and ability of the attorneys, [10] the "undesirability" of the case, [11] the nature and length of the professional relationship with the client, and [12] awards in similar cases.

Id., *citing Gottlieb*, 43 F.3d at 482 n.4. This method is the preferred method in calculating attorneys' fees in common fund class actions. *Chieftan Royalty Co.,* 888 F.3d at 458-59, *citing Gottlieb*, 43 F.3d at 483 ("In our circuit, following *Brown* [*v. Phillips Petroleum Co.*, 838 F.2d 451 (10th Cir. 1988),] and *Uselton* [*v. Commercial Lovelace Motor Freight, Inc.*, 9 F.3d 849 (10th Cir. 1993)], either method is permissible in common fund cases; however, *Uselton* implies a preference for the percentage of the fund method."). This approach "has been called a 'hybrid' approach, combining the percentage fee method with the specific factors traditionally used to calculate the lodestar." *Id.*

Plaintiffs request attorneys' fees in the amount of 1/3rd of the common fund. An award of one-third of the $651 million total Settlement amounts to $217 million. Counsel billed approximately $137.7 million. This equates to a 1.58 multiplier to their collective lodestar, which falls well within the range deemed acceptable within the Tenth Circuit. This settlement involves the global settlement of several actions or putative class actions asserted by Acute Care Hospitals

asserting claims against opioid manufacturers or distributors. The Court finds this request is supported by the Johnson factors.

Factor 1.

The time and labor spent in this case supports the requested fee amount. This settlement is a global settlement of several cases brought by acute care hospitals, and several attorneys from various actions and several plaintiffs from other actions were appointed as interim settlement class counsel and class representatives. Multiple plaintiffs were appointed as settlement class representatives. Over these various cases, Interim Settlement Class Counsel spent over 211,938 hours resulting in over $137.7 million in fees under the lodestar. Burns Decl. at ¶ 44. Counsel billed at $650 per hour. Burns Decl. at ¶ 44. Thus, Plaintiffs represent that the lodestar multiplier– the amount billed compared to the fee request – is approximately 1.58.

Plaintiffs assert that interim class counsel investigated and developed novel factual and legal theories, reviewed millions of pages of documents, took and defended numerous depositions, and more. Burns Decl. at ¶ 27. These hours included time spent on motions practice, including motions to dismiss, discovery disputes, and a summary judgment. *Id.* at ¶ 27. Moreover, time was spent preparing for trial in Alabama. This time does not include the time they will spend through the settlement approval and claims process.

Therefore, this factor weighs in favor of approving the settlement.

Factor 2.

The novelty and difficulty of the issues in this case supports the fee award. Counsel asserted RICO claims (and other claims in other cases) on behalf of Acute Care Hospitals against opioid manufacturers and distributors for the unreimbursed costs of treating opioid users. This appears to be a novel legal theory. There is a heightened risk in cases where there is no roadmap and counsel's acceptance of risk supports an award of a substantial fee. *Stop & Shop Supermarket Co.*

v. SmithKline Beecham Corp., 2005 WL 1213926 at *12 (E.D. Pa. May 19, 2005). In this case, there was a risk that Plaintiffs would not be able to establish the elements of their claims, prove damages, or prevail on appeal. This settlement also resolves state law claims, which also raised novel issues of law and were appealed to the supreme courts of various states. This litigation has been difficult and complex, justifying a significant fee.

Factors 3 and 9.

Moreover, the skill requisite to perform the legal services properly and the experience and skill of class counsel supports the fee award. Interim Settlement Class Counsel are highly skilled class action litigators, and have many years of experience in class action litigation. This factor weighs in favor of the requested fee award. "The substantial and creative recovery obtained for the Class, short of trial, is just the sort of result the percentage-fee method was designed to reward. The skill and acumen of counsel have produced unprecedented benefits to the class." *Schwartz. v. TXU Corp.,* 2005 WL 3148350 at *31.

Factor 4.

The preclusion of employment in other cases also weighs in favor of the requested fee award. The ACH opioid litigation spanned several years and resulted in tens of thousands of hours billed. As noted elsewhere, it included extensive discovery, multiple complaints, and opposing motions to dismiss and responding to motions for summary judgment. It also involved trial preparation in Alabama state court. These cases were time-intensive, resulting in tens of thousands of hours billed, and that time could have been spent on other matters. The scope and time commitment involved in the ACH litigation clearly prevented counsel from pursuing other opportunities.

Factor 5.

Counsel's requested fee if one-third of the common fund is a customary fee in class action cases. "[T]he customary fee to class counsel in a common fund settlement is approximately one-third of the economic benefit bestowed to the class." *Anderson v. Merit Energy Co.*, No. CIV.07CV00916LTBBNB, 2009 WL 3378526, at *3 (D. Colo. Oct. 20, 2009).

Factor 6.

The fee in this case was contingent upon the outcome of the case. Counsel potentially risked non-payment of tens of millions in fees billed.

Factor 7.

This factor does not appear to apply. The time limitations included following federal court scheduling orders and federal rules.

Factor 8.

The significant monetary award and results obtained for the Settlement Classes supports the reasonableness of the fee award. Where "the recovery [is] highly contingent and… the efforts of counsel were instrumental in realizing recovery on behalf of the class", the results obtained may be given greater weight." *Brown,* 838 F.2d at 456; *see also In re Syngenta AG MIR 162 Corn Litig.*, 61 F.4th 1126, 1193 (10th Cir. 2023) (noting that results and amount obtained may be weighed more heavily).

The result obtained for the Settlement Class avoids future uncertainties and provides a cash recovery totaling $651 million. This amount will be distributed to the Settlement Class, with no funds reverting to Settling Defendants. Burns Decl. at ¶15. Obtaining this result in the face of significant risks in this putative class action greatly supports the reasonableness of the fee award.

The value to the class is substantial. Class members, estimated to be around 5,800, may opt for a quick-pay amount of $5,000, which is the base amount a claimant may receive if eligible for

all four settlements. Alternatively, they may submit claims data regarding their damages suffered, to calculate a pro rata share of the net settlement proceeds.

Factor 10.

The undesirability of the case also weighs in favor of the requested fee. Counsel worked this case for many years without payment, and it involves novel and difficult legal issues. Given the significant time and resource commitments, and very significant risk of non-payment, this factor weighs in favor of approving the fee.

Factor 11.

The nature and length of the professional relationships factor is generally neutral in class actions. Several interim class counsel have represented the class representatives for several years.

Factor 12.

The requested fee is consistent with fees awarded in similar cases. An attorneys' fee award of one-third is within the range of fees awarded in common fund class actions. *See* Doc. 283-1 at 47-48 (collecting cases allowing fee requests in the range of 30-40%). "Customarily, courts in this District award fees in the range of 30% to 40% of any amount recovered." *Anderson Living Tr. v. Energen Res. Corp.*, No. CV 13-909 WJ/CG, 2021 WL 3076910, at *8 (D.N.M. July 21, 2021).

Conclusion

Therefore, considering the totality of the circumstances and all relevant factors, the Court concludes that Plaintiffs' requested attorneys' fees are appropriate and reasonable, and the Court approves the award.

VII. Court will award Plaintiffs' their requested expenses.

Plaintiffs request approximately $35,330,637.54 in litigation expenses across the various ACH opioid cases which are included in this global class action settlement. No party or class member has objected to these requested costs and expenses.

Rule 23(h) authorizes courts to reimburse counsel for "non-taxable costs that are authorized by law or *by the parties' agreement*." Fed. R. Civ. P. 23(h) (emphasis added).

"As with attorney fees, an attorney who creates or preserves a common fund for the benefit of a class is entitled to receive reimbursement of all reasonable costs incurred . . . in addition to the attorney fee percentage." *Vaszlavik v. Storage Tech. Corp.*, No. 95-B-2525, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000) (citation omitted); *see Candelaria v. Health Care Serv. Corp.*, No. 2:17-cv-404-KG-SMV, 2020 WL 6875828 at *4 (D.N.M. 2020) (in addition to awarding the cost of hiring a settlement administrator, court awarded class counsel all "actual out of- pocket litigation expenses and costs incurred in prosecuting th[e] case").

Here, Plaintiffs' requested fees appear to be authorized by the settlement agreements. The settlement agreements expressly authorize Interim Settlement Class Counsel to seek "reimbursement of expenses incurred in connection with prosecuting the Action and the Other Acts brought by the Class Representatives." *See, e.g.,* Distributor Settlement Agreement, Doc. 276-1 at VIII(A). The agreements provide that the expenses shall be paid from the Settlement Funds. *Id.* at VIII(C).

In this global settlement, Interim Settlement Class Counsel incurred $35,330,637.54 in expenses across the ACH litigation. Burn Decl. Doc. 284-1 at ¶ 48. The expenses are itemized in detail in Exhibits B-9 through B-23 of the exhibits to the Motion. *See, e.g.,* Doc. 284-1 at ¶ 50. The parties appear to have agreed to reimbursement of these expenses in the settlement agreements. The expenses include filing fees, expert costs, court reporting service and transcripts, document management, travel, electronic research, photocopying, overnight delivery, phone charges, mediation fees, jury consultant fees, and others. *Id.* at ¶ 49. These costs were incurred on behalf of Plaintiffs and the class by Plaintiffs' counsel on a contingent basis and have not been

repaid. *Id.* at ¶ 50. To the extent necessary, the Court's analysis of the *Johnson* factors above also support the award of costs herein.

Moreover, Plaintiffs seek compensation for the costs incurred for implementation of the Class Notice plan, totaling $311,757.66, with $72,569.86 to A.B. Data and $239,187.81 to Cherry Bekaert. Plaintiffs also requests that the Notice and Claims Administrators and the Escrow Agent be allowed to submit itemized statements of fees and expenses for the Court's approval on a monthly basis. Similarly, Plaintiffs propose allowing Special Master Hon. Thomas Hogan to submit on a monthly basis an itemized statement of fees and expenses.

The Court approves the costs and fees, and Plaintiffs' proposed procedure for reimbursement of the above administration and special master fees and costs.

VIII. Court declines to *sua sponte* allow late opt-out.

The Court was informed that there was one attempted opt-out submission. *See* Special Master's opt-Out Report, Doc. 298. The Special Master stated that he reviewed the Opt Out Report prepared by AB Data. *Id.* at 1. He concluded that no valid and timely opt-out elections were received by the Court Order deadline for any of the Class Settlements. There was one email submitted after the deadline, which the Special Master concluded was untimely did not comply with the requirements to opt out set forth in the Court's Orders. *See, e.g.,* Doc. 277 at ¶¶ 25-27.

This class member has not petitioned this court to consider its late opt out. The Special Master noted that the e-mail was sent to the incorrect email address, was not timely submitted, was not submitted individually for each hospital, did not contain the required certifications under penalty of perjury or provide an affidavit or proof of standing as required. A physical copy of the request for exclusion was also not received by the designated date. Doc. 298-1 at 2. Because the

class member has not petitioned the court to allow its untimely opt-out, it appears there is nothing for the Court to rule on.

Alternatively, only assuming the Court must *sua sponte* address the late opt-out, the Court concludes that the class member seeking to opt-out, doc. 298, has not established good cause or excusable neglect under Fed. R. Civ. P. 6(b)(1)(B). *See, e.g., In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Pracs. & Antitrust Litig.*, No. 17-MD-2785-DDC-TJJ, 2021 WL 5369815, at *4 (D. Kan. Nov. 17, 2021) (addressing good cause and excusable neglect for late opt-out).

> Federal Rule of Civil Procedure 6(b)(1)(B) provides:
>
> When an act may or must be done within a specified time, the court may, for good cause, extend the time ... on motion made after the time has expired if the party failed to act because of excusable neglect.

"Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute excusable neglect, it is clear that excusable neglect under Rule 6(b) is a somewhat elastic concept and is not limited strictly to omissions caused by circumstances beyond the control of the movant." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 392 (1993) (quotations omitted). The determination of whether neglect is excusable "is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *Id.* at 395.

In *Pioneer*, the Supreme Court said courts should determine whether a movant has shown excusable neglect by balancing "[1] the danger of prejudice to the [non-moving party], [2] the length of the delay and its potential impact on judicial proceedings, [3] the reason for the delay, including whether it was within the reasonable control of the movant, and [4] whether the movant acted in good faith." *Id.*

"[T]he most important [*Pioneer*] factor" is the third. *Perez v. El Tequila, LLC*, 847 F.3d 1247, 1253 (10th Cir. 2017). "[A]n inadequate explanation for delay may, by itself, be sufficient

to reject a finding of excusable neglect." *Id.*; *see also United States v. Torres*, 372 F.3d 1159, 1162-64 (10th Cir. 2004) (finding no excusable neglect where three lesser factors weighed in movant's favor but reason for delay did not).

Here, the class member who sought to opt out has not attempted to establish good cause or excusable neglect.

CONCLUSION

Plaintiffs have satisfied the requirements under Fed. R. Civ. P. 23(a) and (b)(3) for class certification. Moreover, the Court approves the settlement and allocation plan, appoints class counsel, and approves the requested attorneys' fees and expenses. This opinion incorporates the eight other orders and partial judgments entered concurrently herewith.

IT IS THEREFORE ORDERED that Plaintiff's Motion for Final Class Certification, Appointment of Class Counsel, Final Approval of Settlements, Approval of Plan of Allocation, and Award of Attorney's fees and Expenses **(Doc. 283)** is hereby **GRANTED.**

/S/ KEA W. RIGGS
UNITED STATES DISTRICT JUDGE

Exhibit 4A

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Counsel for Plaintiff City of Laurel, Mississippi

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
NORTHERN DIVISION

CITY OF LAUREL, MISSISSIPPI, on behalf of itself and all others similarly situated,

Plaintiff,

v.

CINTAS CORPORATION NO. 2

Defendants.

Case No. 3:21-cv-00124-ART-CLB

NOTICE OF MOTION AND MOTION FOR CLASS COUNSEL FEE AND EXPENSE AWARD AND CLASS REPRESENTATIVE SERVICE AWARD AND MEMORANDUM IN SUPPORT

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that at 1:00 p.m. on April 25, 2025, or as soon thereafter as the matter may be heard, in the courtroom of the Honorable Anne R. Traum, located at the Lloyd D. George Federal District Courthouse, 333 S. Las Vegas

Blvd, Las Vegas, NV 89101, Plaintiff City of Laurel, Mississippi ("the City") will and hereby does move for an order:

1. Awarding attorneys' fees in the amount of 33% of the Cash Settlement Amount, or $14,850,000;

2. Approving the reimbursement of expenses in the amount of $230,211.64; and

3. Authorizing a Class Representative service award for Plaintiff, the City of Laurel, Mississippi, in the amount of $10,000.

Plaintiff's unopposed Motion is based on this Notice, the accompanying Memorandum of Points and Authorities, the Declaration of Warren Burns, all other documents filed in support of this motion, and the papers and pleadings on file in this action.

Dated this April 10, 2025.

Respectfully submitted,

/s/Warren Burns

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Counsel for Plaintiff City of Laurel, Mississippi

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
NORTHERN DIVISION

CITY OF LAUREL, MISSISSIPPI, on behalf of itself and all others similarly situated,

Plaintiff,

v.

CINTAS CORPORATION NO. 2

Defendants.

Case No. 3:21-cv-00124-ART-CLB

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR CLASS COUNSEL FEE AND EXPENSE AWARD AND CLASS REPRESENTATIVE SERVICE AWARD

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

After delivering an outstanding Settlement with a value exceeding $50,000,000, Class Counsel seeks an order awarding (1) 33% of the common fund in attorneys' fees; (2) reimbursement of $230,211.64 for actual costs reasonably incurred for litigation; and (3) a service award of $10,000 to the Class Representative.

The Settlement offers significant relief to Class Members in the form of (1) a non-reversionary cash settlement amount of $45,000,000, (2) $5,000,000 allocated to Cintas's enhancement of its policies, procedures, and systems related to agreements with Class Members, which may create additional price savings, and (3) the ability to transition to a Local Agreement "piggybacking" onto Cintas's Master Agreement No. 3702-22-4618 with the Board of Regents of the University of Nebraska, effective June 1, 2023 (the "University of Nebraska Master Agreement"), which offers a more competitive mix of pricing for Cintas products and services. Notably, not a single class member has objected to this Settlement, and only one class member has requested exclusion from the Class.

Given the excellent result achieved for the Class, the substantial risks and complexity of this litigation, the contingent nature of the fee, the work performed by Class Counsel, awards made in similar cases, and the reaction of the Class, Plaintiff submits that the fee and expense requests are reasonable and respectfully request that the Court approve them. The requested class representative service award is also within the range approved by courts in this circuit and is warranted here in

recognition of the City's commitment to this important litigation despite the financial and reputational risks involved, which was indispensable to its successful resolution.

II. BACKGROUND

A. Preliminary Approval of the Settlement and Conditional Certification of the Settlement Class

On October 8, 2024, the City filed its motion seeking preliminary approval of the class action settlement, conditional certification of the settlement class, appointment of the class representative, class counsel, and settlement administrator, and approval of the notice plan. *See* ECF No. 114. Plaintiff's Motion summarized Plaintiff's allegations, chronicled the history of the litigation and the negotiations that led to the proposed Settlement, and detailed the extensive benefits that the proposed Settlement Agreement provides to the Class. *See id.* at 12–18. Rather than reproduce here the pages of facts set forth in the Motion, Plaintiff incorporates that material by reference. On December 31, 2024, the Court granted the Motion and ordered dissemination of notice to the Class pursuant to the settlement's notice plan. *See* ECF No. 115.

B. Notice Was Provided to the Class & the Claim Period Concluded

Defendant, along with Angeion, the Claims Administrator, provided Notice to the Class in accordance with the Settlement Agreement and the Court's Preliminary Approval Order. *See* Declaration of Baro Lee Re: Notice and Administration ("Lee Decl."), ECF No. 116. Postcard notices were mailed to the 95,030 Class Members that had valid mailing addresses. *See id*. Of the 2,521 notices returned by the USPS as undeliverable, 1,399 were remailed to updated addresses either provided by USPS or identified through a skip trace process. *See id*. Reminder notices were also mailed to

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Class Members who had not submitted claim forms as of March 3, 2025. *See id*. Email notice containing a copy of the Class Notice in the body of the email and links to the settlement website and the claims administrator's phone numbers was sent to 22,685 Class Members who had valid email addresses. *See id*. A reminder email notice was sent to Class Members who had valid email addresses and who had not submitted claim forms as of February 26, 2025. *See id*. Angeion also established Settlement-dedicated phone lines to field Class member inquiries regarding the Settlement. *See id*. Angeion launched the settlement website (www.CityOfLaurelSettlement.com) on or about January 30, 2025. *See id*. The mail notice, re-mail notice, email notice, and email reminder notice to the 95,032 total Class Members resulted in a cumulative successful delivery rate of 92,875 (97.73%) and undeliverable rate of 2,157 (2.27%). *See id*.

The claim period concluded on April 1, 2025. *See* ECF No. 116. As of April 9, 2025, the Settlement Administrator received 3,087 claim submissions, no Class Member objected to the settlement, and only one Class Member opted out of the settlement.

III. ARGUMENT

A. The Requested Fee Award is Reasonable

Federal Rule of Civil Procedure 23 permits a court to award "reasonable attorney's fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court and Ninth Circuit recognize that attorneys who obtain a "common fund" for class members are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444

U.S 472, 478 (1980); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003). Courts have the discretion to use either the "percentage-of-the-fund" method or the "lodestar" method to determine fee awards. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 942–43 (9th Cir. 2015). "Despite this discretion, use of the percentage method in common fund cases appears to be dominant." *In re Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008).

1. Percentage-of-the-Fund is the Preferred Method in Common Fund Cases

"Because the benefit to the class is easily quantified in common-fund settlements," courts frequently choose to award "a percentage of the common fund in lieu of the often more time-consuming task of calculating the lodestar." *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th Cir. 2011). As such, percentage-of-the-fund has become the prevailing approach in common fund cases in this circuit. *See, e.g., Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002); *Lopez v. Youngblood*, No. CV–F–07–0474 DLB, 2011 WL 10483569, at *3 (E.D. Cal. Sept. 2, 2011) ("[T]he percentage of the available fund analysis is the preferred approach in class action fee requests because it more closely aligns the interests of the counsel and the class, i.e., class counsel directly benefit from increasing the size of the class fund and working in the most efficient manner."). Under this approach, 25% is considered the "benchmark" for a reasonable award, and may be adjusted upward when "special circumstances" support a departure. *Bluetooth Headset*, 654 F.3d at 942.

Class Counsel has conferred a significant benefit on the Class in the form of both a common fund and business practice changes designed to remediate the

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breaches of contract moving forward. *See Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) (citing *Boeing Co.*, 444 U.S. at 479) (explaining that a "common fund" exists when each class member has "an undisputed and mathematically ascertainable claim to part of a lump-sum judgment recovered on his behalf"). Paying reasonable attorneys' fees from the common fund compensates Class Counsel for bringing and prosecuting this action and providing concrete relief to over 95,000 governmental and non-profit entities—none of which objected to the settlement and only one of which opted out for unexplained reasons. *See* Lee Decl., ECF No. 116 ¶ 7.

Focusing only on the cash consideration, Class Counsel's efforts have created a common fund of $45,000,000. Class Counsel seek 33% of the common fund as a fee award. *See* Burns Decl. ¶¶ 28–29. Class Counsel's requested fee is deserved in light of the value of the extensive work performed, the result achieved for the Class, and the risk and expense of contingent-fee representation.

2. An Upward Adjustment of the Benchmark is Justified

The Ninth Circuit has identified several factors that may be relevant in reviewing the reasonableness of an award: (1) "whether class counsel 'achieved exceptional results for the class'"; (2) "whether the case was risky for class counsel"; (3) "whether counsel's performance 'generated benefits beyond the cash settlement fund'"; (4) "the market rate for the particular field of law (in some circumstances)"; (5) "the burdens class counsel experienced while litigating the case (e.g., cost, duration, foregoing other work)"; and (6) "whether the case was handled on a contingency basis." *Online DVD-Rental*, 779 F.3d at 954–55 (quoting *Vizcaino*, 290 F.3d at 1048–50).

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Courts in this circuit frequently approve an upward adjustment from the benchmark after weighing these factors. *See, e.g., Gutierrez v. Amplify Energy Corp.*, Case No. 8:21-CV-01628-DOC, 2023 WL 3071198, at *3 (C.D. Cal. Apr. 24, 2023) (observing that "in most common fund cases, the award exceeds that 25% benchmark"); *Greene v. Jacob Transp. Servs., LLC*, Case No. 2:09-cv-00466-GMN, 2018 WL 11424176, at *2 (D. Nev. Aug. 29, 2018) (approving a fee of 29.4 percent of the settlement fund); *Davis v. Yelp, Inc.*, Case No. 18-cv-00400-EMC, 2023 WL 3063823, at *2 (N.D. Cal. Jan. 27, 2023) (approving a fee of 33.3 percent of the settlement fund); *Johnson v. U.S. Bank Nat'l Ass'n*, Case No.: 19-CV-286 JLS (LL), 2020 WL 13652583, at *3 (S.D. Cal. Aug. 20, 2020) (finding an award of 33 percent reasonable in light of the circumstances); *In re Banc of Cal. Sec. Litig.*, No. SA CV 17-118 DMG (DFMx), 2020 WL 1283486, at *1 (C.D. Cal. Mar. 16, 2020) (finding an award of 33 percent fair and reasonable); *Schroede v. Envoy Air, Inc.*, Case No. CV 16-4911-MWF (KSx), 2019 WL 2000578, at *7 (C.D. Cal. May 6, 2019) (approving a fee of 33 percent of the settlement fund). In this case, the reasonableness factors support an upward adjustment of the attorneys' fee award to 33% of the cash settlement amount.

a. Class Counsel achieved an excellent result and generated benefits beyond the cash settlement fund.

"The first and most critical factor in assessing an attorneys' fee request is 'the degree of success obtained.'" *Hunt v. Bloom Energy Corp.*, Case No. 19-cv-02935-HSG, 2024 WL 1995840, at *8 (N.D. Cal. May 6, 2024) (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983)); *see also Lowery v. Rhapsody International, Inc.*, 75 F.4th 985,

988 (9th Cir. 2023) ("The touchstone for determining the reasonableness of attorneys' fees in a class action is the benefit to the class.").

Class Counsel secured a substantial monetary recovery, $45,000,000 in cash, and non-monetary relief, forward-looking business practices changes and the ability to transition to the University of Nebraska Master Agreement, that is available to all Class Members. As explained in the City's Motion for Preliminary Approval, the settlement amount represents approximately **66%** of the forecasted $68,507,000 damages incurred by the Settlement Class. *See* ECF No. 114 at 21. After the deduction of settlement-related costs, including the expenses of the settlement administrator (e.g., the costs of notice to the Settlement Class), any court-awarded attorneys' fees, expense reimbursements, and named-plaintiff service award, Class Members who submit valid claims will receive a cash payment equivalent to five percent of their total spend on Cintas products and services available under the 2012 and 2018 Master Agreements. *See* Settlement Agreement, Ex. A at 15, 19–22 ¶¶ 5.2, 7.1, 7.2.2, 7.4.

The non-monetary relief provided by the Settlement includes Cintas' allocation of $5,000,000 for future investments and resources to enhance its policies, procedures, and systems related to agreements with PPAs that piggyback onto the 2012 and 2018 Master Agreements, in connection with which Class Members may see additional price savings for products and services purchased under their local agreements piggybacking onto the 2012 or 2018 Master Agreements. *See* Settlement Agreement, Ex. A at 15–16 ¶ 5.3. As a further benefit to the Settlement Class, Cintas agreed to offer Class Members with valid claims and a local agreement "piggybacking" onto the

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2012 Master Agreement the option to transition to a Local Agreement "piggybacking" onto Cintas's Master Agreement No. 3702-22-4618 with the Board of Regents of the University of Nebraska, effective June 1, 2023 (the "University of Nebraska Master Agreement"), which offers a more competitive mix of pricing for Cintas products and services. *See* Settlement Agreement, Ex. A at 16 ¶ 5.3.2. The non-monetary relief is well-considered and meaningful, targeting the heart of the issues the Class Representative and Class Counsel sought to address: the repeated overcharging of governmental and non-profit entities in violation of their local agreements.

There is no suggestion of collusion or other conflicts of interest that would cause a court to place fees under greater scrutiny. *See, e.g., In re Apple Inc. Device Performance Litig.*, 50 F.4th 769, 782 (9th Cir. 2022); *Roes, 1-2 v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1048–49 (9th Cir. 2019). Courts presented with settlements look for "subtle signs" of collusion such as "(1) 'when counsel receive a disproportionate distribution of the settlement;' (2) 'when the parties negotiate a "clear sailing" arrangement' (i.e., an arrangement where defendant will not object to a certain fee request by class counsel); and (3) when the parties create a reverter that returns unclaimed [funds] to the defendant." *Allen v. Bedolla*, 787 F.3d 1218, 1224 (9th Cir. 2015) (quoting *Bluetooth Headset*, 654 F.3d at 947). None of those pitfalls (or any others) exist here. In this settlement, every Class Member will receive a substantial pro rata share based on their total spend on Cintas products and services under the Master Agreements. Attorneys' fees were not negotiated separately, there is no "clear sailing" provision, and under no circumstances will any amount of the settlement revert to Cintas. There is no basis to suggest that there has been any collusion or

conflict interest; rather, this settlement is the result of good faith, arms-length negotiations and the evaluation of extensive confirmatory discovery. The exceptional results obtained for the Class thus strongly supports the requested fee award.

b. Class Counsel undertook risk and a financial burden on a contingent fee basis for a challenging case.

"The risk that further litigation might result in Plaintiffs not recovering at all, particularly [in] a case involving complicated legal issues, is a significant factor in the award of fees." *Wietzke v. CoStar Realty Info., Inc.*, No. 09cv2743 MMA (WVG), 2011 WL 817438, at *6 (S.D. Cal. Mar. 2, 2011). Class Counsel assumed significant risk in undertaking this litigation and has been litigating the case for several years. Although the City believes that its claims have merit, Class Counsel acknowledges the risks and expense necessary to prosecute the Class's claims through trial and subsequent appeals, as well as the inherent difficulties and delays complex litigation like this entails. Indeed, this case is being settled prior to a ruling on a motion to dismiss, class certification, summary judgment, trial, and potential appeals, each of which posed a risk that Class Members would receive no recovery. *See In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *12 (N.D. Cal. Aug 17, 2018) (describing the risks associated with potential adverse decisions "outside of the pleading stage.").

In addition to the risks associated with complex litigation, "the risk of non-payment or reimbursement of expenses [in cases undertaken on a contingent basis] is a factor in determining the appropriateness of counsel's fee award." *In re Heritage Bond Litig.*, No. 02–ML–1475 DT, 2005 WL 1594403, at *21 (C.D. Cal. June 10, 2005). Courts in this Circuit have found that "[t]he importance of assuring adequate

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representation for plaintiffs who could not otherwise afford competent attorneys justifies providing those attorneys who do accept matters on a contingent-fee basis a larger fee than if they were billing by the hour or on a flat fee." *Omnivision Techs.*, 559 F. Supp. 2d at 1047. Class Counsel utilized their own funds and resources to prosecute the action. *See* Burns Decl. ¶¶ 22, 27. To date, Class Counsel has incurred expenses of $230,211.64. *See* Burns Decl. ¶ 27. These expenses were incurred without any guarantee of recovery and were directly advanced by Class Counsel. *See id.* Under these circumstances, the requested fee is justified.

3. Courts in the Ninth Circuit Routinely Approve Similar Awards

Percentage fee awards in the Ninth Circuit consistently range from 25 to 33 percent. *See, e.g., In re W. States Wholesale Nat. Gas Antitrust Litig.*, MDL Docket No. 1566, 2019 WL 4597502, at *2 (D. Nev. Aug. 5, 2019) (awarding 33.09 percent of $29,250,000 settlement fund in attorneys' fees); *Khoja v. Orexigen Therapeutics, Inc.*, Case No.: 15-cv-00540-JLS-AGS, 2021 WL 5632673, at *9 (S.D. Cal. Nov. 30, 2021) (finding 33 percent of the settlement amount to be a reasonable fee in securities class action); *Bloom Energy Corp.*, 2024 WL 1995840 at *8 (awarding 30 percent of the common fund in a securities class action); *Beaver v. Tarsadia Hotels*, Case No. 11-cv-01842-GPC-KSC, 2017 WL 4310707, at *12 (S.D. Cal. Sept. 28, 2017) (approving 33.3 percent fee award in class action alleging violations of the Interstate Land Sales Full Disclosure Act and California Unfair Competition Law). In *Szymborski v. Ormat Technologies, Inc.*, for example, the court found a 30 percent fee reasonable under the circumstances where counsel litigated "for more than two years without recompense," "achieved a favorable settlement of approximately 21.5 percent of maximum

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damages," and "shouldered the risk of non-payment by taking the class action suit on a contingency fee basis." No. 3:10–CV–132–RCJ, 2012 WL 4960098, at *3 (D. Nev. Oct. 16, 2012). Similarly, in *Greene v. Jacob Transportation Services, LLC*, the court found a fee request for 29.4 percent of a settlement fund to be reasonable considering the risk undertaken by counsel in litigating on a contingency basis for over nine years at both the district and appellate court levels, the substantial non-monetary benefit counsel secured by influencing the defendant to change its business practices, and the fact that the requested award would not substantially reduce the funds available to the class. Case No. 2:09-cv-00466-GMN, 2018 WL 11424176, at *2 (D. Nev. Aug. 29, 2018).

Here, Class Counsel have litigated for years at both the district and appellate court levels, negotiated an extraordinary cash settlement amounting to approximately **66%** of the Class's projected damages, secured non-monetary benefits for the Class in the form of enhanced business practices and the option to piggyback onto an additional master agreement with a more competitive pricing structure, and undertook significant risk of non-payment by taking the action on a contingency fee basis. The requested fee is therefore consistent with what courts have awarded under similar circumstances.

B. Class Counsel's Expenses are Reasonable and Necessary

Class Counsel seeks payment from the Settlement Fund of $230,211.64 in expenses necessarily incurred in the prosecution of this action. *See* Burns Decl. ¶¶ 22, 27. The Ninth Circuit has noted that in contingency-fee class actions, "litigation expenses make the entire action possible." *Online DVD-Rental*, 779 F.3d at 953.

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Attorneys who create a common fund for the benefit of a class are entitled to be reimbursed for out-of-pocket expenses incurred in creating the fund so long as the submitted expenses are reasonable, necessary, and directly related to the prosecution of the action. *Vincent v. Hughes Air W.*, 557 F.2d 759, 769 (9th Cir. 1977); *Omnivision Techs., Inc.*, 559 F. Supp. 2d at 1048 ("Attorneys may recover their reasonable expenses that would typically be billed to paying clients in non-contingency matters.").

The Burns Declaration provides an accounting of all costs for which reimbursement is sought. The primary expenses in this case were for experts, who were an essential component to securing robust and reliable non-monetary relief. *See* Burns Decl. ¶ 27. Other expenses include court filing fees, mailings, courier services, travel, lodging, and meals, all which Class Counsel believes were reasonable and necessary to adequately prosecute the claims in this action. *See id.* Class Counsel advanced these expenses, interest free, with no assurance that they would ever be recouped. Their request for reimbursement is therefore reasonable.

C. Payment of a Service Award to the Class Representative is Appropriate

Courts routinely approve service awards to compensate named plaintiffs for the services they provided and the financial or reputational risks they incurred during the class action litigation, "and, sometimes, to recognize their willingness to act as a private attorney general." *Rodriguez v. W. Publ'g Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009); *see also Smith v. One Nev. Credit Union*, Case No. 2:16-cv-02156-GMN-NJK, 2018 WL 4407251, at *9 (D. Nev. Sept. 16, 2018) (treating "incentive" and "service" awards as the same kind of award). In some cases, the awards have been

substantial. *See, e.g., W. States*, 2019 WL 4597502 at *2 ($75,000 service awards in antitrust class action involving $29,250,000 settlement on behalf of approximately 1,145 class members).

Here, the City requests a service award of $10,000, which is consistent with the service awards typically granted in this District. *See, e.g., Lee v. Enter. Leasing Co.-West*, No. 3:10–CV–00326–LRH–WGC, 2015 WL 2345540, at *11 (D. Nev. May 15, 2015) (approving $10,000 service award in class action involving $19,000,000 settlement on behalf of almost 1,200,000 class members); *Sinanyan v. Luxury Suites International, LLC*, Case No: 2:15–cv–00225–GMN–VCF, 2018 WL 813864, at *6 (D. Nev. Feb. 8, 2018) (granting $12,500 service award in breach of contract class action involving $525,000 settlement); *Sobel v. Hertz Corp.*, 53 F. Supp. 3d 1319, 1332 (D. Nev. 2014) (approving $10,000 service award in class action involving $42,000,000 settlement for almost 35,000 class members). In *Evans v. Wal-Mart Store, Inc.*, for example, the court approved a $15,000 service award where the class representative "assist[ed] her counsel at multiple stages of litigation . . . participated in multiple call conferences with counsel, provided and reviewed documents and pleadings, and was on standby during three mediation sessions." Case No. 2:10-CV-1224 JCM (VCF), 2020 WL 886932, at *5–6 (D. Nev. Feb. 24, 2020). The City has vigorously pursued the interests of the class for over four years, devoting a significant amount of time and effort to staying informed about the case, submitting documents and data necessary for discovery efforts, participating in settlement negotiations, and traveling from Mississippi to Nevada for a settlement conference. *See* Burns Decl. ¶¶ 31–32. Accordingly, a $10,000 service award is appropriate.

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IV. CONCLUSION

For the reasons set forth above, Class Counsel requests the Court grant their Motion for payment of 33% of the cash settlement amount, or $14,850,000, in attorneys' fees, $230,211.64 in reimbursable costs, and a service award of $10,000 to the Class Representative.

Dated this April 10, 2025.

Respectfully submitted,

/s/Warren Burns

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Exhibit 4B

EXHIBIT B

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Counsel for Plaintiff City of Laurel, Mississippi

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
NORTHERN DIVISION

CITY OF LAUREL, MISSISSIPPI, on behalf of itself and all others similarly situated,

Plaintiff,

v.

CINTAS CORPORATION NO. 2

Defendants.

Case No. 3:21-cv-00124-ART-CLB

DECLARATION OF WARREN BURNS IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR CLASS COUNSEL FEE AND EXPENSE AWARD AND CLASS REPRESENTATIVE SERVICE AWARD

I, WARREN BURNS, hereby declare as follows:

1. I am a partner of the law firm Burns Charest LLP. The Court has appointed my firm as Class Counsel for Plaintiff City of Laurel, Mississippi and the

Settlement Class in the above-captioned action (the "Action"). *See* ECF No. 115. I am a member in good standing of the Bars of Texas, New York, and the United States Virgin Islands, and am admitted to practice *pro hac vice* before this Court.

2. I submit this declaration in support of the Plaintiff's Motion for Final Approval of Class Action Settlement ("Final Approval Motion") and Motion for Class Counsel Fee and Expense Award and Class Representative Service Award ("Fee Motion"). Both motions are filed concurrently herewith. I make this declaration based on personal knowledge.

3. I have personally participated in all material aspects of the Action from its pre-complaint investigation through settlement. As Class Counsel, I have been responsible for drafting the complaints, overseeing the development and filing of all briefs and other documents, the litigation strategy of this complex class action, and the negotiation of the Settlement Agreement[1] with Defendant Cintas Corporation No. 2 ("Cintas").

NATURE AND HISTORY OF THE ACTION

4. Plaintiff the City of Laurel, Mississippi (the "City") commenced this action in the United States District Court for the District of Nevada on March 12, 2021. This Action was the product of extensive pre-suit investigatory work spanning months that I and other Class Counsel undertook. Our investigation involved analyzing Cintas's business practices, contracts, and transactions with the City and other municipalities. As a result of our investigation, we discovered that the City and

[1] Any capitalized terms used but not defined herein have the meaning given to them in the parties' Settlement Agreement. *See generally* Final Approval Mot., Ex. A (Settlement Agreement).

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other municipalities executed agreements with Cintas, in which Cintas bound itself to offer the same prices offered in its Master Agreement No. 12-JLH-011C with Harford County, Maryland, effective April 1, 2012 (the "Harford County Master Agreement" or "2012 Master Agreement") and Cintas's Master Agreement with Prince William County, Virginia, Contract No. R-BB-19002, effective December 13, 2018 (the "Prince William County Master Agreement" or "2018 Master Agreement"). Contrary to the terms of those agreements, we determined that in certain instances Cintas charged the City and other putative class members more than those prices.

5. On July 19, 2021, the City filed its First Amended Class Action Complaint, alleging that Cintas breached its agreements with OMNIA Partners (formerly known as U.S. Communities Government Purchasing Alliance) Participating Public Agencies ("PPAs") for products and services that "piggyback" onto Cintas's 2012 Harford County Master Agreement and 2018 Prince William County Master Agreement by billing PPAs amounts that exceeded pricing authorized under those agreements. *See* ECF No. 36, First Am. Class Action Compl. ("Compl."), ¶¶ 47–49. Cintas then moved for a stay pending arbitration or, alternatively, for a transfer of venue to the Southern District of Ohio. This Court denied that motion. On appeal, the United States Court of Appeal for the Ninth Circuit affirmed. Following that ruling, the parties began to discuss the possibility of settling Plaintiff's claims on a class-wide basis. To facilitate that process, the parties sought and received several stays from this Court while they undertook an exchange of discovery and negotiated terms. *See* ECF Nos. 78, 81, 87, 94, 106, 108, 110, 112.

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THE SETTLEMENT

6. After more than two years of litigation and one year of arm's-length settlement negotiations, Plaintiff and Cintas have reached a Settlement Agreement that provides substantial monetary relief to the Settlement Class, which includes Participating Public Agencies ("PPAs") who were overcharged for products and services provided by Cintas under the 2012 Harford County Master Agreement and the 2018 Prince William County Master Agreement.

7. The settlement negotiations were facilitated by the Honorable Robert A. McQuaid Jr., who presided over a settlement conference between the parties in March 2024 after the parties filed detailed mediation statements. *See* ECF No. 99. These discussions concluded with the Parties signing a Term Sheet, agreeing to the material terms of a settlement that would resolve Plaintiff's and the putative class's claims. *See id*. The Parties informed the Court of this agreement-in-principle to settle the Action at the settlement conference, and for the next several months, the Parties exchanged confirmatory discovery and negotiated long form Settlement Agreement.

8. The Settlement was reached only after extensive informal discovery and data analysis, including Cintas's provision of transactional records, which were analyzed by Plaintiff's experts to identify overcharges. Specifically, Cintas provided data about its Local Agreements with putative Class Members, the Harford County and Prince William County Master Agreements, Cintas's revenues under those agreements, including voluminous data showing Cintas's total recorded monthly revenues from 2012 through February 29, 2024 under the 2012 and 2018 Master Agreements, and the details of transactions conducted for products and services

under those agreements. Cintas further responded to multiple inquiries from Plaintiff and its expert about the data.

9. The settlement negotiations were accompanied by frank discussions of the relative strengths and weaknesses of the Parties' claims and defenses. Class Counsel's negotiations were informed by the assistance of their expert economist, Joseph Mason, and his consulting firm, BVA Group.

10. On October 8, 2024, the parties effectuated the Settlement Agreement.

11. The named Plaintiff and Class Representative informed me that it supports the Settlement and believes it is an excellent result for the Class.

12. Based on Class Counsel's extensive experience, this Settlement is an outstanding result for the Class. The Settlement provides a significant non-reversionary cash payment of $45 million, less attorneys' fees, expenses, administration costs, and a service award ("Cash Settlement Amount"). This amount represents approximately 66% of the total estimated damages incurred by Class Members. Each Class Member who submits a Valid Claim will receive a cash payment of 5% of their Total Spend on Cintas products and services under the 2012 and 2018 Master Agreements.

13. In addition to the Cash Settlement Amount, Cintas has agreed to allocate $5 million toward enhancing its policies, procedures, and systems related to Local Agreements with PPAs as Additional Relief. This enhancement aims to prevent future breaches of the type alleged in this case, offering meaningful forward-looking relief to Class Members.

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14. As discussed in my Declaration in Support of Motion for Preliminary Approval of Class Action Settlement, I and Class Counsel believe the Settlement is fair, reasonable, and adequate in light of the risks of continued litigation, including the possibility that Cintas would successfully oppose class certification or prevail on merits-based defenses. *See generally* ECF No. 114-3. The recovery secured by this settlement provides immediate and substantial benefits to Class Members, including monetary relief that represents approximately 66% of the total estimated damages incurred by Class Members, without the need for protracted litigation.

PRELIMINARY APPROVAL AND DISSEMINATION OF NOTICE

15. On December 31, 2024, this Court granted Plaintiff's motion seeking preliminary approval of the class action settlement, conditional certification of the settlement class for settlement purposes, appointment of Plaintiff, the City of Laurel, Mississippi as the class representative, Korey Nelson, Amanda Klevorn, Natalie Earles, and I of Burns Charest LLP as class counsel, and Angeion Group, LLC, as settlement administrator, and approval of the notice plan. *See* ECF No. 115 ("Preliminary Approval Order").

16. The Preliminary Approval Order also scheduled the Final Approval Hearing for April 25, 2025, to determine whether the proposed settlement of the action, pursuant to the terms and conditions provided in the Settlement Agreement, is fair, reasonable, and adequate to the Settlement Class and should be finally approved; whether to certify the Settlement Class under Federal Rule of Civil Procedure 23; whether the Final Approval Order and Judgment should be entered; to determine any amount of fees, costs, and expenses that should be awarded to Class

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Counsel; and to determine the amount of any Service Award to Plaintiff. *See* ECF No. 115 ¶ 20.

17. The Preliminary Approval Order required that notice be provided to Settlement Class Members in the form and manner set forth in the Settlement Agreement and documents in support of Plaintiff's Motion for Preliminary Approval. *See* ECF No. 115 ¶ 8. Defendant, along with Angeion, the Settlement Administrator, provided direct notice to the Class in accordance with the Settlement Agreement and the Court's Preliminary Approval Order. *See* Declaration of Baro Lee Re: Notice and Administration ("Lee Decl."), ECF No. 116.

18. Angeion commenced the mailing of direct notice to the Class Members that had valid mailing addresses on January 30, 2025. *See id.* ¶ 8. Of the 2,521 notices returned by the USPS as undeliverable, 1,399 were remailed to updated addresses either provided by USPS or identified through a skip trace process. *See id.* Reminder notices were also mailed to Class Members who had not submitted claim forms as of March 3, 2025. *See id.* Email notice containing a copy of the Class Notice in the body of the email and links to the settlement website and the claims administrator's phone numbers was sent to 22,685 Class Members who had valid email addresses on January 30, 2025. *See id.* A reminder email notice was sent to Class Members who had valid email addresses and who had not submitted claim forms as of February 26, 2025. *See id.* Angeion also established Settlement-dedicated phone lines to field Class member inquiries regarding the Settlement. *See id.* Angeion launched the settlement website (www.CityOfLaurelSettlement.com) on or about January 30, 2025. *See id.* The mail notice, re-mail notice, email notice, and email reminder notice to the 95,032

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total Class Members resulted in a cumulative successful delivery rate of 92,875 (97.73%) and undeliverable rate of 2,157 (2.27%). *See id.*

19. The Preliminary Approval Order also set the deadline for Class Members to file claims, objections, and requests for exclusion. Because the Order listed two different deadlines, March 31, 2025 and April 1, 2025, Class Counsel and Counsel for Cintas agreed to use the later date, April 1, 2025, as the deadline for Class Members to file claims, objections, and requests for exclusion. *See* ECF No. 115 ¶¶ 9, 11, 16.

20. The Claim Period concluded on April 1, 2025. As of April 9, 2025, the Settlement Administrator received 3,087 claim submissions, no Class Member objected to the settlement, and only one Class Member opted out of the settlement.

CLASS COUNSEL'S WORK AND EXPENSES

21. Class Counsel has represented Plaintiff on a wholly contingent basis for more than seven years. To date, Class Counsel has received no payment for its services or the expenses incurred in prosecuting the action and negotiating the settlement. Throughout this time, Class Counsel's dedication to recovering a favorable result for the Settlement Class has been expensive and challenging.

22. Class Counsel have vigorously led all aspects of case investigation, management, prosecution, and resolution in this Action. These efforts include, among other things: (i) conducting a thorough pre-suit factual investigation and developing legal theories that resulted in the preparation of a detailed complaint and subsequent amended complaint; (ii) opposing Cintas' motion to stay pending arbitration and, alternatively, transfer venue; (iii) opposing Cintas' appeal of this Court's denial of its

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motion to stay pending arbitration and, alternatively, transfer venue; (iv) gathering Plaintiff's documents and relevant information; (v) preparing a detailed mediation statement; (vi) participating in extensive settlement discussions; (vii) analyzing relevant informal discovery; (viii) engaging experts to analyze relevant data; (ix) achieving a favorable Settlement on behalf of the Settlement Class; (x) drafting the settlement agreement; (xi) drafting the motions for preliminary and final approval; and (xii) developing the notice plan and coordinating claims administration with the settlement administrator, including responding to Class Members' inquiries.

23. Even now, the work on this litigation has not ended and will not end until the last settlement distribution is made to the Class and a final report is made to the Court. Counsel will continue to expend many additional hours in connection with the Settlement administration process, responding to Class Members inquiries, and preparing for the Fairness Hearing scheduled for April 25, 2025.

24. The table below sets forth my firm's total hours for the period from inception of the case through and including April 8, 2025 for work performed by attorneys and professional staff at or affiliated with my firm for the benefit of the Class. The total number of hours spent by my firm during this period was 1,608.85.

Timekeeper	Hours
Kevin Amezquita	21.00
Warren Burns	118.00
Chris Cormier	0.60
Cristina Delise	7.10
Natalie Earles	196.00
Logan Fontenot	49.80
Amanda Klevorn	17.80
Patrick Murphree	276.20
Korey Nelson	163.40
Kyle Oxford	52.40

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Ellen Short	11.40
Max Sternberg	6.00
Will Thompson	384.58
Matt Tripolitsiotis	102.80
Larry Vincent	20.10
Lydia Wright	0.67
Rick Yelton	78.60
Mark Anderson	0.60
Gabriella Andino	40.20
Erika Boehmer	18.10
Julianna Gravois	24.00
Maggie Kweik	5.50
Hannah Lopez	13.10
Abigail Provost	0.70
Jordan Soyka	0.20
TOTAL	**1,608.85**

25. As set forth in the table below, my firm has expended a total of $230,211.64 in unreimbursed costs and expenses in connection with the prosecution of the Action from inception of the case through and including April 8, 2025. These costs are reflected on the books and records of my firm. They were incurred on behalf of Plaintiff and Class Members by my firm and have not been reimbursed.

Description	Amount
Lodging	$25,879.49
Meals	$3,065.52
Other	$5,873.22
Expert Services	$165,104.60
Ground Transportation	$6,221.44
Airfare	$24,067.37
TOTAL	**$230,211.64**

26. The Notice disseminated to Class Members provided that Class Counsel will apply for an award of attorneys' fees of up to 33% of the Cash Settlement Amount and reimbursement of expenses necessarily incurred in the prosecution of this action.

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Class Counsel requests that the Court award a fee of 33% of the Cash Settlement Amount, or $14,850,000.

27. As discussed in the Fee Motion, filed concurrently herewith, seeking an award of attorneys' fees in an amount of 33% of the Cash Settlement Amount is in line with similar awards granted in this Circuit. In light of the favorable result achieved for the Settlement Class, the skill required, the quality of work performed, the risk of pursuing claims on a contingency basis, and the significant amount of time and resources Class Counsel has dedicated to this Action, Class Counsel respectfully submits that a fee of 33% of the Cash Settlement Amount is justified and should be approved.

28. Class Counsel has reasonably incurred, and seeks reimbursement of, expenses in the amount of $230,211.64. All of the funds advanced by Counsel were fully contingent on a successful outcome.

CLASS REPRESENTATIVE'S EFFORTS

29. Based on our experience in complex class action litigation and our observations throughout this Action, it is Class Counsel's professional opinion that the Class Representative, the City, willingly, constructively, and effectively contributed to the prosecution of the claims on behalf of the Class. The City has fully cooperated with Class Counsel, participated in a thorough vetting process undertaken by Class Counsel, stayed informed about the case, preserved relevant documents, responded to Class Counsel's requests for information for the benefit of the Class, and attended settlement negotiations.

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30. Class Counsel requests a service award for the Class Representative of $10,000 for its assistance in bringing this litigation and in light of the significant amount of time and effort it devoted to representing the Class.

* * *

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 10th day of April, 2025, in Dallas, Texas.

Warren Burns

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Exhibit 4C

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA
NORTHERN DIVISION

CITY OF LAUREL, MISSISSIPPI, on behalf of itself and all others similarly situated,

Plaintiff,

v.

CINTAS CORPORATION NO. 2

Defendants.

Case No. 3:21-cv-00124-ART-CLB

ORDER GRANTING CLASS COUNSEL FEE AND EXPENSE AWARD AND CLASS REPRESENTATIVE SERVICE AWARD

WHEREAS, Plaintiff City of Laurel, Mississippi filed a Complaint and commenced the action entitled *City of Laurel, Mississippi v. Cintas Corporation No. 2*, No. 3:21-cv-00124-ART-CLB (the "Action");

WHEREAS, Plaintiff City of Laurel, Mississippi filed a First Amended Class Action Complaint (ECF No. 36) and subsequently entered into an Agreement with Cintas Corporation No. 2 that, if approved, would settle the Action;

WHEREAS, Plaintiff has moved, under to Federal Rule of Civil Procedure 23, for an order awarding 33% of the common fund in attorneys' fees, reimbursement of $230,211.64 for costs incurred, and a service award of $10,000 to the Class Representative (the "Motion"); and

WHEREAS, the Court, having considered the Motion, the Agreement together with all exhibits and attachments thereto, the record in the Action, the parties' briefs, and arguments of counsel,

NOW THEREFORE, THE COURT HEREBY FINDS AND ORDERS AS FOLLOWS:

1. Class Counsel is awarded attorneys' fees of 33% of the $45,000,000 Cash Settlement Amount, or $14,850,000. The Court finds that Class Counsel's requested fee award is fair and reasonable under the common fund doctrine and percentage-of-the-recovery method based upon the following factors: (a) the results obtained by Class Counsel in this case; (b) the risks and complex issues involved in this case; (c) that the attorneys' fees requested were entirely contingent upon success – Class Counsel risked time and effort and advanced costs with no ultimate guarantee of compensation; and (d) that the Class Members have been notified of the requested fees and had an opportunity to inform the Court of any concerns they have with the request. These factors justify an award above the Ninth Circuit's 25% benchmark. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). As such, the Court finds that the requested fee award comports with the applicable law and is justified by the circumstances of this case.

2. Class Counsel is awarded reimbursement of their litigation costs and expenses in the amount of $230,211.64. The Court finds that these costs and expenses were reasonably incurred in the ordinary course of prosecuting this case and were necessary given the complex nature and nationwide scope of the case.

3. The Class Representative is awarded a service award in the amount of $10,000. The Court has confirmed the reasonableness of Class Counsel's requested service award for Plaintiff the City of Laurel, Mississippi due to its service in bringing the case and facilitating its resolution. The Court finds that the requested service award is fair and reasonable in light of the Class Representative's efforts on behalf of the litigation.

4. The attorneys' fees awarded, reimbursement of litigation costs and expenses, and service award shall be paid from the Cash Settlement Amount.

IT IS SO ORDERED.

Dated this 29th day of April, 2025.

Honorable Anne R. Traum
United States District Judge