IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

Paul Laidig, Peter Lewis, and Derek Kemp, as representatives of a class of similarly situated persons, and on behalf of the Vi-Jon Employee Stock Ownership Plan, Plaintiffs, v. GreatBanc Trust Company, et al., Defendants.	Case No. 1:22-cv-01296 Hon. LaShonda A. Hunt Hon. Heather K. McShain **MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF PARTIAL CLASS ACTION SETTLEMENT**

INTRODUCTION

On May 13, 2025, this Court preliminarily approved the Partial Class Action Settlement Agreement, as amended ("Partial Settlement"),[1] which resolves Plaintiffs' class action claims against Defendants John Brunner ("Brunner") and the John G. Brunner Revocable Trust dated 06-09-1992 (the "1992 Brunner Family Trust") (the "Brunner Defendants") relating to the purchase of company stock by the Vi-Jon (n/k/a Emprise Group, Inc.) Employee Stock Ownership Plan ("Plan"). Dkt. 311.[2] After a preliminary evaluation, the Court found that there was cause to believe the terms of the Partial Settlement were "fair, reasonable, and adequate, and within the range of possible approval" and approved the distribution of the Notices of Settlement as specified in the Settlement Agreement. Dkt. 311 at 2.

[1] A copy of the Partial Class Action Settlement Agreement is filed at Dkt. 258-1. The Amendment to the Partial Class Action Settlement is filed at Dkt. 302-1.
[2] While Plaintiffs' motion for preliminary approval of the Partial Settlement was pending, the John and Janell Brunner Family Trust Dated May 27, 2020 (the "2020 Brunner Family Trust") was added as a defendant in this action. Dkt. 273; Dkt. 274. The 2020 Brunner Family Trust is identified in the Partial Settlement as a Released Party. Dkt. 258-1 at 3, 7 (Partial Settlement §§ 1.4(c), 1.45). As such, the Partial Settlement will also resolve Plaintiffs' claims against the newly named 2020 Brunner Family Trust. *See* Dkt. 302-1 at 1–2.

This Court should now grant final approval of the Partial Settlement. As discussed below, all of the criteria for final approval are satisfied, and events following this Court's decision to preliminarily approve the Partial Settlement confirm that the Court's preliminary analysis was correct. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Partial Settlement. Plaintiffs' motion is unopposed.[3]

BACKGROUND

I. PROCEDURAL HISTORY

A. The Pleadings and Motions to Dismiss

On March 10, 2022, Plaintiffs Laidig, Lewis, and Michael Robbins filed this action. Dkt. 1. In their Complaint, they alleged that Defendant GreatBanc Trust Company ("GreatBanc"), as a fiduciary to the Plan, caused the Plan to engage in a prohibited transaction with a party in interest, as barred by ERISA. *Id.* at ¶ 80. They also alleged that Defendants Berkshire Fund VI, L.P. ("Berkshire"), Brunner, and the Brunner Trust are liable to the Plan as transferees of proceeds of the unlawful transaction. *Id.* at ¶ 88. On June 6, 2022, Defendants moved to dismiss via three separate motions. *See* Dkt. 42; Dkt. 43; Dkt. 45. On January 31, 2023, the Court denied GreatBanc and Berkshire's motions in their entirety, and "denie[d] in large part the Brunner Defendants' motion."[4] Dkt. 70 at 1.

On December 6, 2023, Plaintiffs moved to amend the complaint to add Mr. Kemp as a plaintiff. *See* Dkt. 112-1 at ¶ 19. On December 7, 2023, the Court granted this request. Dkt. 114. On June 4, 2024, Plaintiff Robbins asked to be withdrawn as a named plaintiff. Dkt. 155. The

[3] GreatBanc and the Vi-Jon defendants do not oppose the relief outlined in the proposed order, but requested that Plaintiffs disclose that this memorandum was not shared with defendants' counsel prior to filing with the Court.

[4] The Court dismissed Plaintiff's requests for declaratory relief and "other appropriate relief." Dkt. 70 at 19–20.

Court granted Robbins' request the next day. Dkt. 157. In July 2024, Plaintiffs moved to amend the complaint a second time to add new claims and defendants, including and the John and Janell Brunner Family Trust Dated May 27, 2020 (the "2020 Brunner Family Trust"). *See* Dkt. 162; Dkt. 164-4. Berkshire and the Brunner Defendants opposed the motion to amend. Dkt. 180. The Court granted Plaintiffs' motion for leave to amend the operative Complaint on March 4, 2025, Dkt. 273, and Plaintiffs filed their Second Amended Complaint the next day, Dkt. 274.[5]

B. Settlement Discussions and Discovery

Global settlement negotiations began around April 2023 and continued throughout that year. Dkt. 95 at ¶ 1–2. While Plaintiffs' initial motion to amend was pending, the Parties continued negotiations facilitated by Magistrate Judge Heather K. McShain. Four such negotiations were held between November 20, 2023, and January 4, 2024. Dkt. 125 at 2–3. During a January 19, 2024, conference, the Parties indicated that global settlement discussions were at an impasse, had become unproductive, and were ultimately terminated. Dkt. 132 at 3–4.

The Parties resumed extensive fact discovery. As this case concerns a complicated, $400 million ESOP Transaction, discovery in this matter has produced a voluminous record. Collectively, Defendants have produced over 25,000 documents, amassing more than 182,000 pages. Dkt. 258 at ¶ 12 (Declaration of Brock J. Specht in Support of Plaintiffs' Opposed Motion for Preliminary Approval of Partial Class Action Settlement). Third parties involved in the ESOP Transaction have produced more than 42,000 documents, amassing more than 321,580 pages. Dkt. 258 at ¶¶ 12–13; *see also* Dkt. 213 at ¶ 3. The Brunner Defendants produced 965 of the

[5] At the time of this filing, motions to dismiss Plaintiff's Second Amended Complaint are pending, with briefing set to close on July 31, 2025. *See* Dkt. 346 (minute entry establishing briefing schedule); Dkt. 339 (amended motion to dismiss filed by Defendants LeGrand and Greiman); Dkt. 326 (amended motion to dismiss filed by VJCS Director Defendants, excluding LeGrand and Greiman); Dkt. 337 (amended motion to dismiss filed by VJHC Director Defendants and Vi-Jon Entity Defendants); *see also* Dkt. 357 (Plaintiffs' Combined Opposition to the New Defendants' Motions to Dismiss).

documents obtained in discovery, amassing over 7,500 pages. Dkt. 258 at ¶ 12. Plaintiffs took nine depositions of numerous party and non-party fact witnesses, including Brunner. *Id.* ¶ 14. The Named Plaintiffs also participated in discovery by producing documents, reviewing and signing written discovery responses, testifying at their depositions when requested. *Id.* ¶ 15.

As discovery progressed, counsel for Plaintiffs and the Brunner Defendants remained in contact. *Id.* ¶ *18*. After continued negotiations, while Plaintiffs' second motion to amend was pending, they reached a settlement in principle and prepared the agreement at issue here. *Id.*

C. Preliminary Approval of the Partial Settlement, as Amended

Plaintiffs filed an Opposed Motion for Preliminary Approval of Partial Class Action Settlement with Defendants John Brunner and the John G. Brunner Revocable Trust dated 06-09-1992 on January 27, 2025. Dkt. 256.[6]

Non-Settling Defendants GreatBanc Trust Company ("GreatBanc") and Berkshire Fund VI, Limited Partnership ("Berkshire") opposed Plaintiffs' motion to the extent that the Partial Settlement purportedly required them to retain, pay, or provide information to an Independent Fiduciary under PTE 2003-39. *See* Dkt. 264; Dkt. 265. The Non-Settling Defendants also objected to the Partial Settlement to the extent that it affected their contribution, indemnification, and set off rights against the settling Defendants. *See* Dkt. 264; Dkt. 276. In response, the Settling Parties agreed to amend the relevant provisions of the Partial Settlement to ask the Court to appoint the Independent Fiduciary and to clarify that the Non-Settling Defendants will not incur any cost in connection with the Independent Fiduciary. Dkt. 302-1. On May 2, 2025, the Court overruled the remaining objections to Plaintiffs' motion for preliminary approval and instructed Plaintiffs to submit a revised proposed order for preliminary approval. *See* Dkt. 300; Dkt. 301. On May 9,

[6] Atticus sent the notices required by the Class Action Fairness Act, 28 U.S.C. § 1715, to the appropriate federal and state officials less than 10 days later, on February 5, 2025. Dkt. 373 at 2.

Plaintiffs filed their unopposed motion for the appointment of an Independent Fiduciary along with the Amended Settlement Terms. Dkt. 302; Dkt. 302-1. On May 13, the Court granted preliminary approval of the Partial Class Action Settlement, as Amended, and appointed an Independent Fiduciary. Dkt. 311; Dkt. 309.

II. OVERVIEW OF SETTLEMENT TERMS, AS AMENDED

A. The Settlement Class

The Partial Settlement applies to the following certified Settlement Class:

> All participants and beneficiaries of the Vi-Jon Employee Stock Ownership Plan (n/k/a Emprise Group, Inc. Employee Stock Ownership Plan) at any time since its inception with a vested Plan balance on or prior to October 29, 2024, excluding Defendants, the directors of Vi-Jon or of any entity in which a Defendant has a controlling interest, and legal representatives, successors, and assigns of any such excluded person.

Dkt. 311 at 2. There are 1,403 Settlement Class Members. *Declaration of Bryn Bridley on Notice and Settlement Administration ("Bridley Decl.")* at ¶ 4.

B. Monetary Relief

Under the Partial Settlement, the Brunner Defendants will contribute $1 million to a common settlement fund. Dkt. 258-1 at 6, 14, 16 (Partial Settlement ¶¶ 1.31, 4.2, 5.1). After accounting for any attorneys' fees and costs, administrative expenses, and class representative service awards approved by the Court, the Net Settlement Amount will be distributed to eligible Settlement Class Members. *Id.* ¶¶ 1.34, 5.1–5, 6.1–2.

Payments to Settlement Class Members will allocated *pro rata* by dividing each individual's number of vested shares of Plan stock by the total number of vested shares of stock allocated to the Plan accounts of all Settlement Class Members on or prior to October 29, 2024, then multiplying that percentage by the Net Proceeds of the Settlement. *Id.* ¶ 5.2. If the dollar amount payable to a Non-Active ESOP Participant is less than $10, then that Settlement Class

Member's proceeds will be reallocated among the other Settlement Class Members. *Id.* ¶ 5.4. Active ESOP Participants' accounts will be automatically credited with their share. *Id.* ¶ 5.3(a). Non-Active ESOP Participants will have the opportunity to submit a Rollover Form allowing them to roll their distribution into a qualified retirement account. *Id.* ¶ 5.3(b). Non-Active ESOP Participants who do not timely submit a Rollover Form will be sent a check. *Id.* Under no circumstances will any funds revert to any of the Defendants. Any uncashed checks or other funds remaining will be deposited in the Plan and allocated to Active ESOP Participants equally on a *per capita* basis. *Id.* ¶ 5.6.

C. Release of Claims

In exchange for the foregoing relief, the Settlement Class will release the Brunner Defendants and Affiliated Family Trusts from all claims:

> that were asserted in the Action against the Brunner Defendants or could have been asserted in the Action or any other court, forum, or proceeding against the Brunner Defendants and/or the Affiliated Family Trusts based on or arising from any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions, or occurrences asserted in the Action, whether or not pleaded in the Complaints . . . .

Id. ¶ 1.38, 7.1(a)–(b); *see also id.* ¶ 1.4; 1.10. The Released Claims do not include claims to enforce the Partial Settlement. *Id.* ¶¶ 1.38, 7.1(c).

III. CLASS NOTICE AND REACTION TO THE SETTLEMENT

Pursuant to the Court's Order preliminarily approving the Partial Settlement, as Amended, Atticus sent Notice to the 1,403 Settlement Class Members on June 12, 2025 by U.S. First Class mail. *Bridley Decl.* ¶ 6. The Notice provided Settlement Class Members with an overview of the Partial Settlement, of their legal rights and options under the terms of the Partial Settlement and the deadlines by which to act on those rights, the benefits available, details on the Fairness Hearing, and contact information for the Settling Parties and Atticus. *Id.*; *see Bridley Decl., Exs. A & B.*

Prior to sending these Notices, Atticus cross-referenced the addresses on the class list with the United States Postal Service National Change of Address Database. *Bridley Decl.* ¶ *5*. Seventy (70) of the 1,403 total Notices mailed on June 12, 2025 were returned to Atticus as undeliverable. *Id.* ¶ 8. Atticus re-mailed the Notices to forwarding addresses and addresses obtained from a professional service for address tracing before the July 22, 2025 response deadline. *Id.* ¶ 8. As a result, the Notice program was very effective. Out of 1,403 Settlement Class Members, 1,368 (97.5%) were successfully mailed a Notice. *Id.*

Atticus also created and maintained a toll-free telephone support line (1-800-291-5085) and a Settlement Website (www.ViJonESOPSettlement.com) as resources for Settlement Class members seeking additional information. *Id.* ¶¶ 9–10. The telephone number and Settlement Website were referenced in the Notices. *Id.* The telephone number also appears on the Settlement Website. *Id*.

The deadline to submit objections to the Partial Settlement was July 22, 2025. Dkt. 311 at 5. No objections were received. *See Declaration of Brock J. Specht in Support of Plaintiffs' Unopposed Motion for Final Approval of Partial Class Action Settlement ("Specht Decl.")* at ¶ 5; *Bridley Decl.* ¶ 11.

IV. REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY

Pursuant to Section 2.2 of the Partial Settlement, as amended, and applicable ERISA regulations,[7] the Partial Settlement was submitted to an Independent Fiduciary (Fiduciary Counselors, Inc.) for review following the Court's Preliminary Approval Order. *Specht Decl.* ¶ 4. Based on its evaluation of the relevant documents and information associated with this action and the Partial Settlement, interviewing counsel for each of the Settling Parties, and taking into account

[7] *See* Dkt. 301-1 at 4 (Amendment ¶ 2.2); Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

the fiduciary obligations imposed by ERISA, the Independent Fiduciary concluded, among other things, that:

> The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone.

Specht Decl., Ex. A (Report of the Independent Fiduciary) at 7. Accordingly, the Independent Fiduciary did not object to any aspect of the Partial Settlement, including but not limited to the requested attorneys' fees and costs, authorized the Partial Settlement in accordance with PTE 2003-39, and gave a release for and on behalf of the Plan. *Id.* at 6–7, 9.

ARGUMENT

I. LEGAL STANDARD

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any settlement agreement that will bind absent class members. Fed. R. Civ. P. 23(e). "The central concern in reviewing a proposed class-action settlement is that it be fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2) Committee Notes (2018). In 2018, Rule 23(e) was amended "to focus the court and the lawyers on the core concerns of procedure and substance that should guide the decision" of whether to approve a proposed settlement. *Id.* These four "core concerns" are: (1) the adequacy of representation, (2) the existence of arm's-length negotiations, (3) the adequacy of relief, and (4) the equitableness of treatment of class members. *See* Fed. R. Civ. P. 23(e)(2); Fed. R. Civ. P. 23(e)(2) Committee Notes (2018).

The factors identified in Rule 23(e) overlap significantly with the more detailed list of factors that courts in this Circuit have historically used to review a proposed class action settlement: "[1.] the strength of plaintiffs' case compared to the amount of defendants' settlement offer, [2.] an assessment of the likely complexity, length and expense of the litigation, [3.] an

evaluation of the amount of opposition to settlement among affected parties, [4.] the opinion of competent counsel, and [5.] the stage of the proceedings and the amount of discovery completed at the time of settlement." *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996).[8] Because these principles "subsume most of the factors listed in Rule 23(e)(2)," *Snyder v. Ocwen Loan Servicing, LLC*, 2019 WL 2103379, at *5 (N.D. Ill. May 14, 2019), they are considered together.

As discussed below, the factors in Rule 23(e)(2) and the *Isby* factors overwhelmingly favor approval of the Partial Settlement.

II. THE SETTLEMENT MEETS THE STANDARD FOR FINAL APPROVAL

A. The Class Representatives and Class Counsel Have Adequately Represented the Settlement Class

The first Rule 23 factor evaluates whether the Class Representatives and Class Counsel have adequately represented the class. Fed. R. Civ. P. 23(e)(2)(A). Here, the Class Representatives and Class Counsel have faithfully done so. Each of the Named Plaintiffs agreed to perform their duties as class representatives, and each has fulfilled those duties throughout the course of the litigation. *See* Dkt. 258 at ¶ 15; Dkt. 258-2. As detailed in the attorney declarations accompanying the preliminary approval and fees motions, Class Counsel have extensive experience in ERISA litigation with a proven track record. *See* Dkt. 365 (Declaration of Brock J. Specht); Dkt. 366 (Declaration of Gregory Y. Porter). Class Counsel have skillfully and adequately represented the Settlement Class. This factor supports approval.

B. The Partial Settlement Is the Product of Arm's-Length Negotiations Between Experienced, Capable Counsel after Extensive Fact Discovery

Under the second Rule 23 factor, courts consider whether the proposal was negotiated at

[8] Over the years, the Seventh Circuit has articulated this list of factors in different ways, sometimes separately enumerating the reaction of class members from the amount of opposition to the settlement by affected parties. *E.g. Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (collecting cases). Though the numbering may differ, the substantive factors remain the same. *See id.* (endorsing *Isby*, 75 F.3d at 1199).

arm's length and review the circumstances surrounding the negotiations, including the stage of the proceedings and the amount of discovery completed at the time of settlement. *See* Fed. R. Civ. P. 23(e)(2)(B); *see also supra* at 9 (*Isby* factors 4 and 5). "A 'presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.'" *Am. Int'l Group, Inc. v. ACE INA Holdings, Inc.*, 2012 WL 651727, at *10 (N.D. Ill. Feb. 28, 2012) (quoting *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005)); *see also Newberg and Rubenstein on Class Actions* § 13:45 (6th ed. 2022). That is exactly the situation presented here.

Relevant here: (1) Class Counsel undertook an extensive investigation of the factual and legal bases for Plaintiffs' claims prior to commencing the action; (2) the parties' legal positions were staked out in connection with the motion to dismiss; (3) the parties engaged in four arm's-length settlement negotiations facilitated by Magistrate Judge McShain; (4) the Settling Parties engaged in extensive fact discovery, including requests for production of documents and interrogatories, and the Brunner Defendants produced more than 900 documents (7,500+ pages); (5) Plaintiffs also obtained and analyzed over 67,000 documents (500,000+ pages) in discovery from Defendants and third parties; (6) Plaintiffs took nine depositions of fact witnesses, including Mr. Brunner; and (7) Class Counsel had the necessary experience and qualifications to evaluate the Settling Parties' legal positions. *Supra* at 2–4; *see also* Dkt. 258 at 3–10.

With the full benefit of fact discovery, Class Counsel had a clear view of the facts to weigh the strengths and weaknesses of their case. *See In re Clearview AI, Inc., Consumer Priv. Litig.*, 2025 WL 1371330, at *16 (N.D. Ill. May 12, 2025). The Partial Settlement was negotiated at arm's length with this information in mind.

In addition, after separately interviewing Class Counsel and the Brunner Defendants'

counsel, the Independent Fiduciary concluded: "[t]he terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances." *Ex. A* at 8.

In sum, the circumstances surrounding the Settling Parties' arm's-length negotiations (including the stage of the proceedings and the amount of fact discovery) and the opinion of competent counsel strongly support granting final approval. *See Hale v. State Farm Mut. Auto Ins. Co.*, 2018 WL 6606079, at *3 (S.D. Ill. Dec. 16, 2018).

C. The Partial Settlement Provides Meaningful Relief to the Settlement Class

The third Rule 23 factor considers whether "the relief provided to the class is adequate" in light of "the costs, risks, and delay" of further litigation. *See* Fed. R. Civ. P. 23(e)(2)(C); *see also supra* at 8 (*Isby* factors 1 and 2). Relevant considerations may include the effectiveness of any proposed distribution method, the terms of any proposed award of attorneys' fees, and the existence of any agreements made in connection with the proposed settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(ii)–(iv). For the reasons that follow, the adequacy of relief favors final approval.

The Partial Settlement provides immediate and meaningful financial relief for some of the harm suffered by the Settlement Class. Continuing litigation against the Brunner Defendants would have resulted in more complex and costly proceedings with the potential for significant delay. After three years of litigation, the Settling Parties could anticipate the protracted and costly stages of complex litigation that would follow, including class certification, expert discovery, summary judgment, and trial. Although this partial settlement "[does] not provide a complete victory to Plaintiffs, it does not need to do so." *Koerner v. Copenhaver*, 2014 WL 5544051, at *4 (C.D. Ill. Nov. 3, 2014). It provides them some "present victory, meaning they will not need to await a result of uncertain and potentially lengthy litigation" to obtain relief. *See id.*

As stated above, Plaintiffs do not lack confidence in their claims; nonetheless, given the

risks and costs of litigation, it is reasonable for Plaintiffs to reach a partial settlement on these terms with a subset of the defendants in this case. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 582–83 (N.D. Ill. 2011); *Seiden v. Nicholson*, 72 F.R.D. 201, 208 (N.D. Ill. 1976) ("If this case had been litigated to conclusion, all that is certain is that plaintiffs would have spent a large amount of time, money, and effort."); *In re NCAA Student-Athlete Concussion Inj. Litig.*, 332 F.R.D. 202, 219 (N.D. Ill. 2019) ("If this case were to continue, litigation likely would take several more years to complete.").

While $1 million is not a high proportion of what Plaintiffs believe will be recovered for the class in the overall case, it is a significant recovery against the Brunner Defendants. At the time the Settling Parties reached this agreement, Plaintiffs' claims against the Brunner Defendants were solely in their capacity as non-fiduciary "gratuitous transferee[s]" of excess proceeds of the unfair deal. Dkt. 116 at 2. Under this theory of liability, Plaintiffs' recovery from the Brunner Defendants would never exceed what the Brunner Defendants received in "excess" from the ESOP Transaction. Plaintiffs' best estimate of the excess amount received by the Brunner Defendants (and the other Released Parties affiliated with them) is approximately $15 million. *Specht Decl.* ¶ 6. Plaintiffs would also face potential challenges tracing the excess proceeds to funds in the Brunner Defendants' possession. Documents produced in discovery suggest that a significant portion of the funds have been further dispersed, further complicating a potential recovery. *Id.* Considered in this context, the $1 million settlement payment represents a recovery to the Settlement Class that is greater than 5% of the maximum ***possible*** recovery from the Brunner Defendants, and a much higher percentage of the maximum ***realistic*** recovery. *Id.* Courts have approved settlements with recoveries around this percentage. *See Schulte*, 805 F. Supp. 2d at 583–84 (collecting cases); *In re Rite Aid Corp. Sec. Litig.*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001)

(citing a study which determined a typical class action recovery is "between 5.5% and 6.2%" of the estimated losses.").

The remaining adequacy considerations identified in Fed. R. Civ. P. 23(e)(2)(C)(ii)–(iv) also support granting final approval. First, the Independent Fiduciary determined the Plan of Allocation is "reasonable… cost-effective and fair to Class Members in terms of both calculation and distribution." *Ex. A.* at 6; *see* Fed. R. Civ. P. 23(e)(2)(C)(ii). Second, after reviewing Plaintiffs' motion for attorneys' fees and its related filings (Dkts. 363, 364, 365, 365-1, 365-2, and 366), the Independent Fiduciary concluded "in light of the work performed, the result achieved, the litigation risk assumed by Class Counsel, and the combination of the percentage and the lodestar multiplier… the requested attorneys' fees [are] reasonable." *Ex. A* at 6–7; *see* Fed. R. Civ. P. 23(e)(2)(C)(iii). Finally, no other agreements have been made in connection with the Partial Settlement. *Ex. A* at 8–9; Dkt. 258-1 at 24 (Settlement § 11.6); *see* Fed. R. Civ. P. 23(e)(2)(C)(iv).

For these reasons, the adequacy of relief strongly favors granting final approval.

D. The Partial Settlement Treats Settlement Class Members Equitably

The final Rule 23 factor examines whether the settlement is equitable. Fed. R. Civ. P. 23(e)(2)(D). The Partial Settlement treats Settlement Class Members equitably by allocating the Net Settlement Amount to Settlement Class Members on a *pro rata* basis. *See supra* at 5–6; *e.g.*, *Kaplan v. Houlihan Smith & Co.*, 2014 WL 2808801, at *3 (N.D. Ill. June 20, 2014) (approving ESOP settlement that allocates recovery "based on the number of shares each class member held"); *Chesemore v. All. Holdings, Inc.*, 2014 WL 4415919, at *1 (W.D. Wis. Sept. 5, 2014), *aff'd sub nom. Chesemore v. Fenkell*, 829 F.3d 803 (7th Cir. 2016) (similar). And as noted above, the Independent Fiduciary determined the Plan of Allocation provisions "are cost-effective and fair." *Supra* at 13; *Ex. A* at 6.

In light of these factors, it is not surprising that there have been no objections to either the Partial Settlement terms or the requested attorneys' fees, expenses, or service awards from any of the 1,403 Settlement Class members. *See supra* at 7–8, 9–13. The absence of any objections to the Partial Settlement by Settlement Class members further supports the conclusion that the proposed settlement is fair, reasonable, and adequate. *In re Clearview AI, Inc., Consumer Priv. Litig.*, 2025 WL 1371330, at *16 ("The relative dearth of opposition to the settlement and the reaction of class members weighs in favor of approval as well."); *Bhattacharya v. Capgemini N. Am. Inc.*, 2018 WL 11708972, at *1 (N.D. Ill. Nov. 13, 2018). The equitable treatment of Settlement Class members and lack of opposition weigh in favor of granting final approval.

III. THE CLASS NOTICE PROGRAM WAS REASONABLE AND EFFECTIVE

The class notice program also was reasonable and satisfied the requirements of Rule 23 and due process. The "best notice" practicable under the circumstances includes "individual notice to all [class] members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice that was provided here. *See Smith v. GreatBanc Tr. Co.*, 2023 WL 12119782, at *2 (N.D. Ill. Aug. 23, 2023) (granting final approval of a settlement with a similar notice program); *Hill v. Mercy Health Sys. Corp.*, No. 20-CV-50286, Dkt. 83 (N.D. Ill. May 6, 2022) (same); *Allegretti v. Walgreen Co.*, No. 1:19-CV-05392, 2021 WL 5119759, at *2 (N.D. Ill. Nov. 1, 2021), *final approval granted*, Dkt. 116 at *3–4 (N.D. Ill. Feb. 16, 2022).

As noted above, the Settlement Administrator sent the Court-approved Settlement Notices to Settlement Class Members via first-class U.S. Mail. *See supra* at 6–7. This type of notice is presumptively reasonable. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *see also Mullins v. Direct Digital, LLC*, 795 F.3d 654, 665 (7th Cir. 2015) ("When class members' names and addresses are known or knowable with reasonable effort, notice can be accomplished by first-class mail."). Further, the record reflects that 97.5% of the Settlement Notices were successfully

delivered. *Supra* at 7. This confirms the effectiveness of the notice program in this case. *See T.K. Through Leshore v. Bytedance Tech. Co.*, 2022 WL 888943, at *7 (N.D. Ill. Mar. 25, 2022); *Douglas v. W. Union Co.*, 328 F.R.D. 204, 218 (N.D. Ill. 2018). As an additional benefit, the Notices were accessible to all Settlement Class members online via the Settlement Website.

Finally, the content of the Notices was reasonable. These Notices were previously approved by the Court, see Dkt. 311 at 4–5, and are more than sufficient to meet the Rule 23 standard. *E.g.*, *Nistra v. Reliance Tr. Co.*, No. 1:16-CV-04773, 2020 WL 13645290, at *2 (N.D. Ill. Mar. 12, 2020), *final approval granted*, Dkt. 291 (N.D. Ill. June 19, 2020) (approving notices with similar content). No Settlement Class Member has claimed that the Notices were deficient, and to the extent they had any questions, they could review the Settlement Website, call the toll-free telephone line, or contact the Settlement Administrator or Class Counsel. *Supra* at 7.

IV. THE COURT SHOULD REAFFIRM ITS CERTIFICATION OF THE SETTLEMENT CLASS

In its Preliminary Approval Order, the Court preliminarily certified the Settlement Class. Dkt. 311 at 2; *see supra* at 5. In support of preliminary approval, Plaintiffs previously established that: (1) the Settlement Class is numerous; (2) common issues pertain to all Settlement Class members; (3) Plaintiffs' claims are typical of other Settlement Class members' claims; (4) Plaintiffs are adequate class representatives; (5) Class Counsel are experienced and competent; (6) class certification is appropriate under Rule 23(b)(1)(A) and (B) due to the risk of inconsistent adjudications and because any individual adjudication would be dispositive of other Settlement Class members' interests. Dkt. 257 at 13–15. Nothing has changed since the Court preliminarily certified the Settlement Class. Accordingly, the Court should reaffirm its certification.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Partial Settlement and enter the accompanying proposed Final Approval Order.

Dated: July 29, 2025

NICHOLS KASTER, PLLP

s/Brock J. Specht
Paul J. Lukas
Brock J. Specht (*pro hac vice*)
Patricia C. Dana (*pro hac vice*)
Laura A. Farley (*pro hac vice*)
Benjamin Bauer (*pro hac vice*)
Daniel P. Suitor (*pro hac vice*)
Elizabeth M. Binczik (*pro hac vice*)
4700 IDS Center
80 S. 8th Street
Minneapolis, MN 55402
Telephone: (612) 256-3200
Facsimile: (612) 338-4878
lukas@nka.com
bpsecht@nka.com
pdana@nka.com
lfarley@nka.com
bbauer@nka.com
dsuitor@nka.com
ebinczik@nka.com

BAILEY & GLASSER, LLP

Patrick O. Muench
Gregory Y. Porter (*pro hac vice*)
Ryan Jenny
1055 Thomas Jefferson Street NW
Suite 540
Washington, D.C. 20007
Telephone: (202) 463-2101
pmuench@baileyglasser.com
gporter@baileyglasser.com
rjenny@baileyglasser.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on July 29, 2025, I caused a copy of the foregoing to be electronically filed with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

Dated: July 29, 2025

s/Brock J. Specht
Brock J. Specht