IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

NICHOLAS CAHILL, individually and on behalf of all others similarly situated, Plaintiff, v. NESTLE USA, INC., a Delaware corporation, Defendant.	Case No. 22PH-CV01205

PLAINTIFF'S SUGGESTIONS IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiff/Class Representative Nicholas Cahill, as well as Class Representative Julia Yonan, on behalf of all similarly situated persons and a proposed Settlement Class, respectfully submit these Suggestions in Support of Plaintiff's Motion for Final Approval of the Class Action Settlement.[1]

I. INTRODUCTION

A court may approve a class action settlement under Rule 52.08 after finding that the settlement is fair, reasonable, and adequate. When determining whether to approve a settlement, the court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the

[1] Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.[2]

Plaintiff asks this Court to approve the Class Action Settlement Agreement (the "Settlement") fully and finally, filed in connection with Plaintiff's Unopposed Motion for Preliminary Approval of Class Settlement, because it is fair, reasonable, and adequate. Specifically, and most importantly, the Settlement provides significant monetary and injunctive relief to the Class Members, and this relief is fair, reasonable, and adequate. In addition, the parties have already incurred substantial expenses, and continued litigation will result in the further expenditure of party and judicial resources. Class and defense counsel fully concur that the Settlement is fair, reasonable, and adequate. Based on the assessment of the relevant factors, the Settlement should be finally approved by this Court.[3]

II. BACKGROUND OF THE LITIGATION

This case arises out of Plaintiff's allegations that Defendant Nestle USA, Inc. ("Defendant" or "Nestle") deceptively and unlawfully packaged, marketed and labeled certain powder coffee creamer Products as defined in the Settlement Agreement, which are sold in a variety of sizes, and collectively referred to herein as "Products" or a "Product." Specifically, Plaintiff alleges that Defendant represented that the Products can make up to a specified number of servings; however, contrary to these representations, the Products do not always yield the represented number of

[2] *See Bachman v. A.G. Edwards, Inc.*, 344 S.W.3d 260 (Mo.App. E.D. 2011), citing *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo.App. E.D. 2000); *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 378 n. 6 (Mo.App. W.D. 1997); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150, 1152 (8th Cir. 1999).

[3] Lead Class Counsel filed separately an application for Attorneys' Fees and Costs and Class Representative Service Awards on February 20, 2023. The Settlement provides that any order or proceedings related to fees and costs will not affect the finality of the Settlement or the benefits available thereunder to the Class. *See* Settlement, at Section 7.2.

servings when consumers follow the "Serving Size" instructions on the labels of the Products.

Plaintiff's Petition and Jury Demand – Class Action was filed on September 2, 2022, and includes claims for violations of the Missouri Merchandising Practices Act ("MMPA"), Unjust Enrichment, Breach of Express Warranty, and Breach of Implied Warranty.

Prosecution of this claim, however, began long before the Petition was filed. This Settlement is a product of engagement between the Parties, which was preceded by intensive case investigation by Plaintiff. Plaintiff began investigating this case in January 2021 including by obtaining independent laboratory testing of several of the Products. Plaintiff delivered a demand letter, which included copies of the laboratory results, to Defendant on or about June 1, 2021. Since shortly after delivery of the demand letter, and an exchange of initial telephone conversations between the Parties, it became clear the matter would need to be litigated. Accordingly, Southern Atlantic Law Group, PLLC and Law Office of L. DeWayne Layfield, PLLC filed a lawsuit against Nestle in the Southern District of Florida. Nestle filed a motion to dismiss, which was extensively briefed, and the motion was denied with respect to all damage claims. After the motion to dismiss was decided, the Parties engaged in intensive settlement discussions for over six months. Those settlement efforts included: an initial settlement demand; provision of Plaintiff's laboratory test results to Defendant; informal discovery from Defendant to Plaintiff; informal settlement discussions between the parties; an August 3, 2022, full-day mediation with a neutral mediator, the Hon. Wayne Andersen (Ret.) of JAMS; and additional follow-up negotiations after the mediation (many of which negotiations included the Hon. Wayne Andersen's participation). *See* Declaration of L. DeWayne Layfield, attached hereto as Exhibit A ("Layfield Declaration") (incorporating separate Layfield Declaration previously filed February 20, 2023). Through these continuous and vigorous efforts, the Settlement Agreement was ultimately reached.

On or about November 28, 2022, the parties executed the Settlement Agreement. On December 7, 2022, Plaintiff moved for preliminary approval of the settlement, which the Court granted on December 8, 2022.

The operative terms of the Settlement provide for substantial monetary and programmatic relief as follows:

- The Defendant shall commence the process to either (1) revise the Nutrition Facts panel such that the common household measurement and metric mass expressed therein are in compliance with 21 C.F.R. § 101.9(b) or (2) place an asterisk statement on the label that explains that the front-of-pack statement of servings per container is based on a serving size with a mass of 2 grams. Defendant shall not manufacture any Products with Labeling containing the Challenged Language during the period (the "Restricted Period") beginning on the first-month anniversary of the date of entry by the Court of the Preliminary Approval Order ("PAO Date") and ending on the ninth-year anniversary of the entry of the PAO Date, other than Products containing demonstrably accurate information on the Label. If Class Counsel believes that the Labeling of any Product does not comply, they shall provide written notice to Defendant of the specific facts and circumstances of any alleged non-compliance and discuss in good faith with Defendant appropriate changes, if any, to the then-existing Labeling; to the extent agreed, Defendant will then have 120 days from the date of such agreement to bring its practices into compliance. If no agreement is reached, Class Counsel may apply to the Court to enforce the Agreement.

- Defendant agreed to provide cash benefits under a two-tiered structure with a gross potential payout of US $10,000,000 (ten million dollars) in the aggregate. Class members have the ability to claim $0.50 per Unit purchased, up to a maximum of $5.00 where Class Members do not have a valid Proof of Purchase, and 30% of price paid per Unit purchased, up to a maximum of $40.00 with a valid Proof of Purchase.

Defendant also agreed to pay service awards to the Class Representatives in the amount of $3,500 each to compensate for their efforts in bringing the Action and for achieving the benefits of the Settlement on behalf of the Settlement Class. Defendant further agreed that it would not oppose an Application for an Attorneys' Fees and Costs award in an amount of not more than $2,600,000 (exclusive of settlement administration fees and costs, which will be paid directly by Defendant). Defendant agreed that contingent on entry of the Final Approval Order, it would pay the amounts approved by the Court. On February 20, 2023, Class Counsel filed a Motion for an Attorneys' Fees and Costs Award, and Class Representative Service Awards seeking an award of attorneys' fees and costs in the amount of $2,600,000 and Class Representative Service Awards in the amount of $3,500 each.

For the reasons stated below, the Settlement is fair, adequate, and reasonable and should be approved. This Honorable Court should enter an Order approving the Settlement and ordering the other appropriate relief and rulings which are sought herein.

III. THE CLASS SHOULD BE CERTIFIED FOR PURPOSES OF THIS SETTLEMENT.

Plaintiff requests that this Court certify a Settlement Class under Rules 52.08(a), (b)(2) and (b)(3) of the Missouri Rules of Civil Procedure. "Among current applications of Rule 23(b)(3), the 'settlement only' class has become a stock device." *State ex rel. Byrd v. Chadwick*, 956 S.W.2d

369, 377 (Mo. Ct. App. 1997). Here, the Parties have agreed, and Plaintiff asks that the Class be certified, as follows, for the limited purposes of this Settlement:

> All residents of the United States who purchased in the United States the Product (as defined by the list attached as Exhibit A) during the Class Period (January 1, 2017 through date of Preliminary Approval) for personal and household use and not for resale excluding: (a) the Released Parties; (b) all Persons who file a timely and valid Opt-Out; (c) Defendant, its employees and counsel, as well as the household members of Defendant's employees and counsel; (d) federal, state, and local governments, political subdivisions or agencies of federal, state and local governments; and (e) the judicial officers, courtroom staff, and members of their households overseeing the Action.

The prerequisites of Rule 52.08(a) that must be considered before a class can be certified are (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. Here, numerosity[4] is satisfied because it would be impractical to bring tens of thousands of Class Members before the Court individually. Commonality[5] and typicality[6] are satisfied with respect to the Settlement

[4] "A plaintiff does not have to specify an exact number of class members to satisfy the numerosity prerequisite for class certification but must show only that joinder is impracticable through some evidence or reasonable, good faith estimate of the number of purported class members." *Dale v. DaimlerChrysler Corp*., 204 S.W.3d 151, 167 (Mo. App. W.D. 2006), citing *Linquist v. Bowen,* 633 F.Supp. 846, 858 (W.D. Mo.1986). "To support a finding of the numerosity prerequisite of Rule 52.08(a)(1), the trial court can accept 'common sense assumptions.'" *Dale,* 204 S.W.3d at 167, quoting *Snider v. Upjohn Co.,* 115 F.R.D. 536, 539 (E.D. Pa.1987).

[5] The commonality "threshold is not that high and does not require that every question be common to the class, but merely that one or more significant questions of law or fact are common to the case." *Hopkins v. Kansas Teacher Cmty. Credit Union*, 265 F.R.D. 483, 487 (W.D. Mo. 2010) (citations omitted); *see also Jenkins v. Raymark Indus., Inc*., 782 F.2d 468, 472 (5th Cir. 1986) ("The threshold of commonality is not high.").

[6] The typicality prerequisite is met even despite factual variances if (1) the named representatives' "and the class members' claims arise from the same event or course of conduct by the defendant, (2) the conduct and facts give rise to same legal theory, and (3) the underlying facts are not markedly different." *Mitchell v. Residential Funding Corp.,* 334 S.W.3d 477 (Mo. App. W.D. 2010), citing *Plubell v. Merck & Co., Inc*., 289 S.W.3d 707, 715 (Mo. App. W.D. 2009). Typicality is not defeated by speculative variations in the claims, and no showing of the likelihood of an individual's success on the merits is required. *Id.*

because there are issues of fact and law that are common to the Class, and the Class Representatives' and the Class Members' claims arise from the same event or course of conduct by Defendant. In addition, the conduct and facts related to Defendant's manufacturing and labeling of the Products give rise to the same legal theories, and the underlying facts are substantially similar. Furthermore, the Class Representatives and Class Counsel have adequately represented the Class, having achieved a common nucleus of Settlement benefits that will provide important and immediate monetary and injunctive relief for all Class Members.[7]

Because Rule 52.08(b)(2) contains no "predominance" or "superiority" requirements,[8] the Settlement Class should be certified under Rule 52.08(b)(2) without further analysis.

With respect to Rule 52.08(b)(3), the predominance inquiry for class certification asks whether the class is "seeking to remedy a common legal grievance." *Plubell v. Merck & Co.*, 289 S.W.3d 707, 712 (Mo. Ct. App. 2009). Predominance does not require that all issues be common to the class members. *Id.* Rather, it requires that common issues substantially predominate over individual ones. *Id.* Additionally, a single common issue may be the overriding one in the litigation, even though the suit also entails numerous remaining individual questions. Here, predominance is satisfied because the single, predominant, common issue is whether or not Defendant made misrepresentations and false statements in the labeling of its Products. *Id.* ("Because that issue—the legality of [Defendant's] conduct—is common to all the class members, and because that issue is at the core of the case, the court did not abuse its discretion in finding the predominance requirement satisfied.").

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[7] *See, gen., Ring*, 41 S.W.3d at 492 ("The adequacy of class representation can be determined by looking at the settlement.").

[8] *See* Rule 52.08(b); *see also In re St. Jude Medical, Inc.*, 425 F.3d 1116, 1121 (8th Cir. 2005) ("Rule 23(b)(2) contains no predominance or superiority requirements"); *Pipes v. Life Investors Ins. Co. of America*, 254 F.R.D. 544, 551 (E.D. Ark. 2008) (same).

With respect to superiority, the Court considers whether "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 181 (Mo. Ct. App. 2006). The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of "alternative available methods" of adjudication. *Id.* The balancing must be in keeping with judicial integrity, convenience, and economy. *Id.* In balancing the relative merits of a class action versus alternative available methods of adjudicating the controversy, the trial court may consider: "the inability of the poor or uninformed to enforce their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *Id.* The primary focus of the superiority analysis is the efficiency of the class action over other available methods of adjudication. *Id.*

Here, superiority is met because tens of thousands of class members have had the opportunity to file claims. Hence, judicial economy would dictate that all such possible claims be tried in one class action lawsuit, rather than thousands of individual lawsuits. Moreover, in the absence of a class action, the potential expense of the litigation in relation to the relatively small recovery amount for each Class Member would prevent most, if not all, injured parties from initiating a lawsuit. Hence, judicial economy and efficiency would dictate again that all such possible claims be tried in one class action lawsuit, rather than allowing numerous injured parties to abstain from vindicating their rights in court. *See Dale*, 204 S.W.3d at 181.

For these foregoing reasons, Plaintiff asks this Court to certify this Class for Settlement purposes.

IV. NOTICE, OPT-OUTS, AND OBJECTORS

Pursuant to the Court's Preliminary Approval Order, dated December 8, 2022, and the Declaration of Jeanne C. Finegan, APR ("Finegan Decl."), Kroll Settlement Administration ("Kroll") (filed January 30, 2023), beginning on or about December 29, 2022, the Settlement Administrator disseminated the Settlement Notice by setting up a best-in-class tools and technology Media Plan, which included launching the Settlement Website, print publication, online display ads, search engine ads, social media ads, and launching a toll-free telephone number through which Class Members can access Settlement information. Finegan Decl., at ¶ 3. A complete summary of the Notice process ordered by the Court, and its success and effectiveness, is set out in the Finegan Decl. Specifically, Ms. Finegan states that the implemented Notice plan had a reach of an estimated 70% of targeted Class Members, on average 5 times. *Id*. at ¶ 3. While the claims period remains open, the fact that over 607,000 claims have already been filed is a further testament to the robust nature of the Notice plan. See Declaration and Report re: Opt-Outs and Objections by Scott M. Fenwick of Kroll ("Fenwick Report"), at ¶ 6, filed March 2, 2023.

The Court set the deadline for Opt-Outs and Objections as February 27, 2023 (Order granting Preliminary Approval, December 8, 2022). Of the tens of thousands of potential objectors, there were no Objections to the Settlement. *See* Fenwick Report, at ¶ 5. Similarly, not a single request for exclusion/Opt-Out was received. *Id*. This overwhelmingly positive reaction from the Class further demonstrates the strength of the Settlement.

Counsel for both Plaintiff and Defendant, and their respective clients, fully concur that the proposed Settlement is fair, reasonable, and adequate. Further, Class Counsel, who have

substantial experience in prosecuting and negotiating class action litigation, have recommended approval of the proposed Settlement as in the best interest of the Settlement Class.[9]

V. THE SETTLEMENT SHOULD BE APPROVED.

A. Legal Standard Governing Approval of Settlements

"When determining if a settlement is fair, reasonable, and adequate, the Court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members."[10]

While the decision to approve a class settlement is squarely left to the court's discretion,[11] "[p]ublic policy and the law favor the settlement of disputes."[12] The preference for settlement applies "particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."[13]

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[9] *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) (noting that the court is "entitled to give consideration to the opinion of competent counsel that the settlement [is] fair, reasonable, and adequate"); *see also, Weinberger v. Kendrick,* 698 F.2d 61, 74 (2d Cir. 1982) (absent fraud or collusion, courts should be hesitant about substituting their own judgment for that of counsel).

[10] *See Bachman v. A.G. Edwards, Inc.,* 344 S.W.3d 260 (Mo. App. E.D. 2011), quoting *Ring v. Metro. St. Louis Sewer Dist.,* 41 S.W.3d 487, 492 (Mo. App. E.D. 2000); *see also State ex rel. Byrd v. Chadwick,* 956 S.W.2d 369, 378 n. 6 (Mo. App. W.D. 1997).

[11] *See Bachman,* 344 S.W.3d at 265.

[12] *Hilton v. Davita, Inc.*, 302 S.W.3d 157, 159 (Mo. App. E.D. 2009), citing *State ex rel. Malan v. Huesemann,* 942 S.W.2d 424, 427 (Mo. App.1997); *Holtmeier v. Dayani*, 862 S.W.2d 391, 403 (Mo. App.1993).

[13] *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 784 (3d Cir. 1995); *see, also, e.g., Ehrheart v. Verizon Wireless,* 609 F.3d 590, 595 (3d Cir. 2010) ("The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings. This policy also ties into the strong policy favoring the finality of judgments and the termination of litigation. Settlement

When determining whether a settlement is fair, the question is not whether the settlement is the best of all possible deals: "Settlement is the offspring of compromise; the question we address is not whether the final product could have been prettier, smarter or snazzier, but whether it is fair, adequate and free from collusion."[14] A reviewing court's function is not to second-guess the settlement's terms; rather, "[t]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that [ ] the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."[15]

B. The Settlement is Fair, Reasonable, and Adequate.

1. There is no evidence of fraud or collusion.

The proposed Settlement resulted from intensive, arms-length negotiations between very experienced attorneys over the course of a full-day mediation session with a renowned, independent, and neutral mediator, and additional follow-up negotiations after the mediation, wherein the Hon. Wayne Andersen (Ret.) participated in many of the follow-up discussions. There is not, nor could there be, any evidence of fraud or collusion regarding the Settlement. Since shortly after delivery of a demand letter and an exchange of initial telephone conversations between the Parties, the Parties engaged in intensive settlement negotiations for over a year and three months. These initial discussions led to a full-day mediation spearheaded by the Hon. Wayne Andersen (Ret.). After the mediation session, the parties continued with weeks of additional follow-up negotiations after the mediation to flesh out the Settlement framework and the details of its

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agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.").

[14] *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1027 (9th Cir. 1998).

[15] Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982).

proposed implementation. The Parties continued to negotiate and exchange confidential business and technical information regarding settlement details by examining potential approaches to injunctive relief. There was no reverse auction, as Defendant only reached a settlement with Class Counsel since the mediation. Finally, no attorneys' fees were negotiated until after the substantive relief for the Class had been agreed upon.

2. The case was adequately developed for the parties to reach an informed agreement, and the complexity, and likely duration of the litigation favor approval.

The parties entered into the settlement negotiations only after extensive investigation of the facts and law, which included a substantial pre-suit investigation by Plaintiff. In addition, the parties engaged in an exchange of confidential information, including sensitive business information, which helped shape the Settlement terms. Representatives of the parties also attended numerous virtual meetings and conferences, wherein they engaged in a further exchange of information and evaluation of the claims at issue. These efforts provided Plaintiff and his experienced counsel with sufficient information to thoroughly analyze the strengths and weaknesses of the case and, subsequently, to negotiate and consummate the Settlement proposed to the Court.

Both sides have been vigorously represented by their respective counsel and have invested substantial time and incurred substantial expenses pursuant to this representation. There is no doubt that the time and expense of continuing the litigation would significantly increase costs. In particular, the costs of conducting discovery would be substantial. In addition, experts would need to be involved, produce reports, and be deposed, likely resulting in substantial additional motion practice. This complexity militates in favor of a relatively early resolution, which has been achieved here.

Even if this case were tried to finality, there is a substantial risk that Class Members may not receive as much as they would under the proposed Settlement, or anything at all. Avoiding the unnecessary risk, and unwarranted expenditure of resources and time, would benefit the Parties and the Court. To continue to litigate this case in hopes of obtaining greater relief would be expensive and wasteful of both Party and judicial resources.

Moreover, if this Action were tried to finality, it would likely be years before it would be finally resolved, meaning it would also be years before the Class would receive a benefit, if any. The complexity and expected duration of this Action, compared against the "certainty" and "immediacy" of the significant relief provided for the Class, weigh heavily in favor of approval.[16]

3. The stage of the proceedings and the amount of discovery completed favor approval.

While it is true that the Parties executed the Settlement shortly after this case was filed, the history of the litigation in its entirety tells a different story. Plaintiff began investigating this case in January 2021. Class Counsel conducted its own thorough and rigorous pre-litigation investigation, including with respect to the label representations on the Products and the specificized number of servings that the Products actually yield; a comprehensive laboratory analysis of the Products and claims at issue; evaluation of those test results as compared to test results for other manufacturers; thoroughly researched the law and facts pertinent to Plaintiff's claims and any potential defenses; and assessed the risks of prevailing on each of the respective claims on pre-trial motions and at trial. In addition, Lead Class Counsel worked to coordinate four different law firms representing the Plaintiff. Plaintiff delivered a demand letter, which includes copies of the laboratory results, to Defendant, on or about June 1, 2021. Moreover, the Parties

[16] *See In Re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1041-1042 (N.D. Cal. 2008) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)).

engaged in informal discussions for over a year and three months. Thus, although the initial petition in this case was filed in September 2022, the process of independent and mediated negotiation sessions, occurring in parallel with the successful litigation of a motion to dismiss in the Southern District of Florida, took a significant investment of time and effort over the course of more than one year.

The information exchanged by the parties demonstrates the strength of the Settlement. As part of the Settlement, at a minimum, Class Members have the ability to claim $0.50 per Unit purchased. Tier 1 claimants will receive a maximum of $5.00 per Household to Settlement Class Members without the need to provide any proof of purchase. Tier 2 claimants will receive 30% per Unit purchased up to a maximum of $40.00 per Household to Settlement Class Members who provide a valid Proof of Purchase. These benefits will be provided without the time and expense of litigating this case to trial—which is a tremendous recovery for the Class.

4. The probability of the Plaintiff's success on the merits and the range of possible recovery in relation to the benefits provided by the Settlement favor approval.

Without a settlement, Plaintiff and Class Members face a risk of losing on the merits of their claims at trial and receiving no relief at all.[17] Since the inception of this litigation, Defendant has denied and continues to deny Plaintiff's allegations and all claims of wrongdoing or liability of any kind. Defendant maintains that no misrepresentations were made, and that Defendant acted lawfully under state and federal law.

The Settlement secures for the Class Members significant monetary relief and ensures that Defendant will remove the Challenged Language from its Products. Each Class Member obtains

[17] *See, e.g.*, *Bachman*, 344 S.W.3d at 266 (suggesting the "most important" factor may be the strength of the case on the merits compared to the relief provided).

not only the benefit of the programmatic relief, but also the opportunity to recoup some or all their alleged damages; and the Settlement avoids the risk that Class Members would not obtain anything should the case be decided on summary judgment or at trial in favor of Defendant. The proposed Settlement is within the range of possible approval because it provides—today, not years from now—real, substantial, and practical benefits to the Class. This factor, the most important of all the factors, weighs in favor of approval of the Settlement.

5. There is no meaningful opposition to the settlement.

Counsel for both Plaintiff and Defendant and their respective clients fully concur that the proposed Settlement is fair, reasonable, and adequate. Of the estimated tens of thousands of potential Class Members, there were no Objections to the Settlement. Moreover, despite the opportunity to do so, not a single class member submitted a request to Opt-Out of the Settlement. *See* Fenwick Report, at ¶ __. Class Counsel, who have substantial experience in prosecuting and negotiating class action litigation, whole heartedly recommend approval of the proposed Settlement as in the best interest of the Settlement Class.[18]

[18] *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) (noting that the court is "entitled to give consideration to the opinion of competent counsel that the settlement [is] fair, reasonable, and adequate"); *see also, Weinberger v. Kendrick,* 698 F.2d 61, 74 (2d Cir. 1982) (absent fraud or collusion, courts should be hesitant about substituting their own judgment for that of counsel).

VI. CONCLUSION

For the foregoing reasons, the Settlement is fair, reasonable, and adequate, and should be approved.

Dated: March 6, 2023 Respectfully submitted,

NICHOLAS CAHILL, Plaintiff, individually, and on behalf of a Class of similarly situated individuals,

By: /s/ Bryce Crowley

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered on this March 6, 2023, via the Missouri Court System's Electronic Filing System to all counsel of record.

By: /s/ Bryce Crowley
Bryce Crowley, #64800MO