IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

SHAUNA WINKELMAN, MICHAEL LENON, SCOTT CENNA, KALEA NIXON, ROBERT GOLDORAZENA, CHAD DIEHL and ROSS NANFELDT, individually and on behalf of all others similarly situated, Plaintiffs, v. WHOLE FOODS MARKET, INC., THE BOARD OF DIRECTORS OF WHOLE FOODS MARKET, INC., THE WHOLE FOODS MARKET, INC. EMPLOYER COMMITTEE, THE WHOLE FOODS MARKET, INC. 401(K) COMMITTEE, THE WHOLE FOODS MARKET, INC. BENEFITS ADMINISTRATIVE COMMITTEE and JOHN DOES 1-50, Defendants.	)	**CIVIL ACTION NO.: 1:23-cv-1352-RP**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF PLAN OF ALLOCATION

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I. INTRODUCTION

On July 24, 2025, the Court preliminarily approved the Settlement in this Action, which provides for the creation of a $2,000,000.00 Settlement Fund. *See* ECF No. 47 (hereinafter "Preliminary Approval Order"). The Court scheduled the Final Fairness Hearing for January 15, 2026. *Id*. The Preliminary Approval Order also, *inter alia*, conditionally certified a Settlement Class and appointed Plaintiffs as class representatives and Capozzi Adler, P.C ("Capozzi Adler") as Class Counsel. *Id*. Plaintiffs and Class Counsel believe each of these findings in the Preliminary Approval Order should be made final because the proposed Settlement represents an outstanding recovery. Class Counsel achieved this Settlement only after a full-day mediation under the auspices of Robert A. Meyer of JAMS. Plaintiffs respectfully request this Court to enter the proposed Final Approval Order and Judgment approving the Settlement.

While Defendants do not agree with all averments and statements made in the instant memorandum, Defendants do not oppose the ultimate relief sought by Plaintiffs and submit that the Court should approve the Settlement in this matter.

II. BACKGROUND[1]

A. Procedural History and Discovery

Plaintiffs are/were participants in the Whole Foods Market Growing Your Future 401(k) Plan (the "Plan"). *See* First Amended Complaint ("FAC" or "Amended Complaint") (ECF 19), ¶¶ 17-23. Defendants are Whole Foods Market Inc., The Board of Directors of Whole Foods Market, Inc., the Whole Foods Market, Inc. Employer Committee, the Whole Foods Market, Inc. 401(k) Committee, (now known as the Retirement Committee), the Whole Foods Market, Inc. Benefits Administrative Committee. *See* Settlement Agreement., ¶ 1.17. Plaintiffs commenced this action

[1] The full procedural history of this matter is recounted in the Gyandoh Decl. at ¶¶ 3-26.

by filing their initial complaint on November 6, 2023. *See* ECF No. 1. It alleged violations of fiduciary duty of prudence imposed by ERISA § 404(a), 29 U.S.C. § 1104(a). Prior to filing the original complaint, Plaintiffs conducted an in-depth investigation of Plaintiffs' claims, including by evaluating Plaintiffs' Plan documents, public filings, and engaged consulting experts. *See* Gyandoh Decl., ¶ 17. On February 13, 2023, Plaintiffs requested numerous documents and information from Defendants pursuant to Section 104(b)(4) of ERISA. *Id*., ¶ 17. Defendants produced 635 pages of documents in response to Plaintiffs' request pursuant to Section 104(b)(4). *Id*., ¶ 18.

On February 5, 2023, Defendants filed their Motion to Dismiss Plaintiffs' Complaint. *See* ECF No. 15. In response, on March 11, 2024, Plaintiffs filed their First Amended Complaint, the operative complaint. *See* ECF No. 19. Defendants filed an Answer to Plaintiffs' First Amended Complaint on May 10, 2024. *See* ECF No. 20. After the pleadings stage, the Parties began formal discovery. In total, 4,355 pages of documents were produced. *See* Gyandoh Decl., ¶ 26.

On November 13, 2024, Plaintiffs filed their Motion for Class Certification. *See* ECF No. 35. On December 13, 2024, the Parties filed a Stipulation Regarding Class Certification. *See* ECF No. 38. On December 17, 2024, this Court issued an Order certifying the Class, and appointing Plaintiffs as class representatives and Capozzi Adler, P.C. ("Capozzi Adler") as Class Counsel. *See* ECF No. 39. On January 3, 2025, the Parties filed a Joint Motion to Stay All Deadlines Pending Mediation, which the Court granted. *See* ECF Nos. 40, 41. On April 17, 2025, the Parties filed a Joint Status Report informing the Court that a settlement had been reached in principle. *See* ECF No. 42.

B. Settlement Negotiations

On November 12, 2024, Plaintiffs sent Defendants a settlement demand with supporting

details. *See* Gyandoh Decl., ¶ 27. On December 12, 2024, Defendants responded to Plaintiffs with a counterproposal. *Id*., ¶ 28. On April 16, 2025, the Parties attended a full-day mediation session with Robert A. Meyer of JAMS who is well-versed and experienced in mediating ERISA matters. During the mediation session the Parties advocated vigorously for their respective positions. *Id*.

Based on the aforementioned negotiations and exchange of information, the Parties were able to negotiate a fair Settlement that Plaintiffs believe to be in the Class's best interests. Indeed, the Court preliminarily found that "[t]he Settlement was negotiated vigorously and at arm's length by Defense Counsel, on the one hand, and Plaintiffs and Class Counsel on behalf of the Settlement Class, on the other hand" and "Plaintiffs and Class Counsel had sufficient information to evaluate the settlement value of the Action and have concluded that the Settlement is fair, reasonable, and adequate." Preliminary Approval Order, ¶ 4. It is Plaintiffs' counsel's opinion that the proposed Settlement is fair, reasonable, and adequate. *See* Gyandoh Decl., at ¶ 48.

C. The Proposed Settlement

The Settlement provides that Whole Foods (or its insurers) will pay $2,000,000.00 – the Gross Settlement Amount – to be allocated to participants on a *pro rata* basis pursuant to the proposed Plan of Allocation (*see* Exhibit C to Settlement Agreement) in exchange for releases and dismissal of this action (described in Article 7 of the Settlement Agreement). The Gross Settlement Amount will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Case Contribution Awards if awarded by the Court. Gyandoh Decl., ¶ 92. The Settlement Class is defined as:

> All persons who participated in the Whole Foods Market Growing Your Future 401(k) Plan at any time from November 6, 2017 through [July 24, 2025] ("Class Period"), including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any

> Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their Beneficiaries.

Preliminary Approval Order, ¶ 1.

III. THE NOTICE PLAN

"There are 'no rigid rules to determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements.'" *Melby v. Am.'s MHT, Inc.*, No. 17-cv-155, 2018 WL 10399004, at *7 (N.D. Tex. June 22, 2018) (quoting *Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 114 (2d Cir. 2005)). "Instead, 'a settlement notice need only satisfy the broad reasonableness standards imposed by due process'[,]" meaning "if the notice provides class members with the 'information reasonably necessary for them to make a decision whether to object to the settlement.'" *Id*. (quoting *In re Katrina Canal Breaches Litig.*, 628 F.3d 185, 197 (5th Cir. 2010)). Like *Melby,* the notice program here satisfies due process and Rule 23(e) because it included email and first class mail, and re-mailing as necessary, in addition to a dedicated telephone number and website. All methods of communications apprised Settlement Class members of the terms of the Settlement, and of their right to object to any or all of the terms of the Settlement, Plan of Allocation, Case Contribution Awards, and to Class Counsel's motion for award of attorneys' fees and reimbursement of litigation expenses. Indeed, the Court previously found that the combination of the direct-mail Notice, dedicated Settlement website, phone line, and contents therein, was adequate to inform Settlement Class members of the terms of the proposed Settlement, how to lodge an objection, and how to obtain additional information. *See* Preliminary Approval Order, ¶¶ 7-8.

Pursuant to the Preliminary Approval Order, Class Counsel is overseeing the issuance of the Court-approved Class Notice. *See* Gyandoh Decl., ¶ 15. The Settlement Administrator

(Analytics, LLC) processed the Class Data and mailed the Short Form Postcard Notice on September 18, 2025, three days later than the September 15, 2025 deadline stated in the Preliminary Approval Order. *See* Declaration of Settlement Administrator ("Analytics Decl.") at ¶ 8. The missed deadline was in part due to more time being needed to process the large data set provided to Analytics, which was comprised of names, addresses, and email addresses of approximately 335,444 Class Members. *Id.* at ¶¶ 6-7. After processing the data set, Analytics determined 31,494 Class Members were to be mailed the Short Form Postcard Notice because they had no email addresses, with the remainder of the Class Members being sent the Class Notice via email. *Id.* at ¶ 8.

Plaintiffs believe the slight delay in sending Class Notice did not materially affect the time the Settlement Class has to object to the Settlement because the length of time between the notice mailing date (September 18, 2025) and Fairness Hearing (January 15, 2026) is 119 days. This time provides Class Members sufficient time to review the Settlement ahead of the Fairness Hearing. Moreover, Class Members' length of time to evaluate Plaintiffs' motions for final approval of the Settlement and for attorneys' fees, litigation expenses, and case contribution awards, has not been affected because those motions are being timely filed today per the Preliminary Approval Order.

To date, only one "objection," addressed below, has been lodged. In accordance with the Preliminary Approval Order, Plaintiffs will file an additional brief by January 8, 2026, to update the Court of the success of the notice issuance campaign and to address any additional objections if filed. *See* Preliminary Approval Order., ¶ 11. The objection deadline is December 16, 2025. *Id.*, ¶ 10.

IV. THE PROPOSED SETTLEMENT SHOULD BE APPROVED

A. Legal Standard

"In determining whether to approve a proposed settlement, the cardinal rule is that the District Court must find that the settlement is fair, adequate and reasonable." *Garza v. Sporting Goods Props., Inc.*, No. 93-cv-108, 1996 WL 56247, at *11 (W.D. Tex. Feb. 6, 1996). When assessing whether a proposed settlement "is fair, reasonable, and adequate", Courts within the Fifth Circuit evaluate six "*Reed* Factors":

> (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 plaintiffs' success on the merits;
>
> (5) the range of possible recovery; and
>
> (6) the opinions of the class counsel, class representatives, and absent class members.

Jones v. Singing River Health Servs. Foundation, 865 F.3d 285, 293 (5th Cir. 2017) (quoting *Reed v. Gen. Motors Corp*., 703 F.2d 170, 172 (5th Cir. 1983)).

Final approval of a class action settlement is within the sound discretion of the district court. *See Ayers v. Thompson*, 358 F.3d 356, 368 (5th Cir. 2004). The Fifth Circuit has instructed courts in applying these factors "to be mindful of the 'overriding public interest in favor of settlement' in class action suits." *Garza*, 1996 WL 56247, at *12 (*quoting Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977)). Accordingly, "[t]here is a strong presumption in favor of finding the settlement fair" and "the court may rely on the judgment of experienced counsel for the parties." *Id*. at **11-12.

B. The Settlement Satisfies the *Reed* Factors

1. The risk of fraud or collusion

Courts within the Fifth Circuit "adhere to a strong presumption that an arm's length class action settlement is fair—especially when doing so will result in significant economies of judicial resources." *Klein*, 705 F. Supp. 2d at 650. On November 12, 2024, Plaintiffs sent Defendants a settlement demand with supporting details, to which Defendants responded with a counterproposal on December 12, 2024. Gyandoh Decl., ¶¶ 27-28. On April 16, 2025, after sufficient formal discovery, the Parties voluntarily attended a full-day mediation session with Robert A. Meyer of JAMS who is well-versed and experienced in mediating ERISA matters. *Id.*, ¶¶ 29-30; *see also Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295-96 (5th Cir. 2017) (approving of the fact that "the district court relied heavily on the fact that a well-recognized neutral mediator oversaw settlement negotiations."). During negotiations, the Parties repeatedly exchanged damages scenarios and argued for their respective sides before finally reaching an agreement. *See* Gyandoh Decl., ¶ 30. Hence, the resulting proposed Settlement is the product of arm's length, informed negotiations without fraud or collusion.

2. The complexity, expense, and likely duration of the litigation weighs in favor of Settlement approval

The second *Reed* Factor weighs in favor of final approval because "ERISA litigation is notoriously complex." *Blackmon v. Zachary Holdings, Inc.*, No. 20-cv-00988, 2022 WL 3142362, at *5 (W.D. Tex. Aug. 5, 2022), *judgment entered*, No. 20-cv-00988, 2022 WL 3142364 (W.D. Tex. Aug. 5, 2022); *see also Krueger v. Ameriprise*, No. 11-cv-02781, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015) ("ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation."); *LaLonde v. Textron, Inc.*, 369 F.3d 1, 6 (1st Cir. 2004) (describing ERISA jurisprudence as an "important and complex area of law" that "is neither mature nor uniform. . ."). Like in *Blackmon*, "the proposed settlement mitigates the significant risks and expenses associated with the continued litigation of a complex ERISA trial, thereby avoiding years

of additional delay and uncertain outcomes and the possibility of lesser recovery to Plan participants." *Blackmon*, 2022 WL 3142362, at *1. Here, in the absence of a settlement, the Parties would continue with costly discovery, dispositive motion practice, depositions, trial and likely appeals. The likely appeal from a trial would exacerbate the expense, duration, and complexity of the litigation to the detriment of the Plaintiffs. Accordingly, now is an ideal stage for settlement.

3. Plaintiffs conducted enough discovery to understand their strengths and weaknesses

"Under the third *Reed* factor, the court […] evaluates whether 'the parties and the district court possess ample information with which to evaluate the merits of the competing positions.'" *Klein*, 705 F. Supp. 2d at 653 (quoting *Ayers v. Thompson*, 358 F.3d 356, 369 (5th Cir. 2004)). As the Fifth Circuit Court of Appeals has instructed, a "lack of discovery is not necessarily fatal to a settlement agreement, provided the parties demonstrate the case 'cannot be characterized as an instance of the unscrupulous leading the blind.'" *Jones*, 865 F.3d at 300 (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1332 (5th Cir. 1977)); *see also Klein*, 705 F. Supp. 2d at 653 ("[a] settlement can be approved under this factor even if the parties have not conducted much formal discovery.").

The formal discovery in this case led to the production of 4,355 pages of documents before the Parties' mediation session. *See* Gyandoh Decl., ¶ 26. Additionally, there was ample informal discovery and consulting expert guidance prior to filing this suit. *Id*., ¶¶ 16-26. In *Kruger v. Novant Health, Inc.*, another ERISA breach of fiduciary duty case, the court lauded the amount of informal discovery work that the ERISA class counsel undertook before filing similar complaints, including "meeting with the Plans' participants, obtaining documents from public sources and the Retirement [] Plan administrator, reviewing and analyzing plan documents and financial statements, building on expertise regarding industry practices, conducting extensive legal research, and fashioning the causes of action."); *Kruger v. Novant Health, Inc.*, No. 14-cv-208, 2016 WL 6769066, at *3

(M.D.N.C. Sept. 29, 2016). Class Counsel conducted the same rigorous work here. Furthermore, Counsel for both Parties have sufficient experience in ERISA breach of fiduciary duty cases to evaluate the discovery produced and determine a fair settlement amount in light of the attendant risks and costs of continued litigation. *See Jones*, 865 F.3d at 300 ("[I]f experienced counsel reached this settlement, the court may trust that the terms are reasonable in ways that it might not had the settlement been reached by lawyers with less experience in class action litigation.").

In sum, Plaintiffs had ample information to understand the strengths and weaknesses of their case, and this factor weighs in favor of final approval.

4. The probability of success on the merits and range of possible recovery warrants approval (Factors 4 and 5)

"In balancing the six factors, 'absent fraud or collusion, the most important factor is the probability of the plaintiffs' success on the merits.'" *Klein*, 705 F. Supp. 2d at 649-50 (quoting *Parker v. Anderson*, 667 F.2d 1204, 1209 (5th Cir. 1982)). However, "this does not mean that the court should reach conclusions as to the ultimate merits of the claims or defenses" because the "proposed settlement need not obtain the largest conceivable recovery for the class to be worthy of approval." *Id.* at 648-49. "'[P]roof difficulties' are 'permissible factors' for a court to contemplate when evaluating the fairness of a settlement." *In re Pool Products Distribution Market Antitrust Litigation*, 310 F.R.D. 300, 316 (E.D. La. 2015) (quoting *In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 240 (5th Cir. 1982)). Here, "[r]egarding liability, no claim is subject to a theory of *per se* illegality, which makes proof of [] [mis]conduct more difficult." *Id*. Under ERISA's "prudent man" standard (*Perkins*, 2024 WL 1574342, at *2), liability determinations would be subject to competing expert testimony on the prevailing standard of prudence and factual interpretations. *See In re Broadwing, Inc. ERISA Litig*., 252 F.R.D. 369, 373 (S.D. Ohio 2006). If this Action were to go to trial, Defendants would assert multiple defenses arguing that Defendants

followed prudent processes and the Plan's recordkeeping fees were reasonable at all times, and lastly, the Plan did not suffer any losses. *See Baird v. BlackRock Institutional Trust Co. N.A.*, No. 17-cv-01892, 2021 WL 5113030, at *5 (N.D. Cal. Nov. 3, 2021) ("Even if the Plaintiffs were to ultimately prevail on the issue of liability, they still expected Defendants to vigorously challenge the extent of liability."). Hence, "[e]stimating the range of possible recovery is not difficult. The lowest band is no recovery, after all legal challenges" and costs. *O'Donnell v. Harris Cnty., Texas*, No. 16-cv-1414, 2019 WL 4224040, at *12 (S.D. Tex. Sept. 5, 2019).

Considering the risk of no recovery, or materially reduced recovery, the 17% recovery of the potential damages as calculated by Plaintiffs falls within the range of fair, reasonable and adequate settlements. Plaintiffs estimated maximum potential damages to be $12,102,601.30 million based on the argument that the Plan should have achieved recordkeeping fees around the $16 per participant average fee of several plans Plaintiffs believed were comparable to the Plan. But Defendants argued that the Plan was paying reasonable recordkeeping rates at all times. Thus, there was a risk Plaintiffs could not prove any loss amount even if they could prove liability, which Defendants also adamantly dispute.

In *Blackmon*, an analogous breach of fiduciary duty case from this Circuit, the court noted that a recovery of 14-23% of the plaintiffs' total estimated damages "exceeds many recoveries received in other class action cases." *Blackmon*, 2022 WL 3142362, at *4 (listing cases approving settlements as low as 2%); *see also Sims v. BB&T Corp.*, No. 15-cv-732, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (approving a recovery "represent[ing] 19% of the total investment and recordkeeping damages sought by the plaintiffs."); *Mehling*, 248 F.R.D. at 462 (finding the recovery representing 20% of estimated damages in ERISA class action approved was adequate); *Johnson v. Fujitsu Tech. & Business of America, Inc.*, No. 16-cv-03698, 2018 WL 2183253, at **6-

7 (N.D. Cal. May 11, 2018) (approving a recovery representing "under 10% of the Plaintiffs' most aggressive 'all in' measure of damages" in an ERISA excessive fee case). Because Defendants made no concessions regarding damages or liability, the Settlement also represents a 100% recovery if any of Defendants' arguments regarding damages or liability were to prevail in the long run. Thus, the range of recovery is fair, reasonable, and adequate.

5. The opinions of class counsel, class representatives, and absent class members[2]

a. The approval of experienced counsel for the Parties

"Significant weight is given to the opinion of class counsel concerning whether the settlement is in the best interest of the class and the court is not to substitute its own judgment for that of counsel." *Ramirez*, 2017 WL 6462355, at *3 (citing *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)); *see also Kemp*, 2015 WL 8526689, at *7 ("district courts in the Fifth Circuit often accord great weight to the stated opinion of class counsel"); *Slipchenko*, 2015 WL 338358, at *12 ("The endorsement of class counsel is entitled to deference, especially in light of class counsel's significant experience in complex civil litigation and their lengthy opportunity to evaluate the merits of the claims."). As discussed in greater detail in the Gyandoh Declaration, the vast experience of Class Counsel in analogous actions weighs strongly in favor of the fairness of the proposed Settlement, a Settlement which Class Counsel firmly stands behind. Gyandoh Decl., ¶¶ 79-91. As other courts have expressly found, the undersigned is "well-qualified to weigh the risks and benefits of continued litigation as compared to the relief provided by the Settlement." *Diaz*, 2021 WL 2414580, at *8; *see also Nesbeth v. ICON Clinical Rsch. LLC*, No. 21-cv-1444, 2022

[2] Plaintiffs will also provide the Court with the report of the independent fiduciary report before the final approval hearing. Courts have found the opinions of independent fiduciaries helpful in similar cases. *See Blackmon*, 2022 WL 3142362, at *5.

WL 22893879, at *4 (E.D. Pa. Mar. 10, 2022) ("Capozzi Adler, P.C. […] has extensive experience and has worked diligently to litigate Plaintiffs' claims."); *Hawkins I,* 2024 WL 3982210, at *10 ("Both Plaintiffs' counsel [, Capozzi Adler,] and Defendants' counsel are experienced ERISA attorneys and […] recommended settlement in this case and in briefing and at the fairness hearing."). Similarly, counsel for Defendants, Jackson Lewis P.C., is one of the preeminent firms in the country defending ERISA class actions.[3] The first part of the sixth *Reed* Factor is satisfied because both Plaintiffs' counsel and Defendants' counsel are experienced in ERISA class actions of this type and approve of the Settlement.

b. The Class and Class Representatives' approval

It is too soon to gauge the reaction of the Class, as the notice dissemination program is still ongoing. The objection deadline is December 16, 2025. *See* Preliminary Approval Order, ¶ 11. In accordance with the Preliminary Approval Order, Plaintiffs will file an additional brief in support of the Settlement no later than January 8, 2026. *Id*., ¶ 12. Plaintiffs will provide the Court with information regarding the effectiveness of the Notice program, whether any additional objections were received, a response to any potential objections, and the report of the independent fiduciary. *See* Gyandoh Decl., ¶ 37. However, it is already persuasive that "[t]he Class Representatives who have dedicated time and energy to this matter also find that the Settlement is fair, reasonable, and adequate[,]" including the request for attorney's fees and expenses, which "weighs in favor of approval." *Slipchenko*, 2015 WL 338358, at *12. *See* Declarations of Plaintiffs Michael Lenon, Scott Cenna, Kalea Nixon, Robert Goldorazena, Chad Diehl and Ross Nanfeldt (attached as Exhibits 12 through 18, respectively, to the Gyandoh Declaration); *see also Delaware Cnty. Emps.*

[3] *See* https://www.jacksonlewis.com/services/erisa-complex-litigation. Last accessed November 10, 2025.

Ret. Sys. v. AdaptHealth Corp., 739 F. Supp. 3d 270, 282 (E.D. Pa. 2024) ("A court may presume that a fee is reasonable when lead plaintiff approves of the fee request."). This factor weighs in favor of approval, because the Parties' counsel and Class Representatives find the Settlement to be fair, reasonable, and adequate.

c. The absent class members have embraced the Settlement

Thus far, the Settlement Class's response has been overwhelmingly positive. Of the approximately 335,444 class members, only one class member, Kathryn Seidler, submitted a request to "opt out" or "objection." *See* ECF No. 48. Notably, Ms. Seidler is not objecting to any terms of the Settlement, nor the request for attorney's fees, expenses or case contribution awards. Rather, Ms. Seidler's sole concern is the preservation of her claims regarding her "other claims in relation to Amazon and related **whistleblowing and their publication of my identity and retaliation towards me for whistleblowing**." ECF No. 48, at 2 (emphasis in original).

Ms. Seidler does not appear to be represented by counsel, and has not provided a case number to her "other claims." It is unclear whether Ms. Seidler intends to attend the final fairness hearing. Ms. Seidler need not worry. The Complaint alleges fiduciary breaches under ERISA, not relating to employment or whistleblower law. Under the Settlement Agreement, the terms of the "'Released Claims' does not include any claims unrelated to … this Settlement Agreement that the Class Representatives or the Settlement Class may have regarding the calculation of the value of their respective vested account balances under the terms of the Plan … ." Settlement Agreement, 1.39.7. Thus, Ms. Seidler's potentially related claims are not affected by a Settlement in this case because they neither "b[ear] a sufficiently close relation" nor involve "the same nucleus of operative fact[s][,]" as this case. *Nottingham Partners v. Trans-Lux Corp*., 925 F.2d 29, 33 34 (1st Cir. 1991). Final approval will not impact Ms. Seidler's separate legal proceedings.

At this juncture, the lack of any true objections to the merits of the Settlement weighs heavily in favor of final approval. *See Roberts*, 2016 WL 8677312, at *6 ("The [P]arties have received no objections to the Settlement [….] the second Grinnell factor supports judicial approval of the Settlement."); *Glynn v. Maine Oxy-Acetylene Supply Co.,* No. 19-cv-00176, 2022 WL 17617138, at *6 (D. Me. Dec. 13, 2022) (the absence of objections "suggests that the settlement has been well-received.").[4] Further, a single objection - out of a class of thousands - supports approval of the Settlement. *See Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 662 (N.D. Tex. 2010) (holding the existence of one objector supports approval); *Shaw v. Toshiba Am. Info. Sys., Inc.*, 91 F. Supp. 2d 942, 961, 976 (E.D. Tex. 2000) (holding 30 objections in a "class of thousands" constituted a "conspicuous absence of substantial objections" supporting approval of the settlement); *see also Ayers v. Thompson*, 358 F.3d 356, 373 (5th Cir. 2004) (noting precedent approving settlements with objection rates over 40%).

6. The public interest

Although not an explicit *Reed* Factor, courts in the Fifth Circuit nonetheless recognize that approving these settlements is in the public's interest. "There is a strong judicial policy in favor of settlements, particularly in the class action context." *Ramirez*, 2017 WL 6462355, at *3 (citing *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2nd Cir. 1998)); *see also Kemp*, 2015 WL 8526689, at *5 ("[S]ettlement avoids consuming additional judicial […] time and resources, and avoiding such costs weighs in favor of settlement."); *Hawkins I*, 2024 WL 3982210, at *11 (In general, "public interest is furthered by an efficient resolution of a class-wide controversy and the

[4] Per the Preliminary Approval Order, the deadline for objections is December 16, 2025. *See* Preliminary Approval Order, ¶ 11. Plaintiffs will address any additional objections filed after this memorandum in a supplemental briefing prior to the final fairness hearing. *Id*. at ¶ 12.

conservation of judicial resources[,]" especially where "the Agreement provides class members immediate relief, avoids further litigation, and frees the Court's judicial resources.").

"Importantly, it has been determined that an 'ERISA Settlement [in particular] confers broader public benefits, as the protection of retirement funds is a great public interest.'" *Hawkins I*, 2024 WL 3982210, at *11 (quoting *Karpik*, 2021 WL 757123 at *6); *see also In re Marsh Erisa Litig.*, 265 F.R.D. 128, 149-50 (S.D.N.Y. 2010) ("Congress passed ERISA to promote the important goals of protecting and preserving the retirement savings of American workers" and "such lawsuits create incentives for fiduciaries to comply with ERISA."). As mentioned above, this case involves complex issues and, without a settlement, would remain in the judicial system for a lengthy duration at the risk of lesser or no relief to Plan Participants. Thus, the public benefit of settling this case, as well as all of the other *Reed* factors, weighs in favor of finding the Settlement fair, reasonable, and adequate.

V. THE REQUIREMENTS OF FED. R. CIV. P. 23(e)(2) ARE SATISFIED

Before granting final approval, courts must consider: (1) "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;" (2) "the terms of any proposed award of attorney's fees, including timing of payment;" and (3) whether "the proposal treats class members equitably relative to each other." FED. R. CIV. P. 23(e)(2)(C)(ii), (C)(iii) and (D).[5]

A. Effectiveness of Plan Distribution and Equitable Treatment of Class Members

"'A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable.'" *Slipchenko*, 2015 WL 338358, at *12 (quoting *Schwartz v. TXU Corp.,*

[5] FED. R. CIV. P. 23(e)(2)(C)(iv) is irrelevant because there are no agreements other than the Settlement Agreement.

2005 WL 3148350, at *23 (N.D. Tex. Nov. 8, 2005)). The proposed Plan of Allocation is premised on calculating a Settlement class member's distribution on a *pro rata* basis based on account balances, a proxy for the alleged losses. Current participants will receive their share of the Settlement Fund through a distribution to their accounts in the Plan and former participants will be paid by check. *See* Plan of Allocation at Sections 1.6, 1.7.

The proposed Plan of Allocation is commonly utilized in similar ERISA matters because it is equitable and is highly effective. *See*, *e.g.*, *Ramirez*, 2017 WL 6462355, at *4 (approving a "pro rata distribution of the Net Settlement Fund based on each class member's loss"); *Davis*, 2025 WL 66052, at *1 ("a Settlement Administrator will determine each Class Member's share of the Settlement Amount in proportion to that Class Member's balance in their Plan Account during the Class Period as compared to the sum of the balances of all Class Members during that time."); *Hawkins I*, 2024 WL 3982210, at *3 (similar); *Feinberg v. T. Rowe Price Grp.*, 610 F. Supp. 3d 758, 769-70 (D. Md. 2022) (same, listing cases). Because this is an ERISA case, "Class Members will not have to file a claim form but will automatically receive their distributions into their tax-deferred retirement accounts." *Pledger*, 2021 WL 2253497, at *8; *see also In re Schering-Plough Corp. Enhance ERISA Litig.*, No. 08-cv-1432, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) (for members with active accounts "[t]he distribution takes place through the Plan[] so as to realize the tax advantage of investment in the Plan[]."). Additionally, while Plaintiffs also intend to request Case Contribution Awards, the Settlement is not contingent on Plaintiffs receiving an award in a specified amount, and the amount Plaintiffs intend to request is in line with the awards in other cases as explained in Plaintiffs' accompanying Memorandum of Law in Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses and Case Contribution Awards ("Fee Memo").

B. Terms of Proposed Attorneys' Fees

The Settlement is not contingent on Class Counsel receiving a specific amount of fees and any fees they receive will be determined by the Court. As detailed further in the Fee Memo, the Settlement does not excessively compensate Class Counsel. The amount of fees Class Counsel is requesting, a third of the Settlement Fund, is reasonable and consistent with the awards in other ERISA cases in this Circuit and nationwide. *See, e.g., Blackmon*, 2022 WL 2866411, at *4 ("The proposed award of 33 1/3% of the total settlement is reasonable and consistent with awards made by other district courts in this Circuit under the percentage method."); *Hawkins v. Cintas Corp*., No. 19-cv-1062, 2025 WL 523909, at *3 (S.D. Ohio Feb. 18, 2025) (*Hawkins II*) ("[T]he requested award of one-third of the common fund is consistent with fees awarded in similar [ERISA] actions in this circuit and across the country."); *McDonald v. Edward Jones*, 791 Fed. Appx. 638, 640 (8th Cir. 2020) (affirming judgment awarding the class counsel attorneys' fees of 1/3 of the settlement fund in an ERISA case); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 270 (S.D.N.Y. 2020) (listing ERISA cases awarding one-third of settlement fund); *Kruger*, 2016 WL 6769066, at *6; *Cates v. Trustees of Columbia Univ.*, No. 16-cv-6524, 2021 WL 4847890 (S.D.N.Y. Oct. 18, 2021); *In re Pool Prods. Distribution Mkt. Antitrust Litig*., 310 F.R.D. 300, 316 (E.D. La. 2015)("[T]he Court finds that a sum for the attorneys' fees and costs of one-third of the settlement fund is in keeping with practice in this circuit and is therefore within the limit of what the Court deems reasonable."). Plus, although "the lodestar method is not required," the undersigned's "rates are reasonable." *Hawkins II*, 2025 WL 523909, at *4 (refering to Capozzi Adler's rates). Capozzi Adler's lodestar multiplier in this case is currently 61 — a multiplier that will continue to decrease as Class Counsel oversees the Settlement process and work towards final approval. Thus the percentage requested by Class Counsel is reasonable because it is roughly the

same as their lodestar, and "there is a strong presumption that the lodestar represents a reasonable fee." *Erica P. John Fund, Inc. v. Halliburton Co*., No. 02-cv-1152, 2018 WL 1942227, at *13 (N.D. Tex. Apr. 25, 2018) (citing *City of Burlington v. Dague*, 505 U.S. 557, 562 (1992)); *see also Blackmon*, 2022 WL 2866411, at *5 (finding the lodestar multiplier of 1.06 supported the reasonableness of the 33 1/3% fee award).

Given the above, Rule 23(e)(2) is satisfied.

VI. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS WARRANTED

Although this Court has already certified a Class and named Plaintiffs and Capozzi Adler as Class Representatives for litigation purposes, *see* ECF No. 39, the Supreme Court has instructed that courts must still evaluate "a request for settlement-only class certification" under Rule 23(a). *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620, 117 S. Ct. 2231, 2248 (1997). "Rule 23(a) provides four prerequisites to a class action: '(1) numerosity (a 'class [so large] that joinder of all members is impracticable'); (2) commonality ('questions of law or fact common to the class'); (3) typicality (named parties' claims or defenses 'are typical ... of the class'); and (4) adequacy of representation (representatives 'will fairly and adequately protect the interests of the class').'" *Feder v. Elec. Data Sys. Corp*., 429 F.3d 125, 129 (5th Cir. 2005) (quoting *Amchem Products, Inc*., 521 U.S. at 117). These requirements are met here.

A. The Proposed Class Meets the Requirements of Rule 23(b)(1) of the Federal Rules of Civil Procedure

Before entering the Preliminary Approval Order, this Court examined the record and conditionally certified the Settlement Class pursuant to FED. R. CIV. P. 23(b)(1). *See* Preliminary Approval Order, ¶ 1. Nothing has changed in the record to compel the Court to reach a different conclusion with respect to the final approval of the Settlement Class. Indeed, courts across the country have determined breach of fiduciary duty claims under ERISA analogous to those at issue

in this action are uniquely appropriate for class treatment.[6] To avoid unnecessary repetition, Plaintiffs incorporate their arguments from their memorandum in support of preliminary approval (*see* ECF 44-1, at 5-12) and request the Court make the same findings it did in preliminarily certifying a Settlement Class and certify the following Class for Settlement purposes only:

> All persons who participated in the Whole Foods Market Growing Your Future 401(k) Plan at any time from November 6, 2017 through [date of preliminary approval order] ("Class Period"), including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their Beneficiaries.

B. Adequacy of Named Plaintiffs and Class Counsel

Under Rule 23, certification of a class requires the Court determine both Plaintiffs and Class Counsel's adequacy. Courts in the Fifth Circuit evaluate "(1) the zeal and competence of the representatives' counsel"; "(2) the willingness and ability of the representatives to take an active role in and control the litigation and to protect the interests of absentees"; and "(3) the risk of conflicts of interest between the named plaintiffs and the class they seek to represent." *Slade v.*

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[6] *See, e.g., Sacerdote v. New York Univ*., 2018 WL 840364, *6 (S.D.N.Y. Feb. 13, 2018) ("Most ERISA class action cases are certified under Rule 23(b)(1)."); *Wachala et al. v. Astella US LLC et al*., 2022 WL 408108, at * 1 (N.D. Ill. Feb. 10, 2022) (certifying claims brought pursuant to ERISA § 502(a)(2); *Nunez, et al., v. B. Braun Medical, Inc., et al*., No. 20-cv-04195 (E.D. Pa. June 30, 2022) (same); *Stengl et al. v. L3Harris Technologies, et al.*, No. 22-cv-572 (M.D. Fla. June 5, 2023) (same); *Pizarro v. Home Depot, Inc*., 2020 WL 6939810 (N.D. Ga. Sept. 21, 2020) (same); *Boley v. Universal Health Servs., Inc*., 36 F.4th 124 (3d Cir. 2022) (same); *In re Suntrust Banks, Inc. ERISA Litig*., 2016 WL 4377131, at *8 (N.D. Ga. Aug. 17, 2016) (same); *Iannone et al., v. Autozone, Inc., et al.*, No. 19-cv-02779 (W.D. Tenn. Dec. 07, 2022) (same); *Jacobs v. Verizon Communications, Inc. et al.*, 2020 WL 5796165 (S.D.N.Y. Sept. 29, 2020) (same); *Karg v. Transamerica Corp.*, 2020 WL 3400199 (N.D. Iowa Mar. 25, 2020) (certifying class alleging defendants breached fiduciary duties by selecting poorly performing investment options); *Vellali v. Yale Univ*., 33 F.R.D. 10 (D. Conn. 2019) (certifying class in case alleging fiduciaries saddled retirement plan with investment options that charged excessive management fees); *Cunningham et al. v. Cornell Univ*., 2019 WL 275827 (S.D.N.Y. Jan. 22, 2019) (same); *Beach v. JPMorgan Chase Bank, N.A.*, 2019 WL 2428631 (S.D.N.Y. June 11, 2019) (same); *Cassell v. Vanderbilt Univ*., 2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018) (same).

Progressive Sec. Ins. Co., 856 F.3d 408, 412 (5th Cir. 2017) (cleaned up) (citing *Feder v. Elec. Data Sys. Corp*., 429 F.3d 125, 130 (5th Cir. 2005)). Here all three of the prongs of the adequacy test are met. In its Preliminary Approval Order, the Court found Plaintiffs and Capozzi Adler to be adequate. *See* Preliminary Approval Order, ¶ 2. In connection with the instant motion for final approval, each of the Plaintiffs have submitted declarations and Class Counsel has also submitted a declaration to attest to their adequacy. Plaintiffs dedicated a lot of their time to the prosecution of this action and have no interests antagonistic to the Class. *See* Declarations of Plaintiffs Michael Lenon, Scott Cenna, Kalea Nixon, Robert Goldorazena, Chad Diehl and Ross Nanfeldt (attached as Exhibits 12 through 18 respectively, to the Gyandoh Declaration).

VII. CONCLUSION

For the reasons set forth above, the Settlement meets the standard for final approval under Rule 23. Accordingly, Plaintiffs seek an Order: (1) approving the Class Action Settlement Agreement under FED. R. CIV. P. 23(e); (2) certifying the above-defined Settlement Class; (3) appointing Plaintiffs as Class Representatives and Capozzi Adler as Class Counsel under FED. R. CIV. P. 23(g); (4) finding the manner in which the Settlement Class was notified of the Settlement was the best practicable under the circumstances and fair and adequate; and (5) approving the Plan of Allocation.

Dated: November 14, 2025

Respectfully submitted,

CAPOZZI ADLER, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2025, I electronically filed the foregoing document with the Clerk of the Court using the CM/ECF system, which will send notification of the filing to all attorneys of record.

/s/Mark K. Gyandoh
Mark K. Gyandoh