

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
EVANSVILLE DIVISION**

*In re: Midwestern Pet Foods Marketing, Sales
Practices and Product Liability Litigation*

Case No. 3:21-cv-00007-RLY-MPB

**ORDER PRELIMINARY
APPROVING CLASS ACTION SETTLEMENT**

Before the Court is the Unopposed Motion for Preliminary Approval of Class Action Settlement (“Motion”)¹ of Plaintiffs Kelleen Reagan, Marcia Berger, Tammy Johnson, Harvey Williams, Jannette Kern, Ashley Lill, Charles Foster, James Buechler, Sue Flynn, Tiffany Carlson, Connor Staponski, Shannon Proulx, Stephanie Romero, Shanda Marshall, Owen Woodall, David Starnes, Chanler Potts, Vollie Griffin, Henry Franco, Jr., Robert Lee, and Crystal Fabela (“Plaintiffs”). Plaintiffs in this lawsuit (the “Litigation”) assert claims on behalf of themselves and the proposed Settlement Class arising out of the sale of pet foods allegedly contaminated with aflatoxin and/or salmonella manufactured and distributed by Defendants Midwestern Pet Foods (“Midwestern”) and Nunn Milling Company (“Nunn”) (collectively, “Defendants”).²

In early January, 2023, Plaintiffs and Defendants (together, the “Parties”) executed a Class Action Settlement Agreement (“Settlement Agreement”) on behalf of themselves and the Settlement Class that Plaintiffs seek to certify. Having thoroughly reviewed the Settlement Agreement and exhibits thereto and having considered the Motion and all related supporting documents, THE COURT

¹ Dkt. No. --.

² Capitalized terms not defined herein have the definitions given to them in the Settlement Agreement. Dkt. __ § II.

HEREBY FINDS, CONCLUDES AND ORDERS THE FOLLOWING:

1. The Parties have agreed to a class action settlement of all Released Claims, including unknown claims. Plaintiffs seek, and for purposes of settlement only Defendants do not object to, certification of a Settlement Class with the following definition:

All persons and entities residing in the United States who purchased one or more of the Midwestern Pet Food Products.

Specifically excluded are the following:

- (i) the plaintiffs in *Simmons v. Midwestern Pet Foods, Inc.*, Case No. 6:21-cv-03012 (W.D. Mo. 2021);
- (ii) persons or entities whose claims are solely based upon the purchase of Midwestern Pet Food Products for resale;
- (iii) corporate officers, members of the board of directors, and senior management of Defendants;
- (iv) any and all judges and justices, and chambers' staff, assigned to hear or adjudicate any aspect of this litigation;
- (v) any members of the Settlement Class that opt out prior to the opt out deadline;
- (vi) any entity in which Defendants have a controlling interest, and their legal representatives, officers, directors, employees, assigns and successors; and
- (vii) Class Counsel.

2. For purposes of preliminary approval, this Court assesses the Settlement Agreement under Fed. R. Civ. P. 23(e). Rule 23(e)(1)(B) provides that the Court “must direct notice in a reasonable manner” to proposed Settlement Class Members “if giving notice is justified by the parties’ showing that the court will likely be able to (i) approve the proposal [as fair, reasonable, and adequate] under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal.” Fed. R. Civ. P. 23(e)(1)(B).

Likely Approval as Fair, Reasonable and Adequate

3. To determine whether the Settlement Agreement is fair, reasonable and adequate, Rule 23(e)(2) directs the Court to consider whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

4. The proposed Class Representatives are adequately representing the proposed Settlement Class: they share the same alleged injury (injury from the purchase of contaminated pet food) and the same interest (maximizing recovery related to the pet food contamination). Rosemary M. Rivas of the law firm of Gibbs Law Group LLP, Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A., and Kenneth A. Wexler of Wexler Boley & Elgersma LLP are also adequately representing the proposed Settlement Class.

5. There is no question that the Parties are at arm's length. The Settlement Agreement appears to be the result of extensive, non-collusive, arm's-length negotiations between experienced counsel who were thoroughly informed of the strengths and weaknesses of the case through mediation-related discovery and whose negotiations were supervised by respected class-action mediator the Honorable Wayne R. Andersen (Ret.) of JAMS.

6. The proposed Settlement creates a \$6,375,000 Settlement Fund from which Settlement Class Members may submit Pet Injury Claims and/or Consumer Food Purchase Claims. Settlement Class Members who file valid Pet Injury Claims and / or valid Consumer Food Purchase Claims shall have those claims adjudicated and paid according to the Plan of Allocation attached

as Exhibit D to the Settlement Agreement and Release which the Court has reviewed and preliminarily approves.

7. The Settlement Agreement and the Plan of Allocation provide adequate relief to the proposed Settlement Class. If the Settlement Agreement had not been reached, the Parties planned to vigorously contest Defendants' expected motion for summary judgment as well as class certification, and Plaintiffs' chances at trial also would have been uncertain. In light of the costs, risks and delay of trial and appeal, this compensation is at least adequate for purposes of Rule 23(e)(1).

8. There is no reason to doubt the effectiveness of distributing relief under the Settlement Agreement. As further addressed below, the Parties propose a Notice Program reasonably calculated to reach as many members as practicable of the proposed Settlement Class.

9. This Court will fully assess the request of Class Counsel for the Attorneys' Fees, Expenses, and Service Awards after receiving their motion supporting such request. At this stage, the Court finds that the plan to request fees to be paid from the Settlement Fund creates no reason not to direct notice to the proposed Settlement Class. In particular, should the Court find any aspect of the requested Attorneys' Fees, Expenses, or Service Awards unsupported or unwarranted, such funds would not be returned to Defendants, and therefore the Settlement Class would not be prejudiced by directing notice at this time.

10. No agreements exist between the Parties aside from those referred to in the Settlement Agreement and/or submitted to the Court.

11. The Settlement Agreement and the Plan of Allocation treat members of the proposed Settlement Class equitably relative to each other because all members of the proposed Settlement Class are eligible to submit Pet Injury Claims and/or Consumer Food Purchase Claims.

The Settlement is specifically designed to apportion relief among class members in proportion to the harms they have suffered and the relative strengths of their claims. For instance, Settlement Class members with documentation supporting their claimed damages are entitled to a greater share of the Settlement proceeds than those do not. These are equitable terms.

Likely Certification of Settlement Class

12. The Court assesses the likelihood that it will be able to certify the proposed Settlement Class under Rules 23(a) and 23(b)(3) (because this Settlement Class seeks damages). *See* Fed. R. Civ. P. 23(a)-(b). The Court makes this assessment for the purposes of settlement only at this time.

13. The proposed Settlement Class is sufficiently numerous under Rule 23(a)(1) because it is estimated to contain hundreds of thousands of members.

14. Resolution of the Litigation would depend on the common answers to common questions, such as whether Defendants maintained adequate quality control over their pet food manufacturing processes and whether they are liable to unsuspecting consumers injured as a result of purchasing Defendants' pet food products covered by this settlement.

15. Plaintiffs' claims are typical of the claims of the members of the proposed Settlement Class because they challenge the same conduct—the sale of contaminated pet food products—and make the same legal arguments. Typicality under Rule 23(a)(3) is satisfied.

16. The proposed Class Representatives and Class Counsel will fairly and adequately protect the interests of the proposed Settlement Class. There is no evidence to suggest a conflict of interest and Class Counsel are experienced litigators of consumer class actions.

17. At least for purposes of settlement, the common issues in the Litigation predominate over individual issues under Rule 23(b)(3). Key elements of Plaintiffs' claims are

Defendants' allegedly inadequate quality control and testing procedures and sale of contaminated pet food products. These issues predominate over individualized issues in the Litigation.

18. The settlement would be superior under Rule 23(b)(3) to many individual actions. Many members of the proposed Settlement Class may not have suffered sufficient damages to justify the costs of expensive litigation. The Settlement Agreement ensures that all Settlement Class Members will have the opportunity to be compensated through cash payments.

19. For these reasons, pursuant to Rule 23, and for settlement purposes only, the Court finds it will likely certify the Settlement Class defined above in paragraph 1 of this Order. This finding is subject to further consideration at the Final Approval Hearing to be conducted as described below.

20. The Court hereby preliminarily appoints the Plaintiffs as representatives of the Settlement Class. Pursuant to Fed. R. Civ. P. 23(g), the Court hereby preliminarily appoints Rosemary M. Rivas of the Gibbs Law Group LLP, Jeffrey S. Goldenberg of Goldenberg Schneider, L.P.A., and Kenneth A. Wexler of Wexler Boley & Elgersma LLP as Settlement Class Counsel for the Settlement Class.

21. In any final approval order issued after the Final Approval Hearing, all Settlement Class Members that have not been properly excluded from the Settlement Class will release all known and unknown claims to the fullest extent permitted by law against Defendants relating to any alleged claims related to the Defendants' recalls of Midwestern's Pet Food Products due to levels of Aflatoxin and Salmonella exceeding acceptable limits pronounced by the U.S. Food and Drug Administration, as alleged in *In re: Midwestern Pet Foods Marketing, Sales Practices, and Prod. Liab. Litig.*, Case No. 3:21-cv-00007-RLY-MPB (S.D. Ind. July 26, 2021). This Release

includes equitable, injunctive, and monetary claims within the scope of the Settlement Class definition. Claims against Scoular will not be released.

Approval of the Manner and Form of Notice

22. Having preliminarily approved the Settlement Agreement, the Court “must direct notice in a reasonable manner to all class members who would be bound by the proposal.” Fed. R. Civ. P. 23(e)(1)(B). The Parties have submitted to the Court the proposed Notices, Claim Forms, and a detailed Notice Plan as explained in the Declaration of Cameron R. Azari, Esq. on Notice Plan and Notices attached as Exhibit E to the Settlement Agreement.

23. Having reviewed these exhibits and the Settlement Agreement, the Court finds that the Parties’ proposed plan for providing notice to Settlement Class Members (a) is reasonable and constitutes due, adequate and sufficient notice to all persons entitled to receive notice, (b) is reasonably calculated, under the circumstances, to apprise the Settlement Class of the pendency of the Litigation and of their right to object to or to exclude themselves from the settlement and (c) meets all applicable requirements of applicable law. The Notice Program satisfies the requirements of Fed. R. Civ. P. 23(c)(2)(B) and due process. The Court therefore approves the Notice Program, the Claim Form and the notice documents substantially in the form attached as the exhibits to the Settlement Agreement.

24. As part of the Notice Program, the Court expressly approves and authorizes Class Counsel’s use of third-party subpoenas to be issued to the top 10 retailers of Midwestern Pet Food Products the purpose of which is to obtain contact information for potential members of the Class to facilitate the Notice Program. Defendants shall provide the list of the top 10 retailers to Class Counsel no later than 10 days following the entry of this Order. All contact information provided by the top 10 retailers in response to the subpoenas shall only be used by the Settlement

Administrator for the limited purpose of issuing notice of this settlement to the potential Class Members and evaluating claims. Further, all such information provided by third-party retailers in response to these subpoenas shall be subject to and treated as confidential information pursuant to the Protective Order issued by this Court on October 29, 2021 (Dkt. No. 80). Accordingly, all such information provided by third-party retailers in response to these subpoenas shall be destroyed consistent with section VII.A. of the Protective Order.

25. Epiq Class Action and Claims Solutions, Inc. (“Epiq”) has been selected to serve as the Settlement Administrator under the terms of the Settlement Agreement. The Court hereby appoints Epiq to serve as the Settlement Administrator to be supervised jointly by Class Counsel and counsel for Defendants in taking the actions ordered below and performing any other duties of the Settlement Administrator provided for in the Settlement Agreement.

26. Accordingly, the Court hereby ORDERS as follows and adopts the Proposed Schedule to Implement Settlement as provided in Plaintiffs’ Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Action Settlement:

- a. Within ten (10) days of entry of the Preliminary Approval Order, Defendants shall provide Class Counsel a list of the top 10 retailers of Midwestern Pet Food Products so that Class Counsel may issue targeted subpoenas requesting the identities and contact information of Settlement Class Members;
- b. Within thirty (30) days of entry of the Preliminary Approval Order, Class Counsel shall issue subpoenas as directed by this Court to the top ten (10) retailers of Midwestern Pet Food Products;
- c. Within ninety (90) days after entry of the Preliminary Approval Order, the Settlement Administrator shall begin mailing, by First Class U.S. Mail, postage

pre-paid (to the extent mailing addresses are available), and email (to the extent email addresses are available) the Summary Postcard Notice to Settlement Class Members (“Notice Date”). The Settlement Administrator shall complete the mailing and emailing of notices no later than forty-five (45) days after the Notice Date.

- d. The Settlement Administrator shall undertake reasonable efforts to confirm the address, and to resend notice, for any Settlement Class Members for which the Claims Administrator receives returned mail from the U.S. Postal Service indicating that the initial mailing was not delivered;
- e. Prior to the time the Settlement Administrator first mails and emails the Summary Postcard Notice to Settlement Class Members, the Settlement Administrator shall establish a dedicated settlement website, that includes, at a minimum, the Settlement Agreement, the Long Notice, FAQs, the Summary Notice and the Claim Form approved by the Court. The Settlement Administrator shall maintain and update the website throughout the implementation of this Settlement and for a period not less than 90 days after the Date of Finality. The Settlement Administrator will also post on the settlement website copies of the motion for final approval of the Settlement Agreement, and the motion for Attorneys’ Fees and Expenses Award and Service Award. A toll-free number with interactive voice response, FAQs, and an option to speak to a live operator shall also be made available to address Settlement Class Members’ inquiries. The settlement website shall not include any advertising.

- f. At least thirty (30) days before the Claims Deadline, the Settlement Administrator shall send a reminder email notice to Settlement Class Members with a valid email address reminding them of the Settlement and the Claims Deadline.
- g. No later than fourteen (14) days prior to the Final Approval Hearing, Class Counsel shall cause to be filed with the Court an appropriate declaration from the Settlement Administrator demonstrating compliance with the Court-approved Notice Program.
- h. The Settlement Administrator shall determine whether a claimant's Claim Form, along with supporting materials, are sufficient to support a Valid Claim Form. If the Settlement Administrator should receive an incomplete claim form or a claim form with insufficient documentation to determine whether the claimant is a Settlement Class Member, the Settlement Administrator shall request additional information and give the claimant thirty (30) days to cure any defect(s) before rejecting a Settlement Claim. All requests by the Settlement Administrator for additional information shall be made within thirty (30) days after the Claims Deadline. If a Settlement Class Member fails to correct all deficiencies within thirty (30) days from receiving a request for additional information, the Settlement Administrator may deny the claimant's Settlement Claim.
- i. After receiving additional information, the Settlement Administrator shall have fourteen (14) days to accept or reject each Settlement Claim. If after review of the claim form and all documentation submitted by the claimant, the Settlement

Administrator determines that such claim is a Valid Claim Form, then the claim shall be paid in a timely manner after the Date of Finality. If the claim form remains invalid because the claimant does not provide the requested information needed to complete the claim form and evaluate the claim, then the Settlement Administrator may reject the Settlement Claim without any further action apart from providing a notice of rejection of the Settlement Claim and alerting the claimant to his or her right to appeal the denial as set out in the Settlement Agreement.

- j. The Settlement Administrator shall forward any objections to the Settlement Agreement received from Settlement Class Members to Class Counsel and counsel for Defendants.
- k. The deadline for Settlement Class Members to opt-out of or object to the Settlement shall be ninety (90) days after the Notice Date. Within fourteen (14) days after the objection and opt-out deadline, the Settlement Administrator shall provide the Parties with a complete and final list of all opt-outs and objectors and, upon request, copies of all completed requests for exclusions and objections. Class Counsel, working with the Settlement Administrator, shall provide a list of all persons requesting exclusion and objecting to the Court no later than no later than fourteen (14) days prior to the Final Approval Hearing.

Participation in, Exclusion from or Objection to the Settlement Agreement

27. Each form described in this section shall be deemed to be submitted when postmarked or when electronically received by the Settlement Administrator if submitted electronically.

28. Settlement Class Members who wish to receive compensation for a Pet Injury Claim or Consumer Food Purchase Claim under the Settlement Agreement must properly and timely complete, sign and submit a Valid Claim Form in accordance with the instructions contained therein. All Valid Claim Forms must be submitted no later than ninety (90) days after the Notice Date.

29. Settlement Class Members that wish to exclude themselves from (i.e., opt out of) the settlement must send a request for exclusion that: (i) states the person or entity's full name and current address, and (ii) specifically and clearly states his/her/its desire to be excluded from the Settlement and from the Settlement Class.

30. All requests for exclusion must be submitted individually in connection with a Settlement Class Member, i.e., one request is required for every Settlement Class Member seeking exclusion; so-called "mass" or "class" opt outs shall not be allowed.

31. All requests for exclusion must be submitted no later than ninety (90) days after the Notice Date. Any member of the Settlement Class that submits a timely request for exclusion may not file an objection to the Settlement Agreement and shall be deemed to have waived any rights or benefits under the Settlement Agreement.

32. Any Settlement Class Member that fails to submit a timely and complete request for exclusion sent to the proper address shall be subject to and bound by the Settlement Agreement and every order or judgment entered pursuant to the Settlement Agreement. Any purported request for exclusion or other communication sent to such address that is unclear or internally inconsistent with respect to the Settlement Class Member's desire to be excluded from the Settlement Class will be deemed invalid unless determined otherwise by the Court. Requests for exclusion signed only by counsel or another representative shall not be permitted.

33. Any Settlement Class Member that wishes to be heard at the Final Approval Hearing, or that wishes for any objection to be considered, must file with the Clerk of the Court a written notice of objection, including any request to be heard, no later than ninety (90) days after the Notice Date. Such objection must provide:

- a. The name and case number of this lawsuit, In re: Midwestern Pet Foods Marketing, Sales Practices and Product Liability Litig., No. 3:21-CV-00007-RLY-MPB (S.D. Ind.);
- b. The Settlement Class Member's full name, mailing address, and email address or telephone number;
- c. If objecting, the Settlement Class Member must state whether the objection applies only to the objector, or to a specific subset of the Settlement Class, or to the entire Settlement Class;
- d. All reasons for the objection or comment and sufficient proof establishing that he or she is a Settlement Class Member;
- e. A statement identifying the number of class action settlements the Settlement Class Member or their attorney has objected to or commented on in the last five years;
- f. Whether the Settlement Class Member intends to personally appear at the Final Approval Hearing;
- g. The name and contact information of any and all attorneys representing, advising, or assisting the Settlement Class Member, including any counsel who may be entitled to compensation for any reason related to the objection or comment;
- h. Whether any attorney will appear on the Settlement Class Member's behalf at the Final Approval Hearing, and if so the identity of that attorney; and
- i. The Settlement Class Member's signature.

34. Any lawyer representing or assisting an objecting Settlement Class Member must: (a) file a notice of appearance with the Court by the date set forth in the Preliminary Approval Order; (b) file a sworn declaration attesting to representation of each Settlement Class Member on whose behalf the lawyer has acted or will be acting; and (c) comply (and ensure their client's compliance) with each of the above requirements.

35. Except upon a showing of good cause, any Settlement Class Member who fails to substantially comply with the requirements for objecting shall waive and forfeit any and all rights he or she may have to appear separately and/or to object to the Settlement Agreement, and shall

be bound by all the terms of the Settlement Agreement and by all proceedings, orders and judgments in the Litigation.

36. Class Counsel and counsel for Defendants may respond to any objection filed by a Settlement Class Member, and must file such a response with the Court no later than fourteen (14) days prior to the Final Approval Hearing.

37. Settlement Class Members may not both object and opt out. If a Class Member submits both a request for exclusion and an objection, the request for exclusion shall be controlling.

38. Any Settlement Class Member that does not file a timely, written objection to the Settlement Agreement or that fails to otherwise comply with the requirements outlined above shall be foreclosed from seeking any adjudication or review of the Settlement Agreement by appeal or otherwise.

Final Approval Hearing and Related Deadlines

39. This Court will hold a Final Approval Hearing on **AUGUST 21, 2023 at 11:00 a.m.** (CST), before Magistrate Judge Matthew P. Brookman, in the Winfield K. Denton Federal Building & U.S. Courthouse, Courtroom 301, 101 Northwest Martin Luther King Boulevard Evansville, IN 47708.

40. The purposes of the Final Approval Hearing will be to consider the fairness, reasonableness and adequacy of the proposed settlement and the application for an award of attorneys' fees and expenses and service awards, and to consider whether the Court should issue a Final Approval Order approving the Settlement Agreement, granting Class Counsel's application for fees and expenses, granting the service awards application of Plaintiffs and dismissing the claims against Defendants with prejudice.

41. The Court reserves the right to adjourn the Final Approval Hearing without further notice to Settlement Class Members, change the Final Approval Hearing date and/or time, or to approve the Settlement Agreement with modification without further notice to Settlement Class Members.

42. Any Settlement Class Member may appear at the Final Approval Hearing by filing with the Clerk of the Court a written notice of objection in accordance with the requirements outlined above and including a statement that he or she intends to appear at the Final Approval Hearing, either with or without counsel, along with a list of all persons, if any, that will be called to testify in support of the objection.

43. If any Settlement Class Member hires an attorney to represent the Settlement Class Member at the Final Approval Hearing, that attorney will be at the Settlement Class Member's expense.

44. Any attorney hired by a Settlement Class Member for the purpose of objecting to the Settlement and who intends to make an appearance at the Final Approval Hearing must provide to Class Counsel and counsel for Defendants and to file with the Clerk of the Court a notice of intention to appear no later than ninety (90) days after the Notice Date.

45. Class Counsel's papers in support of any application for Attorneys' Fees and Expenses and/or Service Awards shall be filed no later than twenty-one days prior to the opt-out and objection deadline. Class Counsel shall also post their application for Attorneys' Fees and Expenses and/or Service Awards on the settlement website within two business days of filing the application with the Court.

46. Class Counsel's papers in support of final approval of the Settlement Agreement shall be filed no later than fourteen (14) days before the Final Fairness Hearing.

Effects of this Preliminary Approval Order

47. All proceedings in the Litigation other than those related to approval of the Settlement Agreement are hereby stayed.

48. If for any reason the Settlement Agreement fails to become effective in accordance with its terms, or if the judgment is not entered or is reversed, vacated or materially modified on appeal (and, in the event of material modification—which shall not include any modification to an award of attorneys’ fees and expenses or to the service awards—if either party elects to terminate the Settlement Agreement), this Order shall be null and void, the Settlement Agreement shall be deemed terminated (except for any paragraphs that, pursuant to the terms of the Settlement Agreement, survive termination of the Settlement Agreement), and the Parties shall return to their positions without prejudice in any way, as provided for in the Settlement Agreement.

49. As set forth in the Settlement Agreement, the fact and terms of this Order and the Settlement Agreement, all negotiations, discussions, drafts, and proceedings in connection with this Order and the Settlement Agreement, and any act performed or document signed in connection with this Order and the Settlement Agreement, shall not, in this or any other court, administrative agency, arbitration forum or other tribunal, constitute an admission or evidence or be deemed to create any inference against any party, including, but not limited to: (i) of any acts of wrongdoing or lack of wrongdoing; (ii) of any liability on the part of Defendants to the Plaintiffs, the Settlement Class or anyone else; (iii) of any deficiency of any claim or defense that has been or could have been asserted in this case; (iv) that Defendants agree that a litigation class may be properly certified in this case; (v) of any damages or lack of damages suffered by the Plaintiffs, the Settlement Class or anyone else; or (vi) that any benefits obtained by the Settlement Class pursuant to the Settlement Agreement or any other amount represents the amount that could or would have been recovered in

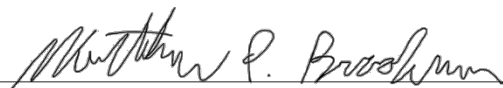
the actions in this case if they were not settled at this point in time. The fact and terms of this Order and the Settlement Agreement, all negotiations, discussions, drafts and proceedings in connection with this Order and the Settlement Agreement, including but not limited to the judgment and the release of the Released Claims provided for in the Settlement Agreement and any judgment, shall not be offered or received in evidence or used for any other purpose in this or any other proceeding in any court, administrative agency, arbitration forum or other tribunal, except as necessary to enforce the terms of this Order and/or the Settlement Agreement.

50. All members of the Settlement Class (unless and until they have timely and properly excluded themselves from the Settlement Class) are preliminarily enjoined from (a) filing, commencing, prosecuting, intervening in or participating as plaintiff, claimant, participant or class member in any other lawsuit or administrative, regulatory, arbitration or other proceeding in any jurisdiction based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims; (b) filing, commencing, participating in or prosecuting a lawsuit or administrative, regulatory, arbitration or other proceeding as a class action on behalf of any member of the Settlement Class that has not timely excluded himself or herself (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims, including the unknown claims; and (c) attempting to effect opt outs of a class of individuals in this lawsuit or any other lawsuit or administrative, regulatory, arbitration or other proceeding based on, relating to or arising out of the claims and causes of action or the facts and circumstances giving rise to the Litigation or the Released Claims.

51. Any member of the Settlement Class who does not submit a timely and valid written request for exclusion from the Settlement Class (i.e., become an Opt-Out) will be bound by all proceedings, orders and judgments in the Litigation, even if such Settlement Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Release.

SO ORDERED.

Date: February 6, 2023



Matthew P. Brookman
United States Magistrate Judge
Southern District of Indiana

Distributed electronically to ECF registered counsel of record.