UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

RACHEL MAHER, *et al.*, individually and on behalf of others similarly situated, *Plaintiffs*, v. AMAG PHARMACEUTICALS, INC., *Defendant*.	:	Civil Action No.: 2:20-cv-00152-(JXN)(JBC)

PLAINTIFFS' BRIEF IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFYING A CLASS FOR SETTLEMENT PURPOSES, APPROVING THE PARTIES' PROPOSED NOTICE PROGRAM, SETTING A FINAL APPROVAL HEARING DATE, AND GRANTING RELATED RELIEF

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INTRODUCTION

Named Plaintiffs[1] and Defendant AMAG Pharmaceuticals, Inc. ("AMAG") have agreed to settle this case (the "Settlement").[2] The Settlement is the product of more than five years of hard-fought litigation among sophisticated parties and skillful counsel, and follows extensive, arm's-length mediation and settlement discussions between Class Counsel and AMAG's Counsel overseen by an experienced mediator, Hon. Freda L. Wolfson, Chief U.S.D.J. (Ret.).

The proposed Settlement Class is defined as:

> [A]ll natural persons who took, were prescribed, purchased, paid for, or otherwise incurred out-of-pocket costs in connection with treatment with Makena in the United States during the Class Period, except for any Excluded Persons.[3]

The non-reversionary Settlement provides for payment of $7.5 million in cash to resolve all claims of Named Plaintiffs and the Settlement Class.

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[1] Named Plaintiffs include Rachael Maher, Marina Gomez, Rebecca Torres, Brittany Bonds, Teresa Faughnan, Ebony Odommorris, Molly O'Hara, and Brandy Silas (collectively "Named Plaintiffs"). The remaining plaintiffs' claims were subject to the Court's Motion to Dismiss Order (ECF No. 109).

[2] All capitalized terms not defined herein have the meanings set forth in the Parties' Settlement Agreement ("Agreement"), attached as Exhibit 1 to the Joint Declaration of Richard M. Paul, Laura C. Fellows, Stuart Talley, and Bruce D. Greenberg ("Joint Decl.").

[3] Joint Decl. at Ex. 1 ¶¶ 1.13, 1.32.

The Settlement is fair, reasonable, and adequate for purposes of approval under Federal Rule of Civil Procedure 23(e). The proposed Settlement Class satisfies Rule 23(a) and (b)(3), and the proposed notice and allocation plans are reasonable.

Named Plaintiffs move the Court to: (1) preliminarily approve the Settlement; (2) certify the Settlement Class; (3) appoint Richard M. Paul III and Laura C. Fellows with PAUL LLP, Stuart Talley with Kershaw Talley Barlow, PC, and Bruce D. Greenberg with Lite DePalma Greenberg & Afanador, LLC as Settlement Class Counsel; (4) appoint the Named Plaintiffs as Class Representatives; (5) approve the proposed Notice Plan and Notice; (6) appoint the proposed Claim Administrator; and (7) schedule the Final Approval Hearing and related dates as proposed.

BACKGROUND OF THE ACTION AND SETTLEMENT AGREEMENT

I. Factual Background and Procedural History of the Action

This case arises from AMAG's marketing and sale of the prescription drug Makena, a progestin hormone treatment that was approved by the FDA in 2011 to reduce the risk of preterm birth in certain pregnancies. Plaintiffs allege that on or about April 6, 2023, the FDA withdrew Makena's approval, following the completion of a post-marketing study in 2019 that failed to confirm Makena's efficacy for its approved indication.

Five actions were filed against AMAG that alleged AMAG made common misrepresentations and/or omissions regarding Makena in marketing materials and

other public statements and asserted claims for violating state consumer protection laws and/or the Racketeer Influenced and Corrupt Organizations Act in connection with the purchase of and/or treatment with Makena. These Actions were captioned: *Barnes v. AMAG Pharm., Inc.*, No. 19-cv-05088 (W.D. Mo.) (filed Nov. 1, 2019); *Gill v. AMAG Pharm., Inc.*, No. 19-cv-2681 (D. Kan.) (filed Nov. 4, 2019); *Faughnan, et al., v. AMAG Pharm., Inc.*, No. 19-cv-1394 (N.D.N.Y.) (filed Nov. 12, 2019); *Zamfirova v. AMAG Pharm., Inc.*, No. 20-cv-00152 (D.N.J.) (filed Jan. 3, 2020); and *Nelson v. AMAG Pharm., Inc.*, No. 20-cv-00089 (E.D. Cal.) (filed Jan. 13, 2020). These actions were subsequently transferred to this Court, consolidated, and captioned *Maher v. AMAG Pharm., Inc.*, No. 20-cv-00152 (D.N.J.) (the "Consolidated Action"). On June 24, 2021, Plaintiffs filed a Second Amended Consolidated Class Action Complaint ("Consolidated Complaint"). (ECF No. 66).

On December 27, 2022, Named Plaintiffs Molly O'Hara and Brandy Silas filed a sixth action against AMAG in Massachusetts state court, captioned *O'Hara et al., v. AMAG Pharm., Inc.*, No. 2284-cv-02931 (Mass. Super.), and brought claims and allegations similar to those asserted in the Consolidated Complaint. That action was removed to federal court, transferred to the District of New Jersey, and, by Order dated March 28, 2024, consolidated into the Consolidated Action. (ECF No. 110). Since filing the Consolidated Action, the Parties engaged in motions to dismiss, exchanged formal and informal discovery, reviewed data, documents, and records,

and have sought the Court's intervention on disputed issues regarding the scope of discovery, all as discussed in more detail in the Joint Decl.

II. Negotiations Producing the Settlement

The Parties engaged in extensive arms-length negotiations under the direction of Chief Judge Wolfson. Joint Decl. at ¶¶ 10, 25-28. After a full-day in-person mediation with Chief Judge Wolfson and numerous follow-up video conferences, the Parties reached the proposed Settlement that is embodied in the Settlement Agreement.

III. The Material Terms of the Proposed Settlement

A. Settlement Class

The Settlement Class is defined as:

> [A]ll natural persons who took, were prescribed, purchased, paid for, or otherwise incurred out-of-pocket costs in connection with treatment with Makena in the United States during the Class Period, except for any Excluded Persons.[4]
>
> Excluded from the Settlement Class are (1) any judge presiding over the Litigation, their staff and their immediate family members; (2) Defendant; (3) any of Defendant's subsidiaries, parents or affiliates, and its and their officers, directors, employees, legal representatives, heirs, successors, or assigns; (4) Class Counsel and counsel for Defendant; and (5) any persons who timely exclude themselves from the Settlement Class in accordance with the procedures set forth in the Settlement Agreement.

The Settlement Class includes approximately 65,000 to 81,000 members.

[4] Joint Decl. at Ex. 1, ¶¶ 1.13, 1.32.

B. Settlement Amount

The proposed Settlement establishes a $7,500,000 Settlement Fund, which will exclusively be used to pay the costs of notice and settlement administration, attorneys' fees and costs, any service awards, and Settlement Class Members' pro-rata share of the remainder, subject to the following criteria:

> Each Settlement Class Member who timely submits a valid Claim Form with Proof of Treatment and Proof of Out-of-Pocket Payment of a Covered Product[5] shall receive the full amount of out-of-pocket costs incurred for each treatment with a Covered Product during the Class Period, as reflected on the Proof of Treatment and Proof of Out-of-Pocket Payment;
>
> Each Settlement Class Member who timely submits a valid Claim Form without Proof of Treatment or Proof of Out-of-Pocket Payment, but for whom the amount of out-of-pocket costs incurred can be reliably substantiated through data that has been produced from Defendant's patient assistance program, shall receive the full amount of out-of-pocket costs incurred for each treatment with a Covered Product during the Class Period, as reflected in such data;
>
> Each Settlement Class Member who timely submits a valid Claim Form with Proof of Treatment but without Proof of Out-of-Pocket Costs, and for whom the amount of out-of-pocket costs incurred cannot be reliably substantiated through data that has been produced from Defendant's patient assistance program, shall receive $22 for each treatment with a Covered Product during the Class Period, as reflected on the Proof of Treatment, unless said Class Member was a participant in any Government Healthcare Program at the time of treatment, in which case said Class Member shall receive $4 for each such treatment;

[5] "Covered Product" or "Covered Products" means Makena (hydroxyprogesterone caproate injection), regardless of dose or formulation, and regardless of whether supplied in single- or multi-dose vials or auto-injector, including but not limited to those sold under the following National Drug Codes: 64011-243-01, 64011-243-02; 64011-243-03. *See* Joint Decl., Ex. 1 at ¶ 1.11.

> Each Settlement Class Member who timely submits a valid Claim Form without Proof of Treatment and without Proof of Out-of-Pocket Costs, and for whom the number of treatments and amount of out-of-pocket costs incurred cannot be reliably substantiated through data that has been produced from Defendant's patient assistance program, shall receive $1 for each treatment with a Covered Product during the Class Period, with a limit of $40 in total recovery.[6]
>
> Each Settlement Class Member's payment shall be increased or decreased on a *pro rata* basis such that the total amount paid to all Settlement Class Members equals the Available Settlement Funds (i.e., the remaining amount of the $7,500,000.00 settlement payment after accounting for costs of notice and administration and court-awarded service awards, attorneys' fees and expenses).
>
> No settlement funds will revert to Defendant.

C. Released Claims

As provided in the Settlement Agreement, the Settlement includes a release that is appropriately tailored to the claims in this case. The standard release language includes all claims relating to (i) the purchase of, payment for, or treatment with Makena, (ii) any representation or omission in connection with Makena, or (iii) that were or could have been alleged in the case, except claims related to enforcing the Settlement Agreement.[7] The release excludes any claims for personal and/or bodily injury, and any claims of any Third-Party Payor (such as Medicaid and private health

[6] Joint Decl., Ex. 1 at ¶ 4.5.

[7] *Id.* at ¶¶ 1.28, 8.1.

insurance companies) for payments those Third-Party Payors may have made for any Covered Product, as defined in the Settlement Agreement.[8]

1. Attorneys' Fees and Costs, Service Awards, and Administrative Expenses

If the Settlement receives preliminary approval, Class Counsel will apply to the Court for an award of attorneys' fees and expenses not to exceed 1/3 of the Settlement Fund.[9] An award of attorneys' fees and costs will compensate Class Counsel for the work already performed in relation to the Class claims as well as the remaining work to be performed in documenting the Settlement, securing Court approval of the Settlement, and ensuring the Settlement is fairly implemented so that as many Settlement Class Members as possible receive settlement benefits. Class Counsel will also apply to the Court for total service awards of $40,000 for the Named Plaintiffs ($5,000 to each Class Representative). The Named Plaintiffs each actively participated in the litigation, advocated for the best interests of the Settlement Class, and assisted counsel in litigating the case.[10]

2. Proposed Claim Administrator

After soliciting bids from several class action settlement administrators, Class Counsel requests that the Court appoint Angeion as the Claim Administrator.

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[8] Joint Decl., Ex. 1 at ¶ 8.1; *see also* Joint Decl. at ¶ ¶ 39-40.

[9] Joint Decl., Ex. 1 at ¶¶ 1.2, 7.1.

[10] *Id.* at ¶¶ 12, 41.

Angeion has ample experience administering settlements of class actions similar to this.[11] The cost of the settlement administration will be approximately $203,000. Class Counsel believes this fee is reasonable and that Angeion's experience in similar cases makes it the most qualified administrator for this case. Similarly, Defendant has consented to Angeion's appointment.

3. Net Settlement Fund and Claims Process

The amount remaining in the Settlement Fund after paying attorneys' fees and expenses, service awards, and administrative expenses will be allocated to Settlement Class Members who filed a timely and valid claim. As described herein, Settlement Class Members' shares will be based on the amount of their out-of-pocket expenses and will be adjusted *pro rata* based on the total claims submitted.[12] Undistributed Settlement Class Member funds (e.g. for Settlement Class Members who do not deposit their Settlement check by the stale date and/or who cannot be located after reasonable and customary efforts) will be submitted to the unclaimed property fund for the state in which the Settlement Class Member resides.[13] No portion of the Settlement Fund shall revert to or be returned to Defendant.

[11] Joint Decl. ¶ 34; *see also* accompanying Declaration of Michael Lynch.

[12] Joint Decl. ¶ 30.

[13] Joint Decl. ¶¶ 30-32.

ARGUMENT

It is well-established in the Third Circuit that the settlement of class action litigation is favored and encouraged. *See, e.g.*, *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594-95 (3d Cir. 2010) ("Settlement 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."); *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."). As discussed further below, judicial review of a proposed class action settlement is a two-step process. Pursuant to Rule 23(e)(1)(B), at the first stage, the parties must "show[] that the [C]ourt will likely be able to: (i) approve the [settlement] proposal under Rule 23(e)(2); and, (ii) certify the class for purposes of judgment on the proposal."[14] Fed. R. Civ. P. 23(e)(1)(B).

I. The Court Should Certify the Proposed Settlement Class

The propriety of certifying a class solely for purposes of settlement is well established in the Third Circuit. *See, e.g.*, *In re NFL Players Concussion Injury Litig.*, 775 F.3d 570, 583 (3d Cir. 2014) ("*[P]reliminary* analysis of a proposed class

[14] Consistent with past decisions by this Court and others, Plaintiffs proceed first with the class certification analysis before addressing preliminary approval of the Settlement. *See, e.g.*, *Smith v. Merck & Co., Inc.*, No. 13-2970, 2019 WL 3281609, at *2-5 (D.N.J. Jul. 19, 2019).

is ... a tool for settlement used by the parties to fairly and efficiently resolve litigation.") (emphasis in original);[15] *In re Pet Food Prods. Liab. Litig.*, MDL No. 1850, 2008 WL 4937632, at *3 (D.N.J. Nov. 18, 2008) ("Class actions certified for the purposes of settlement are well recognized under Rule 23."). Moreover, certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 188 (S.D.N.Y. 2012). Nevertheless, a settlement class, like other certified classes, must satisfy the requirements of Rules 23(a) and (b), though the manageability concerns of Rule 23(b)(3) are not at issue for a settlement class. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 593 (1997) ("Whether trial would present intractable management problems ... is not a consideration when settlement-only certification is requested[.]"). As demonstrated below, the proposed Settlement Class satisfies these requirements.

A. The Proposed Settlement Class Satisfies Rule 23(a)

Rule 23(a) of the Federal Rules of Civil Procedure sets forth the prerequisites for a class and requires that:

> (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical

[15] Cases pre-dating the amendments to Federal Rule of Civil Procedure 23 are cited so long as they are not inconsistent with the 2018 Amendments.

> of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a); *see also Russell v. Educ. Comm'n for Foreign Med. Graduates*, 15 F.4th 259, 265-66 (3d Cir. 2021) (citations omitted).

1. Numerosity

Rule 23(a) requires that a class be "so numerous that joinder of all members is impracticable[.]" Fed. R. Civ. P. 23(a)(1). In the Third Circuit, this prong is generally satisfied where "the named plaintiff demonstrates the potential number of plaintiffs exceeds 40[.]" *In re Modafinil Antitrust Litig.*, 837 F.3d 238, 249-50 (3d Cir. 2016) (citation omitted).

Here, there are thousands of persons within the Settlement Class. *See* Joint Decl. ¶ 29. Because joinder of all of these persons would be impracticable, the Court will have no trouble finding the Settlement Class is sufficiently numerous. *See*, *e.g.*, *In re Modafinil Antitrust Litig.*, 837 F.3d at 250 (noting that "[l]eading treatises have collected cases and recognized the general rule that ... '[a] class of 41 or more is usually sufficiently numerous....'") (citations omitted) (second alteration in original).

2. Commonality

Rule 23(a) requires "questions of law or fact common to the class[.]" Fed. R. Civ. P. 23(a). This commonality requirement is satisfied, "if the Named Plaintiffs share at least one question of law fact or law with the grievances of the prospective

class." *Warfarin Sodium Antitrust Litig*., 391 F.3d at 528; *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011) ("We quite agree that for purposes of Rule 23(a)(2) even a single common question will do."); *Rodriguez v. Nat'l City Bank*, 726 F.3d 372, 381 (3d Cir. 2013) ("That burden is not onerous. It does, however, require an affirmative showing that the class members share a common question of law or fact.").

Here, Plaintiffs allege that AMAG misrepresented and/or omitted material facts regarding Makena in common marketing materials and other public statements. As alleged, AMAG's actions or failure to act are questions of fact common to all Settlement Class Members that underlie their claims herein. *See In re Remicade Antitrust Litig.*, No. 17-cv-04326, 2022 WL 3042766 at *5 (E.D. Pa. Aug. 2, 2022) ("Commonality is met in this case because each Class Member's claim depends on whether Defendants unlawfully engaged in anticompetitive behavior."); *Roofer's Pension Fund v. Paper*, 333 F.R.D. 66, 75 (D.N.J. 2019) (commonality requirement met where "[t]he class claims are predicated upon the same underlying misrepresentations and commissions by Defendants, presenting common issues of both fact and law arising thereunder").

This case involves further common legal and factual questions arising from AMAG's same course of conduct, including, but not limited to: (1) whether AMAG advertised or marketed Makena in a way that was false or misleading; (2) whether

Makena failed to conform to the representations that were published, disseminated, and advertised by AMAG to Named Plaintiffs and the Class; (3) whether AMAG concealed from Plaintiffs and the Class that Makena did not conform to its stated representations; (4) whether AMAG engaged in unfair, fraudulent, or unlawful business practices with respect to the advertising, marketing, and sales of Makena; (5) whether AMAG's attacks on compounded 17P were intended to coerce doctors and their patients to prescribe and purchase brand-name Makena; (6) whether AMAG knew that Makena was not effective at preventing preterm birth prior to the public release of the PROLONG study data; and (7) the appropriate measure of Class damages. These common questions will yield common answers and readily satisfy the commonality requirement.

3. Typicality

Rule 23(a)(3) requires that the class representatives' claims be "typical of the claims ... of the class." "The typicality inquiry is intended to assess ... whether the named plaintiffs have incentives that align with those of absent class members so as to assure that the absentees' interests will be fairly represented." *Baby Neal v. Casey,* 43 F.3d 48, 57-58 (3d Cir. 1994). Typicality is satisfied if "a single overarching common question ... cuts across every claim of every Settlement Class Member." *Stevens v. SEI Invs. Co.,* No. CV 184205, 2020 WL 996418, at *8 (E.D. Pa. Feb. 28,

2020) (finding typicality where all settlement class members' claims asked whether defendant's fee practice related to in-network services violated ERISA).

Here, Plaintiffs' and all Settlement Class Members' legal claims arise out of the same alleged conduct, namely, that Named Plaintiffs and Settlement Class Members all were prescribed, purchased, paid for, or otherwise incurred out-of-pocket costs in connection with treatment with Makena. In short, Plaintiffs' and Settlement Class Members' claims arise out of the same alleged course of conduct, involve the same alleged injury, and seek the same relief. Thus, typicality is satisfied.

4. Adequacy

Rule 23(a)(4) requires that a class representative "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). To meet this requirement, the Court must find that (1) plaintiff's interests do not conflict with those of the class; and (2) the proposed class counsel are capable of representing the class. *Newton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* 259 F.3d 154, 185 (3d Cir. 2001). Both of these requirements are met.

First, Named Plaintiffs' counsel are experienced lawyers whose combined experience in consumer class action cases, and current diligence in this litigation, helped to achieve this settlement and will more than adequately protect the interests of the Settlement Class through settlement administration. Joint Decl. at ¶¶ 3-11.

Second, there is no conflict or antagonism between the Named Plaintiffs and the Settlement Class Members. *Id.* at ¶ 12. All share a united interest in seeking redress for the harm they suffered because of AMAG's alleged material omissions and misrepresentations made in connection with its marketing and sale of Makena.

B. The Proposed Class Satisfies Rule 23(b)(3)

Rule 23(b)(3) authorizes class certification if: "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class meets this standard.

1. Common Legal and Factual Questions Predominate Over any Individual Issues

To satisfy Rule 23(b)(3)'s requirement that common questions of law and fact predominate, "the predominance test asks whether a class suit for the unitary adjudication of common issues is economical and efficient in the context of all the issues in the suit." *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 297 (3d Cir. 2011) (quoting William Rubenstein, Alba Conte & Herbert Newberg, Newberg on Class Actions, § 4:25 (4th ed. 2010)). The touchstone of predominance is whether the proposed class is "sufficiently cohesive to warrant adjudication by representation." *Amchem*, 521 U.S. at 597. The rule, however, "does *not* require a plaintiff seeking class certification to prove that every element of her claim is susceptible to classwide

proof." *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 469 (2013) (emphasis in original). Rather, predominance is determined by whether: "the efficiencies gained by class resolution of common issues are outweighed by individual issues." *Varacallo v. Massachusetts Mut. Life Ins. Co.*, 226 F.R.D. 207, 231 (D.N.J. 2005); *In re Mercedes-Benz Antitrust Litig.*, 213 F.R.D. 180, 186 (D.N.J. 2003) (finding predominance requires that "common issues be both numerically and qualitatively substantial in relation to the issues peculiar to individual class members"). "[T]he focus of the predominance inquiry is on whether the defendant's conduct was common as to all of the class members, and whether all of the class members were harmed by the defendant's conduct." *Sullivan*, 667 F.3d at 298. "The Third Circuit has counseled that courts should be 'more inclined to find the predominance test met in the settlement context.'" *In re Remicade Antitrust Litig.*, 2022 WL 3042766, at *7 (citation omitted).

Here, the predominance requirement under Rule 23(b) is satisfied for many of the same reasons that the commonality requirement of Rule 23(a) is satisfied. AMAG's alleged misrepresentation and omissions made in connection with its sale and marketing of Makena affected all Settlement Class Members, and all Settlement Class members were harmed as a result of AMAG's alleged conduct. The focus of proof is on AMAG's actions. Because the question of liability is common to the class, predominance is satisfied here.

2. Superiority

The remaining criterion for certification is whether "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3); *see also In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions* ("*Prudential II*"), 148 F.3d 283, 312 (3d Cir. 1998). "The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any ligation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in a particular forum; and, (D) the likely difficulties in managing a class action." *Id*. Courts also consider whether "a class action would achieve economies of time, effort, and expense, and promote ... uniformity of decisions as to persons similarly situated...." *Amchem*, 521 U.S. at 615.

Similar to this Court's observations in *Smith*, here, the Settlement Class contains thousands of class members "and, absent certification, they would have to conduct individual trials, which would likely prove too costly for individuals[, and] ... would burden the Court." *Smith*, 2019 WL 3281609, at *4 (citation omitted). Accordingly, based on, among other things, judicial economy and economic barriers to individual enforcement, a class action is superior to other available options for fair and efficient adjudication of the Settlement Class's Claims. *See, e.g.*, *Alfaro*,

2017 WL 3567974, at *4; *Varacallo*, 226 F.R.D. at 233 (finding class satisfied the superiority requirement where it was "unlikely that individual Class Members would have the resources to pursue successful litigation on their own.").

II. The Settlement Meets the Criteria Necessary for Preliminary Approval

The proposed Settlement with AMAG is fair, reasonable, and adequate. Pursuant to Federal Rule of Civil Procedure 23(e), for the reasons set forth below, preliminary approval for the proposed Settlement should be granted; *see also Ehrheart*, 609 F.3d at 594-95 (noting it is well established in the Third Circuit that the settlement of class action litigation is favored and encouraged).

Judicial review of a proposed class action settlement consists of a two-step process. First, the court grants preliminary approval to the settlement and provisionally certifies a settlement class. Second, after notice of the settlement is provided to the class and the court conducts a fairness hearing, the court may grant final approval of the settlement. Fed. R. Civ. P. 23(e). Preliminary approval requires that the parties proposing the settlement make a showing that the Court is likely able to:

(i) approve the proposal 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).

Approval of the settlement requires that the Court find that the settlement is fair, reasonable and adequate after considering 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)
>
> (D) the proposal treats class members equitably relative to each other."

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

These factors substantially overlap with the factors set forth in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), and *Prudential II*, 148 F.3d at 323-24, which the Third Circuit continues to apply when evaluating proposed class action settlements. *See Kanefsky v. Honeywell Int'l Inc.*, No. 18-cv-15536 (WJM), 2022 WL 1320827, at *4 (D.N.J. May 3, 2022) ("Rule 23(e)(2) was amended in 2018 to include a list of factors for courts to consider in evaluating a proposed settlement of

a class action. The Third Circuit has, however, continued to apply the *Girsh* and *Prudential* factors."). The nine *Girsh* factors are:

> (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.
>
> *Girsh*, 531 F.2d at 157.

The additional discretionary *Prudential* factors to be considered, when appropriate and relevant, are: the maturity of the underlying substantive issues; the existence and probable outcome of claims by other classes and subclasses; the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; whether class or subclass members are accorded the right to opt out of the settlement; whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable. *Prudential II*, 148 F.3d at 323. As set forth below, the Court is likely to find that the Settlement achieved in this case is fair, reasonable, and adequate, and that the Settlement satisfies the *Girsh* factors and the relevant *Prudential* factors.

A. The Settlement Satisfies Rule 23(e)(2)

The proposed Settlement satisfies all of the foregoing Rule 23(e)(2) standards.

1. The Settlement Occurred After Good Faith, Arm's-Length Negotiations Conducted By Well-Informed and Experienced Counsel

First, the Settlement is the result of extensive arm's-length negotiations undertaken in good faith by counsel for the Parties. As noted above, the Parties' negotiations involved in-person and virtual meetings, and the assistance of the mediator, Chief Judge Wolfson. The fact that the Settlement is the product of arm's length negotiations between experienced and well-informed counsel, with the assistance of a neutral mediator, demonstrates that the process by which the Settlement was reached was fair and not the product of collusion. *See, e.g.*, *Glaberson v. Comcast Corp.*, No. CV 03-6604, 2014 WL 7008539, at *4 (E.D. Pa. Dec. 12, 2014) (finding a settlement is presumed to be fair "when the negotiations were at arm's length, there was sufficient discovery, and the proponents of the settlement are experienced in similar litigation"). The process culminating in the present Settlement strongly supports the Court's granting of preliminary approval.

Moreover, throughout every stage of their negotiations, the Parties weighed the strengths and weaknesses of the Named Plaintiffs' claims and AMAG's defenses, including consideration of, among other issues, liability and damages. The Settlement was also consummated after motion practice, rulings from the Court, and

certain discovery. *See In re Philips/Magnavox TV Litig.*, No. 09-3072, 2012 WL 1677244, at *11 (D.N.J. May 14, 2012) ("Where this negotiation process follows meaningful discovery, the maturity and correctness of the settlement become all the more apparent."); *see also In re Viropharma Inc., Sec. Litig.,* No. 12-2714, 2016 WL 312108, at *10-11 (E.D. Pa. Jan. 25, 2016) (finding that the third *Girsh* factor was satisfied when the parties had fully briefed defendants' motion to dismiss, engaged in discovery, and had met and conferred multiple times). When the Settlement was reached, Named Plaintiffs and AMAG were well-informed regarding the case against AMAG, and the likelihood of recovery from AMAG. As a result, Named Plaintiffs and Class Counsel had an adequate basis for assessing the strengths of the Settlement Class's claims and the risks of continued litigation against AMAG when they entered the Settlement.

Moreover, Class Counsel, firms with extensive experience in complex class actions and consumer protection claims in particular, believe the Settlement is in the best interests of the Class. *See* Joint Decl. ¶¶ 1-11, 42. Counsel's judgment is entitled to considerable weight. *See Varacallo*, 226 F.R.D. at 240 ("Class Counsel's approval of the Settlement also weighs in favor of the Settlement's fairness."); *In re Viropharma Inc., Sec. Litig.*, 2016 WL 312108, at *11 (the Court "affords considerable weight to the views of experienced counsel regarding the merits of the

settlement."). The Settlement is also fully supported by Named Plaintiffs and they believe it is in the best interest of the Settlement Class.

2. The Relief Provided to the Class Is Adequate

The Settlement, which provides for significant monetary compensation, affords important relief to Settlement Class Members and is well within the range of reasonableness. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). Damages in this misrepresentation/omission case are based on the amount of individual's out of pocket expenses. Here, Defendant will pay $7,500,000 in Settlement. The Parties estimate there are approximately 65,000 to 81,000 potential class members based on the total number of Makena doses, approximately 1.3 million, sold during the Class Period.[16] Approximately 55% of Settlement Class Members received government assistance which was subject to a co-pay cap of approximately $4 per dose.[17] The remaining patients were either self-pay or received assistance through private health insurance. Of those individuals, Defendant offered patient co-pay assistance and has out-of-pocket payment records for approximately 34% of the total private or self-pay Makena doses. The average out-of-pocket payment for each treatment based on those records was $22.

[16] The typical Makena treatment included 16-20 doses. The potential number of Settlement Class Members is derived from the median of 18 doses.

[17] Certain states have lower co-pay caps, but for this purpose, Plaintiffs have assumed the highest $4 per dose cap.

Based on those figures, Class Counsel estimates the approximate out-of-pocket costs are $15,730,000, rendering the proposed Settlement 48% of the total potential damages. *See* Joint Decl., ¶¶ 27, 29, 33; *see also, e.g., Carlin v. DairyAmerica, Inc.*, 380 F.Supp.3d 998, 1020 (E.D. Cal. 2019) ("Courts regularly approve class settlements where class members recover less than one quarter of the maximum potential recovery amount.").

The Settlement is also reasonable in light of the costs and risks of continuing litigation. This case has already been litigated for over five years. As with any trial, the trial in this case poses inherent risks. Moreover, as set forth in the procedural history, AMAG has demonstrated a willingness to litigate this matter to the fullest. *See Viropharma*, 2016 WL 312108, at *10 (finding that continuing litigation would involve substantially more motion practice, including motions to dismiss and for class certification, each of which would likely require oral argument, extensive briefing, potential *Daubert* challenges and "battles between competing reports"). It would be a virtual certainty that AMAG would appeal any adverse judgment, which would result in further delay of any recovery on behalf of the Class.

AMAG has agreed to pay $7.5 million. While Named Plaintiffs believe their case is strong, there is an inherent benefit to a certain result now as opposed to the risks of trial (and appeal) where there is a chance of a greater recovery, but a chance of no recovery as well, and a near certainty of delay in any event.

3. The Settlement Treats Class Members Equitably

The Settlement treats Settlement Class Members equitably relative to each other and their respective out-of-pocket payments. Funds will be awarded to Settlement Class Members based on their documented out-of-pocket payments for a Covered Product, or, absent documentation of their actual costs, based on the above described estimated average. To the extent the Settlement Class Member does not have documentation of treatment but affirms under penalty of perjury they received Makena, they will receive a fixed payment for each treatment. Payments will be increased or decreased pro rata taking into account total claims made by Settlement Class Members. As further set forth herein, the Parties have designed a simple process to maximize the number of Settlement Class Members who receive and accept compensation for their claims. This supports settlement approval.

4. Proposed Attorneys' Fees and Service Awards

Class Counsel have also adequately represented the Class. They vigorously prosecuted this case, including extensive motion to dismiss briefing, discovery disputes, and so on, as the extensive docket reflects. They also conducted robust discovery before the litigation was stayed and began to develop liability and damage evidence. As part of these efforts, Class Counsel worked over 3,000 hours on the case and have advanced more than $100,000 in litigation expenses on behalf of the Settlement Class, with no assurance that those expenses would be reimbursed. Joint

Decl. at ¶ 29. The proposed Settlement Agreement provides that counsel for the Plaintiffs, subject to Court approval, may seek up to one third of the settlement or $2,500,000 for attorneys' fees and reimbursement of out-of-pocket costs and expenses, and $5,000 to each Named Plaintiff as a Service Award. These amounts will be paid out of the Settlement Fund.

An award of attorneys' fees and costs will compensate Class Counsel for the work already performed, as well as the remaining work to be performed in securing Court approval of the Settlement and making sure the Settlement is fairly implemented so that as many Settlement Class Members as possible receive settlement benefits. This award is reasonable and typical in this District. *See e.g.*, *Beltran v. Sos Ltd.*, No. CV 21-7454, 2023 WL 319895, at *8 (D.N.J. Jan. 3, 2023) ("In common fund cases, the fees typically awarded to class counsel generally range between 19% to 45% of the settlement fund."); *In re Valeant Pharms. Int'l Inc. Third Party Payor Litig.*, No. 16-3087, 2022 WL 525807, at *8 (D.N.J. Feb. 22, 2022) ("30% of a fund is a typical fee award."); *James v. Global Tel*Link Corp.*, No. 13-cv-04989, 2020 WL 6197511, at *10 (D.N.J. Oct. 22, 2020) (award of 30.5% of settlement fund "is well within the reasonable range of awards approved by the Third Circuit and is consistent with similar class action settlements); *Castro v. Sanofi Pasteur Inc.*, 2017 WL 4776626, at *9 (D.N.J. Oct. 23, 2017) ("The one-third fee is within the range of fees typically awarded within the Third Circuit through the

percentage-of-recovery method; the Circuit has observed that fee awards generally ranged from 19% to 45% of the settlement fund. . . . Thus, the requested fee in this matter [of one-third of the settlement fund] is within the normal range."); *La. Mun. Police Emps. Ret. Sys. v. Sealed Air Corp.*, No. 03-CV-4372 (DMC), 2009 WL 4730185, at *8 (D.N.J. Dec. 4, 2009) (noting that "[c]ourts within the Third Circuit often award fees of 25% to 33⅓% of the recovery"); *In re Ikon Office Sols., Inc. Sec. Litig.*, 194 F.R.D. 166, 194 (E.D. Pa. 2000) ("Percentages awarded have varied considerably, but most fees appear to fall in the range of nineteen to forty-five percent."). Moreover, Class Counsel's fee request will include their expenses.

Finally, the proposed Class Representatives have diligently represented the Settlement Class. Class Counsel will also apply to the Court for total service awards of $40,000 for the Class Representatives ($5,000 to each Class Representative). The Class Representatives each actively participated in this litigation and advocated for the best interest of the Settlement Class and cooperated and assisted counsel in litigating the case. Joint Decl. at ¶¶ 12, 41.

B. The Settlement Satisfies the *Girsh* Factors for Fairness, Reasonableness, and Adequacy

1. The Complexity, Expense, and Likely Duration of the Litigation

The first *Girsh* factor is intended to capture the likely costs of continued litigation. *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prod. Liab. Litig.,* 55

F.3d 768, 812 (3d Cir. 1995). This action is a complex misrepresentation, pharmaceutical case and, absent settlement, would likely continue for a significant period of time. This case was filed more than five years ago and was just proceeding past motions to dismiss; absent settlement, the parties would continue to engage in significant and expensive litigation of class certification, summary judgment, trial, and potential appeals for more years. *See Viropharma*, 2016 WL 312108, at *10 (finding that continuing litigation would involve substantially more motion practice, including motions to dismiss and for class certification, each of which would likely require oral argument, extensive briefing, potential *Daubert* challenges and "battles between competing reports"). Thus, this factor weighs in favor of approval.

2. The Reaction of the Class to the Settlement

The Named Plaintiffs support the Settlement and believe it is in the best interest of the Settlement Class. The reaction of other Settlement Class Members will be addressed after Settlement Class Members have been given notice of the Settlement and have had an opportunity to be heard.

3. The Stage of the Proceedings and Amount of Discovery Complete

This case is at a stage of proceedings where counsel understand its strengths and weaknesses. This factor "captures the degree of case development that class counsel have accomplished prior to settlement," and allows the court to "determine whether counsel had an adequate appreciation of the merits of the case before

negotiating." *In re Gen. Motors Corp.,* 55 F.3d at 813. As previously mentioned, the Parties have engaged in substantial discovery to date, including formal and informal exchange of documents and a third-party subpoena to obtain Settlement Class Member data. Thus, Class Counsel had an adequate appreciation for the strengths and weaknesses of their case. *See Viropharma,* 2016 WL 312108, at *10-11 (finding that the third *Girsh* factor was satisfied when the parties had fully briefed defendants' motion to dismiss, completed expedited discovery, and had met and conferred multiple times). Therefore, this factor weighs strongly in favor of approval of the Settlement.

4. The Risks of Establishing Liability and Damages

The fourth and fifth *Girsh* factors – the risks of establishing liability and the risks of establishing damages – require a court to "balance the likelihood of success and the potential damage award if the case were taken to trial against the benefits of an immediate settlement." *In re Linerboard Antitrust Litig.*, 292 F.Supp.2d 631, 640-41 (E.D. Pa. 2003). Here, these factors weigh in favor of preliminary approval. Section 30.42 of the *Manual for Complex Litigation (Third)* states that a court evaluating a class action settlement "should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation." Manual Complex Litigation (4th ed.) § 30.42. As mentioned previously, both Parties' counsel are very experienced in class action litigation.

While Plaintiffs proceeded past the Motion to Dismiss, Defendant filed a Motion for Reconsideration and the Parties still faced other major risk factors, including summary judgment, *Daubert* motions, and class certification. Moreover, through their settlement discussions, facilitated by Judge Wolfson, the Parties discussed their respective strengths and weaknesses, including ongoing legal questions about preemption. Thus, this factor weighs heavily in favor of preliminary approval.

5. The Risks of Maintaining the Class Action Through Trial

The risk of maintaining a class action through trial favors settlement. "Under Federal Rule of Civil Procedure 23(a), a district court may decertify or modify a class at any time during the litigation if it proves to be unmanageable." *Id.* at 262. Outside of the settlement arena, Defendant would have opposed certifying a nationwide class. And even if the Court certified a nationwide class for litigation, Defendant could seek Rule 23(f) review. Moreover, proceeding to trial would inevitably carry the risk of decertification. Thus, this factor favors settlement.

6. The Ability of AMAG to Withstand a Greater Judgment

The seventh *Girsh* factor, whether a defendant is able to withstand a greater judgment, is neutral because AMAG is likely to be able to withstand a greater judgment. However, as further outlined herein, the proposed Settlement provides the Settlement Class Members substantial damages.

7. The Range of Reasonableness of the Settlement Fund in Light of the Best Possible Recovery and All the Attendant Risks of Litigation

The eighth and ninth *Girsh* factors require a court to consider whether the settlement is reasonable in light of the best possible recovery and the risks the parties would face if the case went to trial. *In re Linerboard Antitrust Litig.,* 292 F.Supp.2d at 642-43. This assessment should consider "the present value of damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, compared with the amount of the proposed settlement. *Id.* (quoting *Prudential II*, 148 F.3d at 322). The total settlement is approximately 48% of the total estimated Settlement Class Members' damages based on the data produced at the time the Settlement was reached.

This Settlement provides a great outcome to all Settlement Class Members as it provides guaranteed financial relief to the injured parties. Compared with the substantial risks and costs associated with ongoing litigation, the finality and certainty of settlement should be preferred. *See In re Aetna Sec. Litig.,* MDL No. 1219, 2001 WL 20928, at *11 (E.D. Pa. Jan. 4, 2001) ("settlement represents a compromise in which the highest hopes for recovery are yielded in exchange for certainty and resolution"). Thus, this factor weighs in favor of approval.[18]

[18] For the *Prudential* factors, the maturity of the underlying substantive issues, while the case has not proceeded to summary judgment, the Parties engaged in sufficient

III. The Court Should Approve the Form and Plan for Disseminating Notice to the Settlement Class

Federal Rule of Civil Procedure 23(e)(1) provides that, in the event of a class settlement, "[t]he 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). To satisfy due process, notice must be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re Nat'l Football League Players Concussion Inj. Litig.,* 821 F.3d at 435.

Here, the Parties negotiated the form of the notices to be disseminated to the potential Settlement Class Members. Plaintiffs request that the Court approve the form of the proposed Notice and Short-Form Notice substantially in the forms attached as Exhibits B and C to the Settlement Agreement, as well as the proposed plan for providing notice of the Settlement to Settlement Class Members as set forth in accompanying Declaration of Michael Lynch. In clear, concise, and plain language, the proposed Notice will "provide all the required information concerning the class members' rights and obligations under the settlement." *Prudential II*, 148 F.3d at 328; *see also* Fed. R. Civ. P. 23(c)(2)(B); *Halley v. Honeywell Int'l, Inc.*, No.

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discovery and tested the strength of their allegations through two rounds of motion to dismiss briefing. *Prudential II*, 148 F.3d at 323. Settlement Class Members will have the option to opt out and there are no other classes or subclasses at issue. Plaintiffs address attorneys' fees and individual claims processing herein.

CV103345ESJAB, 2016 WL 1682943, at *17 (D.N.J. Apr. 26, 2016) (finding the notice should be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections") (quoting *Mullane v. Cent. Hanover Bank &Tr. Co.*, 339 U.S. 306, 314 (1950)). The Notice will advise recipients of, among other things, the nature of the Action, the definition of the Settlement Class, the essential terms of the Settlement (including the claims that will be released), information regarding Plaintiffs' motion for attorneys' fees and reimbursement of expenses, and the binding effect of the final judgment. The Notice will also provide specifics on the date, time and place of the Fairness Hearing and set forth the procedures, as well as deadlines, for: (i) requesting exclusion from the Class; (ii) entering an appearance; (iii) objecting to the Settlement, the plan of distribution and/or the motion for attorneys' fees and reimbursement of expenses; and (iv) submitting a Claim Form. The Short-Form Notice will provide a summary of the foregoing information and will advise potential Class Members how to obtain the more detailed Notice.

The Court must also direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). Plaintiffs' proposed notice plan provides notice in a reasonable manner to all Settlement Class Members who would be bound by the proposal—including direct notice via U.S. Mail, email,

where available, and supplemental media notice. Joint Decl. ¶¶ 30-38. A Claim Form, substantially in the form attached as Exhibit D to the Settlement Agreement, will be provided with the mailed notice, posted on the Settlement Website, and may also be obtained by calling the Claim Administrator's toll-free hotline. In addition to the Notice and Claim Form, other documents and information relevant to the Settlement will be posted on the Settlement Website, which will be established to give notice of certification of the Settlement Class.

This type of notice program is frequently used in class action cases. The proposed Notice Plan meets the requirements of Rule 23, comports with due process, and will fairly apprise potential Settlement Class Members of the existence of the Settlement and their options in connection therewith. Accordingly, Named Plaintiffs respectfully submit that the proposed notice plan is adequate and should be approved by the Court.

In connection with approval of notice of the Settlement, processing Settlement Class Member claims and making distributions to Settlement Class Members, Plaintiffs also seek the Court's authorization to retain Angeion as the Claim Administrator. Angeion is a nationally recognized notice and claims administration firm with extensive experience in settlement administration and will adequately fulfill its duties in this case. Angeion will first obtain a viable and working mailing list of potential Settlement Class Members from Defendant's patient assistance

program. Declaration of Michael Lynch at ¶¶ 13, 19-20; *see also* Joint Decl. at ¶ 27, 29. Those records include the last known contact information for approximately 80,000 individuals who may be Settlement Class Members. The records also contain email addresses for certain individuals who may be Settlement Class Members. Notice of the proposed Settlement will be sent via email when available. Lynch Decl. at ¶¶ 14-18. For individuals without an email address or for whom email notice was not delivered, Angeion will send the notice via U.S. Mail with the short-form notice along with a claim form and business reply mail envelope. *Id.* at ¶¶ 19-20. The proposed form of mailing is a HIPAA compliant mail kit. *See id.* Settlement Class Members who want more information from the full notice can either go to the website or request a copy of the full notice mailed to them. In addition, as further detailed in the attached declaration of Angeion, the proposed notice plan includes a state-of-the-art media campaign to provide notice via internet banner advertisements, social media advertisements, and a search marketing campaign via Google. *See id.* at ¶¶ 21-34.

A Settlement Website for publishing case deadlines, case documents, and submission of Claim Forms, optimized for ease-of-use, will be made available to Settlement Class Members. *Id.* at ¶¶ 35-37. A toll-free hotline will also be made available to Settlement Class Members twenty-four hours a day, seven days a week.

The proposed method of distributing relief to Class Members is simple and will be based upon valid Claim Forms filed, subject to distribution as outlined in the Settlement Agreement. *See* Joint Decl. ¶ 30; *see also id.*, Ex. 1 at ¶ 4.5. The distribution methods are specifically designed to ensure those who are unbanked or underbanked have access to their payments and allow Settlement Class Members to select among Zelle, Paypal, ACH, and direct check. *See* Lynch Decl. at ¶¶ 43-48.

The Claims process also includes a dispute resolution and appeal process to allow Settlement Class Members a full and fair opportunity to cure any deficient Claims. *See* Joint Decl., Ex. 1 at ¶ 4.7. This method satisfies Rule 23(e)(2)(C)(ii) and 23(e)(2)(D).

IV. The Court Should Adopt the Parties' Proposed Settlement Schedule

In connection with preliminary approval of the Settlement, Plaintiffs respectfully propose the schedule set forth below for Settlement-related events. The proposed schedule revolves around the date the Court enters the Preliminary Approval Order and the date of the Fairness Hearing—which Plaintiffs request be 175 days after preliminary approval.

EVENT	PROPOSED TIMING
Notice Date	Within 30 days after preliminary approval
Deadline for Settlement Class Members to opt out	90 days after notice
Deadline for Settlement Class Members to object to the Settlement	90 days after notice
Deadline for Settlement Class Members to file claims	90 days after notice
Named Plaintiffs to file motion for final approval and fees, costs and service awards	Within 150 days after preliminary approval
Final Approval Hearing	175 days after preliminary approval

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement, preliminarily certify the settlement class, and enter the proposed Preliminary Approval Order.

Dated May 8, 2025

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