SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

PAMELA GOLDSTEIN, ELLYN & TONY BERK, as Administrators of the Estate of Winifred Berk, and PAUL BENJAMIN, on behalf of themselves and all others similarly situated, Plaintiffs, v. HOULIHAN/LAWRENCE INC., Defendant.	Index No. 60767/2018 Hon. Linda S. Jamieson

THE CLASS'S MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND APPOINTMENT OF CLASS REPRESENTATIVES AND SETTLEMENT CLASS COUNSEL

Dated: February 21, 2025

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INTRODUCTION

After nearly *seven* years of hard-fought litigation and extensive arm's-length, Court-supervised settlement negotiations, Plaintiffs and Houlihan Lawrence reached a Settlement that requires Houlihan Lawrence to pay $9 million and eliminates the "In-House Bonus" program through which it financially incentivized and rewarded sales agents for in-house sales. The Settlement was informed by weighing the monetary and practice change relief against the risks, costs, and delay of further litigation (including appeals), as well as limitations on Houlihan Lawrence's ability to pay the full amount of any trial judgment entered against it. For these and the other reasons set forth below, the Settlement is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement; (2) certifying a Settlement Class; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Settlement Class Counsel as defined below; and (5) ordering notice to the Class.

BACKGROUND

1. The Litigation

This litigation was filed in this Court by Pamela Goldstein on July 14, 2018, on behalf of all buyers and sellers of residential real estate in Westchester, Putnam, and Dutchess counties from January 1, 2011, to July 14, 2018, wherein Houlihan Lawrence represented both the buyer and seller in the same transaction. On October 1, 2018, Dr. Ellyn Berk and Tony Berk, as administrators of the Estate of Winifred Berk, and Paul Benjamin, joined as plaintiffs (together, "Plaintiffs").

Plaintiffs alleged that, among other things, Houlihan Lawrence breached its fiduciary duties and engaged in deceptive trade practices in violation of General Business Law § 349 by operating a scheme to lure homebuyers and sellers into dual-agent transactions, including by offering undisclosed in-house bonuses to its sales agents to incentivize and reward them for brokering deals within Houlihan Lawrence.

Houlihan Lawrence moved to dismiss the action on October 30, 2018 (Dkt. 343), but the Court granted in part and denied in part the motion on April 17, 2019, Decision and Order, Hon. L. Jamieson, Apr. 17, 2019 (Dkt. 370), upholding the aforementioned causes of action.

Following the Court's appointment of William S. Harrington as Discovery Referee, Order, Hon. L. Jamieson, May 15, 2019 (Dkt. 547), the parties proceeded with nearly two years of pre-class certification discovery, during which they "fought about virtually every conceivable discovery issue," resulting "in substantial delay and expense." Twentieth Report and Recommendation, William S. Harrington, Nov. 9, 2022 (Dkt. 1468) at 10.

On January 25, 2022, the Court granted Plaintiffs' motion for class certification; appointed Pamela Goldstein, Dr. Ellyn Berk, Tony Berk, and Paul Benjamin as class representatives; and appointed Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. ("Mintz") and Boies Schiller Flexner LLP ("BSF") as Class Counsel. Decision and Order, Hon. L. Jamieson, Jan. 25, 2022 (Dkt. 1072).

Thereafter, the parties completed an additional two years of post-certification merits discovery, which also involved litigation of "numerous complex discovery issues and myriad discovery motions". Decision and Order, Hon. L. Jamieson, July 9, 2024 (Dkt. 1959) at 8. In total, the parties completed over five years of fact and expert discovery, including propounding and responding to multiple sets of interrogatories and requests for production of documents, followed by the production of over 1 million pages of documents from the parties and non-parties. The parties briefed more than 20 discovery motions and other disputes relevant to obtaining evidence supporting their claims. The parties conducted more than a dozen depositions. Plaintiffs engaged three experts to prepare reports supporting their claims and in rebuttal to the three experts retained by Houlihan Lawrence. Plaintiffs also successfully briefed motions to amend or decertify the class, summary judgment, and to strike the testimony of each of Plaintiffs' experts. Plaintiffs also opposed more than 20 motion *in limine* filed by Houlihan Lawrence in advance of trial and otherwise completed preparation for the scheduled month-long trial. Plaintiffs also opposed Houlihan Lawrence's appeal to the Second Department of the Court's class certification determination and separate application for a calendar preference.[1]

2. Settlement Negotiations and Mediation

After years of aggressive litigation and settlement negotiations, Plaintiffs and Houlihan Lawrence entered into a Settlement Agreement that requires

[1] *See generally* Vest Aff. in Support of Plaintiffs' Motion for Preliminary Approval, February 21, 2025 (Vest Aff.)

Houlihan Lawrence to pay $9 million and requires it to eliminate its In-House Bonus program.

Class Counsel and counsel for Houlihan Lawrence engaged in extensive arm's-length settlement negotiations that lasted nearly three years. These included several telephonic and in-person mediations with a highly experienced mediator, Leonard Benowich, appointed by the Court. *See* Joint Order of Reference to Mediation, Hon. L. Jamieson, May 22, 2023 (Dkt. 1624). Although these mediations did not directly result in a Settlement, the Settling Parties continued to engage directly through multiple intensive in-person and telephonic negotiations, and then participated in several in-person mediations with the Court, when they ultimately reached agreement on the Settlement on October 4, 2024, following jury selection.

The Settling Parties reached the Settlement Agreement after considering the risks and costs of continued litigation, including appeals and a potential bankruptcy. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed supports their claims. Plaintiffs and Class Counsel, however, also recognize the myriad risks and delay of further proceedings in a complex case like this one, and they believe that the Settlement confers meaningful benefit upon the Settlement Class Members. Moreover, Class Counsel conducted a thorough financial analysis of Houlihan Lawrence's ability to pay, which reflected limits on the monetary recovery feasible through either settlement or continued litigation.[2]

[2] *Id.*

3. Summary of the Settlement Agreement

3.1. Settlement Class

The proposed Settlement Class in the Settlement Agreement includes all home buyers and sellers of residential real estate in Westchester, Putnam, and Dutchess counties from January 1, 2011, to July 14, 2018, in which Houlihan Lawrence represented both buyer and seller in the same transaction.

3.2. Cash Consideration

The Settlement provides that Houlihan Lawrence will pay a Total Settlement Amount of $9 million. The Total Settlement Amount is paid in five installments and is inclusive of interest. Interest earned on the payments once deposited into the escrow accounts is for the benefit of the Settlement Class. The Total Settlement Amount is inclusive of all costs of settlement, including payments to class members, attorneys' fees and costs, and costs of notice and administration. The Total Settlement Amount is non-reversionary.

3.3. Change in Business Practice

The Settlement requires Houlihan Lawrence to eliminate and prohibit all "in house" bonus payment programs, and to cease and refrain from offering any additional "in house" bonus payment programs. Elimination of Houlihan Lawrence's In-House Bonus program provides a substantial benefit to the Class and future consumers of real estate brokerage services in Westchester, Putnam, and Dutchess Counties, including Settlement Class Members who reenter this residential real estate market. Because Houlihan Lawrence's non-disclosure of the

In-House Bonus provided separate and independent grounds for liability,[3] the injunctive relief is reasonably valued at more than $200,000,000, the amount of sales commissions that were subject to disgorgement if the Class had prevailed at trial, *E*x. *1*, Expert Report of R. Lashway, Aug. 15, 2023, and in no event less than the $11 million that Houlihan Lawrence paid sales agents in In-House Bonuses during the Class Period, *see* Ex. 2, Expert Report of G. Kleinrichert, February 15, 2023.

3.4. Release of Claims

Upon the Effective Date, Plaintiffs and the Settlement Class will release and discharge Houlihan Lawrence and its respective past, present, and future, direct and indirect, subsidiaries, predecessors, successors, parents, affiliates, and all of their officers, directors, managing directors, employees, agents, contractors, and independent contractors from any and all claims arising from or relating to "the consumer protection, statutory, and common law claims brough in the Action and similar state and federal statutes and caselaw." The complete terms of the releases are contained in the Settlement Agreement.

3.5. Application for Attorneys' Fees and Costs

The Settlement authorizes Settlement Class Counsel to seek to recover their attorneys' fees and costs incurred in prosecuting the action. Contemporaneously herewith, Class Counsel is filing a motion seeking an award of attorneys' fees and

[3] *See*, *e.g.*, Opp. to Mot. for Summary Judgment, Apr. 22, 2025 (Dkt. 1872) at § 3

costs in the amount of $9 million, to be paid out of the Settlement Fund in the time and manner provided in the Settlement Agreement.

The monetary and injunctive relief in the Settlement Agreement is reasonably valued at not less than $20 and up to more than $200 million. As detailed in Class Counsel's Motion for Attorneys' Fees and Costs, to achieve this result, they faced substantial risks while working intensively on behalf of the Class for six-and-a-half years. Class Counsel worked on a fully contingent basis, investing over 16,000 of labor just between the filing of the complaint, on July 14, 2018, through the Settlement, on October 4, 2024, and advancing over $1.4 million in out-of-pocket costs and expenses, all without any guarantee of success. They did so despite this litigation having no pre-ordained path to a recovery and against a well-funded and entrenched opponent. The requested attorneys' fee award is equal to less than 59% of the Settlement Class Counsel's lodestar between July 14, 2018, and October 4, 2024, and even smaller fraction of the total amount of time expended by Class Counsel on behalf of the Class.

During that same time period, Settlement Class Counsel also incurred out-of-pocket litigation expenses in the amount of $1,422,047.59 and they will incur more in connection with issuance of class notice. Such expenses are of a nature typically billed to fee-paying clients, and the expenses were reasonable and necessary to the prosecution of the action in light of the extent of the proceedings, the complexity of the legal and factual issues in the case, the amount at stake in the litigation, and

the vigorous efforts of counsel for all Parties. Settlement Class Counsel also seeks reimbursement of these $1,264,122.78 in out-of-pocket costs.

In sum, for the reasons set forth above and in their Motion for Attorneys' Fees and Costs, Settlement Class Counsel respectfully requests that the Court approve attorneys' fees of $7,735,877.22, which is equal to less than 59% of their lodestar and approximately one-third of the minimum total value of the Settlement Fund, plus reimbursement of out-of-pocket litigation expenses of $1,264,122.78, for a total award equal to $9 million.

4. The Settlement Class Should Be Certified

Certifying the Settlement Class is appropriate here, where the Settlement Class members are all homebuyers and sellers whose rights were allegedly violated by Houlihan Lawrence in the same or similar manner.

4.1. Class Definition

This Court previously certified under CPLR §§ 901 and 902 the following class:

"[A]ll home buyers and sellers of residential real estate in Westchester, Putnam, and Dutchess counties from January 1, 2011 to July 14, 2018 in which defendant represented both buyer and seller int eh same transaction." Decision and Order, Hon. L. Jamieson, Jan. 24, 2022 (Dkt. 1072) at 19-20.

The Settlement is conditioned upon the Court certifying a class for settlement purposes only that is slightly broader than the litigation class because it includes homebuyers and sellers who were excluded from the litigation class on the ground that they signed an arbitration agreement with Houlihan Lawrence.

The Settlement Class definition satisfies the requirements of CPLR §§ 901 and 902. Accordingly, Plaintiffs request that the Court certify the Settlement Class for settlement purposes.

4.2. The Proposed Settlement Class Satisfies CPLR § 901

The Court should grant certification here because the proposed Settlement Class satisfies CPLR §§ 901 and 902. Provisional certification will allow the Settlement Class to receive notice of the Settlement and its terms, to object to and/or be heard on the Settlement's fairness at the Fairness Hearing, or to opt out.

4.2.1. Numerosity

As set forth in the Plaintiffs' previous class certification briefing before this Court, CPLR § 901 requires that the class be "so numerous that joinder of all members … is impracticable." Although New York courts have not established strict requirements regarding the size of a proposed class, "numerosity is presumed at a level of 40 members." *Borden v. 400 E. 55th St. Assoc., L.P.*, 24 N.Y.3d 382, 399 (2014) (quoting *Consol. Rail Corp v. Town of Hyde Park*, 47 F.3d 473, 483 (2d Cir. 1995). Here, the Settlement Class Members exceed 12,000, and thus plainly satisfies CPLR
§ 901's numerosity requirement.

4.2.2. Commonality

CPLR § 901(a)(2) requires that there be "questions of law or fact common to the class which predominate over any questions affecting only individual members." City of *New York v. Maul*, 14, N.Y.3d 499, 508 (2010). Predominance, "not identity

or unanimity" of issues, is required. *Maul*, 14 N.Y.3d at 514. New York authorizes "class actions even where there are subsidiary questions of law or fact not common to the class." *Weinberg v. Hertz Corp.*, 116 A.D.2d 1, 6 (1st Dep't 1986). Predominance is not "determined by any mechanical test," but based on whether a class action "would achieve economies of time, effort, and expense, and promote uniformity of decision." *Friar v. Vanguard Holding Corp.*, 78 A.D.2d 83, 97 (2d Dep't 1980).

Here, the Court previously held that the commonality requirement was met based on "defendant's uniform training, script and practices, alleged to have been part of a 'strategy' to increase in-house sales by representing both buyers and sellers in thousands of real estate transactions – including by offering undisclosed in-house bonuses to defendant's real estate brokers so as to incentivize dual-agent sales". Decision and Order, Hon. L. Jamieson, Jan. 24, 2022 (Dkt. 1072) at 10. These common issues exists with respect to the Settlement Class as they did with respect to the class initially certified by the Court.

4.2.3. Typicality

CPLR § 901(a)(3) requires that the class representatives' claims or defenses be "typical of the claims or defenses of the class." "The commonality and typicality requirements tend to merge." *Burdick v, Tonoga, Inc.*, 2018 N.Y. Misc. LEXIS 2812, *15 (Sup. Ct. Rensselaer Cty. July 3, 2018). "Typical claims are those that arise from the same facts and circumstances," *Globe Surgical Supply v. Geico Ins. Co.*, 59 A.D.2d 129, 143 (2d Dep't 2008), or derive "from the same practice or course of

conduct," *Friar*, 78 A.D.2d at 99, as those of the class. This Court previously held that Plaintiffs' claims are typical of members of the class. [CITE] Similarly, here, Plaintiffs' claims are typical of members of the proposed Settlement Class. Each Settlement Class Member was party to a dual-agent transaction and their claims arise out of a common course of alleged misconduct by Houlihan Lawrence. As such, CPLR § 901(a)(3) is satisfied.

4.2.4. Adequacy

CPLR § 901(a)(4) requires the Court to find that "the representative parties will fairly and adequately protect the interests of the class." "A class representative acts as principal to the other class members and owes them a fiduciary duty to vigorously protect their interests." *City of Rochester v Chiarella*, 65 NY2d 92, 100 (1985). "That responsibility clearly encompasses the duty to act affirmatively to secure the class members' rights as well as to oppose the adverse interests asserted by others." *Id*. at 100. "The three essential factors to consider in determining adequacy of representation are potential conflicts of interest between the representative and the class members, personal characteristics of the proposed class representative (e.g. familiarity with the lawsuit and his or her financial resources), and the quality of the class counsel." *Globe Surgical Supply v GEICO Ins. Co.*, 59 A.D.3d 129, 144 (2d Dep't 2008). As the Court previously held, Plaintiffs and the Settlement Class Members share the overriding interest in obtaining the largest possible monetary recovery and the most effective practice changes from Houlihan Lawrence. See Decision and Order, Hon. L. Jamieson, Jan.

24, 2022 (Dkt. 1072) at 10-14; *see also* Decision and Order, Hon. L. Jamieson, June 9, 2022 (Dkt. 1355) at 3-4. Plaintiffs are not afforded any special or unique compensation by the proposed Settlement Agreement. As such, CPLR § 901(a)(4) is satisfied.

4.2.5. Superiority

CPLR § 901(a)(5) requires a finding that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." "Where common issues predominate," as they do here, "class actions are superior." *Burdick*, 2018 N.Y. Misc. LEXIS 2812, *16. The superiority criterion is also "usually satisfied" by weighing the CPLR 902 elements. *Martin*, 2013 N.Y. Misc. LEXIS 7214 at *66. Because this action meets the predominance criterion and satisfies CPLR 902, it meets the superiority criterion.

Finally, the Supreme Court has found that when certifying a settlement class "a district court need not inquire whether the case, if tried, would present intractable management problems," *see* Fed. Rule Civ. Proc. 23(b)(3)(D), for the proposal is that there be no trial." *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 620 (1997). Such is the case here. If approved, the Settlement Agreement would obviate the need for a trial against Houlihan Lawrence, and thus questions concerning that trial's manageability are irrelevant. Accordingly, the Court should certify the Settlement Class.

4.3. The Proposed Settlement Class Satisfies CPLR § 902

Once CPLR § 901's five prerequisites are met, Plaintiffs must demonstrate that the proposed Settlement Class satisfies CPLR § 902. CPLR § 902 sets forth five "illustrative considerations," most of which are "implicit in CPLR 901" and bear on whether a class action is a superior method of adjudication. *Gilman v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 93 Misc. 2d 941, 948 (Sup. Ct. N.Y. Cty. 1978). As the Court has previously held, all five considerations favor certification.

Settlement Class Members have little economic incentive to sue individually, as evidenced by the absence of individual litigation against Houlihan Lawrence, and any Settlement Class Member who wishes to opt out will have an opportunity to do so. Judicial efficiency is served by approving the proposed Settlement because it would be inefficient for the Court and the parties to engage in thousands of individual trials involving similar claims.

5. The Court Should Preliminarily Approve the Settlement

CPLR § 908 provides that "[a] class action shall not be dismissed, discontinued, or compromised without the approval of the court. Notice of the proposed dismissal, discontinuance, or compromise shall be given to all members of the class in such manner as the court directs." While "[t]here is no explicit requirement under Article 9 of the CPLR for preliminary approval," *Saska v. Metropolitan Museum of Art*, 2016 N.Y. Misc. LEXIS 4184, at *27 (Sup. Ct. N.Y. Cnty. Nov. 10, 2016), "New York's courts have recognized that its class action statute is similar to the federal statute," id., and "[i]t is common practice in federal

court to seek preliminary approval of a class action settlement prior to scheduling a final approval hearing and providing the class with notice thereof," *id*.

The standard for granting preliminary approval is not the same as the standard for granting final approval of a class action settlement. "Preliminary approval requires only an initial evaluation of the fairness of the proposed settlement on the basis of written submissions and an informal presentation by the settling parties. This is because preliminary approval is at most a determination that there is what might be termed probable cause to submit the proposal to class members and hold a full-scale hearing as to its fairness" *Id.* (internal citations, quotations, and alterations omitted). "Thus, a trial court should preliminarily approve a proposed settlement which appears to be the product of serious, informed non-collusive negotiations, has not obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class and fails within the reasonable range of approval. If the proposed Settlement Agreement falls within the range of reasonableness, it meets the requirements for preliminary approval such that notice to the Class Members is appropriate." *Id*. (internal citations, quotations, and alterations omitted).

As a general matter, "[c]ourts encourage early settlement of class actions, when warranted, because early settlement allows class members to recover without unnecessary delay and allows the judicial systems to focus resources elsewhere". *Id*. at *34.

Because the terms of the Settlement Agreement fall within a reasonable range of approval and are the product of bona fide, Court-supervised, arms' length negotiation, the Court should find probable cause to submit the proposed settlement for evaluation by the Settlement Class. *Id*. at *35.

5.1. The Merits of Plaintiffs' Case, Weighed Against the Terms of the Settlement

The Settlement Agreement reflects a compromise based on the parties' educated assessments of their best-case and worst-case scenarios, and the likelihood of potential outcomes. Plaintiffs' best-case scenario is prevailing and recovering on the merits at trial, and upholding their award on appeal. But "experience proves that, no matter how confident trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict". *In re Cardizem CD Antitrust Litig*., 218 F.R.D. 508, 523 (E.D. Mich. 2003). The same is true for post-trial motions and appeals. And being liable alone for the full amount of alleged disgorgement would bankrupt Houlihan Lawrence. *Saska*, 2016 N.Y. Misc. LEXIS at *35 ("[T]he specter of expensive and extensive fact and expert discovery, along with the expense of briefing numerous complicated legal issues, plus the cost and uncertainty of trial and appeal, are proper reasons to settle.").

5.2. Houlihan Lawrence's Financial Condition

As set forth in the affirmation of Co-Lead Class Counsel, Jeremy Vest, the Settlement is fair and reasonable in light of Houlihan Lawrence's financial condition and its inability to satisfy a judgment in favor of Plaintiffs at trial. Pursuant to CPLR § 4547, Plaintiffs received and carefully analyzed Houlihan

Lawrence's financial records, including with the assistance of one of Plaintiffs' experts, a certified public accountant. The monetary settlement was reached with due consideration for Houlihan Lawrence's limited ability to pay a settlement or judgment, including the near or total unavailability of insurance coverage, and only after Class Counsel concluded that $9 million disgorges a substantial portion of the profit that Houlihan Lawrence can reasonably be expected to generate during the Settlement's five-year payout period. *Id.* Furthermore, the entire real estate industry has faced significant financial headwinds over the past 2 years due to challenging financial conditions including high interest rates and antitrust litigation. This has caused understandable financial difficulties for Houlihan Lawrence.

5.3. The Complexity and Expense of Further Litigation

Plaintiffs' claims raise numerous complex legal and factual issues under New York common law and General Business Law § 349. This is reflected in the parties' voluminous briefing to date, which includes extensive class certification and summary judgment briefing. In addition, the parties have engaged in extensive appellate briefing, including on the legality of the In-House Bonus. Furthermore, even in the event that Plaintiffs prevailed at trial, Houlihan Lawrence was poised to mount a strenuous appeal. By contrast, the Settlement ensures elimination of the In-House Bonus program that furthered Houlihan Lawrence's alleged strategy to increase its in-house sales and disgorgement of $9 million. In light of the many

uncertainties still pending in the litigation, an equitable and certain recovery is favorable, and weighs in favor of approving the proposed Settlement.

5.4. The Amount of Opposition to the Settlement

The Settlement Class Representatives have approved the terms of the Settlement, with the knowledge and understanding that Settlement Class Counsel seek an award of attorneys' fees and costs equal to $9 million. Notice regarding the Settlement has not yet been distributed. In the event any objections are received after notice is issued, they will be addressed by Settlement Class Counsel as part of the final approval process.

6. The Court Should Appoint Co-Lead Counsel for the Settlement Class

Plaintiffs respectfully request that the Court appoint litigation Class Counsel as Settlement Class Counsel, namely Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C. and Boies Schiller Flexner LLP. Proposed Settlement Class Counsel are highly experienced in class action litigation, having litigated and settled numerous class actions. Moreover, as detailed above, they have diligently prosecuted this case for nearly seven years, handling, among other things, motions to dismiss, protracted fact discovery from parties and non-parties, review and synthesis of more than a million pages of documents, expert discovery, discovery disputes, class certification, and depositions of fact and expert witnesses. This Court has already recognized litigation Class Counsel's diligent prosecution of this case by appointing them as litigation Class Counsel, as part of its ruling on class certification. Litigation Class Counsel participated in the lengthy negotiation process to achieve the best possible result for the classes.

7. Class Notice Should Proceed in a Substantial Similar Manner as the Earlier Notice

CPLR § 908 requires that, prior to final approval of a class action settlement, notice must be provided to class members who would be bound by it. CPLR § 908 requires that notice of a settlement be "in such manner as the court directs."

When notice is sent, the process will be substantially similar to the notice provided following the Court's certification of this case as a class action. As this Court previously held, JND's proposed notice plan is reasonably calculated to reach the class members and constitutes the "best notice practicable" under the circumstances. Decision and Order, Hon. L. Jamieson, July 25, 2022 (Dkt. 1458). This plan, pursuant to CPLR § 908, provides the "best notice practicable" to all potential Settlement Class Members who will be bound by the proposed Settlement. Accordingly, the Court should appoint JND as the notice administrator and implement the class notice plan outlined in the Declaration of Gina Intrepido-Bowden.[4]

CONCLUSION

The Settlement Agreement provides an immediate, substantial, and fair recovery for the Settlement Class. Accordingly, Plaintiffs respectfully request that the Court enter an order: (1) preliminarily approving the Settlement; (2) certifying the Settlement Class for settlement purposes only; (3) appointing Plaintiffs as Settlement Class Representatives; (4) appointing Mintz and BSF as Settlement

[4] *See* Ex. 3, Aff. of G. Intrepido-Bowden, February 19, 2025

Class Counsel; and (5) ordering that notice be directed to the Class in a manner substantially similar to that issued in following the Court's certification of this case as a class action.

Dated: February 21, 2025
New York, New York

By: */s/ Jeremy Vest*

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Certificate of Counsel
Pursuant to Commercial Division Rule 17

I, Jeremy Vest, counsel for Plaintiffs, hereby certify, pursuant to Commercial Division Rule 17, that the word count for the foregoing document, excluding the caption, table of contents, table of authorities, and signature block, is 6,386 words. This document therefore complies with the rule, which limits briefs, memoranda, affirmations, and affidavits to 7,000 words. I certify that the word count Microsoft Word generated for this document is 4,340.

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