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 FINAL APPROVAL OF SETTLEMENT

Dated: June 16, 2025

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INTRODUCTION

The Class seeks final approval of its proposed settlement with Houlihan Lawrence. After nearly seven years of hard-fought litigation and Court-supervised settlement negotiations, the parties reached a Settlement that requires Houlihan Lawernce to pay $9 million and to eliminate the "In-House Bonus" program through which the Class alleged that it financially incentivized its sales agents to steer homebuyers and sellers into dual-agent transactions so that it could get both sides of the commission (the "Settlement"). The Settlement holds Houlihan Lawrence financially accountable to the fullest extent short of putting it into bankruptcy and the important change that the Settlement requires Houlihan Lawrence to make to the way it does business will deter other wrongdoers, promote competition in the real estate brokerage industry, and help protect future homebuyers and sellers from undisclosed dual agency.

The Court granted the Class's Motion for Preliminary Approval of the Settlement and directed that notice be disseminated to the Class. Order, Hon. L. Jamieson, March 14, 2015 (Dkt. 2307) (the "Preliminary Approval Order"). In that Order, the Court preliminarily found, among other things, that the Settlement is fair, reasonable, and adequate, and that the Class Representatives and Class Counsel have adequately represented the Class. Accordingly, the Court held that it would likely approve the Settlement, provisionally certified the proposed Settlement Class under CPLR §§ 901 and 902, and directed the parties to issue notice to putative Settlement Class members. In compliance with the

Preliminary Approval Order, the Class Administrator appointed by the Court, JND Legal Administration ("JND"), implemented the Court-approved notice plan.

The Settlement has been well-received by the Settlement Class. Indeed, as of June 10, 2025, the deadline for Settlement Class members to either opt out of or object to the Settlement, the parties received only four objections to the Settlement and one request for exclusion from the Settlement Class, meaning that more than 99% of the Settlement Class did not object or opt-out. The relatively small number of exclusion requests and objections to the Settlement is strong evidence that the Settlement is fair, reasonable, and adequate.

As discussed further below, when weighed against the risks of and time required for litigation through appeal of a potential class judgment at trial and the unlikelihood of a greater recovery given Houlihan Lawrence's financial condition, the immediate benefits provided by the Settlement strongly support the finding that the Settlement is fair, reasonable, and adequate. The Court should grant final approval.

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* 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 its separate but related application for a calendar preference.[1]

2. Settlement Negotiations and Mediation

After more than six years of contentious litigation and settlement negotiations, Plaintiffs and Houlihan Lawrence (together, the "Settling Parties")

[1] *See generally* Vest Aff. in Support of Plaintiffs' Motion for Final Approval, June 16, 2025 (Vest Aff.)

entered into a Settlement Agreement that requires Houlihan Lawrence to pay $9 million and to eliminate its In-House Bonus program.

Class Counsel and counsel for Houlihan Lawrence engaged in vigorous settlement negotiations for nearly three years. These included several telephonic and in-person mediations with a highly-experienced, Court-appointed mediator, Leonard Benowich. *See* Joint Order of Reference to Mediation, Hon. L. Jamieson, May 22, 2023 (Dkt. 1624). Although these mediations did not directly produce a Settlement, the Settling Parties continued to engage directly through intensive in-person and telephonic negotiations and then participated in several in-person mediations with the Court, when they ultimately reached the Settlement on October 4, 2024, shortly after the Court empaneled a jury for trial.

The Settling Parties reached the Settlement Agreement after considering the risks and costs of continued litigation, including appeals and a potential bankruptcy by Houlihan Lawrence in the event of an adverse judgment. Plaintiffs and Class Counsel believe the claims asserted have merit and that the evidence developed supports the Class's 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 and the public. 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, including those who signed arbitration agreements with Houlihan Lawrence.

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 Settlement 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 may have been recoverable if the Class had prevailed at trial, Ex. 2, 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. 3, 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 and settling the action. On February 21, 2025, Class Counsel filed their motion seeking an award of attorneys' fees and costs in the amount of $9 million, to be paid out of the Settlement Fund. (Dkt. 2292).

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

CLASS NOTICE

4. Notice Was Effectively Disseminated to the Settlement Class

The Settlement Notice Plan was robust and implemented in accordance with the Preliminary Approval Order, and it satisfied due process. In consultation and collaboration with the Settling Parties, the Settlement Administrator, JND, provided Notice to Settlement Class members in the manner approved by the Court through first-class U.S. mail or electronic mail.[4] The Notice Plan "met, and exceeded, the standards for providing the best practicable notice in class action settlements.[5] The notice provided Settlement Class members all information material to making an informed and intelligent decision whether to participate in the Settlement Class and the Settlement, in that it clearly and concisely stated in plain, easily understood language a description of the Settlement Class, a description of the claims, the names of Class Counsel, Class Counsel's request for an award of attorneys' fees and costs equal to $9 million, a description of Settlement Class members' opportunity to appear at the Fairness Hearing, opt-out and objection requirements, and the manner in which to obtain further information. *See Willson v. New York Life Ins. Co.*, 1995 N.Y. Misc. LEXIS 652, at *39 (Sup. Ct. N.Y. Cnty. Nov. 8, 1995).

The Notice Plan consisted in part of direct notices, in the form of postcard and email notice to all Settlement Class members that JND was able to locate through third-party data. Email notice was sent to over 9,000 Settlement Class

[4] Intrepido-Bowden Decl. in Supp. of Plaintiffs' Motion for Final Approval, June 13, 2025 (Intrepido-Bowden Decl.)

[5] *Id.* at ¶ 5

members, and postcard notice was sent to over 9,000 Settlement Class members.[6] The direct notice program "was extremely successful and reached more than 93.53% of the potential Settlement Class Members."[7] JND also created and maintained a Settlement Website that had over 600 unique visitors and more than 1,700 page views.[8]

SETTLEMENT CLASS MEMBER REACTION

5. The Settlement Has Been Well Received by the Settlement Class

The Settlement Class's reaction to the Settlement has been positive and strongly supports final approval. *Hibbs v. Marvel Enters.*, 19 A.D.3d 232, 233 (1st Dep't 2005) (support for a proposed settlement by class members demonstrates its fairness and reasonableness); *Fiala v. Metro. Life Ins. Co.*, 27 Misc.3d 599, 608 (Sup. Ct. N.Y. Cnty. Mar. 3, 2010) (approving settlement when small fraction of class members objected or opted out). As indicated above, as of June 10, 2025, the deadline for Settlement Class members to either opt out of or object to the Settlement, the Settling Parties received only four objections to the Settlement and one request for exclusion from the Settlement Class. *Cf. Friedman v. Northville Indus. Corp.*, 1991 N.Y. Misc. LEXIS 837 (Sup. Ct. Suffolk Cnty. Dec. 27, 1991) (finding support for a class settlement where only five class members filed objections to the settlement and only two class members opted out). These objections are discussed below in § 8.

[6] *Id.* at ¶¶ 18, 21

[7] *Id.* at ¶ 22

[8] *Id.* at ¶ 23-24

LEGAL STANDARDS AND SETTLEMENT APPROVAL

6. The Standard for Reviewing a Proposed Settlement of a Class Action

CPLR § 908 provides that a class action shall not be settled without court approval. New York courts typically follow a two-step process for approving class settlements. The Court already completed the first stage of the approval process, often called "preliminary approval," when it determined that the proposed Settlement is fair, reasonable, and adequate, and ordered that notice be given to the Settlement Class. *See* Preliminary Approval Order (Dkt. 2307). Now that notice has been disseminated and reaction of the Settlement Class members has been received, the Court can make its final decision whether to approve the Settlement.

Under New York law, "before granting final approval to a class action settlement, the court must first certify that the requisite factors militate in favor of approval and class certification." *Saska v. Metropolitan Museum of Art*, 57 Misc.3d 218, 222 (Sup. Ct. N.Y. Cnty. June 15, 2017). The standard for reviewing a proposed settlement of a class action is whether the settlement is fair, reasonable, and adequate when its benefits are viewed against the risks and benefits of continued litigation. *Klein v. Robert's Am. Gourmet Food, Inc.*, 28 A.D.3d 63 (2d Dep't 2006); *Michels v. Phoenix Home Life Mut. Ins. Co.*, 1997 N.Y. Misc. LEXIS 171, at *77 (Sup. Ct. Albany Cnty. Jan. 3, 1997). CPLR § 908 does not set forth specific guidelines for courts to follow in assessing the merits of a proposed class settlement. Case law indicates, however, that "[c]ourts judge the fairness of a proposed compromise by weighing the plaintiff's likelihood of success

on the merits against the amount and form of the relief offered in the settlement." *Matter of Colt Indus. Shareholder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990). In conducting that assessment, "courts weigh the following factors: the likelihood of success, the extent of support from the parties, the judgment of counsel, the presence of bargaining in good faith, and the nature of the issues of law and fact." *Saska*, 57 Misc.3d at 222 (internal quotation marks omitted) (quoting *Colt*, 155 A.D.2d at 160).

7. The *Colt* Factors Support Final Approval

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

For the reasons stated above, the relief obtained for the Settlement Class is fair, reasonable, and adequate. The Settlement provides a substantial payment by Houlihan Lawrence in light of the strengths and weaknesses of the case and the risks and costs of continued litigation, including potential appeals, and taking into account Houlihan Lawrence's financial condition. The Settlement also includes a meaningful change to the way that Houlihan Lawrence does business that is likely to benefit consumers, including by helping to prevent undisclosed dual agency.

The Settling Parties dispute the strength of their claims and defenses. The Settlement reflects a compromise based on the Settling Parties' well-informed assessments of their best-case and worst-case scenarios, and the likelihood of various potential outcomes. *Cf. In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 523 (E.D. Mich. 2003) ("[E]xperience proves that, no matter how confident

trial counsel may be, they cannot predict with 100% accuracy a jury's favorable verdict.")

Plaintiffs' best-case scenario was defending a verdict on appeal and obtaining a recovery from any resulting bankruptcy. Plaintiffs' worst-case scenario was receiving nothing due to a loss at trial, an appellate reversal, or as unsecured creditors in a bankruptcy. Against this risk, the Settlement provides the maximum payment from Houlihan Lawrence short of putting it into bankruptcy and secures a substantial change to its business practice. *Cf. Saska v. Metro. Museum of Art*, 2016 N.Y. Misc. LEXIS 4856, at *35 (Sup. Ct. N.Y. Cnty. Nov. 18, 2016) ("[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.").

7.2. Houlihan Lawrence's Financial Condition

The fairness, reasonableness, and adequacy of the Settlement is supported by Houlihan Lawrence's financial condition and its inability to satisfy a judgment in favor of Plaintiffs' at trial.[9] To evaluate Houlihan Lawrence's financial condition, Plaintiffs reviewed the financial information of Houlihan Lawrence and its ability to pay. The Settlement was reached with due consideration for Houlihan Lawrence's limited ability to pay a settlement or judgment, including its exhaustion of its insurance coverage, and only after Class Counsel concluded that $9 million is greater than Houlihan Lawrence's entire annual Net Income in the year preceding the Settlement and is a reasonable payment in light of what

[9] Vest Aff. at ¶¶ 13-14

Houlihan Lawrence is forecasted to generate during the Settlement's five-year payout period. Numerous courts recognize that a defendant's ability to pay is an important factor in evaluating the fairness of a class settlement. *In re Lumber Liquidators Chines-Mfr. Flooring Prod. Mktg., Sales Pracs. And Prod. Liab. Litig.*, 952 F.3d 471, 485 (4th Cir. 2020) ("Lumber Liquidators' potential inability to pay litigated judgments in both MDLs weighs in favor of the court's adequacy ruling"); *Lane v. Facebook, Inc.*, 696 F.3d 811, 823-24 (9th Cir. 2012) (affirming settlement given district court's conclusion that additional damages would be "annihilative" to defendant that was "on the verge of bankruptcy"); *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 125 (8th Cir. 1975) (affirming class settlement and explaining that a "total victory" for plaintiffs after trial "would have been financially disastrous if not fatal" to the defendant, and the final settlement "gave valuable concessions to the [settlement class] yet maintained [the defendant's] corporate viability.").

7.3. The Extent of Support from the Parties

The Settlement Class appears to support the Settlement. The Court-ordered notice provided Settlement Class members with all the relevant information related to the Settlement, including the material terms, the attorneys' fees and expenses that Class Counsel would seek to be paid out of the Settlement Fund, and how they could raise objections or otherwise exclude themselves from the Settlement Class. As of June 10, 2025, notice was delivered to more than 15,000 of the Settlement Class members.[10] Copies were also posted on the

[10] Intrepido-Bowden Declaration at ¶ 22

Settlement Website which was viewed more than 1,700 times.[11] The Court-appointed Notice Administrator, JND, received only four objections and one exclusion request. As JND attests, that is a small number of objections and opt-outs relative to the size of the Settlement Class.[12]

The relatively small opposition to the Settlement is strong evidence that it is fair, reasonable, and adequate. *Cox v. Microsoft Corp.*, 2006 N.Y. Misc. LEXIS 9453, at *21 (Sup. Ct. N.Y. July 9, 2006) ("The small number of opt-outs and objections from Class members compared to the size of the Class supports approval of the Settlement."); *Maley v. Del Global Techs. Corp.*, 186 F.Supp.2d 358, 362-63 (S.D.N.Y. 2002) ("[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."); *Michels*, 1997 N.Y. Misc. LEXIS 171, at *84 ("The Court also finds support for approval of the proposed settlement in the small number of opt-outs and objections from Class Members relative to the size of the Class and the insubstantial nature of the few objections that were made."); *Avilez v. Pasta la Vista, Inc.*, 2024 NYLJ LEXIS 797, at *10 (Sup. Ct. Kings Cnty. Mar. 15, 2024) ("[W]here relatively few class members opt-out or object to the settlement, the lack of opposition supports court approval of the settlement."); *DeLeon v. Wells Fargo Bank NA.*, *No. 12 Civ. 4494 (RLE)*, 2015 U.S. Dist. LEXIS 65261, at *5 (S.D.N.Y. May 7, 2015) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness."); *Lopez v. Dinex Group, LLC*, 2015

[11] *Id.* at ¶¶ 23-24

[12] *Id.* at ¶¶ 29-32

N.Y. Misc. LEXIS 3657, at *6 (Sup. Ct. N.Y. Cnty. Oct. 6, 2015) ("favorable reception by the Class also constitutes strong evidence of the fairness of the settlement and supports judicial approval").

7.4. The Judgment of Counsel

The Court approved three law firms to act as Class Counsel: (1) Mintz, Levin, Cohn, Ferris, Glovsky, and Popeo, P.C. ("Mintz"); (2) Ohlemeyer Law PLLC ("Ohlemeyer"); and (3) Boies Schiller Flexner LLP ("BSF"). These counsel have considerable experience in class action litigation, including prosecuting and settling consumer protection class actions. Thus, the Class received representation from not one, but several highly qualified law firms. Class Counsel's belief that, under the circumstances, the Settlement is fair, reasonable, and adequate, weighs heavily in favor of final approval of the Settlement. *Cox*, 2006 N.Y. Misc. LEXIS 9453, at *23 ("The support of qualified counsel is significant to approval of the Settlement."); *Matter of Infinity Q Diversified Alpha Fund Sec. Litig. v. XXX*, 2023 N.Y. Misc. LEXIS 23332, at *18 (Sup. Ct. N.Y. Cnty. Dec. 21, 2023) ("New York courts give significant weight to the judgment of experienced counsel in determining the fairness of a class action settlement.").

7.5. The Presence of Bargaining in Good Faith

As discussed above, the Settlement negotiations were conducted in good faith, at arm's length by experienced counsel on both sides, and under the supervision of the Court and the Court-appointed mediator. The Settlement was reached only after years of negotiations, after jury selection, and after Houlihan Lawrence provided Class Counsel with sufficient financial information for

Plaintiffs to make an informed decision about its ability to pay. *Avilez*, 2024 NYLJ LEXIS 797 at *10 (quoting *Wal-Mart Stores, Inc. v. Visa USA, Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) ("A presumption of fairness arises in circumstances where a settlement was 'reached in arm's length negotiations between experienced, capable counsel after meaningful discovery.'")). The six-year history of contentious litigation that preceded the Settlement shows the skill and tenacity that Class Counsel brought to the Settlement negotiation and supports final approval. *Cox*, 2006 N.Y. Misc. LEXIS 9453, at *23 ("That the negotiations took as long as they did reflects an arduous negotiation process. That the parties bitterly contested this lawsuit over so many years and were able to reach this compromise also indicates good faith bargaining."); *Willson*, 1995 N.Y. Misc. LEXIS 652, at *83 (settlement approved where "negotiations were extensive, lengthy and conducted at arm's-length" and the class "had ample opportunity to review the strengths and weaknesses of their case through extensive discovery.").

7.6. The Nature of the Issue of Law and Fact

The complex nature of this case also supports final approval, because litigation of the case to a conclusion would be complex, lengthy, and expensive. Throughout the six years of litigation, Houlihan Lawrence demonstrated its willingness to defend the case vigorously. Because Houlihan Lawrence would appeal any verdict that held it liable, it would be years before the litigation was resolved, without any reasonable prospect for greater recovery because of Houlihan Lawrence's financial condition. *Michels*, 1997 N.Y. Misc. LEXIS 171, at *88 (class settlement approved where further litigation would have been

protracted). 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.

SETTLEMENT CLASS MEMBER OBJECTIONS

Class Counsel received four objections from *pro se* objectors: (1) Michael Welcome; (2) Kathryn and Gregory Smith; (3) Nancy Amoroso; and (4) Michael Halpern (together, the "Objectors").[13] The Court should carefully review the written objections, find that they neither affect the Court's prior evaluation of the fairness, reasonableness, and adequacy of the Settlement nor cast doubt on the reasonableness of Class Counsel's requested fee award, and therefore overrule the objections.

8. The Court Should Consider and Overrule Each Objection

8.1. Legal Standard

Although "[n]o particular standard governs judicial review of objections," courts evaluate objections in "determining whether the settlement meets" the standard for class settlement approval. 4 Newberg and Rubenstein on Class Action 13:35 (6th ed. June 2024 Update). "[T]he trial court has some obligation to consider objections but is given significant leeway in resolving them." *Id.*

"[I]n determining whether to approve a class action settlement, the issue is not whether everyone affected by the settlement is completely satisfied. Instead, the test is whether the settlement, as a whole, is a fair, adequate, and reasonable resolution of the claims asserted." *In re Capital One Consumer Data Sec. Breach*

[13] Intrepido-Bowden Decl., Exhibit 5

Litg., 2022 U.S. Dist. LEXIS 234943, at *24 (E.D. Va. Sept. 13, 2022); *see also Michels*, 1997 N.Y. Misc. LEXIS 171, at *58 ("The proposed settlement will not be disapproved merely because some objectors believe its benefits are of insufficient value or are not responsive to their needs. The issue is whether the relief that has been provided is adequate and reasonable, not whether something more lucrative might enhance the settlement.").

8.2. The Objections Concern Only the Requested Fee Award

Importantly, none of the objectors object that the Notice Plan was deficient; that the injunctive relief obtained by the Settlement Class did not go far enough; that the $9 million cash payment that Houlihan Lawrence agreed to make is too low; or that the Settlement was not otherwise fair, reasonable, or adequate. Rather, the objectors object only to size of Class Counsel's requested fee award or its payment out of the Settlement Fund. Because "[t]he amount of attorneys' fees, which is up to the court, has not been determined and is not a factor" to be considered in assessing the reasonableness of the Settlement, *Fiala*, 27 Misc.3d at 608, none of the objections call into question the fairness, adequacy, or reasonableness of the Settlement, and they can be overruled on that basis alone. *See also In re Agent Orange Prod. Liab. Litig.*, 818 F.2d 145, 170 (2d Cir. 1987) ("The prime function of the district court in holding a hearing on the fairness of the settlement is to determine that the amount apaid is commensurate with the value of the case," which "can be done before a distribution scheme has been adopted so long as the distribution scheme does not affect the obligations of the defendants under the settlement agreement.");

Manual for Complex Litigation, Fourth § 21.312 (2005) ("Often … the details of allocation and distribution are not established until after the settlement is approved.").

8.3. The Settlement Class Favors the Settlement

As discussed above, for a class of this size, the number of objections received is very low.[14] Indeed, only four of the more than 15,000 Settlement Class members objected to the Settlement (and they did so rather than exercise their right to opt-out). This means that more than 99% of the Settlement Class did not object. The relatively small opposition to the Settlement is strong evidence that it is fair, reasonable, and adequate. *Cox*, 2006 N.Y. Misc. LEXIS 9453, at *21 ("The small number of opt-outs and objections from Class members compared to the size of the Class supports approval of the Settlement."); *Maley v. Del Global Techs. Corp*., 186 F.Supp.2d 358, 362-63 (S.D.N.Y. 2002) ("[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy."); *Michels,* 1997 N.Y. Misc. LEXIS 171, at *84 ("The Court also finds support for approval of the proposed settlement in the small number of opt-outs and objections from Class Members relative to the size of the Class and the insubstantial nature of the few objections that were made.").

8.4. The Objectors Had the Right to Opt-Out of the Settlement

Any Settlement Class member who did not like the Settlement had the option to exclude themselves from the Settlement Class and to pursue damages and any other relief on an individual basis — as one Settlement Class member

[14] *Id*. at ¶ 32

did. This also favors final approval of the Settlement. *Marshall v. Nat'l Football League*, 787 F.3d 502, 513 (8th Cir. 2015) (affirming class settlement, stating that objectors "were not required to forego what they believed to be meritorious claims — they could have opted out of the settlement to pursue their own claims, as some class members did."); *Michels*, 1997 N.Y. Misc. LEXIS 171, at *76 (finding that class members' opportunity to pursue separate litigation supported final approval of class settlement).

8.5. Objections to the Requested Fee Award Should Be Overruled

Even considering the objections, none of them show that the Settlement or Class Counsel's requested fee award should be rejected. The Objectors do not dispute what the Court knows from its careful and personal supervision of this case — that Class Counsel zealously represented the Class in this unprecedented litigation against a well-financed adversary for more than six years; that it did so at great financial risk by incurring more than $13 million in attorneys' fees and costs on a fully contingent basis and without any guarantee of recovery; and that it obtained a successful result for the Class by, among other things, forcing Houlihan Lawrence to forfeit much of the profit that Class Counsel determined it can reasonably be expected to generate over the next five years' and to eliminate the In-House Bonus program that the Class maintained throughout the litigation was central to Houlihan Lawrence's in-house sale scheme. Those undisputed facts support the reasonableness of Class Counsel's requested fee award.

The Objectors also dispute neither that CPLR § 909 authorizes an award of attorneys' fees to successful class counsel based on the reasonable value of the

services rendered to the Class, nor that the most appropriate comparator for Class Counsel's requested attorneys' fees are the attorneys' fees incurred by Houlihan Lawrence to defend the action. *Cf. Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957 (7th Cir. 2013) ("[A]ttorneys' fees in class actions should approximate the market rate that prevails between willing buyers and willing sellers of legal services."); *Ruiz v. Estelle*, 553 F.Supp. 567, 589 (S.D. Tex. 1982) ("In an action for which no adequate parallel can be found, the best example of a fee paid for similar work is that paid by opposing counsel in the same action."). As shown in the Vest affirmation, Houlihan Lawrence also incurred more than $10 million in attorneys' fees and costs.[15] This shows the reasonableness of Class Counsel's billing rates, billing practices, and requested fee award, as does the fact that the requested fee award represents a percentage, not a multiple, of Class Counsel's lodestar.[16] *See, e.g., Crawford v. White Plains Ctr. for Nursing*, 2017 N.Y. Misc. LEXIS 28141, at *611 (citing with approval authority recognizing that a multiple of 2.09 is at the lower end of the range of multipliers awarded by courts") (citing *In re Lloyd's Am. Trust Fund Litig.*, 2002 WL 31663577 (S.D.N.Y. 2002)).

Rather, the Objectors object only that the Settlement Class will allegedly not benefit if Class Counsel's requested fee award is approved. But that objection ignores the important injunctive relief and judicial rulings obtained by Class Counsel on behalf of the Settlement Class. The suggestion by the Objectors that it

[15] Vest Aff. at ¶ 14

[16] *See generally* Vest Aff. in Support of Class Counsel's Motion for Attorneys' Fees and Costs, Feb. 21, 2025 (Dkt. 2293)

is contrary to New York law or otherwise improper for Class Counsel to receive a fee award when no monetary distribution will be made to the Settlement Class is misplaced. As shown in Class Counsel's Motion for Attorneys' Fees and Costs, "[n]umerous courts have approved multi-million-dollar attorneys fee awards in class action settlements that provide for substantial business reforms and other benefits to the class but no monetary payment." (Dkt 2292 at 6) (collecting cases).

9. Class Certification Remains Appropriate

In its Preliminary Approval Order, the Court provisionally certified the Settlement Class for settlement purposes, finding that the class met each of CPLR § 901's numerosity, commonality, typicality, and adequacy requirements, and that the class met each of CPLR § 902's predominance and superiority requirements. The Court was able to draw on its experience of overseeing this litigation for more than six years in doing so. Nothing has changed since the Court's ruling to call into question the Court's conclusions regarding class certification, and the elements of CPLR §§ 901 and 902 remain satisfied. Accordingly, for the reasons set forth in the Preliminary Approval Motion (Dkt. 2285) and Preliminary Approval Order (Dkt. 2307), the Court should now affirm its prior certification of the proposed Settlement Class for settlement purposes.

10. Class Representative Service Awards

"A [c]ourt may grant service fee awards in a class action." *See Kennedy v. United Hebrew of New Rochelle Certified Home Health Agency, Inc.*, 2022 N.Y. Misc. LEXIS 49047, at *6 (Sup. Ct. Westchester Cnty. May 6, 2022) (Jamieson, J.) (approving served award of $10,000 for named plaintiff in recognition of "the

significant contributions he made to advance the prosecution and resolution of the lawsuit"); *see also Guncay v. JCR Am. Builders, Inc.*, 2022 N.Y. Misc. LEXIS 48045, at *4 (Sup. Ct. Westchester Cnty. Sept. 23, 2022) (approving $25,000 service awards) (Walsh, J.). "Such awards reward[] the named plaintiffs for the effort and inconvenience of consulting with counsel over the many years a case was active and for participating in discovery". *Id.* (quoting *Cox v. Microsoft Corp.*, 26 Misc.3d 1220(A), at *4 (Sup. Ct. N.Y. Cnty. 2007)).

Here, the Court should grant service awards of $20,000 for each of the Settlement Class Representatives, Pamela Goldstein, Paul Benjamin, and Tony Berk, which are reasonable and well within the range awarded by courts in other class actions. *See Kennedy*, 2022 N.Y. Misc. LEXIS 49047, at *7 (collecting cases approving service awards ranging from $7,500 to $45,000). The Settlement Class Representatives' substantial assistance over the six-years of the Action included providing Class Counsel with relevant documents in their possession, sitting for multiple depositions, participating in litigation strategy discussions, and reviewing and commenting on the terms of the Settlement. As such, their actions exemplify the reasons that courts grant service awards.

CONCLUSION

The Settlement achieves the primary aims of the litigation, benefits the Settlement Class and the public, and accounts for the risks and uncertainties of continued, vigorously contested litigation. For the reasons set forth herein, the Settlement is fair, reasonable, and adequate, and merits final approval. The Class therefore respectfully requests that the Court certify the Settlement Class,

consider and overrule all objections to the Settlement, grant final approval of the Settlement, approve the requested attorneys' fees and expenses and service awards, and enter a final judgment, in accordance with the Proposed Final Approval Order filed herewith for the Court's consideration.

Dated: June 16, 2025
New York, New York

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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 5,865 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 5,865.

Dated: June 16, 2025
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