IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

DAVID CRUSON AND JOHN DENMAN *Plaintiffs*, v. JACKSON NATIONAL LIFE INSURANCE COMPANY *Defendant*.	§ § § § § § § § § § § § § § § §	Civil Action No. 4:16-CV-912-ALM JURY TRIAL

PLAINTIFFS' UNOPPOSED MOTION AND BRIEF IN SUPPORT FOR FINAL APPROVAL OF CLASS-ACTION SETTLEMENT

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I. INTRODUCTION

Class Counsel move the Court to finally approve the Settlement Agreement (the "Settlement") that the Court previously preliminarily approved on February 9, 2021. The Settlement is the result of Class Counsel's informed decision-making after formal and informal discovery and arms'-length negotiations with Defendants' counsel. Class Counsel recommended this Settlement to the Court only after (1) prevailing on its motion for class certification, (2) taking depositions and undertaking other discovery, (3) prevailing on its motion for summary judgment, (4) briefing, arguing, and losing in the Fifth Circuit an interlocutory appeal of the class-certification order, *see Cruson v. Jackson Nat'l Life Ins. Co.*, 954 F.3d 240 (5th Cir. 2020), and (5) negotiating with Defendants' counsel following the Fifth Circuit's vacation of this Court's order.

Class Counsel faced a choice between further litigating certification in this Court, expanding this litigation across several jurisdictions, or settling the case. Defendants faced the same choice. After extensive negotiations and the assistance of a skilled mediator, the parties reached this Settlement, which concludes more than four years of litigation. Creating a settlement fund of $8,750,000 from which cash compensation will be paid to Class Members, the Settlement is a reasonable and appropriate settlement under Federal Rule of Civil Procedure 23(e). The notice, moreover, is reasonable and satisfies constitutional and statutory due process. After a competitive bidding process, Class Counsel hired Heffler Claims Services LLC to implement the notice plan approved by the Court in the preliminary approval order.[1] Thus far,

[1] Since Class Counsel hired Heffler, Heffler was acquired by Kroll, LLC. Class Counsel herein refers to the Claims Administrator as "Kroll."

the Notice has reached virtually all Class Members. The distribution plan is equally reasonable. Class Members will be paid pro rata according to their share of withdrawal charges. If any money remains after the initial distribution because of returned checks or payments, the money will be redistributed to all Class Members (if practical given the amount) or distributed directly to current Jackson customers (if impractical given the amount). No funds will revert to Jackson or its interested parties.

By all indications, Class Members support the Settlement. Though the deadline for Class Members to object to the Settlement has yet to pass, not a single Class Member has notified Kroll of an objection. One Class Member has notified Class Counsel of an objection on grounds Class Counsel should have recovered a greater common fund. Class Counsel will notify this Class Member she should either formally object or opt out. Should this objector formally object to Kroll by the deadline, the proper remedy would be to permit the objector to opt out, not to obstruct an excellent settlement with widespread support. The Court should finally approve the Settlement accordingly.

II. FACTUAL BACKGROUND

Under the Settlement, Jackson agrees to create a cash common fund of $8,750,000 (the "Settlement Fund") to (1) pay cash to eligible Class Members, (2) pay class notice and settlement-administration expenses, (3) pay Class Counsel's attorneys' fees, (4) pay Class Counsel's litigation costs, and (5) pay service awards to the named Plaintiffs.

The manner of compensation turns on whether a Class Member is a current or former Jackson customer. For the approximately twenty-two percent of Class Members with current accounts, as defined in the Settlement Agreement, Jackson will credit the current accounts at the contract value. ECF No. 137 at 14–15. For the remaining Class Members, Jackson will pay the already-established escrow account. *Id.* at 15. Kroll will then pay these Class Members from the

escrow account. *Id.* Though the Claims Administrator will undertake diligent efforts to locate and pay these remaining Class Members, under no circumstances will funds revert to Jackson, its insurers, or any party that created the Settlement Fund. *Id.* If Class Counsel and Jackson agree that pro rata redistribution of any remaining funds is not practical because the amount to be re-distributed is sufficiently small, Jackson will credit such amount pro rata to the accounts of current Jackson customers. *Id.* Class Members who are current Jackson customers will also receive equitable relief. To avoid any continuing confusion on the appropriate methodology for calculating withdrawal or recapture charges, these Class Members will receive an explanation of Jackson's methodology for calculating early withdrawal charges. *Id.* at 15–16.

On March 26, 2021, the Claims Administrator, Kroll, mailed the approved short-form notice to about 165,000 Class Members that summarized in plain English the material Settlement terms. Ex. A, Kroll Decl. ¶ 4. Kroll conformed to the approved notice plan in its entirety. *Id.* Jackson also sent a copy of the long-form notice to any broker-dealer that is listed in Jackson's records as having been involved with any Class Member Policies. Ex. B, Jackson Decl. ¶ 6. Jackson too conformed to the approved notice plan in its entirety. *Id.* ¶ 2. Both long- and short-form notices direct Class Members to a website on which details about the Settlement and options available to such Class Members are explained in full. Kroll Decl. ¶ 5. Class Members can provide their contact information on the webpage or by phone. *Id.* ¶¶ 5, 7. When a short-form notice was returned as undeliverable with a forwarding address, Kroll re-mailed the notice to the forwarding address. *Id.* ¶ 4. When a return arrived without a forwarding address, Kroll employed the tools of the U.S. Postal Service to obtain a current address and re-mail the notice accordingly. *Id.* Class Counsel have taken yet additional steps to ensure Class Members with more than $100.00 at stake receive notice by requiring that Kroll send additional written notice

by mail and email. Ex. C, LeClair Decl. ¶ 16. Kroll is currently in the processing of effecting this notice. Kroll Decl. ¶ 6. These Class Members represent about 48% of the Class. *Id.*

Class Counsel have communicated with Class Members appropriately. Many Class Members have called Class Counsel with questions, and Class Counsel have responded to each telephone message received. LeClair Decl. ¶ 15. Most of those questions were basic, or Class Members were simply curious about the case. *Id.* One Class Member wrote Class Counsel with an objection, stating the Settlement should be renegotiated to generate a greater recovery. *Id.* Class Counsel intend to advise this Class Member she may formally object or opt out and advise her of the proper mechanics for doing so. *Id.* Though Class Members may timely object to Kroll until April 29, 2021, ECF No. 140 at 2, to date, not a single Class Member has notified Kroll of an objection. Kroll Decl. ¶ 10.

III. ARGUMENT

The negotiated Settlement and plan to distribute the proceeds of the Settlement are fair, adequate, and reasonable and not the product of collusion. The Court should grant Plaintiffs' unopposed motion accordingly.

A. The Settlement Should Be Approved under the *Reed* Factors.

Though a district court wields discretion in deciding whether to approve a class-action settlement, *Cotton v. Hinton*, 559 F.2d 1326, 1331 (5th Cir. 1977), the discretion is bounded. A settlement is worthy of approval so long as it is "fair, adequate, and reasonable, and not a product of collusion." *Id.* at 1330. "'A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's-length negotiations between experienced, capable counsel after meaningful discovery.' This presumption reflects the strong public interest in settling class actions." *ODonnell v. Harris Cty.*, No. CV H-16-1414, 2019 WL 6219933, at *9 (S.D. Tex. Nov.

21, 2019) (Rosenthal, J.) (cleaned up); *see Cotton*, 559 F.2d at 1331 ("Particularly in class action suits, there is an overriding public interest in favor of settlement.").

The Fifth Circuit has identified six factors, the *Reed* factors,[2] a district court must consider in analyzing the propriety of a settlement under Federal Rule of Civil Procedure 23(e): "(1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and absent class members." *See Union Asset Mgmt. Holding A.G. v. Dell, Inc.*, 669 F.3d 632, 639 n.11 (5th Cir. 2012). Here, each *Reed* factor indicates the Settlement is fundamentally fair, reasonable, adequate, and non-collusive. The Settlement should be approved accordingly.

1. The Settlement Was Negotiated at Arms' Length and Is Not the Product of Fraud or Collusion.

"The first factor requires the Court to consider the existence of fraud or collusion behind the settlement." *Vassallo v. Goodman Networks, Inc.*, No. 15CV97-LG-CMC, 2016 WL 6037847, at *2 (E.D. Tex. Oct. 14, 2016). "[T]he Court may presume that no fraud or collusion occurred between counsel in the absence of any evidence to the contrary." *Cunningham v. Kitchen Collection, LLC*, No. 4:17-CV-770, 2019 WL 2865080, at *2 (E.D. Tex. July 3, 2019) (Mazzant, J.) (cleaned up). "The involvement of 'an experienced and well-known' mediator 'is also a strong indicator of procedural fairness.'" *Jones v. Singing River Health Servs. Found.*, 865 F.3d 285, 295 (5th Cir. 2017) (cleaned up).

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[2] *Reed v. Gen. Motors Corp.*, 703 F.2d 170, 172 (5th Cir. 1983).

Here, the parties agreed to settle this matter only after months of negotiation that resulted in a mediation with Hesha Abrams, Esq. LeClair Decl. ¶ 13. The parties' employ of Ms. Abrams, an experienced mediator of complex commercial disputes, affords the Settlement a presumption of reasonableness and the absence of collusion. *Cf. In re Oil Spill by Oil Rig Deepwater Horizon in Gulf of Mex., on April 20, 2010*, 910 F. Supp. 2d 891, 931 (E.D. La. 2012) (reasoning "any suggestion of fraud or collusion" regarding the settlement was "baseless" when the "[s]ettlement was reached only after many months of hard-fought negotiations"). Because nothing rebuts the presumption the Settlement is free of collusion and fraud, this factor supports the Settlement.

2. The Relief Is Adequate in Light of the Duration, Costs, Risks, and Delay of Trial and Appeal.

"This factor requires courts to compare the benefits and risks of the proposed settlement as well as the potential future relief in light of the uncertainties of the litigation." *In re Chinese-Manufactured Drywall Prod. Liab. Litig.*, 424 F. Supp. 3d 456, 487 (E.D. La. 2020). "The proposed settlement is not required to 'achieve some hypothetical standard constructed by imagining every benefit that might someday be obtained in contested litigation.'" *Ahearn v. Fibreboard Corp.*, 162 F.R.D. 505, 527–28 (E.D. Tex. 1995) (cleaned up).[3] "Above all, the court must be mindful that 'inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.'" *Ruiz v. McKaskle*, 724 F.2d 1149, 1152 (5th Cir. 1984) (cleaned up); *see Cotton*, 559 F.2d at 1330 (noting the importance of "[p]ractical considerations").

[3] *Ahearn v. Fibreboard Corp.*, 162 F.R.D. 505, 527–28 (E.D. Tex. 1995), *aff'd sub nom. In re Asbestos Litig.*, 90 F.3d 963 (5th Cir. 1996), *cert. granted, judgment vacated on other grounds sub nom. Flanagan v. Ahearn*, 521 U.S. 1114 (1997), *and cert. granted*, *judgment vacated on other grounds sub nom. Ortiz v. Fibreboard Corp.*, 521 U.S. 1114 (1997).

Absent settlement, the parties would have had to continue with discovery, including multiple depositions; brief both class certification and merits-related issues; and try any issues not resolved on summary judgment. Appeals would almost certainly have followed. The Settlement, however, provides immediate relief and avoids the certainty of additional expensive and protracted litigation. *Cf. DeHoyos v. Allstate Corp.*, 240 F.R.D. 269, 291–92 (W.D. Tex. 2007) (reasoning this factor supported settlement when additional litigation would likely include "(1) contested class certification proceedings; (2) an appeal under Federal Rule of Procedure 23(f); (3) dispositive motions; (4) expert depositions leading to *Daubert* challenges; (5) extensive pretrial filings; (6) a lengthy trial; (7) post-trial proceedings in th[e] [d]istrict [c]ourt; and (8) further appeals").

Having raised numerous and difficult procedural and substantive issues, all reflected in the summary-judgment and class-certification records, this case is complex, even in the context of consumer class litigation. Class Counsel developed and brought vetted claims against a well-funded and aggressive defendant. *Cf. Price v. On Trac Inc.*, No. 6:17-CV-00519, 2018 WL 6804326, at *2 (W.D. La. Dec. 19, 2018), *report and recommendation adopted*, No. 6:17-CV-00519, 2018 WL 6798195 (W.D. La. Dec. 26, 2018) (reasoning this factor supported settlement when the case presented "multiple complex legal issues which [had] been zealously litigated by experienced counsel, at significant expense"); *id.* ("Had a settlement not been consummated, the Court is of the opinion that this case would likely have remained in litigation for a significant amount of time, in excess of at least one or two more years, including any appeal of any adverse judgment, causing the parties to incur significant additional expense.").

Unlike many consumer class actions, moreover, this case did not settle after class certification. Instead, Jackson appealed that decision, asserted new issues about personal

jurisdiction, and raised additional issues by way of defense. After the hard-fought appeal, which resulted in the vacation of this Court's certification order, Class Counsel did not cease their efforts on behalf of Class Members but instead considered new avenues to pursue certification, including the possibility of multiple actions. That road might have been procedurally less difficult but would have been far more costly to the Class and could have resulted in inconsistent rulings. To pursue this case to trial, Class Counsel would likely have incurred hundreds of thousands of dollars on expert fees. LeClair Decl. ¶ 15. More importantly, though, because the contemplated strategy involved multiple actions in multiple fora, both Class Counsel and Jackson were looking at significant costs and expenses, all of which would likely have reduced the ultimate recovery to Class Members. *Id.* Class Counsel's willingness to pursue multiple actions nonetheless incentivized Jackson to negotiate, resulting in this Settlement.

In short, the Settlement allows the parties and the Court to avoid the significant expenses of continued litigation and offers prompt and valuable remuneration to Class Members. *Cf. Cunningham*, 2019 WL 2865080, at *2 ("[W]hen the prospect of ongoing litigation threatens to impose high costs of time and money on the parties, the reasonableness of approving a mutually-agreeable settlement is strengthened." (cleaned up)); *DeHoyos*, 240 F.R.D. at 291 ("[I]t has been held proper to take the bird in the hand instead of a prospective flock in the bush." (cleaned up)). This factor therefore supports the Settlement.

3. The Stage of the Proceedings and the Amount of Discovery Completed Favor the Settlement.

"The goal of the third factor is to 'evaluate whether "the parties and the district court possess ample information with which to evaluate the merits of the competing positions."'" *Cunningham*, 2019 WL 2865080, at *2 (cleaned up).

"A settlement can be approved under this factor even if the parties have not conducted much formal discovery." *In re Heartland Payment Sys., Inc. Customer Data Sec. Breach Litig.*, 851 F. Supp. 2d 1040, 1064 (S.D. Tex. 2012) (Rosenthal, J.) (collecting cases). Absent prejudice, the parties need only "substantial factual bases on which to premise settlement." *Newby v. Enron Corp.*, 394 F.3d 296, 306 (5th Cir. 2004). In deciding whether such bases exist, the "trial court is entitled to rely upon the judgment of experienced counsel for the parties." *Jones*, 865 F.3d at 300 (cleaned up).

Plaintiffs filed their putative class action complaint on November 29, 2016. ECF No. 1. Thereafter, Plaintiffs filed two amended complaints, respectively incorporating new information learned through discovery and altering their claims accordingly. ECF No. 10, 90. Leading up to the mediation with Ms. Abrams, the parties focused their efforts on discovery targeted to foster a resolution. The discovery and mediation ensured that "counsel had an adequate appreciation of the merits of the case before negotiating." *See Jenkins v. Trustmark Nat'l Bank*, 300 F.R.D. 291, 304 (S.D. Miss. 2014) (cleaned up). The parties then consummated the Settlement having a clear view towards the strengths and weaknesses of their respective positions. *Cf. Mashburn v. Nat'l Healthcare, Inc.*, 684 F. Supp. 660, 669 (M.D. Ala. 1988) (holding this factor favored settlement when "plaintiffs have conducted enough discovery to be able to determine the probability of their success on the merits, the possible range of recovery, and the likely expense and duration of the litigation").

The parties settled only after certification was granted and an appeal taken on that certification. Counsel participated in key depositions and reviewed hundreds of thousands of pages of documents. Plaintiffs extensively litigated class certification, briefed and argued numerous motions, and defeated summary judgment. And both before and after the interlocutory

appeal, Class Counsel worked with experts to develop the most appropriate and nuanced damages model based on labyrinthine transactional data from Jackson.

As such, Class Counsel had ample information to make an intelligent, informed appraisal of the strength of Class Members' claims, Defendants' defenses, and the likelihood of obtaining a larger recovery if the case were litigated to trial. *Cf. In re Bear Stearns Cos. Secs., Derivative, & ERISA Litig.*, 909 F. Supp. 2d 259, 267 (S.D.N.Y. 2012) (holding this factor supported settlement when the parties had sufficient knowledge to "gauge the strengths and weaknesses of their claims and the adequacy of settlement" when they "conducted extensive investigations, obtained and reviewed millions of pages of documents, and briefed and litigated a number of significant legal issues"). This factor therefore supports the Settlement.

4. Plaintiffs' Probability of Success on the Merits Favors the Settlement.

"The fourth factor, which is the most important factor absent fraud and collusion, considers the probability of the plaintiffs' success on the merits." *Cunningham*, 2019 WL 2865080, at *2. "When analyzing this factor, courts must judge the terms of the proposed settlement against the probability that the class will succeed in obtaining a judgment following a trial on the merits. However, the court 'must not try the case in the settlement hearings because the very purpose of the compromise is to avoid the delay and expense of such a trial.'" *Id.* (cleaned up). "This factor favors approving a settlement even when the likelihood of success on the merits is not certain," *ODonnell*, 2019 WL 6219933, at *12, or otherwise "questionable," *Heartland*, 851 F. Supp. 2d at 1065.

Here, the claims involve very dense contractual language from numerous documents and practices of Jackson over many years. Class Counsel recognize the risks and uncertainties inherent in class certification, trial, and appeals. The Court is well aware of the challenges the Class would face at trial and on appeal; Defendants laid out their defenses in detailed summary-

judgment motions and in response to requests for certification, and the Court heard these themes during arguments on the key motions. Even if Plaintiffs proved liability, they would still have to prove damages, *cf. In re Pool Prod. Distribution Mkt. Antitrust Litig.*, 310 F.R.D. 300, 316 (E.D. La. 2015) (explaining "'[p]roof difficulties' are 'permissible factors' for a court to contemplate when evaluating the fairness of a settlement" (cleaned up)), and avoid efforts by Jackson opposing class certification. Even if Plaintiffs were to succeed at trial, moreover, Defendants would file post-trial motions and appeals. This factor therefore supports the Settlement.

5. The Range and Certainty of Recovery Favors the Settlement.

"The fifth factor examines the range of possible recovery by the class." *Cunningham*, 2019 WL 2865080, at *3. "This factor requires the district court to 'establish the range of possible damages that could be recovered at trial, and, then, by evaluating the likelihood of prevailing at trial and other relevant factors, determine whether the settlement is pegged at a point in the range that is fair to the plaintiff settlors.'" *ODonnell*, 2019 WL 6219933, at *13 (cleaned up).

"The district court's consideration of this factor 'can take into account the challenges to recovery at trial that could preclude the class from collecting altogether, or from only obtaining a small amount.'" *Heartland*, 851 F. Supp. 2d at 1067 (cleaned up); *see DeHoyos*, 240 F.R.D. at 309 ("The fact that a proposed settlement may only amount to a fraction of the potential recovery does not, in and of itself, mean that the proposed settlement is grossly inadequate and should be disapproved."). "The question," therefore, "is not whether the parties have reached 'exactly the remedy they would have asked the Court to enter absent the settlement,' but instead 'whether the settlement's terms fall within a reasonable range of recovery, given the likelihood of the plaintiffs' success on the merits.'" *Heartland*, 851 F. Supp. 2d at 1067 (cleaned up).

"Accordingly, 'the trial court should not make a proponent of a proposed settlement justify each term of settlement against a hypothetical or speculative measure of what concessions might have been gained; inherent in compromise is a yielding of absolutes and an abandoning of highest hopes.'" *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010) (cleaned up).[4]

Here, the Settlement is well-supported, given the possible range of recovery in this action and the uncertainty of measuring precise damages. Class Counsel faced inordinate difficulties in obtaining precise information about the calculation of withdrawal charges to the Class. (The process was handled with a dynamic system for which current records are not available from Jackson.) Class Counsel determined the possible range of recovery could be significantly more, but at the same time, counsel acknowledged great difficulty in determining precisely how much the overcharge would be for each individual Class Member for each withdrawal transaction. LeClair Decl. ¶ 12. Were those Class Members to maintain individual actions, therefore, they might be unable to prove their damages in a non-speculative manner. Given Jackson's denial of liability and the uncertainties of damage, the settlement amount of $8,750,000 is reasonable. This factor therefore supports the Settlement.

6. The Opinions of the Participants, Including Class Counsel, Class Representatives, and the Absent Class Members Favor the Settlement.

"The sixth factor refers to the opinions of counsel and the class representatives." *Cunningham*, 2019 WL 2865080, at *3. "'The Fifth Circuit has repeatedly stated that the opinion

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[4] *Klein v. O'Neal, Inc.*, 705 F. Supp. 2d 632, 649 (N.D. Tex. 2010), *as modified* (June 14, 2010), *judgment entered* (June 18, 2010), *enforcement denied*, No. 7:03-CV-102-D, 2011 WL 2413318 (N.D. Tex. June 15, 2011).

of class counsel should be accorded great weight' when 'evaluating a proposed settlement.'" *Klein*, 705 F. Supp. 2d at 649 (cleaned up).

Here, Class Counsel firmly believe that the Settlement is fair, reasonable, adequate, and non-collusive. LeClair Decl. ¶ 15. The named Plaintiffs further believe the Settlement is in the best interests of Class Members. Ex. D, Cruson Decl. ¶ 4; Ex. E, Denman Decl. ¶ 4.

"The low objections and opt-out rates are [further] evidence of the Settlement's fairness." *See Deepwater Horizon*, 910 F. Supp. 2d at 938. The deadline for Class Members to object to the Settlement has not yet passed,[5] but to date, a single Class Member has objected to Class Counsel, LeClair Decl. ¶ 15. The Class Member's objection was that Class Members should receive more money. *Id.* "Courts, including the Fifth Circuit," however, "have approved settlements with far higher objection rates." *Deepwater Horizon*, 910 F. Supp. 2d at 938 (collecting cases). The reaction from the vast majority of responding Class Members has been resoundingly positive. LeClair Decl. ¶ 16. Most Class Members had little hope of receiving any compensation related to withdrawal charges paid by them and no realistic opportunity of pursuing any claim. The Settlement gives each of the approximately 200,000 Class Members a tangible recovery without any need to pursue impractical independent claims.

The lack of objections and requests for exclusion is notable in light of the widespread notice plan. On March 26, 2021, Kroll sent about 165,000 short-form notices to potential Class Members, using data provided by Jackson. Kroll Decl. ¶ 4. 11,811 notices were returned as undeliverable; additional addresses for these class members were researched, and 856 notices

[5] The deadline for filing objections is April 29, 2021. ECF No. 141. Plaintiffs will file reply papers by May 20, 2021, addressing any further objections that might be received.

were mailed to new addresses. *Id.* On the same day, Jackson mailed about 48,000 long-form notices to current Jackson account holders and to certain advisors to current account holders. Jackson Decl. ¶ 4. Kroll also maintains a website that enables Class Members to access important documents, a toll-free hotline that enables Class Members to connect to a live operator, and a case-dedicated email address for questions to the Claims Administrator. Kroll Decl. ¶¶ 5, 7.

"For [the sole objector] unhappy with the Settlement, [his or her] remedy [is] simple: opt out. The 'court [should] not dismantle this settlement for the sake of one class member's unique demands, particularly when the class member had the right (and the means) to opt out and pursue its individual claims without disturbing the settlement for the rest of the class.'" *See Deepwater Horizon*, 910 F. Supp. 2d at 938 (cleaned up). This factor therefore supports the Settlement.

* * *

The six *Reed* factors lead to an undeniable conclusion: The Settlement is fair, adequate, reasonable, and not the product of collusion, especially when, as here, the Settlement was reached only "in arm's-length negotiations between experienced, capable counsel after meaningful discovery." *See ODonnell*, 2019 WL 6219933, at *9. The Court should approve the Settlement accordingly.

B. The Settlement Distribution Plan Should Be Approved Because It Treats Class Members Equitably in Relation to Each Other.

Before approving a settlement, the court must also consider whether "the proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). "An allocation formula need only have a reasonable, rational basis, particularly if recommended by 'experienced and competent' class counsel." *City of Omaha Police & Fire Ret. Sys. v. LHC Grp.*, No. CIV. 6:12-1609, 2015 WL 965693, at *15 (W.D. La. Mar. 3, 2015) (cleaned up).

As explained in the Settlement, Class Members will receive settlement funds (net of fees and costs) on a pro rata basis. ECF No. 137 19–21. As courts have held, a "pro-rata distribution of settlement funds based on investment loss is clearly a reasonable approach." *LHC Grp.*, 2015 WL 965693, at *15 (cleaned up); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, No. CIV.A. H-01-3624, 2008 WL 4178151, at *2 (S.D. Tex. Sept. 8, 2008) ("Generally courts will find 'reasonable' a plan of distribution that reimburses class members based on the type and extent of their damages."); *see also Quintanilla v. A & R Demolition Inc.*, No. CIV.A. H-04-1965, 2008 WL 9410399, at *9 (S.D. Tex. May 7, 2008) (Rosenthal, J.) (approving a settlement agreement under Rule 23 when distribution was to occur pro rata).

In addition, Class Counsel's conclusion that the distribution plan is fair, adequate, and reasonable, *see* LeClair Decl. ¶ 15, is entitled to weight. *See Jones*, 865 F.3d at 300 ("The quality and experience of the lawyering is thus 'something of a proxy for both "trustworthiness" and "reasonableness"—that is, if experienced counsel reached this settlement, the court may trust that the terms are reasonable in ways that it might not had the settlement been reached by lawyers with less experience in class action litigation.'" (cleaned up)).

IV. CONCLUSION

For these reasons, Plaintiffs' motion to finally approve the class-action settlement, including the distribution plan thereof, should be granted.

Dated: April 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a true and correct copy of the foregoing was served on all parties entitled to notice by electronic notification on this 27th day of April 2021.

/s/ *Lewis T. LeClair*
Lewis T. LeClair

CERTIFICATE OF CONFERENCE

The undersigned counsel hereby certifies that, with respect to this unopposed motion, he has complied with the meet-and-confer requirement embodied in Local Rule CV-7(h).

/s/ *Lewis T. LeClair*
Lewis T. LeClair