

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**GRANT MOLLA,
on behalf of the Gerdau Ameristeel
US 401(k) Retirement Plan, himself,
and all others similarly situated,**

Plaintiff,

8:22-cv-02094-VMC-SPF

v.

GERDAU AMERISTEEL US, INC.,

Defendant.

**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Grant Molla (“Plaintiff”), on behalf of the Gerdau Ameristeel US 401(k) Retirement Plan (“Plan”), and Defendant, Gerdau Ameristeel US, Inc. (“Defendant”), have entered into a Class Action Settlement Agreement (the “Settlement”) which, subject to this Court’s approval, resolves the claims asserted in this ERISA lawsuit. The Settlement provides Defendant will make an immediate \$1,500,000 cash payment to the Plan. It also requires Defendant to conduct a Request for Proposal to solicit bids for recordkeeping and other administrative services Fidelity, the Plan’s recordkeeper, currently furnishes. The bidding process is a prudent way to ensure the Plan’s administrative costs are reasonable. The

Settlement also requires Defendant to obtain from Fidelity a detailed accounting of its float revenues Fidelity has earned from the Plan.¹

As explained below, the Settlement is fair, reasonable, adequate, and in the best interests of Settlement Class Members, who are current or former participants in the Plan during the Settlement Class Period (September 9, 2016, through the date the Court enters an Order granting preliminary approval of the Settlement). The Settlement is attached as Exhibit 1. The Declarations of Marc R. Edelman and Brandon J. Hill in support of the Motion are attached as Exhibit 2.² Defendant supports the Court's approval of Settlement and the relief sought in this Motion but does not necessarily agree with all of Plaintiff's averments in the Motion.

The Settlement is the product of hard-fought litigation, which included motion practice, a robust pre-suit administrative remedies process that involved the exchange of many of the Plan's substantive documents, the retention of knowledgeable and qualified expert witnesses who performed ERISA prudence and loss analyses, and arm's length negotiations between experienced ERISA counsel on both sides. Equally important, the Settlement was only reached after a

¹ All capitalized terms used in this Motion that are not otherwise defined shall have the meanings provided in the Settlement Agreement.

² The remaining exhibits are attached to the Settlement as follows: Exhibit A — Proposed Order granting final approval of Parties' class action settlement; Exhibit B — Long Form Notice; Exhibit C — Plan of Allocation; Exhibit D — Proposed Order granting final approval of Parties' class action settlement; Exhibit E — Short Form Notice.

full day in-person mediation with Court-appointed mediator, Jack L. Townsend, Sr., who has extensive experience mediating ERISA claims.

The benefits of the Settlement must be considered in the context of the risk that further protracted litigation might lead to no recovery, or to a smaller recovery for the Plan. The docket reflects Defendant's resolve to vigorously defend the claims on the merits. But for the Settlement, prolonged litigation would have been inevitable.

Class Counsel have concluded that the benefits Settlement is in the best interests of the Plan because the Settlement: (1) provides substantial monetary relief to restore alleged Plan losses; (2) requires Defendant to make future improvements to the Plan by issuing a Request for Proposal ("RFP") for recordkeeping and other administrative services (3) eliminates the risks and uncertainties of complex litigation; (4) eliminates the expense and length of time necessary to prosecute this action through trial, and appeals; and (5) promotes the desirability of consummating the Settlement to provide prompt, effective relief to the Plan.

Additionally, to ensure the Settlement's fairness, the proposed Settlement requires the parties to retain an independent fiduciary to act on the Plan's behalf to review the Settlement to determine whether to authorize Plaintiff's Released Claims on behalf of the Plan. (Ex. 1, Settlement Agreement § 2.) *See* Prohibited Transaction Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003).

For these reasons, and as explained further below, Plaintiff respectfully submits this Motion seeking entry of an Order that will (1) preliminarily approve

the Settlement; (2) certify the proposed Settlement Class; (3) approve the form and manner of giving notice of the Settlement to the Settlement Class; (4) appoint Class Counsel; and, (5) set a date for a hearing for final approval of the Settlement. A proposed Preliminary Approval Order is included as Exhibit D to the Settlement Agreement.

I. BACKGROUND FACTS.

A. Pre-Suit Investigation.

Before filing this case, Class Counsel conducted significant in-depth research and analysis into the claims and the anticipated defenses of those claims. Class Counsel retained and worked with industry experts during the pre-suit investigation stage. Class Counsel also reviewed thousands of pages of publicly available documents, reviewed Plaintiff's Plan documents, and worked with experts to craft the Complaint that was eventually filed.

B. Initiation of Lawsuit and Exhaustion of Administrative Remedies.

On September 9, 2022, Plaintiff filed a class action Complaint against Defendant alleging breach of fiduciary duties in administering the Plan under the Employee Retirement Income Security Act of 1974 ("ERISA".) (ECF 1.) Upon receipt of the Complaint, Defendant argued to Plaintiff that the Plan required Plaintiff to exhaust pre-suit administrative remedies before litigating. Plaintiff believed exhaustion of those remedies would have been futile and excusable. However, rather than burdening the Court with heavy briefing on a procedural

issue, Plaintiff agreed to work cooperatively with Defendant to exhaust any ostensible administrative remedies.

On September 30, 2022, the parties filed a Joint Motion to Stay, asking the Court to stay the case pending Plaintiff's exhaustion of administrative remedies. (ECF 12.) On October 1, 2022, the Court granted the Joint Motion to Stay. (*Id.*) The parties were then required to file a Status Report every sixty days thereafter informing the Court of their progress.

Plaintiff initiated the administrative exhaustion process on October 14, 2022, by sending a letter addressed to the "Plan Administrator" requesting certain Plan documents and by submitting an administrative claim pursuant to the Plan's administrative claims review process. During the course of the administrative remedies exhaustion process, Defendant produced a trove of documents relevant to Plaintiff's claims, including: (1) the Plan's committee charter; (2) investment policy statement, (3) the Plan Document, Summary Plan Description, and an array of Plan amendments, (4) Plan Committee meeting minutes, (5) investment consulting reports, (6) recordkeeper reports, (7) disclosures to the Plan and its participants, and (8) accounting reports – among others. Class Counsel carefully scrutinized the documents produced. On October 6, 2023, the administrative review process concluded and were able to use information in the documents to corroborate and further factually develop the claims in the Complaint.

C. Motion Practice and Discovery.

On November 13, 2023, the parties filed a Joint Motion asking the Court to lift the stay. (ECF 23.) The stay was lifted on November 16, 2023. (ECF 24.) The parties then filed a Case Management Report on November 28, 2023. (ECF 27.)

On December 1, 2023, Defendant filed its Motion to Determine the Standard of Review and Motion for Protective Order. (ECFs 28 and 29.) Defendant's Motion for Protective Order sought to effectively prevent Plaintiff from obtaining any discovery in the case and to limit the evidentiary record in the case only to the documents produced by Defendant in the administrative review process. Defendant's Motion to Determine the Standard of Review asked the Court to apply the arbitrary and capricious standard of review to this action. (ECF 3.) Six days later, on December 7, 2023, Defendant filed its Motion to Dismiss. (ECF 32.)

Plaintiff filed oppositions to each of Defendant's motions on January 19, 2024. (ECFs 38, 39, 40.) The oppositions were incredibly important because although styled as a discovery dispute – Defendant was seeking to prevent Plaintiff from obtaining evidence necessary to prove the claims at issue. Had Plaintiff not prevailed at this early stage it would have been very difficult for the case to have been resolved in a fair and effective manner.

Defendant filed reply briefs in support of its motions on February 2, 2024. (ECFs 46, 47.)

The Court referred Defendant's Motion to Determine the Standard of Review and Motion for Protective Order to Magistrate Judge Sean P. Flynn for the issuance of a Report and Recommendation. (ECF 31.) On July 17, 2024, Magistrate

Judge Flynn issued a well-reasoned Report and Recommendation recommending the Court deny both motions. (ECF 52.)

Defendant filed its Objection to Magistrate Judge Flynn's Report and Recommendation on August 9, 2024. (ECF 57.) That same day, Plaintiff also filed his First Amended Complaint. (ECF 59.) On August 22, 2024, Plaintiff filed his response to Defendant's Objection to Magistrate Judge Flynn's Report and Recommendation. (ECF 60.) The next day, August 23, 2024, Defendant filed its Motion to Strike, or Alternatively, Motion to Dismiss Plaintiff's First Amended Complaint. (ECF 61.)

On September 20, 2024, the Court accepted and adopted Magistrate Judge Flynn's Report and Recommendation, overruled Defendant's Objection, and denied Defendant's Motion to Determine the Standard of Review and Motion for Protective Order. (ECF 67.) On that same day, Plaintiff filed his opposition to Defendant's second Motion to Dismiss. (ECF 69.) Defendant filed its reply in support of its second Motion to Dismiss on October 4, 2024. (ECF 72.)³

On October 4, 2024, the Parties filed an updated Case Management Report. (ECF 73.) On October 29, 2024, the Court entered its Scheduling Order. (ECF 74.)

³ The Court granted Defendant's second Motion to Dismiss on January 25, 2025 (ECF 82) but permitted Plaintiff to file a Second Amended Complaint. Plaintiff's Second Amended Complaint was filed on February 5, 2025. (ECF 85.) It is the operative Complaint.

D. Settlement Negotiations and Mediation with Jack L. Townsend.

Class Counsel and Defendant's counsel have extensive experience handling ERISA lawsuits. Settlement was first discussed amongst counsel for the parties shortly after the administrative exhaustion process ended. Counsel continued exploring a possible settlement from that point forward.

On November 22, 2024, the Court ordered the parties to mediate with Jack L. Townsend. (ECF 78.) On December 3, 2024, Plaintiff filed his Notice of Mediation that included a proposed February 4, 2024, mediation date. (ECF 79.) That same day, December 3, 2024, the Court appointed Mr. Townsend as mediator in this action and set mediation to occur on the date proposed by the parties, February 4, 2025. (ECF 80.) The parties mediated with Mr. Townsend on February 4, 2025, at Defendant's counsel's office. After a full day of mediating, the parties were able to reach the tentative class-wide resolution (*see* ECFs 86, 87) for which they now seek this Court's preliminary approval.

E. The Settlement Agreement.

1. Benefits to the Plan.

The Settlement provides for a monetary payment of \$1,500,000.00 as compensation to the Plan. (*See* Ex. 1, Settlement Agreement § 3.1(a).) This "Gross Settlement Amount" will cover the independent fiduciary fees; settlement administration fees and costs; and any Class Counsel fees and costs approved by the Court. (*Id.* § 3.1(j).) The remaining "Net Settlement Amount" will be

distributed by the Plan to Settlement Class Members pursuant to the proposed Plan of Allocation. (*See id.* § 3.2(b), Plan of Allocation, Exhibit C.)

For Class Members who have Plan accounts as of the date of the distribution of the Net Settlement Amount, the distribution will be made automatically pursuant to applicable Plan terms. No claim form is required. The Settlement Administrator shall promptly notify Class Counsel as to the date(s) and amounts(s) of said allocation(s) made to Class Members who are Current Participants. For Former Participants, their distributions will be made by checks. No Former Participant whose entitlement to payment pursuant to the Plan of Allocation would be otherwise less than five dollars (\$5.00) shall receive any payment. The Settlement Administrator shall be responsible for distributing the Settlement proceeds. No claim forms will be required of Former Participants either. (*See* Plan of Allocation, Exhibit C, ¶¶ E-F.)

Under the terms of the Settlement, within five (5) business days of the entry of the Preliminary Approval Order, Defendant, or its insurer, shall pay \$100,000 into a Qualified Settlement Fund to allow for payment of initial Administrative Expenses that may arise before the Court's entry of the Final Approval Order and Judgment. (*See* Exhibit A, Settlement Agreement § 3.1(b).) Within twenty-one (21) business days of the Effective Date of the Settlement Agreement, Defendant, or its insurer, shall pay the remainder of the Gross Settlement Amount, \$1,400,000 into the Qualified Settlement Fund. (*Id.*) The sum of these two payments, \$1,500,000, shall constitute the "Gross Settlement Amount." (*Id.* § 3.1(a).)

The Settlement Administrator will be American Legal Claims Services, LLC. (*Id.* § 1.39.) The Net Settlement Amount shall be distributed by the Plan to Settlement Class Members in accordance with the proposed Plan of Allocation (or as modified by the Court and agreed by the parties). Any Net Settlement Amount remaining after the Settlement distributions are made shall be returned to the Plan to defray Plan administrative expenses; there will be no *cy pres* payment or reversion to Defendant. (*Id.* § 3.4.)

2. Retention of an Independent Fiduciary.

As required by Prohibited Transaction Class Exemption 2003-39, 68 FR 75632 (Dec. 31, 2003), as amended 75 FR 33830 (June 15, 2010), the Settlement provides that an independent fiduciary will review the Settlement and provide, if the appropriate, the authorization required by that Exemption on behalf of the Plan. (*Id.* § 2.9(b).) The independent fiduciary will also provide to the Court a report memorializing its determination prior to the Final Approval Hearing. Accordingly, in addition to this Court's review, the Settlement will be evaluated by an experienced independent fiduciary whose sole loyalty is to the Plan, and that fiduciary will evaluate the Settlement as to whether it is (1) reasonable in the light of the litigation risk and the value of the claims, (2) consistent with an arm's length agreement, and (3) not part of an agreement or arrangement to benefit a party in interest.

3. Attorneys' Fees and Costs.

Any Attorneys' fees and costs the Court may award will be paid from the Gross Settlement Fund. (*Id.* § 3.1(j).) Class Counsel will petition the Court for an

award of attorneys' fees not to exceed one-third (33.3%) of the Gross Settlement Amount, plus reimbursement of reasonable expenses. (*Id.* § 7.1(a)-(b).) The Settlement is not contingent on any such fees, or expense reimbursements being awarded. Thus, if the Court denies the petition for Attorneys' fees and expense reimbursements, in whole or part, such denial will have no impact on the validity or enforceability of the Settlement.

4. Release of Claims.

Under the terms of the Settlement, Plaintiff and Settlement Class Members, on their own behalf and on behalf of their current and former beneficiaries, their representatives, and their successors-in-interest, and the Plan unconditionally release and discharge Defendant and the other Released Parties from all Released Claims, as set forth in more detail in the Settlement Agreement. (*Id.* § 1.37.)

5. Notice and Objections.

Pursuant to Federal Rule of Civil Procedure 23(e)(1) and (e)(5), the Settlement provides for notice to the Class and an opportunity for Settlement Class Members to object to final approval of the Settlement. The proposed form and method of notice of the proposed Settlement satisfy all due process considerations and meet the requirements under Rule 23(e)(1).

The proposed long and short and form Settlement Notices are attached to the Settlement Agreement as Exhibit A and Exhibit E. The Settlement Notices fully apprise Settlement Class Members of the existence of the lawsuit, the Settlement, and information they need to make informed decisions about their rights, including (1) the terms of the Settlement; (2) the nature and extent of the Released

Claims and Released Parties; (3) the attorneys' fees and expense reimbursements Class Counsel will seek; (4) the procedure and timing for objecting to the Settlement; (5) the date and place of the final fairness hearing; and (6) the website that will contain the settlement documents and other information about the Settlement and the litigation.

The notice plan consists of the following steps: first, the short form Settlement Notice will be sent by first-class mail to all Settlement Class Members identified by the Settlement Administrator, using the last mailing address known to the Plan's recordkeeper. It is anticipated that sending the notice by first-class mail will be highly effective as the Plan's recordkeeper has current mailing addresses for all current Plan participants in for most of the former Plan participants. Second, the Settlement Administrator will provide a dynamic website that will provide the Settlement Class Members with access to the long form Settlement Notice and access to information answering frequently asked questions, copies of key case documents, and the ability to email the Settlement Administrator with questions. Third, the Settlement Administrator will provide an IVR call center, which Settlement Class members will be able to call toll-free 24 hours a day, 7 days a week. Fourth, the Settlement Administrator will take additional action, including running skip traces, etc., to reach those Settlement Class Members whose notice letters are returned as undeliverable. Accordingly, both the forms of notice and proposed procedures for notice satisfy the requirements of due process, and the Court should approve the notice plan as adequate.

II. THE PROPOSED SETTLEMENT IS WITHIN AN APPROPRIATE RANGE FOR PRELIMINARY APPROVAL.

Rule 23(e) requires judicial approval of any settlement agreement that will bind absent class members. This involves a two-step process. *Smith v. Wm. Wrigley Jr. Co.*, 2010 U.S. Dist. LEXIS 67832, at *5 (S.D. Fla. June 15, 2010); *Holman v. Student Loan Xpress. Inc.*, 2009 U.S. Dist. LEXIS 113491, at *7 (M.D. Fla. Nov. 19, 2009). “In the first step of the process, a court should make a preliminary evaluation of the fairness of the settlement before directing that notice be given to the settlement class.” *Smith*, 2010 U.S. Dist. LEXIS at *5-6. Second, following preliminary approval of the settlement, class members are provided notice of a formal fairness hearing, at which time arguments and evidence may be presented in support of, or in opposition to, the settlement. *Id.* The decision whether to approve a proposed class action settlement is “committed to the sound discretion of the district court.” *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493 (11th Cir. 1992). In exercising this discretion, courts are mindful of the “strong judicial policy favoring settlement,” as well as “the realization that compromise is the essence of settlement.” *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984). “Settlement agreements are highly favored in the law and will be upheld whenever possible because they are a means of amicably resolving doubts and uncertainties and preventing lawsuits.” *Pierre-Val v. Buccaneers Ltd. Partn.*, 2015 U.S. Dist. LEXIS 81518 at *2-3 (M.D. Fla. June 17, 2015) (quoting *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1105 (5th Cir. 1977)).

Under the first step of Rule 23(e)(2), Courts look to whether: (1) the class representative and class counsel have adequately represented the class; (2) the proposed settlement was negotiated at arm's length; (3) the relief provided for the class is adequate, and (4) the proposed settlement treats class members equitably relative to each other. This standard is satisfied here.

1. The Class Representatives and Class Counsel Have Adequately Represented the Class.

This first Rule 23(e)(2) requirement encompasses two separate inquiries: (1) whether any substantial conflicts of interest exist between the class representatives and the class; and (2) whether the representatives will adequately prosecute the action. *Battle v. Law Offices of Charles W. McKinnon, P.L.*, 2013 U.S. Dist. LEXIS 29263, at *10 (S.D. Fla. Mar. 5, 2013) (citing *Busby v. JRHBW Realty, Inc.*, 513 F.3d 1314, 1323 (11th Cir. 2008)).

Here, the adequacy-of-representation requirement has been met. Plaintiff is adequate given that his interests align fully with those of the Settlement Class. He actively participated in the case and has volunteered to assist Class Counsel with whatever is necessary to ensure this Settlement is approved. Plaintiff receives the same benefits under the Settlement as do all Settlement Class Members. There are no obvious conflicts of interest between Plaintiff and the Settlement Class. Plaintiff, along with Class Counsel, secured a \$1,500,000 monetary payment to restore the Plan's losses and secured Defendant's commitment to processes that will ensure Plan administration expenses are further analyzed and defrayed prospectively.

With respect to Class Counsel, they have extensive class action experience. They have a demonstrated track record of success in this case specifically and have broadly recovered millions of dollars in class action court approved settlements, including in ERISA court-approved class action settlements. (Hill Decl. ¶ 6; Edelman Decl ¶ 6.) For example, Southern District of Florida United States District Court Judge Raag Singhal granted final approval of a similar ERISA class action settlement in *Angelo v. NCL Corporation LTD*, 22-cv-22962-AHS (February 20, 2024). Class Counsel were class counsel in the *Angelo* matter. By way of another recent example, Southern District of Florida United States District Court Judge Darrin P. Gayles also granted final approval of a similar ERISA class action settlement in *Santiago, et al., v. University of Miami*, 1:20-cv-21784-DPG (April 7, 2022). Class Counsel were also class counsel in the *Santiago* matter too. Class Counsel have never been found by any court to lack the qualifications or ability to serve as class counsel. (Hill Decl. ¶ 28.)

2. The Settlement Is the Product of Arm's Length Negotiations Between Experienced Counsel and the Court's Appointed Mediator.

The Settlement is the product of arm's length negotiations between the parties and their counsel, along with the assistance of the mediator appointed by the Court, Jack L. Townsend. Thus, the next Rule 23(e)(2) factor is also satisfied.

The Settlement was achieved only after months of informal negotiations between experienced counsel, consultations with industry experts, hard-fought motion practice, a substantial exchange of information, and a full-day mediation. *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1384 (S.D. Fla. 2007) (concluding

that approval of class settlement was warranted because it was overseen by “an experienced and well-respected mediator”). All counsel involved in the negotiations are experienced in handling class action litigation and complex litigation and are clearly capable of assessing the strengths and weaknesses of their respective positions. Where there “is no evidence of any kind that the parties or their counsel have colluded or otherwise acted in bad faith in arriving at the terms of the proposed settlement ... counsel’s informed recommendation of the agreement is persuasive that approval is appropriate.” *Strube v. American Equity Inv. Life Ins. Co.*, 226 F.R.D. 696, 703 (M.D. Fla. 2005).

Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented in this case. It is recognized that the opinion of experienced and informed counsel supporting the settlement is entitled to considerable weight. *Holmes v. Cont’l Can Co.*, 706 F.2d 1144, 1149 (11th Cir. 1983). Counsel for both parties support the Settlement.

3. The Settlement Provides Significant Relief to the Plan.

The Settlement requires Defendant to create a common fund of \$1,500,000.00. After comprehensive exchanges of information with Defendant, Class Counsel estimate the Plan’s losses to be approximately \$3,500,000.00 if Plaintiff was successful on all claims. (See Hill Decl. ¶ 25.) The \$1,500,000 monetary recovery represents about 43% of the potential total monetary recovery. An immediate and guaranteed 43% recovery represents an excellent recovery for the Plan. See *Behrens v. Wometco Enters., Inc.*, 118 F.R.D. 534, 542 (S.D. Fla. 1988).

But there is more. Plaintiff also secured agreements from Defendant to conduct a RFP for recordkeeping and other administrative services currently provided by the Plan's recordkeeper, Fidelity. Competitive bidding is widely accepted in the ERISA community as a prudent way to secure fair and favorable pricing for recordkeeping services. The RFP process will help to ensure the Plan's recordkeeping fees going forward are reasonable. Defendant also agreed to require Fidelity to provide a detailed accounting of Fidelity's float earnings derived from the Plan. This information ought to help Defendant to also ensure that recordkeeping compensation is reasonable. These non-monetary terms prospectively provide substantial benefits to the Plan.

Absent this Settlement, continued litigation would require both sides to invest significant time and money into the action and tap into the Court's resources until finally resolved. Liability was heavily contested and both sides faced considerable and growing risk moving forward. By contrast, the proposed Settlement produces a timely and guaranteed substantial recovery and future assurances for the Settlement Class, without delay and further risk. Specifically, without the Settlement, there exists a risk the Court might find no liability or the inability to prove losses. *See, e.g. Huang v. TriNet HR III*, Case No. 8:20-cv-2293-VMC-TGW, 2023 WL 3092626 (M.D. Fla. April 26, 2023) (summary judgment for defendant in ERISA breach of fiduciary duty action). While Plaintiff asserts asserted against the Defendant are meritorious, Plaintiff recognizes that Defendant disagrees, he faced challenges to establishing both liability and losses.

There is no certainty that Plaintiff would have prevailed at summary judgment, trial, and or at the appellate level.

As to the primary question of liability, Defendant asserts it properly managed the Plan and had prudent processes in place to evaluate the Plan's investments and recordkeeping and administrative fees. Defendant argues when decisions were made, they were aligned and within range of decisions made by plan fiduciaries to similar retirement plans. Defendant contends Plaintiff's loss analysis was flawed and overstated recoverable losses if was to provide liability.

In sum, under the Settlement, the Plan can quickly realize a substantial portion of its alleged losses and instill guardrails moving forward. The Settlement is fair, reasonable, and adequate.

4. The Proposed Settlement Treats Class Members Equitably Relative to Each Other.

The last Rule 23(e)(2) factor is satisfied because the Settlement treats Class Members equitably. The Plan will make Settlement distributions to Settlement Class Members on a pro rata basis and consistent with the proposed Plan of Allocation. The Plan of Allocation here is nearly identical to plans used in similar ERISA court-approved settlements across the country. Settlement Class Members with an active account in the Plan will receive automatic settlement payments made directly to their Plan account. And Settlement Class Members who no longer have an active account at the time of payment will receive their settlement payment by check.

5. **The Settlement Will Avoid a Complex, Expensive and Prolonged Legal Battle Between the Parties.**

Along with the inherent risks of litigation, continuing this action would be costly and resolution delayed well into the future, with no guaranteed outcome. Even if Plaintiff was to overcome summary judgment and prevail on liability at trial, Defendant likely would have appealed any judgment entered against it, resulting in further expense and delay. Complex litigation like this “can occupy a court’s docket for years on end, depleting the resources of the parties and the taxpayers while rendering meaningful relief increasingly elusive.” *Wald v. Wolfson (In re U.S. Oil and Gas)*, 967 F.2d 489, 493 (11th Cir. 1992). By entering into the Settlement now, Plaintiff saved precious time and money, and avoided the risks associated with further litigation, trial, and appeals.

F. **The Proposed Notices are Adequate, Appropriate, and Warranted.**

Finally, due process and Federal Rule of Civil Procedure 23(e) do not require that each Settlement Class Member receive settlement notice, but they do require that settlement notice be “reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Central Hanover Bank and Trust Co.*, 339 U.S. 306, 314 (1950). “Individual notice must be provided to those class members who are identifiable through reasonable effort.” *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974). The proposed notice and method of Settlement Notice here satisfy all due process considerations and the requirements under Rule 23(e)(1). *See Stengl v. L3 Harris Technologies*, Case No: 6:22-572-

PGB-LHP (M.D. Fla. July 12, 2024)(approving notices nearly identical to proposed Short Form and Long Form notices).

III. CONCLUSION.

The Court should grant Plaintiff's Motion for Preliminary Approval of the Parties' Class Action Settlement. A Proposed Order granting this Motion is attached as Exhibit D to the Settlement Agreement.

Certificate of Compliance with M.D. Fla. Local Rule 3.01(g)

Pursuant to M.D. Fla. Local Rule 3.01(g), counsel for Plaintiff conferred with Defendant prior to filing this Motion. Defendant does not oppose the relief sought in this Motion.

Dated this 19th day of February, 2024.

Respectfully submitted,

/s/ Brandon J. Hill

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of February, 2024, the foregoing was electronically filed with the Clerk of the Court via the CM/ECF system, which will send a notice to all counsel of record.

/s/ Brandon J. Hill

BRANDON J. HILL