UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In re DENTAL SUPPLIES ANTITRUST LITIGATION	Civil Action No.: 1:16-CV-00696-BMC-GRB ALL CASES Honorable Brian M. Cogan

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT

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Case Document	Citation Abbreviation
Declaration of James T. McClave, Ph.D. Concerning Proposed Dental Litigation Settlement Allocation Plan, ECF No. 310-5.	McClave Decl.
Declaration of Eric L. Cramer on Behalf of Class Counsel in Support of Plaintiffs' Motion for Final Approval of Class Settlement and Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Payment of Service Awards to the Class Representatives, ECF No. 329.	Cramer Decl.
Declaration of Jeanne C. Finegan, APR in Support of Final Approval of the Notice Program, filed contemporaneously.	Finegan Decl.

I. INTRODUCTION

Plaintiffs,[1] through Class Counsel,[2] move this Court for: (i) final approval of the $80 million class action settlement (the "Settlement") reached on September 28, 2018, with Defendants Henry Schein, Inc., Patterson Companies, Inc., and Benco Dental Supply Co. (collectively, "Defendants"); (ii) final approval of the dissemination of notice to the Settlement Class (the "Notice"); (iii) final approval of the proposed plan of allocating the net settlement fund to the Settlement Class (the "Plan of Allocation"); and (iv) final certification of the preliminarily approved settlement class (the "Settlement Class").

The Settlement, if finally approved, would resolve all claims brought by Plaintiffs and the members of Settlement Class who purchased Dental Supplies or Dental Equipment (defined *infra*) that allegedly paid higher prices for those products as a result of Defendants' alleged violation of the federal antitrust laws. Defendants deny any wrongdoing but have agreed to pay $80 million in exchange for dismissal of the litigation with prejudice and release of certain claims held by Plaintiffs and members of the Settlement Class.

To show that the $80 million Settlement is a tremendous result for the Settlement Class and amply satisfies the nine-factor test outlined by the Second Circuit in *Grinnell*, one need look no further than the overwhelmingly positive reaction of the Settlement Class members. Of the approximately 200,000 members of the Settlement Class, a staggering 43,983 have ***already*** registered to participate in the claims process, and that number is sure to grow as the claims deadline of October 15, 2019 approaches. *See* ECF No. 331. Only ***four*** members of the

[1] Arnell Prato, D.D.S., P.L.L.C., d/b/a/ Down to Earth Dental; Evolution Dental Sciences, LLC; Howard M. May, DDS, P.C.; Casey Nelson, D.D.S.; Jim Peck, D.D.S.; Keith Schwartz, D.M.D., P.A.; and Bernard W. Kurek, D.M.D. and Larchmont Dental Associates, P.C.

[2] Berger Montague PC, Cohen Milstein Sellers & Toll, PLLC, Hausfeld LLP, and Susman Godfrey LLP.

Settlement Class have requested exclusion and only ***two*** members have objected to the Settlement. "[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in [the Second Circuit's] *Grinnell* inquiry." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 119 (2d Cir. 2005).

Moreover, the objectors' complaints ring hollow. *See* ECF Nos. 330 (Clark Objection); ECF No. 334 (Roe Objection). Neither complains about the substantive terms of the Settlement; neither identifies any purported flaw in the plan of distribution; neither lodges a complaint about the adequacy of notice; neither complains that the Settlement amount is too low (though such an objection would also be baseless, *see infra*); and neither suggests that Class Counsel's billable rates were too high or that the overall lodestar was anything other than efficient and appropriate.

Instead, Dr. Clark appears to complain that the Settlement amount should be ***zero*** because his personal "experience does not support the allegations that agreement on prices harmed [his] practice." ECF No. 330. He decries his peers, citing "his profession's apathy, ignorance, and perhaps greed" as "they enjoy their $2-300 settlement check," although ***he himself*** registered to participate in the claims process. *Id.* But Dr. Clark concedes that he does not "understand or even have all the facts," and that his objection is "more an opinion editorial of [the legal] system than a relevant objection." *Id.*

And Dr. Roe has lodged nothing more than a boilerplate objection to Class Counsel's fee request. ECF No. 334. Dr. Roe erroneously labels the $80 million settlement a "mega fund" that necessitates, in his view, application of the "lodestar" approach as compared with the "percentage of the fund" approach. *Id.* at 2, 4. But Dr. Roe does not cite ***a single case*** demonstrating that Class Counsel's requested lodestar multiplier of 1.45 is excessive; to the contrary, Class Counsel cited dozens of cases from within and outside of this Circuit awarding

larger multipliers and similar or larger percentages of the fund on settlements both comparably sized and substantially larger than that reached by Class Counsel in this action. *See* ECF No. 328 at 3 n.4, 17 n.8 (collecting cases with similar or larger fund percentages) & 3 n.5, 21-22 (collecting cases with larger multipliers). Moreover, Dr. Roe entirely ignores the risks and expenses inherent in antitrust class actions generally and in this case in particular and provides no basis to judge whether the modest multiplier sought by Class Counsel is appropriate.

Whether the lodestar or percentage of the fund approach is utilized, the fee request is warranted and appropriately rewards Class Counsel for the risk of contingent litigation and the tens of millions of dollars of hard costs and attorney time Class Counsel invested in this matter without any guarantee of remuneration. *In re Credit Default Swaps Antitrust Litig.*, 13-md-2476, 2016 WL 2731524, at *18 (S.D.N.Y. Apr. 26, 2016) (awarding multiplier of just over six: "It is important to encourage top-tier litigators to pursue challenging antitrust cases such as this one. Our antitrust laws address issues that go to the heart of our economy. Our economic health, and indeed our stability as a nation, depend upon adherence to the rule of law and our citizenry's trust in the fairness and transparency of our marketplace.").

Dr. Clark's irrelevant objection and Dr. Roe's boilerplate disagreement with Class Counsel's fee request stand in stark contrast to the positive reaction of the tens of thousands that have already registered to participate in the claims process. They should be overruled.

As the Court recognized in preliminarily approving the comprehensive Notice, it satisfies due process and constitutes the "best notice that is practicable under the circumstances." ECF No. 317 ¶ 16. This preliminary conclusion has been proven correct, as the direct mail component of the Notice alone reached over 95 percent of the Settlement Class. Finegan Decl. ¶ 9. The strength of the Notice, to which no Settlement Class member objected, is further demonstrated

by the strong preliminary claims rate. *Id.* ¶ 10. And as this Court recognized in preliminarily approving the Plan of Allocation—again, to which no member of the Settlement Class has objected—it "is a straightforward and equitable method of allocating the Net Settlement Fund to the Settlement Class, and [] it fairly accounts for the relative strengths and weaknesses of the claims of different categories of Settlement Class Members." ECF No. 317.

Finally, for the reasons set forth in Plaintiffs' preliminary approval and class certification papers and those adopted by the Court in preliminarily certifying the Settlement Class, its conditional certification should be finalized for purposes of effectuating the Settlement.

Plaintiffs' Motion should be granted.

II. BACKGROUND

A. Procedural Posture

On January 9, 2019, this Court: (1) granted preliminary approval of the Settlement, finding the requirements of Rules 23(a) and Rule 23(b)(3) satisfied, ECF No. 317 ¶¶ 2 & 4; (2) preliminarily certified a Settlement Class for settlement purposes, *id.* ¶ 4; (3) appointed Class Counsel as counsel for the Settlement Class, *id.* ¶ 9; (4) appointed Plaintiffs as class representatives of the Settlement Class, *id.* ¶ 10; (5) appointed the Huntington National Bank as the Escrow Agent and Heffler Claims Group ("Heffler) as the Settlement Administrator, *id.* ¶¶ 11 & 15; (6) approved the proposed method of disseminating notice to the Settlement Class as the "best notice that is practicable under the circumstances" and "reasonably calculated" to apprise the Settlement Class of their rights and options, meeting "the requirements of Federal Rule of Civil Procedure 23 and due process," *id.* ¶ 16; and (7) preliminarily approved the proposed method of allocating the net settlement fund to the Settlement Class, finding Dr. McClave's proposed methodology to be "a straightforward and equitable method of allocat[ion]"

that "fairly accounts for the relative strengths and weaknesses of the claims of different categories of Settlement Class Members," *id.* ¶ 17.

The Court subsequently modified the proposed notice in one minor respect on February 1, 2019. ECF No. 325. Plaintiffs thereafter moved for an award of attorneys' fees, expenses, and class representative service awards on March 22, 2019. ECF Nos. 327-328. Plaintiffs' fee motion papers were promptly posted on the website set up for the Settlement. Finegan Decl. ¶ 19.

B. The Dissemination of Notice of the Settlement to the Settlement Class

The Notice previously approved by the Court included direct mail notice to all known class members via U.S. First Class Mail; publication notice through specifically targeted press releases, dental trade publications, e-newsletters, and other outlets; internet notice through social media platforms such as Facebook and Instagram; and the maintenance of a settlement website containing important information and court documents. Finegan Decl. ¶ 4.

On February 5, 2019, Heffler received and processed direct mailing addresses contained in Defendants' transactional data, utilizing the National Change of Address Database to ensure that the most current mailing information would be used. Finegan Decl. ¶ 6. On February 22, 2019, Notice was mailed to approximately 349,792 addresses connected to the estimated 200,000 members of the Settlement Class. *Id.* ¶¶ 6 & 8. Based on undeliverable mail responses, Heffler estimated that 95 percent of the Settlement Class were reached through direct mail. *Id.* ¶ 9.

Publication notice was disseminated on March 4, 2019, in the American Dental Association's *ADA News*, a publication with a circulation of over 158,000, and through the *ADA News* e-newsletter as both a banner ad and a "splash page" in the digital version of the circulation. Finegan Decl. ¶¶ 11-13 & Ex. C. Notice was also delivered through social media platforms Facebook and Instagram. *Id.* ¶¶ 14-16 & Ex. D. In addition, press releases were issued

on February 22, 2019, in both English and Spanish, targeting 393 dental industry journalists and bloggers; Heffler staff identified 530 media pick-ups of the press release. *Id.* ¶¶ 17-18 & Ex. E.

Finally, Heffler (a) caused a settlement website to go live on February 21, 2019, which, through May 22, 2019, had 14,393 visits; (b) established a 24-hour toll free telephone line where callers can obtain automated and interactive information, which, through May 22, 2019, had received 1,611 calls; and (c) established a dedicated post office box for written correspondence, which through May 22, 2019 had received (and where necessary, Heffler responded to) 108 pieces of correspondence from members of the Settlement Class. *Id.* ¶¶ 19-21.

C. The Settlement Class' Response to the Settlement

The response of the Settlement Class to the Settlement has been vigorous. There are approximately 200,000 members in the Settlement Class. McClave Decl. ¶ 2. As of Thursday, May 22, 2019, 43,983 members of the Settlement Class—representing over 22 percent of the Settlement Class—have registered to participate in the claims process, while only four members have requested exclusion from the Settlement Class, and only two members objected. Finegan Decl. ¶¶ 10, 22-23. This is an impressive participation rate given the stage of the proceedings and the remaining time to register. *Id.* ¶ 10.

The ***only two*** objections to the Settlement, out of a Settlement Class comprised of 200,000 members, are not truly objections to the fairness, reasonableness, or adequacy of the Settlement, but are instead (1) a self-proclaimed "opinion editorial of [the legal] system," ECF No. 330; and (2) a boilerplate objection to the fee request (which is properly considered separate and apart from the fairness, adequacy, and reasonableness of the Settlement) that fails to engage at all with the facts and circumstances of this particular case, the quality or efficiency of the legal representation or results of the case, the propriety of the billing rates or lodestar, and the

authorities Class Counsel cited in support of the fee request. *Compare* ECF No. 334 *with* ECF No. 328 at 3 nn.4-5. 17 n.8, 21-22, & n.11.

Settlement Class member Albert B Clark DDS's *pro se* objection to the Settlement concedes that it "is probably not even relevant in the legal realm" and appears to complain that the $80 million Settlement amount is ***too high*** because the objector's experiences do "not support the allegations that agreement on prices harmed" his practice. Ostensibly, the objector's complaint is that because he does not view the claims as plausible, the Settlement amount should "in fairness" be zero. *See id.*

Dr. William Roe's objection is equally unavailing. Dr. Roe begins by incorrectly labeling the $80 million Settlement a "mega fund"—a term typically reserved for cases settled in the hundreds of millions or billions of dollars—in order to complain that the Court should adopt the lodestar approach instead of the percentage of the fund approach in determining fees. ECF No. 334. Dr. Roe tacitly suggests that Class Counsel's multiplier should be one, but cites no authority supporting this outcome (which would punish efficient counsel and disincentivize counsel from seeking the largest settlement award possible). Tellingly, Dr. Roe never suggests that Class Counsel provided anything other than efficient and excellent representation to the Settlement Class, and fails to engage with black letter law that courts should properly reward counsel for pursuing, and incentivize them to continue to pursue, complex, contingent antitrust cases.

III. ARGUMENT

A. The Settlement Should be Finally Approved.

Rule 23(e) provides that the Court should grant final approval to a class action settlement if it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this determination, the Court should consider both the procedural and substantive fairness of the settlement. *Wal-*

Mart Stores, 396 F.3d at 116; *In re Air Cargo Shipping Servs. Antitrust Litig.*, No. 06-md-1775, 2012 WL 3138596, at *4 (E.D.N.Y. Aug. 2, 2012). Public policy favors the settlement of disputed claims among private litigants, and that is equally true, if not more so, in the context of class actions. *Wal-Mart*, 396 F.3d at 116-17.

1. The Settlement is Presumptively Fair, Reasonable, and Adequate.

Where, as here, a settlement is the "product of arm's length negotiations conducted by experienced counsel knowledgeable in complex class litigation," the settlement enjoys a "presumption of fairness." *In re Austrian and German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000); *see also Wal-Mart*, 396 F.3d at 116. Indeed, especially in cases like this where Class Counsel are composed of some of the most experienced antitrust class action lawyers in the nation, "'great weight' is accorded to the recommendations of counsel, who are most closely acquainted with the facts of the underlying litigation." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997) (citation omitted), *aff'd,* 117 F.3d 721 (2d Cir. 1997); *see also In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 576 (S.D.N.Y. 2008).

Moreover, the Settlement was reached after extended, frank, and contentious negotiations throughout the course of the litigation, including a mediation session conducted under the guidance of the Honorable Diane Welsh. Cramer Decl. ¶¶ 18-24. The involvement of a mediator strengthens the existing presumption of fairness. *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001). The presumption of fairness thus applies here.

2. The *Grinnell* Factors Support Final Approval of the Settlement.

The Settlement is also fair, reasonable, and adequate when viewed in light of the nine factors identified by the Second Circuit in *Grinnell*:

> (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of

> discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, [and] (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000). As demonstrated below, the Settlement amply satisfies the *Grinnell* factors.[3]

a. The Complexity, Expense, and Likely Duration of Litigation (*Grinnell* 1).

Courts throughout this Circuit, including this Court, have remarked that antitrust cases such as this one readily satisfy the first *Grinnell* factor. *E.g.*, *In re Vitamin C Antitrust Litig.*, No. 06-md-1738-BMC, 2012 WL 5289514, at *4 (E.D.N.Y. Oct. 23, 2012) (Cogan, J.) ("Federal antitrust cases are complicated, lengthy, and bitterly fought, as well as costly.") (citations and quotation omitted); *see also Virgin Atl. Airways Ltd. v. British Airways PLC*, 257 F.3d 256, 263 (2d Cir. 2001) (recognizing the "complexities of antitrust cases"); *Weseley v. Spear, Leeds & Kellogg*, 711 F. Supp. 713, 719 (E.D.N.Y. 1989) ("antitrust claims" are "notoriously complex").

This case is no exception. It involved allegations of an intricate overarching agreement not to compete on price, including by multiple forms of alleged conduct, such as alleged coordination on gross margin levels, an alleged agreement among some (but not all) Defendants to limit the hiring of one another's sales representatives (in order to prevent those sales representatives' customers from moving between Defendants, akin to a market allocation scheme), and alleged episodic group boycotts (involving different configurations of Defendants

[3] "[N]ot every factor must weigh in favor of settlement[;] rather [a] court should consider the totality of these factors in light of the particular circumstances." *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 189 (S.D.N.Y. 2012) (internal citation and quotation omitted).

and Burkhart) of disruptive low-priced rivals. *See, e.g.*, ECF No. 116 ¶¶ 3-7, 45-160.

Although Plaintiffs have unwavering confidence in their claims, Defendants vigorously disputed them and continue to do so. There can be little doubt that, absent the Settlement, Defendants would have mounted robust defenses to these allegations in future stages of the litigation, including trial. At each stage, including class certification, the losing party would have sought to appeal, resulting in further expense and delay.

Avoiding this delay and uncertainty is a tangible benefit to the Settlement Class that supports final approval. *Maley v. Del Glob. Techs. Corp.*, 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) (approval granted as "[d]elay, not just at the trial stage but through post-trial motions and the appellate process, would cause Class Members to wait [for] years for any recovery, further reducing its value"); *Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F. Supp. 2d 254, 261 (S.D.N.Y. 2003) ("[T]he passage of time would introduce yet more risks . . . and would, in light of the time value of money, make future recoveries less valuable than this current recovery"); *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 456 (S.D.N.Y. 2004) (citing the same considerations and finally approving settlement).

The first *Grinnell* factor thus weighs in favor of final approval of the Settlement.

b. The Reaction of the Settlement Class to the Settlement (*Grinnell* 2).

The reaction of the Settlement Class to the Settlement has been enthusiastic, satisfying the second *Grinnell* factor and weighing heavily in favor of final approval. Of the approximately 200,000 members in the Settlement Class, 43,983 (or over 22 percent of the Settlement Class) have ***already*** registered to participate in the claims process. Finegan Decl. ¶ 9. That is a strong preliminary result, *id.*, and the numbers will only improve as the October 15, 2019 claims period approaches. *See* ECF No. 331. And of the 200,000 members of the Settlement Class, only four

requested exclusion. Finegan Decl. ¶ 22. The low exclusion rate speaks volumes as to the fairness, adequacy, and reasonableness of the Settlement. *In re Air Cargo Shipping Servs. Antitrust Litig*., No. 06-md-1775, 2015 WL 5918273, at *3 (E.D.N.Y. Oct. 9, 2015) ("That the overwhelming majority of the class members have elected to remain in the settlement class supports a finding that the settlement is fair, reasonable, and adequate."); *Wal-Mart*, 396 F.3d at 119 ("[T]he favorable reaction of the overwhelming majority of class members to the Settlement is perhaps the most significant factor in our *Grinnell* inquiry").

The paucity of objections is another strong indicator of the adequacy of the Settlement. *Wal-Mart Stores*, 396 F.3d at 118 ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.") (internal quotations omitted). And as discussed *supra*, the two objections stand in stark contrast to the otherwise resoundingly positive response of the Settlement Class. Finegan Decl. ¶¶ 10 & 23.

Dr. Clark's only complaint appears to be that the Settlement amount should be ***zero*** and that there should be ***no Settlement at all*** because his personal "experience does not support the allegations that agreement on prices harmed [his] practice." *Id.* But as Dr. Clark concedes, he "do[es] not claim to understand or even have all the facts in this case." *Id.* Unlike Dr. Clark, Class Counsel had access to the millions of pages of discovery and the over one hundred depositions taken in this action that, in Class Counsel's view, supported the existence of Defendants' alleged overarching conspiracy not to compete on price, as well as the econometric analyses of Dr. McClave showing that the Settlement Class, inclusive of Dr. Clark, suffered economic injury. *E.g.*, Cramer Decl. ¶¶ 3-7, 11-15, 18-24, 27-28, 35, 37, & 47-48.

At its core, Dr. Clark's true complaint appears to lie with the means of collective redress in antitrust class actions authorized by the United States Supreme Court and Congress. ECF No.

330 ("I realize this is probably more an opinion editorial of [the legal] system than a relevant objection").[4] This admittedly irrelevant "opinion editorial" is no barrier to final approval.

Dr. Roe's objection urges the Court to adopt the lodestar approach over the percentage of the fund approach on the incorrect basis that the $80 million Settlement is a "mega fund" and Class Counsel will earn a "boon" or windfall. ECF No. 334. While the result is substantial in absolute and relative terms, it is not, technically, a "mega-fund." Even if it were, though, the requested multiplier of 1.45 is eminently reasonable and appropriately rewards Class Counsel for the tens of millions of dollars in hard costs and attorney time they invested in this case with no guarantee of remuneration. ECF No. 328 at 22 & n.11 (collecting cases).[5] Indeed, even in the *NASDAQ* opinion on which Dr. Roe principally relies in his papers, the Court awarded a multiplier of ***3.97*** and noted that multipliers between 3.5 and 4 in antitrust cases are "common." *In re NASDAQ Market-Makers Antitrust Litig.*, 187 F.R.D. 465, 489 (S.D.N.Y. 1998).[6] Dr. Roe's threadbare objection neither critiques Class Counsel's total lodestar nor addresses the proposed multiplier and as such does not come close to showing that the requested multiplier is excessive.[7]

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[4] Despite criticizing both the U.S. legal system's mechanisms for collective redress ***and*** his peers who elect to participate in the Settlement, ECF No. 330 (citing his "profession's apathy, ignorance, and perhaps greed" as "they enjoy their $2-300 settlement check"), Dr. Clark has himself registered to participate in the Settlement's claims process and receive a payment, Finegan Decl. ¶ 22.

[5] William B. Rubenstein, *The Puzzling Persistence of the "Mega-Fund" Concept*, 4 CLASS ACTION ATTORNEY FEE DIGEST 39 (Feb. 2010) (rejecting the mega fund sliding scale approach as "rough justice," observing that class counsel that secure a larger benefit for the class should be incentivized through higher multipliers, and urging courts "to be skeptical of the idea of the windfall in the first place," and to use "the multiplier itself" as the measure, if any, of any windfall to class counsel).

[6] Additionally, "the lodestar method is difficult to apply, time-consuming to administer, inconsistent in result, and capable of manipulation. In addition, the lodestar creates inherent incentive to prolong the litigation until sufficient hours have been expended." MANUAL COMPLEX LIT. § 14.121 (4th ed.). Conversely, "the percentage method [] encourage[s] early settlements by not penalizing efficient counsel, thus ensuring that competent counsel continue to be willing to undertake risky, complex, and novel litigation" and "the size of the fund created" "is itself the measure of success." *Id.*

[7] Dr. Roe's other authorities (which are all nearly two decades stale and do not purport to apply Second Circuit law) are equally inapposite. *Branch v. F.D.I.C.* suggested that multipliers in ***ERISA cases*** "usually center[] around 1.5," consistent with Class Counsel's requested 1.45. No. 91-cv-13270, 1998

The second *Grinnell* factor weighs heavily in favor of final approval of the Settlement and an award of the sought attorneys' fees.

c. The Stage of the Proceedings (*Grinnell* 3).

Through over three years of litigating this case, Plaintiffs "have obtained a sufficient understanding of the case to gauge the strengths and weaknesses of their claims and the adequacy of the settlement." *In re AOL Time Warner, Inc.*, No. 02-cv-5575-SWK, 2006 WL 903236, at *10 (S.D.N.Y. Apr. 6, 2006). Fact discovery—which was sprawling, involving the production of over a million documents and over 100 depositions—is complete. Cramer Decl. ¶¶ 11, 13. Expert discovery—which saw Defendants proffer four economists while Plaintiffs proffered an economist and an econometrician, each of whom was deposed—is also complete. *Id.* ¶ 14. Class certification and *Daubert* motions are fully briefed. *Id.* ¶¶ 16-17. Indeed, an agreement in concept to resolve the action was first reached on the proverbial courthouse steps, with each side poised to present argument at the hearing concerning Defendants' *Daubert* motion directed at Dr. McClave. *Id.* ¶ 20. There can be no doubt that at the time the Settlement was reached, each side appreciated the strengths and weaknesses of their claims and defenses.

This third *Grinnell* factor therefore weighs heavily in support of final approval.

WL 151249, at *3 (D. Mass. Mar. 24, 1998). *In re First Fid. Bancorporation Sec. Litig.* focuses on avoiding ***excess multipliers*** and "appl[ied] a multiplier of approximately 2.5 to the lodestar," much higher than Class Counsel's request here. 750 F. Supp. 160, 164 (D.N.J. 1990). And *In re Prudential Ins. Co. Am. Sales Practice Litigat. Agent Actions* merely remanded for the district court to consider whether the 5.1 multiplier awarded by the district court was appropriate, as it could not "assess the propriety of a multiplier with no findings to review." 148 F.3d 283, 341 (3d Cir. 1998). In remanding to the district court to make those findings, it noted, however, that "multiples ranging from one to four are frequently awarded in common fund cases," again perfectly in line with Class Counsel's request here. *Id.* If anything, Dr. Roe's authority suggests that Class Counsel's requested multiplier is on the low-end of the commonly-accepted range of multipliers.

d. The Risk of Establishing Liability and Damages and Maintaining the Class Action Through Trial (*Grinnell* 4, 5 & 6).

While Class Counsel believe their case was strong (as Defendants undoubtedly believe theirs was), it—like all complex antitrust cases—would have required winning on multiple dispositive issues, where a loss on any one could have effectively ended the case. "In assessing the Settlement, the Court should balance the benefits afforded the Class, including the *immediacy* and *certainty* of a recovery, against the continuing risks of litigation." *Interchange*, 986 F. Supp. 2d at 224 (emphasis in original) (citation and quotation omitted). In so doing, the Court need not "adjudicate the disputed issues or decide unsettled questions; rather, the Court need only assess the risks of litigation against the certainty of recovery under the proposed settlement[s]." *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. at 459.

Despite Plaintiffs' confidence that they would have been able to establish Defendants' liability and prove damages at trial, all antitrust cases involve complexity, risk, and uncertainty leading up to, and even following, trial. *NASDAQ*, 187 F.R.D. at 476 ("[T]he history of antitrust litigation is replete with cases in which antitrust plaintiffs succeeded at trial on liability, but recovered no damages, or only negligible damages, at trial, or on appeal."); *Cardiology Assocs., P.C. v. Nat'l Intergroup, Inc.*, No. 85-cv-3048-JMW, 1987 WL 7030, at *3 (S.D.N.Y. Feb. 13, 1987) ("There is a substantial risk that the plaintiff might not be able to establish liability at all and, even assuming a favorable jury verdict, if the matter is fully litigated and appealed, any recovery would be years away."). Moreover, while Plaintiffs remain confident that this antitrust case was well-suited for class treatment, there is always the possibility of changed circumstances, or changes in the governing law, that could threaten that conclusion in the future. *Bellifemine v. Sanofi-Aventis U.S. LLC*, No. 07-cv-2207-JGK, 2010 WL 3119374, at *4 (S.D.N.Y. Aug. 6, 2010) ("There is no assurance of obtaining class certification through trial,

because a court can re-evaluate the appropriateness of certification at anytime[.]").

Moreover, Plaintiffs' class motion depended in large part on the admissibility and plausibility of their experts' impact and damages analyses—both of which Defendants had sought to exclude on the grounds that, *inter alia*: (1) Plaintiffs' allegations amounted merely to episodic and disparate illicit acts that could not support a singular overarching conspiracy; (2) high variability in prices and margins supposedly precluded a finding of common impact and classwide damages; (3) individual inquiries were purportedly required to determine whether a given dental practice was overcharged by group boycotts and no-poach agreements that had ostensible geographic and temporal limitations; and (4) Dr. McClave's econometric modeling relied on an inappropriate benchmark and suffered from other statistical flaws. Cramer Decl. ¶ 16. While Plaintiffs contend that each argument, and its underlying factual premise, was incorrect, there is no guarantee that the judge, jury, or an appellate tribunal would have agreed.

When compared to the certainty of the significant recovery achieved by the Settlement, these considerations militate against further litigation and support final approval of the Settlement. Thus, the fourth, fifth, and sixth *Grinnell* factors weigh in favor of final approval.

e. The Ability of Defendants to Withstand a Greater Judgment (*Grinnell* 7).

The seventh *Grinnell* factor addresses the Defendants' ability to withstand a greater judgment, but it is usually afforded minimal weight, because "in any class action against a large corporation, the defendant entity is likely to be able to withstand a more substantial judgment, and, against the weight of the remaining factors, this fact alone does not undermine the reasonableness of the instant settlement[s]." *Weber v. Gov't Emps. Ins. Co.*, 262 F.R.D. 431, 447 (D.N.J. 2009); *see also Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 186 (W.D.N.Y. 2005) ("confident that a corporation the size of Kodak could survive a greater judgment," the court held

that the amount of the settlement, "when considered with the other *Grinnell* factors, does not alone render the settlement unfair").

Here, however, there are real concerns as to whether Plaintiffs could have collected on their full trebled, or even single, damages if they prevailed at trial and through appeal. Schein's net income—which in Class Counsel's view is a useful guidepost in determining a company's ability or willingness to pay—is approximately a sixth of Plaintiffs' best-case single damages. Patterson's net income is approximately a fifteenth of that figure. And Benco is a privately owned company and the smallest of the Defendants by a wide margin. There are therefore real questions concerning whether Plaintiffs could successfully obtain a larger future settlement or collect on a future single-damages (let alone trebled) judgment.

The seventh *Grinnell* factor, then, weighs in favor of final approval of the Settlement.

f. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Risks of Litigation (*Grinnell* 8 & 9).

This case, like all large antitrust class actions, had inherent risks. The last two *Grinnell* factors "recognize[] the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion." *Wal-Mart*, 396 F.3d at 119 (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)); *see also In re Agent Orange Prod. Liab. Litig.*, 597 F. Supp. 740, 762 (E.D.N.Y. 1984). The determination of what dollar amount constitutes a reasonable settlement, given the risks of litigation, is not a simple "mathematical equation yielding a particularized sum." *Massiah v. MetroPlus Health Plan, Inc.*, No 11-cv-05669-BMC, 2012 WL 5874655, at *5 (E.D.N.Y. Nov. 20, 2012) (Cogan, J.) (citation and quotation omitted). Rather, "in any case there is a range of reasonableness with respect to a settlement—a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion."

Newman, 464 F.2d at 693.

"'The standard for evaluating settlement involves a comparison of the settlement amount with the estimated single damages,' not treble damages." *In re Warfarin Sodium Antitrust Litig.*, 212 F.R.D. 231, 257-58 (D. Del. 2002) (citations omitted). The $80 million Settlement amount represents 2.5-21 percent of Plaintiffs' single damages, ECF No. 265-1 at 11 (depending, in part, upon which version of the model the finder of fact ultimately credited, *see infra*), and is reasonable on its face, *Grinnell*, 495 F.2d at 455 n.2 ("[T]here is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery.").

The reasonableness of the $80 million Settlement amount is only bolstered when considering the likelihood of a reduced recovery in continued litigation. *In re Bear Stearns Cos., Inc. Derivative & ERISA*, 909 F. Supp. 2d 259, 270 (S.D.N.Y. 2012) ("[T]he propriety of a given settlement amount is a function of both (1) the size of the amount relative to the best possible recovery; and (2) the likelihood of non-recovery (or reduced recovery)."). Here, while Plaintiffs' believe their liability case was solid, Defendants obviously disputed that, and there is no guarantee a judge, jury, or appellate court would agree with Plaintiffs. Moreover, Plaintiffs' best-case damages estimates were vulnerable to substantial reduction. If just one of Defendants' econometrician's non-methodological criticisms were eventually credited by a jury, the aggregate damages produced by Dr. McClave's econometric model would plummet by 88 percent, to $379 million. ECF No. 276-7 ¶ 51 (report of Defendants' expert Jauren J. Stiroh, Ph.D., arguing that Dr. McClave's model failed to account for sales and marketing costs). And if Defendants ultimately prevailed on the issue of fraudulent concealment, the eight-year damages period would be cut in half. Those possible reductions—which have nothing to do with whether

the Defendants were found to have violated the federal antitrust laws—would cause the $80 million Settlement amount to represent approximately 21 percent (if just the former reduction occurred) or 42 percent (if both reductions occurred) of Plaintiffs' best-case single damages.

And even recovering these reduced judgments would require Plaintiffs to (1) certify a nationwide class, (2) defeat Defendants' class-related *Daubert* challenges, (3) defeat a Rule 23(f) petition, (4) survive summary judgment in whole on liability, (5) defeat all or most of Defendants' merits-related *Daubert* challenges, (6) prevail in challenges to the admissibility of key evidence at trial, through *in limine* motions or otherwise, (7) defeat inevitable motions for judgment as a matter of law, (8) obtain a favorable jury verdict on liability and damages, (9) defeat inevitable motions for judgment notwithstanding the verdict, and (10) prevail on appeal.

While Plaintiffs' convictions as to the skill of Class Counsel and the strength of their claims remain unwavering, running the table through district court proceedings and on appeal would undoubtedly necessitate the expenditure of countless hours and tens of millions of dollars over several more years—all in the face of Defendants' evidence and arguments and with the risk of the development of changed law or circumstances—for Plaintiffs to recover ***anything***. Weighing the risks attendant to pursuing a greater settlement or judgment years down the road versus the immediacy of guaranteed compensation that the Settlement provides strongly favors final approval. *AOL*, 2006 WL 903236, at *13 ("[T]he benefit of the Settlement will . . . be realized far earlier than a hypothetical post-trial recovery.").

Accordingly, the eighth and ninth *Grinnell* factors favor final approval.

B. Notice to the Settlement Class Comported with Rule 23 and Due Process.

Plaintiffs' Court-approved Notice program satisfied due process. A notice program must satisfy Rule 23(c)(2)(B) and Rule 23(e)(1). Rule 23(c)(2)(B) requires the "best notice that is

practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). However, neither individual nor actual notice to every Class member is required; instead, "class counsel [need only] act[] reasonably in selecting means likely to inform the persons affected." *Jermyn v. Best Buy Stores, L.P.*, No. 08-cv-214-CM, 2010 WL 5187746, at *3 (S.D.N.Y. Dec. 6, 2010) (citing *Weigner v. The City of New York*, 852 F.2d 646, 649 (2d Cir. 1988)); *accord In re Adelphia Commc'ns Corp. Sec. & Derivatives Litig.*, 271 F. App'x 41, 44 (2d Cir. 2008).

Rule 23(e)(1) requires that notice of a settlement be "reasonable"—*i.e.*, it must "fairly apprise the prospective members of the class of the terms of the [] settlement and of the options that are open to them in connection with the proceeding." *Wal-Mart*, 396 F.3d at 114 (citation and quotation omitted). As explained below, the Notice—already approved by this Court, *see* Order ¶ 16, ECF No. 317—satisfies each requirement. And each element of the program was effectuated in a timely manner, such that the Notice sent to potential Class Members complied in all respects with the Notice approved by the Court. Finegan Decl. ¶¶ 2, 4-24 & Exs. A-E.

1. The Notice Program Was the Best Practicable Under the Circumstances and Provided Direct Notice to All Addresses in Defendants' and Burkhart's Transactional Data (Rule 23(c)(1)(B)).

As described in Section II.B, *supra*, Notice to the Class had three components: Direct Notice, Publication Notice, and Internet Notice. Courts routinely approve notice programs that combine multiple methods of notice such as this one. *E.g.*, *Vitamin C*, 2012 WL 5289514, at *8 (approving notice disseminated "widely, through the internet, print publication, and targeted mailings"); *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *5 (approving program involving "mailed notice packets," publication of notice in "several important business publications," and "a website for the Settlement" that included important documents). The Court

should similarly find the Notice here adequate.

2. The Notice Program "Fairly Apprised" Potential Settlement Class Members of the Settlement and Their Options Thereunder (Rule 23(e)(1)).

The contents of a class action settlement notice must (1) "fairly apprise the prospective member of the class of the terms of the proposed settlement and the options that are open to them in connection with the proceedings" and (2) be written as to "be understood by the average class member." *Wal-Mart*, 396 F.3d at 114-15 (citations omitted). "There are no rigid rules to determine whether a settlement notice satisfies constitutional or Rule 23(e) requirements[.]" *Vitamin C*, 2012 WL 5289514, at *8 (quotation omitted). Some courts consider (a) "whether there has been a succinct description of the substance of the action and the parties' positions," (b) "whether the parties, class counsel, and class representatives have been identified," (c) "whether the relief sought has been indicated," (d) "whether the risks of being a class member, including the risk of being bound by the judgment have been explained," (e) "whether the procedures and deadlines for opting out have been clearly explained," and (f) "whether class members have been informed of their right to appear in the action through counsel." *Id.* (citation omitted).

The Notice previously approved by the Court here complied with these directives in all respects, Finegan Decl. ¶¶ 2, 4-24, Exs. A-E, and their contents "provided sufficient information for Class Members to understand the settlement and their options." *Sykes v. Harris*, No. 09-cv-8466-DC, 2016 WL 3030156, at *10 (S.D.N.Y. May 24, 2016).

Specifically, the language, contents, and methods of dissemination of the Direct, Publication, and Internet Notice assure conveyance of the necessary information, including a plain-language explanation of (a) the nature of the case, the claims and defenses, the class definition, the background of the Settlement, and how funds will be allocated upon final approval; (b) the right to opt out of or object to the Settlement and to appear at the final approval

hearing—and the processes and deadlines for doing so; and (c) the binding effect of judgment on those who do not exclude themselves. Finegan Decl. ¶¶ 4-9, Exs. A-E.

Additionally, the Notice informs Class Members of Class Counsel's intent to request an award of attorneys' fees, expenses, and service awards to the named class representatives; prominently features contact information for the Claims Administrator and Class Counsel should any Class Members have questions or require further information; and provides Class Members with information on how to register to receive a pre-populated claim form in order to receive a distribution from the Settlement. Finegan Decl. ¶¶ 4-9, Exs. A-E. Further, relevant Settlement-related papers, inclusive of Class Counsel's request for attorneys' fees, were posted to the Settlement website. *Id.* ¶ 19. This is more than adequate.

C. The Settlement Class Should be Certified.

In accordance with the terms of the Settlement, Plaintiffs respectfully request that the Court certify the following Settlement Class for settlement purposes:

> All persons or entities that purchased Dental Products directly from Schein, Patterson, Benco, Burkhart, or any combination thereof, during the period beginning August 31, 2008 through and including March 31, 2016 (the "Class Period"). Excluded from the Class are Schein, Patterson, Benco, and Burkhart (including their subsidiaries, affiliate entities, and employees), and all federal or state government entities or agencies.

ECF No. 317 ¶ 4 (preliminarily approving Settlement Class).

Certification of a settlement class is appropriate where that class meets all of the requirements of Rule 23(a) as well as one of the requirements of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). When certification of a settlement class is sought, "courts must take a liberal rather than a restrictive approach." *Cohen v. J.P. Morgan Chase & Co.*, 262 F.R.D. 153, 157-58 (E.D.N.Y. 2009). Courts need not consider whether a trial will be manageable because the proposal is that the case will not be tried. *In re Am. Int'l Grp.,*

Inc. Sec. Litig., 689 F.3d 229, 239 (2d Cir. 2012).

Plaintiffs previously moved to certify the Settlement Class for settlement purposes, *see* ECF Nos. 308-10, and the Court ordered its preliminary certification, ECF No. 317 ¶ 4. Plaintiffs also previously moved to certify a litigation class. *See* ECF Nos. 263-65 & 289. For the reasons set forth in those filings and the reasoning adopted by the Court in preliminarily certifying the Settlement Class, *see* ECF Nos. 263-65, 289, 308-10 & 317, the Settlement Class should be finally certified for settlement purposes (exclusive of the four Settlement Class members that requested exclusion, identified in the accompanying proposed order).

D. The Plan of Allocation Should be Finally Approved.

As this Court recognized in preliminarily approving the Plan of Allocation—to which no Settlement Class member has objected—it "is a straightforward and equitable method of allocating the Net Settlement Fund to the Settlement Class, and [] it fairly accounts for the relative strengths and weaknesses of the claims of different categories of Settlement Class Members." ECF No. 317 ¶ 17. Plaintiffs' proposed Plan of Allocation proposes to distribute the Net Settlement Funds to Claimants[8] largely *pro rata* based on their purchases of Dental Supplies.[9] A plan of allocating funds to the members of a settlement class "need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Vitamin C*, 2012 WL 5289514, at *7 (quotation omitted).

Plaintiffs alleged that the prices of Dental Supplies and Dental Equipment[10] were

[8] "Claimants are Class Members who timely file valid Claim Forms." McClave Decl. n. 6.

[9] "Dental Supplies . . . are items such as gloves, hand instruments, face masks, toothbrushes and anesthetic solutions." McClave Decl. n. 5 (citation omitted).

[10] "Dental Equipment are non-consumable Dental Products used by dentists and dental laboratories that include imaging devices, dental chairs, and CAD/CAM systems." McClave Decl. n. 4 (citation omitted).

inflated, *see generally* ECF No. 116; however, largely because of time constraints, they only moved to certify a litigation class of purchasers of Dental Supplies, ECF Nos. 263-65, 289. They also carved out of the proposed litigation class larger Corporate purchasers[11] that, because of their size and sophistication, wielded considerable buying power and suffered considerably less economic harm. *Id.* The proposed litigation class was thus composed of Private[12] customers, which are small, independent dental practices that paid the highest prices and bore the brunt of the alleged anticompetitive scheme. *Id.* However, the Settlement releases the claims of, and the Settlement Class consists of, both Private and Corporate customers and purchasers of both Dental Supplies and Equipment.

Here, the Plan of Allocation proposes to place Claimants into one of two categories for purposes of the distribution of settlement funds: Group 1 consists of all Claimants that purchased any Dental Supplies, while Group 2 consists of all Claimants that purchased only Dental Equipment. McClave Decl. ¶ 3. The Plan proposes that 99.25 percent of the net settlement fund be allocated to Group 1 and 0.75 percent to Group 2, with that allocation predicated on (i) the "small fraction of revenue associated with Dental Equipment-only purchasers" in Group 2 and (ii) the "lower overcharge estimate for Dental Equipment." *Id.* ¶ (finding Group 2 class members represent 1.8 percent of all purchase revenue and that the overcharge estimate for Dental Equipment was only 40 percent of the estimate for Dental Supplies).

Within Group 1, Claimants will have their claim amount calculated based upon their customer classification: Corporate or Private. McClave Decl. ¶¶ 2, 5. Because Corporate

[11] "Private dental customers include sole practitioners, non-corporate dental practices and clinics, and dental laboratories." McClave Decl. n. 2 (citation omitted).

[12] "Corporate dental customers are multi-office practices with centralized functions, which include national dental support organizations ('DSOs')." McClave Decl., n. 3 (citation omitted).

Claimants wielded significantly more buyer power than Private Claimants for Dental Supplies, Dr. McClave estimates that Corporate Claimants' overcharge was only 3.1 percent of the overcharge estimate for Private Claimants. *Id.* ¶ 5. The Plan of Allocation thus calculates Private and Corporate claim amounts by weighting their qualifying purchases by their relative overcharge estimates, with Group 1 funds to be distributed *pro rata*[13] to Group 1 Claimants based upon their claim amount, i.e., their weighted purchases of Dental Supplies (in dollars). *Id.*

Comparatively, the Plan of Allocation does not weigh Group 2 Claimants' purchases of Dental Equipment based on their classification as Private or Corporate (because there is not the same Corporate vs. Private overcharge disparity for Dental Equipment); instead, Group 2 Claimants will be compensated *pro rata* based simply on their claim amount, i.e., their unweighted purchases of Dental Equipment (in dollars). *Id.* ¶ 6.[14]

By "fairly account[ing] for the relative strengths and weakness of the claims of different categories of Settlement Class Members," Order ¶ 17, ECF No. 317, Plaintiffs' Plan of Allocation goes further than is required: neither governing Rule 23 jurisprudence nor due process requires that the Settlement funds be distributed based on the relative strengths and weaknesses of the claims of different categories of the Settlement Class members.

Indeed, as Judge Cote recently observed in the Southern District of New York, "the apportionment of a settlement can never be tailored to the rights of each plaintiff with

[13] *Pro rata* distribution is routinely utilized in class action settlements. *E.g.*, *Interchange*, 2019 WL 359981, at *25 (preliminarily approving *pro rata* distribution); *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F.Supp.2d 503, 519 (E.D.N.Y. 2003) (finally approving *pro rata* distribution).

[14] Additionally, to safeguard against the possibility of a windfall in the event of an unexpectedly low number of Equipment-only Claimants, Group 2 Claimants' claims will be capped at 4.1 percent of gross purchases, with 4.1 percent representing the full overcharge estimate for such Claimants. McClave Decl. ¶ 6. If there are a low number of Group 2 Claimants and, as a result, some funds remain in Group 2 because of the cap, those funds will revert to Group 1 to the extent the size of the remaining Group 2 funds makes it practicable to do so. *Id.*

mathematical precision," and the "principal goal of a plan of distribution must be the equitable and timely distribution of a settlement fund without burdening the process in a way that will unduly waste the fund." *In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *9 (finding this principle "often magnified in antitrust cases"). Here, Class Counsel and their experts have tailored the Plan of Allocation to the different categories of Claimants using Dr. McClave's robust econometric analyses, far surpassing the minimal requirement that the Plan be supported by a reasonable and rational basis.[15] *Vitamin C*, 2012 WL 5289514, at *7. That the Plan is recommended by Class Counsel underscores the obvious conclusion that it is fair and adequate to the class as a whole. *In re Am. Bank Note Holographics, Inc.*, 127 F. Supp. 2d 418, 430 (S.D.N.Y. 2001) ("As with other aspects of the settlement, the opinion of experienced and informed counsel is entitled to considerable weight."). The Plan should be finally approved.

IV. CONCLUSION

For the foregoing reasons, the Settlement Class should be finally certified and the Settlement, Notice, and Plan of Allocation should be finally approved and Class Counsel's request for an award of attorneys' fees, expenses, and services awards granted in full.

Dated: May 24, 2019

Respectfully submitted,

/s/ Gary I. Smith, Jr.

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[15] *See, e.g.*, *Sullivan v. DB Investments, Inc.*, 667 F.3d 273, 293, 301-03, 305-08 (3d Cir. 2011) (criticisms of a class settlement based upon a distribution plan that fails to consider "the legal strengths and weaknesses of [individual] class members' claims misconstrue[] the requirements of Rule 23," as it is not the court's role to impose a Rule 12(b)(6) or 56-like standard on a Rule 23 motion to "differentiate within a [settlement] class based on the strength or weakness of the theories of recovery"); *Lane v. Facebook*, 696 F.3d 811, 823-24 (9th Cir. 2012) (rejecting the argument that "the district court was required to find a specific monetary value corresponding to each of the plaintiff class's [] claims and compare the value of those claims" to approve a class settlement); *In re Am. Int'l Grp., Inc. Sec. Litig.*, 689 F.3d 229, 239, 244 (2d Cir. 2012) (rejecting criticisms of settlement, citing *Sullivan* with approval).

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