UNITED STATES DISTRICT COURT

DISTRICT OF SOUTH CAROLINA

CHARLESTON DIVISION

COMMISSIONERS OF PUBLIC WORKS OF THE CITY OF CHARLESTON (d.b.a. Charleston Water System), Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. COSTCO WHOLESALE CORPORATION, CVS HEALTH CORPORATION, KIMBERLY-CLARK CORPORATION, THE PROCTER & GAMBLE COMPANY, TARGET CORPORATION, WALGREEN CO. and WAL-MART, INC., Defendants.	Civil Action No. 2:21-cv-00042-RMG CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF: (1) PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND (2) CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES

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Representative plaintiff, the Commissioners of Public Works of the City of Charleston (d.b.a. "Charleston Water System") ("Plaintiff"), submits this memorandum of law in support of its motion for: (i) final approval of the proposed Settlement, which resolves Plaintiff's common law claims in this class action (the "Litigation") against defendant Kimberly-Clark Corporation ("Kimberly-Clark" or "Defendant"), brought on behalf of all entities that own and/or operate sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts (sewage treatment plant, or "STP Operators") in the United States whose systems were in operation between January 6, 2018 and October 4, 2021, the date of preliminary approval ("Settlement Class" and the "Settlement Class Period"), and (ii) an award of attorneys' fees and expenses.[1]

I. INTRODUCTION

The Settlement with Kimberly-Clark – one of the largest, if not the largest, flushable wipes manufacturers in the country – provides critical injunctive relief to municipal wastewater systems throughout the country, including an unprecedented commitment to meet the national municipal wastewater standard for flushability, confirmatory testing, industry-leading labeling improvements, and public outreach about flushable and non-flushable wipes. Class Counsel achieved the Settlement only after months of extensive, arm's-length negotiations between the Settling Parties. The Settlement is an excellent result for Settlement Class Members as it provides much needed relief to wastewater treatment systems nationwide that are subject to a constant influx of wipes that are sold as "flushable" but do not break down sufficiently to pass through treatment facilities without causing harm. The Settlement is particularly impressive given significant

[1] Citations and internal quotations are omitted and emphasis is added throughout unless otherwise noted. All capitalized terms that are not otherwise defined herein have the same meanings ascribed to them in the Class Action Settlement Agreement, dated April 21, 2021 and filed April 26, 2021, ECF No. 59-2 ("Settlement Agreement").

litigation risks and unfavorable precedents seeking similar relief.

On October 4, 2021, the Court granted preliminary approval of the Settlement under Federal Rule of Civil Procedure 23(e)(1). ECF No. 98 ("Preliminary Approval Order"). In preliminarily approving the Settlement, the Court found that the Settlement was "the result of a fair process" and was "negotiated at arm's length" given "the Parties' history of litigating similar, if not identical issues, combined with Plaintiff's counsel's extensive experience of the same." *Id*. at 9-10. In addition to preliminarily approving the Settlement, the Court: (i) conditionally certified the proposed Settlement Class, and (ii) found the Notice plan as supplemented by the Settling Parties in subsequent Court proceedings to be "reasonable and adequate." *Id*. at 13.

Following implementation of the Court-approved Notice plan, to date not a ***single*** Settlement Class Member has filed a formal objection to ***any*** aspect of the Settlement. The absence of objections is of particular note here, and weighs heavily in favor of the Settlement, because the Settlement Class consists of municipal sewage treatment systems that are staffed and managed by professionals in the field. Over 17,000 potential Settlement Class Members identified in the U.S. Environmental Protection Agency's ("EPA") records were notified of the Settlement by First-Class Mail. Settlement Class Members were also notified about the Settlement through publication in a premier professional publication, as well as by press release, a dedicated Settlement website, and email transmittal to state and federal water, wastewater and/or municipal entities. Thus, the lack of objections and extensive notice plan further support the reasonableness of the Settlement.

The Settlement provides nationwide injunctive relief that will have ongoing benefits to Settlement Class Members. The injunctive relief in the Settlement will lessen Settlement Class Members' expenses incurred to address wipes-related clogging of their systems and lessen the preventative measures necessary to mitigate future clogging, in addition to improving the safety

and efficiency of those systems. For these reasons, and those detailed below, Plaintiff respectfully submits that the Settlement is fair, reasonable and adequate, and should be approved.

Class Counsel also respectfully request that the Court approve a fee and expense award totaling $590,000, consisting of attorneys' fees of $560,655.27, and the payment of litigation expenses and charges of $29,344.73, as compensation for their efforts. Class Counsel's work to date has been without compensation of any kind and the fee has been wholly contingent on the results obtained. The requested fee and expense award is consistent with awards in similar actions in the Fourth Circuit and throughout the country, and is fully supported by Plaintiff. Since fee awards are designed to encourage counsel to achieve the best possible result for the class, the amount requested in this case is warranted, given the exceptional result obtained and the obstacles and risks Class Counsel faced in bringing and prosecuting this case. Indeed, as discussed herein, the requested fee results in a ***negative*** lodestar multiplier of 0.56, substantially lower than multipliers routinely approved in the Fourth Circuit.

Accordingly, Plaintiff requests that the Court enter an order granting final approval of the Settlement, and awarding Class Counsel's requested attorneys' fees and expenses.

II. BACKGROUND OF THE LITIGATION AND SETTLEMENT[2]

A. Plaintiff's Investigation and Claims

Class Counsel's investigation began in November 2018, over two years before the filing of the Complaint. *See* Jt. Decl. at ¶9. Before that time, Plaintiff's counsel, Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), was litigating an analogous case on behalf of a different STP

[2] Further detail about the Litigation and Settlement are detailed in the Joint Declaration of Vincent M. Serra and F. Paul Calamita in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and an Award of Attorneys' Fees and Expenses ("Jt. Decl." or "Joint Declaration"), submitted herewith. The Joint Declaration is an integral part of this submission and, for the sake of brevity in this memorandum, the Court is respectfully referred to it for a detailed description of, *inter alia*: the history of the Litigation; the nature of the claims asserted; the negotiations leading to the Settlement; and the risks and uncertainties of continued litigation; among other things.

Operator against similar Defendants[3] in the Eastern District of New York – *The Preserve at Connetquot Homeowners Association, Inc. v. Costco Wholesale Corporation, et al*., No. 2:17-cv-07050-JFB-AYS. *Id.* In *Preserve*, plaintiff's consulting expert – Robert Villée, the former Executive Director of the Plainfield Area Regional Sewerage Authority and chair of the Water Environment Federation ("WEF") – received testing data from, and conducted testing in coordination with, Kimberly-Clark in December 2018 in connection with separate settlement discussions. *Id*. Mr. Villée also advised Plaintiff here in connection with Plaintiff's investigation and, ultimately, the settlement negotiations discussed below. *Id.*

As part of their investigation, Class Counsel reviewed countless media reports, flushability testing results, an FTC investigation, and pending litigation against flushable wipes manufacturers and retailers. *Id*. at ¶10. Class Counsel also communicated extensively with Plaintiff about its experience dealing with flushable wipes at Plaintiff's facilities, and coordinated with industry experts and consultants – including Mr. Villée and Barry Orr, a prominent wastewater industry specialist and representative of the Canadian Water and Wastewater Association on the International Water Services Flushability Group ("IWSFG"), a group of water associations, utilities and professionals focused on flushability – who advised Class Counsel on the factual bases of Plaintiff's claims. *Id*. After over two years of conducting its pre-suit investigation, on January 6, 2021, Class Counsel filed a detailed 59-page, 180-paragraph Complaint, setting forth claims for nuisance, trespass, defective design, failure to warn, and negligence on behalf of STP Operators in South Carolina and throughout the country. *Id*.

The Amended Class Action Complaint ("Amended Complaint"), filed on August 12, 2021

[3] "Defendants" refers to defendant Kimberly-Clark and the Non-Settling Defendants. The definition of "Non-Settling Defendants" is hereby modified to include Walgreen Co. in place of Walgreens Boots Alliance, Inc., given the filing of the Amended Complaint (defined below).

(ECF No. 85), seeks injunctive relief only – in the form of accurate and truthful labeling – to remedy costly and ongoing damage to Plaintiff's wastewater facilities due in significant part to the inability of Defendants' purportedly "flushable" wipes to break down and disperse sufficiently to pass through Plaintiff and Class members' wastewater systems. Jt. Decl. at ¶8; *see also* Amended Complaint at ¶1 and Prayer for Relief, C-G.[4]

B. The Settlement Process

Recognizing the strength of Plaintiff's claims and Class Counsel's unique experience with flushable wipes-related litigation and municipal water issues, Class Counsel initiated settlement discussions with Kimberly-Clark beginning in late 2019. Jt. Decl. at ¶11. In December 2019, Class Counsel informed Defense Counsel that it was preparing to file a putative class action in federal court on behalf of a nationwide class of STP Operators, seeking injunctive relief in connection with several companies' manufacturing, design, marketing and/or sale of flushable wipes, including Kimberly-Clark's Cottonelle-branded flushable wipes (the "Proposed Action"). *Id*. In April 2020, counsel for Plaintiff and Kimberly-Clark began discussing the possibility of resolving the Proposed Action as part of a mediation in a separate flushable wipes-related case. *Id*. at ¶12. As part of those discussions, Plaintiff submitted a proposal in July 2020 to resolve the Proposed Action, including proposed labeling changes and independent testing of the Product in consultation with its consultants. *Id*.

While Plaintiff and Kimberly-Clark did not reach an agreement before Plaintiff filed the Complaint, they continued their arm's-length settlement discussions in early 2021, with Class Counsel continuing to develop the injunctive relief terms in consultation with prominent members of the wastewater industry and IWSFG. *Id*. at ¶¶12-13. By March 29, 2021, Class Counsel and

[4] As discussed below, at the time the parties executed the Settlement Agreement, Plaintiff's original Complaint, filed on January 6, 2021 (ECF No. 1), was the operative pleading.

Defense Counsel had reached agreement on the basic terms of the Settlement. *Id*. at ¶13. On April 9, 2021, Plaintiff, Class Counsel, Defense Counsel, and various Kimberly-Clark business and legal personnel met via video conference to discuss the performance of the Product. *Id*. at ¶14. This discussion covered both the Product's current performance, and future performance changes to the Product that would be made pursuant to the term sheet, along with Kimberly-Clark's commitment to educate consumers not to flush non-flushable wipes, and to enhance its labeling of non-flushable wipes. *Id*. After exchanging several drafts of the proposed agreement and supporting documents, on April 21, 2021, the Settling Parties executed the Settlement Agreement. *Id*.

C. The Proposed Settlement Class

The Settlement Agreement calls for certification for settlement purposes of a Settlement Class consisting of "[a]ll STP Operators in the United States whose systems were in operation between January 6, 2018 and the date of preliminary approval." Settlement Agreement at ¶1.23. "STP Operators" are defined in the Settlement Agreement as "entities that own and/or operate sewage or wastewater conveyance and treatment systems, including municipalities, authorities and wastewater districts." *Id*. at 1. The Court conditionally certified the Settlement Class in its Preliminary Approval Order on October 4, 2021. ECF No. 98 at 8.

D. Terms of the Settlement

The Settlement provides meaningful injunctive relief in response to Plaintiff's claims, including: (1) enhanced Product performance; (2) confirmatory Product performance testing; (3) Product labeling improvements; and (4) public outreach about flushable and non-flushable wipes. *First*, Kimberly-Clark has agreed that its Product will comply with specific testing criteria, including implementing manufacturing improvements to ensure that the Product meets the IWSFG 2020: "PAS 3" flushability specifications by May 1, 2022, and ensuring that the Product currently meets all other IWSFG 2020 specifications and a modified PAS 3 specification of an average pass-

through percentage of at least 70% after 30 minutes of testing, with all other parameters remaining the same. Settlement Agreement at ¶2.1(a).[5]

Second, Kimberly-Clark has agreed to certain testing implementation and monitoring, including two years of confirmatory testing to verify that the Product continues to meet the IWSFG 2020 specifications after May 2, 2022, either by: (1) hosting periodic independent testing of the Product; or (2) submitting the Product to a mutually acceptable lab for independent testing beginning May 1, 2022. Settlement Agreement at ¶2.1(b).

Third, Kimberly-Clark has agreed to labeling changes for both flushable and non-flushable products. For flushable products (*i.e.*, the Product), upon verification that the Product meets IWSFG 2020 specifications (including PAS 3), Kimberly-Clark will modify the packaging and websites for the Product to add language specifying the bases or sources for the "flushable" claim that appears on its labeling, including that the Product complies with IWSFG 2020 and INDA GD4 guidelines. Settlement Agreement at ¶2.1(c)(i).

For non-flushable labeling, Kimberly-Clark will add prominent language or illustration on its non-flushable wipes products (*e.g.*, baby wipes) identifying the non-flushable products as "nonflushable" or instructing users not to flush the non-flushable products (*e.g.*, "Do Not Flush"), and will meet the "do not flush" labeling standards set forth in Section 3 of House Bill 2565 of Washington State, enacted March 26, 2020 ("HB2565"). *Id.* at ¶2.1(c)(ii). Kimberly-Clark also agreed that it would exceed the standards of HB2565 insofar as it will include "do not flush" symbols or warnings on not only the principal display panel, but also at least two additional panels of packaging for "non-flushable" wipes products, and will include certain high contrast coloring to its "Do Not Flush" symbol. *Id.* Significantly, the Washington State labeling legislation is

[5] For further information about the Slosh Box Disintegration Test used in PAS 3 testing, *see* ECF No. 59-1 at 6, n.4 and Amended Complaint at ¶¶40, 47.

substantively identical to similar legislation in California, Oregon, and Illinois.

Fourth, beyond product improvements and labeling enhancements, Kimberly-Clark has agreed to work with Plaintiff to instruct consumers not to flush non-flushable wipes and to conduct outreach to help educate consumers about which wipes are truly flushable, including promoting its compliance with IWSFG 2020: PAS 3. *Id*. at ¶2.1(b)(i)-(iii).

In combination, this injunctive relief should dramatically reduce the wipes-related impacts to public sewer systems nationwide.

III. THE NOTICE SATISFIED RULE 23 AND DUE PROCESS

Since the Court conditionally certified the Settlement Class under Federal Rule of Civil Procedure ("Rule") 23(b)(2), Plaintiff was required to provide notice to Settlement Class Members under Rule 23(c)(2)(A). Here, the Notice went beyond those requirements and, instead, met the stricter requirement of Rule 23(c)(2)(B) (applicable only to Rule 23(b)(3) classes), which requires "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Rule 23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). The Notice further satisfied Rule 23(e)(1), which requires that notice be directed "in a reasonable manner to all class members who would be bound." Rule 23(e)(1)(B).

In granting preliminary approval, the Court approved the notice procedures outlined in the Settlement Agreement as supplemented by the Settling Parties' agreement in Court proceedings on August 25 and September 9, 2021, including: (1) First-Class Mail notice to 17,297 potential Settlement Class Members consisting of publicly owned sewage treatment plant operators located in the United States as of August 27, 2021; (2) publication of a Summary Notice in both the print and online editions of WEF's magazine, *Water Environment & Technology*; (3) direct email notice to 23 national and local water organizations; (4) creation of a dedicated Settlement website; and

(5) publication of a Summary Notice via press release. *See* ECF No. 98 at 3, 13; Jt. Decl. at ¶¶16-17; Settlement Agreement at ¶¶7.1-7.5.[6] The Settling Parties also filed a copy of the proposed postcard notice with the Court (ECF No. 97) and Class Counsel provided a hard copy of this notice to the Court for inspection. *See* ECF No. 98 at 3; Jt. Decl. at ¶16.

In accordance with the Preliminary Approval Order and the October 13, 2021 Order Regarding Timeline for Proposed Settlement (ECF No. 110), by October 21, 2021– four days in advance of the October 25, 2021 deadline for publishing Notice of the Settlement – Class Counsel had emailed Notice to the State wastewater associations and other entities identified in ¶7.2 of the Settlement Agreement, and developed and activated a website dedicated to the Settlement with pertinent information and documents for Settlement Class Members, www.charlestonwipessettlement.com. Jt. Decl. at ¶17. Additionally, Class Counsel coordinated and caused the Summary Notice to be published in the November 2021 print and online editions of WEF's *Water Environment & Technology* magazine. *Id*. at ¶18. The Settling Parties also retained the services of Gilardi & Co. LLC ("Gilardi") to provide the Summary Notice by First-Class Mail to Settlement Class Members and issue notice via press release. *Id*. at ¶19. Gilardi mailed the Summary Notice and issued notice via press release over *Business Wire* on October 25, 2021. *Id*.; *see also* Declaration of Ross D. Murray Regarding Notice Dissemination and Publication ("Murray Decl."), at ¶¶5-6, submitted herewith.

The Notice apprises Settlement Class Members of their right to, and the deadline by which they must, object to the Settlement and Class Counsel's application for the requested attorneys' fees and expenses. Jt. Decl. at ¶18; Settlement Agreement at Ex. B. The Notice also states that Settlement Class Members can request to speak about their opinion of the Settlement and/or the

[6] To avoid any potential confusion, only Defendant, Plaintiff, and their counsel have any obligations under the Settlement, including implementing the notice procedures.

request for an award of attorneys' fees and expenses at the Final Approval Hearing, details information about the Settlement and its benefits, and provides further explanation about the various ways to receive additional information about the Settlement. *Id.* Additionally, the Notice includes, *inter alia*: (i) a statement indicating the attorneys' fees and expenses that will be sought; (ii) the Settlement Class definition; and (iii) the time and place of the Fairness Hearing. Settlement Agreement at Exs. B-C; Murray Decl. Exs. A-B.

Overall, the Notice's content and manner of dissemination "'fairly apprise[d] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them.'" *See Hill v. State St. Corp.*, 2015 WL 127728, at *15 (D. Mass. Jan. 8, 2015) (quoting *Greenspun v. Bogan*, 492 F.2d 375, 382 (1st Cir. 1974)). In sum, the efforts of Class Counsel "'fairly apprise[d]'" Settlement Class Members about the Settlement consistent with certification of a Rule 23(b)(2) class and in accordance with Rule 23(c)(2)(A) and (e)(1). *Hill*, 2015 WL 127728, at *15.

IV. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval. The Rule further directs that the settlement should be approved if the Court finds it "fair, reasonable, and adequate." Rule 23(e)(2).

Rule 23(e)(2) articulates specific factors for courts to consider when evaluating a settlement for final approval. Specifically, courts are called upon to assess whether:

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Id. Subsections 23(e)(2)(A)-(B) of the revised Rule focus on the "procedural" fairness of the settlement, while subsections 23(e)(2)(C)-(D) concern the settlement's "substantive" fairness. Advisory Committee Notes to 2018 Amendment to Rule 23(e)(2).

Overlapping with Rule 23(e)(2)(B) (arm's-length negotiation) and Rule 23(e)(2)(C)(i) (adequacy of the settlement based on the costs, risks, and delay of trial and appeal) is the two-level analysis in the Fourth Circuit set forth in *In re Jiffy Lube Securities Litigation,* 927 F.2d 155, 158-60 (4th Cir. 1991), which "includes an assessment of both the procedural fairness of the settlement negotiations and the substantive adequacy of the settlement itself." *In re NeuStar, Inc. Sec. Litig.*, 2015 WL 5674798, at *9 (E.D. Va. Sept. 23, 2015). The procedural fairness factor ensures "that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion." *Jiffy Lube*, 927 F.2d at 158-59. The substantive adequacy analysis, on the other hand, "'weigh[s] the likelihood of the plaintiff's recovery on the merits against the amount offered in settlement.'" *NeuStar*, 2015 WL 5674798, at *11. As discussed below, the proposed Settlement satisfies each of the factors identified under Rule 23(e)(2), as well as the Fourth Circuit's "fairness" and "adequacy" analysis.

A. The Settlement Is Procedurally Fair: Plaintiff and Class Counsel Have Adequately Represented the Settlement Class and Engaged in Arm's-Length Negotiations with Defendant

Plaintiff and Class Counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently prosecuting this Litigation on their behalf. Among other things, Plaintiff investigated the relevant factual information and retained and/or consulted with experts in connection with Plaintiff's claims and/or to perform product testing and analysis and technical research. *See* Jt. Decl. at ¶¶9-10. Furthermore, Class Counsel researched the legal issues underlying Plaintiff's claims, drafted a detailed complaint and participated in extensive settlement

negotiations with Defense Counsel, during which the Settling Parties advocated for their respective positions. *Id.* at ¶¶10-14; *supra* §II.B. The result is a Settlement comprised of the comprehensive injunctive relief described above, *supra* §II.D. The facts set out in §§II.B. and II.D. above, and further set forth in the Joint Declaration, demonstrate the adequacy, competence and diligence of Class Counsel and Plaintiff, as well as the arms-length nature of the negotiations. This comprehensive injunctive relief also satisfies both Rule 23(e)(2) and the principles required by *Jiffy Lube*, 927 F.2d at 158-60.

In addition, the Settling Parties achieved the Settlement as the result of good faith, arm's-length negotiations by experienced counsel, satisfying Rule 23(e)(2)(B) and the first part of the Fourth Circuit's *Jiffy Lube* analysis. In order to promote judicial and attorney efficiencies, prior to the filing of the Complaint, the Settling Parties engaged in arm's-length settlement negotiations for over a year. The Fourth Circuit considers whether the case has progressed far enough to dispel any wariness of "'possible collusion among the settling parties.'" *NeuStar*, 2015 WL 5674798, at *10 (quoting *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009)). Here, there can be no question the Settlement was the result of arm's-length negotiations in which there is no hint of collusion. As discussed, over a period of more than a year, the Settling Parties negotiated the terms of the Settlement and rejected or countered numerous offers or counteroffers. "These adversarial encounters dispel any apprehension of collusion between the parties." *NeuStar*, 2015 WL 5674798, at *10.[7]

Moreover, this is the fourth class action suit brought against Kimberly-Clark by counsel

[7] The Fourth Circuit also looks to the extent of discovery. *NeuStar*, 2015 WL 5674798, at *10. Here, Plaintiff had access to a large volume of information and data even though this case had not progressed to formal discovery. As described *supra* §II(A), and in the Joint Declaration (¶¶9-10), Plaintiff conducted a particularly expansive pre-filing investigation (that continued following the filing of the Complaint) including the use of consulting experts.

for Plaintiff related to Kimberly-Clark's flushable wipes, the first of which – *Kurtz v. Kimberly-Clark Corporation, et al.*, No. 1:14-cv-01142-PKC-RML (E.D.N.Y.) – has been pending since 2014 and involved significant discovery. "These factors alone could be enough to demonstrate the fairness of the Settlement[.]" *Berry v. LexisNexis Risk & Info. Analytics Grp., Inc*., 2014 WL 4403524, at *14 (E.D. Va. Sept. 5, 2014), *aff'd sub nom*. *Berry v. Schulman*, 807 F.3d 600 (4th Cir. 2015) (plaintiff's counsel's involvement in two prior class actions against the same defendants related to the same challenged practices following extensive discovery supported a finding of fairness). The review of these documents, combined with the significant pre-suit investigation and negotiations with Defendant, gave Plaintiff a meaningful understanding of the merits of its factual allegations, and the strengths and weaknesses of its legal claims.

In sum, Class Counsel brought its extensive experience to bear on the prosecution and settlement of this case. As detailed in the Joint Declaration, Class Counsel has substantial experience in complex class actions, flushable wipes-related litigation, and disputes involving water and infrastructure. Jt. Decl. at ¶22. Class Counsel have zealously represented the Settlement Class, and achieved a meaningful Settlement after extensive arm's-length negotiations with Defense Counsel. Moreover, Plaintiff has assisted Class Counsel throughout this process and adequately represented the Settlement Class. *See* Declaration of Kin Hill on Behalf of Charleston Water System ("Pl. Decl."), at ¶5, submitted herewith; *see also* ECF No. 64-4. Accordingly, the Settlement satisfies the "procedural" factors outlined in Rule 23(e)(2)(A)-(B) and *Jiffy Lube*.

B. The Settlement Is Substantively Fair: The Relief Provided to the Settlement Class Is Adequate and Equitable

"The relief that the settlement is expected to provide to class members is a central concern" of the analysis under Rules 23(e)(2)(C)-(D). Notes of Advisory Committee on 2018 Amendment to Rule 23(e)(2)(C)-(D). This factor overlaps with the Fourth Circuit's analysis of the substantive

adequacy of the Settlement. *Jiffy Lube*, 927 F.2d at 159.

The injunctive relief achieved through the Settlement – in the form of enhanced product performance, confirmatory testing, labeling improvements, and public outreach – supports the adequacy of the Settlement and its equitable effect. In addition to providing substantial value to Settlement Class Members through reduced costs and effort to address wipes-related clogs and backups, the Settlement meets the other indicia of "substantive" fairness set forth in Rule 23(e)(2)(C)-(D).

1. The Costs, Risks, and Delay of Trial and Appeal Support Approval of the Settlement

The costs, risks, and delay associated with taking this case to trial – and, inevitably, appeals, weigh in favor of approval. *See* Rule 23(e)(2)(C)(i). The prosecution of this case to trial would require substantial reliance on expert witnesses, including experts in the areas of materials and methods used to manufacture flushable wipes, as well as experts in sewage treatment systems and the causes and effects of materials that obstruct such systems. Defense Counsel would undoubtedly challenge the approaches and methodologies of Plaintiff's experts and call their own experts to dispute the findings of Plaintiff's experts. This would place a battle of experts into the hands of the jury, which is risky for both parties. The expense of expert witnesses for both sides would be substantial.

If Plaintiff was unsuccessful at any stage of the Litigation, this could result in the recovery being significantly delayed, reduced, or lost entirely. *See Clark v. Duke Univ.*, 2019 WL 2588029, at *6 (M.D.N.C. June 24, 2019) (finding that the "likelihoods that the defendants may either prevail in motions practice or at trial or appeal any recovery" would likely have the effect of "delaying (or foreclosing) any benefit to the class members"). If Plaintiff's claims survived the pleading stage as to Kimberly-Clark, substantial discovery would need to be taken, including expensive expert

discovery of both sides. Causation issues – highlighted in the Non-Settling Defendants' two joint motions to dismiss – would also be highly contested, particularly at summary judgment. Jt. Decl. at ¶25. Ultimately, any judgment would likely present significant legal questions, which the losing parties would likely appeal, adding further cost, risk and delay to these proceedings.

In sum, the "costs, risks, and delay of trial and appeal" strongly favor final approval of the Settlement. Rule 23(e)(2)(C)(i).

2. The Relief Provided Is Effective and Equitable

The relief described above, *supra* §II.D., provides an effective and far-reaching benefit that extends equitably to all Settlement Class Members. For example, the specific standards that Kimberly-Clark is required to meet both by May 1, 2022 – the full IWSFG 2020 flushability specifications – and now – a modified PAS 3 (Sloth Box) pass-through percentage and all other IWSFG 2020 specifications – provide strong objective evidence of the effectiveness of the Settlement. The relief is equitable because it applies universally to the Product throughout the country, and all Settlement Class Members will thus benefit equally.

Notably, after having been informed of its terms by virtue of the Court-approved notice plan, to date not a single Settlement Class Member has filed a formal objection to the Settlement.[8] As noted above, *supra* §II.C., the Settlement Class is comprised of all STP Operators in the United States whose systems were in operation between January 6, 2018 and October 4, 2021. The Notice was sent to the professional managers and engineers who operate those systems. Unlike consumer-oriented class action notices, it is necessarily part of the work responsibilities of those STP Operators who received the Notice to read and evaluate it. Moreover, it is fair to assume that such

[8] While Class Counsel received one email purporting to object to the Settlement and requested attorneys' fees and expenses, it did not conform with any of the requirements to be considered a valid objection–namely, it failed to provide any reasons for the objection. *See* Jt. Decl. at ¶20. Class Counsel responded to the inquiry promptly, directing the Settlement Class Member to the Notice and Settlement website, but no formal objection has been filed with the Court. *Id*.

entities generally have access to legal counsel to assist in evaluating the Settlement if needed. Therefore, the Court should consider the absence of formal objections as strong evidence that the Settlement is both effective and equitable.

3. The Terms of the Attorneys' Fee Award Are Fair, Reasonable, and in Line with Other Cases

As detailed further below, *infra* §V., the terms of the requested attorneys' fees are fair, reasonable, and in line with awards in similar cases. This also weighs in favor of approval of the Settlement. *See* Rule 23(e)(2)(C)(iii). The Notice states that Class Counsel would apply to the Court for an award of attorneys' fees and expenses of up to $600,000.00 (Settlement Agreement at Ex. B at 11), which is ***more*** than Class Counsel's total requested fee and expense award of $590,000. The proposed attorneys' fee award is substantially below awards and lodestar multipliers in similar injunctive relief cases. *See Berry*, 2014 WL 4403524, at *6, *15 (approving approximately $5.3 million attorneys' fee award, representing a multiplier of 1.99 times counsel's lodestar, for Rule 23(b)(3) injunctive relief settlement based on the purported "value of the relief to consumers and the dynamic shift that it represents in the industry and the fact that the injunction affords far better substantive rights than the Court or a jury could compel following a complete victory on all of Plaintiff's claims"); *Gaston v. LexisNexis Risk Sols. Inc.*, 2021 WL 2077812, at *7 (W.D.N.C. May 24, 2021) (awarding $5.15 million total fee and expense award in a Rule 23(b)(2) settlement, representing 1.85 lodestar multiplier); *see also In re Ferrero Litig.*, 583 F. App'x 665, 668 (9th Cir. 2014) (approving attorneys' fees for injunctive relief that were "calculated through an assessment of time expended on the litigation, counsel's reasonable hourly rate and any multiplier factors such as contingent representation or quality of work").[9]

[9] With respect to the timing of payment, the Settlement Agreement (¶6.1) provides that such fees and expenses awarded by the Court shall be paid within 21 days of entry of the order awarding fees and expenses. *See In re Genworth Fin. Sec. Litig.*, 2016 WL 7187290, at *2 (E.D. Va. Sept. 26, 2016) (ordering that "attorneys' fees and Litigation Expenses awarded above may be

4. The Settling Parties Have No Side Agreements

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. The Settling Parties have entered into no other agreements here.

5. Settlement Class Members Are Treated Equitably

The final factor under Rule 23(e)(2) is whether Settlement Class Members are treated equitably. Rule 23(e)(2)(D). The injunctive relief benefits all Settlement Class Members – STP Operators nationwide – equitably by reducing the harm caused by wipes, both flushable and non-flushable, thus generally increasing safety and efficiency equally across the Settlement Class. There are no sub-classes and all Settlement Class Members get the same benefits.

Thus, each factor identified under Rule 23(e)(2) and *Jiffy Lube* is satisfied. For all of the foregoing reasons, and for each of the reasons set forth in the Court's Preliminary Approval Order, the Court should find that the Settlement is fair, adequate and reasonable, and in Settlement Class Members' best interests.

V. THE REQUESTED ATTORNEYS' FEES AND EXPENSES ARE REASONABLE

Class Counsel requests that the Court approve an award of attorneys' fees and expenses of $590,000 – consisting of $560,655.27 in attorneys fees' and $29,344.73 in actual expenses (including Court costs). Class Counsel's efforts to date have been without compensation of any kind and the fee has been wholly contingent upon the result achieved. For all of the reasons discussed above, and those set forth further below, the amount requested in this case is warranted, if not modest, given the exceptional and unprecedented injunctive relief obtained and the significant obstacles and risks Class Counsel faced in bringing and prosecuting this case.

A. The Requested Attorneys' Fees Are Reasonable and Should Be Granted

Under Rule 23(h), "[i]n a certified class action, the court may award reasonable attorney's

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paid to Lead Counsel immediately upon entry of this Order").

fees and nontaxable costs that are authorized by law or by the parties' agreement." Rule 23(h). Courts in this Circuit generally consider the following factors identified in *Barber v. Kimbrell's, Inc.* to determine the reasonableness of fee awards in class actions:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

577 F.2d 216, 226 & n.28 (4th Cir. 1978) (adopting factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 92-93 (1989)); *see also Stayler v. Rohoho, Inc.*, 2019 WL 1491873, at *3 (D.S.C. Apr. 4, 2019) (Gergel, J.) (finding proposed attorneys' fees reasonable under *Barber* factors). As discussed below, Class Counsel's requested fee satisfies each of the *Barber* factors, and therefore, should be awarded as fair and reasonable in this case.

In addition to the *Barber* factors, the 4th Circuit has confirmed that in settlements under Rule 23(b)(2), a lack of objections by class members as to the fees requested by counsel weighs in favor of the reasonableness of the fees. *See Berry*, 807 F.3d at 618-19; *see also In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 844 (E.D. Va. 2016) (citing *Berry*, 807 F.3d at 618-19). Pursuant to the Preliminary Approval Order, Class Counsel mailed copies of the Summary Notice via First-Class Mail to the EPA's list of over 17,000 publicly owned treatment works, published the Summary Notice in the November editions of WEF's *Water Environment & Technology* magazine, emailed notice to 23 prominent wastewater associations and related entities, issued notice via press release, and posted the Notice and other relevant case documents to the Settlement website, https://charlestonwipessettlement.com/. Jt. Decl. at ¶¶16-19; Murray Decl. at ¶¶4-6. The

Notice informed recipients that Class Counsel would ask the Court for attorneys' fees and expenses of up to $600,000.00. Although the deadline for filing objections is December 29, 2021, thus far, there have been no formal objections to the requested attorneys' fees.[10] Thus, the reaction of the Settlement Class to date here supports the appropriateness of the requested fee. *See Berry*, 807 F.3d at 618-19 (citing *In re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 305 (3d Cir. 2005) (noting that only two class members objecting to fee request is a "rare phenomenon" and evidence that the district court did not abuse its discretion in awarding fees)).

Moreover, the United States Supreme Court has held that negotiated, agreed-upon attorneys' fee provisions are the ideal toward which the parties should strive. *Hensley v. Eckerhart*, 461 U.S. 424, 437 (1983) ("Ideally, of course, litigants will settle the amount of a fee."). Moreover, unlike in a common fund case, the fee amount here will not affect the Settlement benefits. A decision to reduce or even to refuse to award a fee, while beneficial to Defendant, will not affect the Settlement Class. *See Berry*, 807 F.3d at 618 (where "there was never any realistic possibility of class-wide monetary relief . . . there is no reason to think that class counsel left money on the table in negotiating this Agreement"). Nor does a negotiated fee present the potential for adversity between counsel and the class that the traditional common fund fee may present, since the negotiated fee is being paid in addition to the class benefits. *See Bowling v. Pfizer, Inc.*, 922 F. Supp. 1261, 1277-78 (S.D. Ohio 1996) (recognizing that divergence of interest can arise in traditional common fund situations), *aff'd*, 102 F.3d 777 (6th Cir. 1996).

1. *Barber* Factor No. 1: The Time and Labor Expended by Class Counsel Support the Requested Fee

The time and diligent effort expended by Class Counsel to achieve the Settlement supports the requested fee. Since November 2018, Class Counsel have been investigating and litigating

[10] Class Counsel received one invalid objection – an email, without explanation, purporting to object to the requested attorneys' fees and expenses. *See supra* n.8; Jt. Decl. at ¶20.

this case, negotiating with Defendant and, since April of this year, seeking approval of the Settlement while simultaneously litigating the case with the Non-Settling Defendants. Jt. Decl. at ¶¶9-19. During that time, Class Counsel and their paraprofessionals have expended more than 1,420 hours in the prosecution of this Litigation. *See* Declaration of Vincent M. Serra Filed on Behalf of Robbins Geller in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."), at ¶4 and Ex. A; Declaration of Frank P. Calamita Filed on Behalf of AquaLaw PLC in Support of Application for Award of Attorneys' Fees and Expenses ("AquaLaw Decl."), at ¶3 and Ex. A. As set forth in more detail in the Joint Declaration, Class Counsel have committed extensive resources to investigating Plaintiff's claims, consulting with experts, performing complex analyses developing Plaintiff's claims, and negotiating the terms of the unprecedented injunctive relief provided in the Settlement. Jt. Decl. at ¶¶9-19.

After writing off time in the exercise of billing judgment (including time spent working on Class Counsel's fee and expense application), and omitting time following the execution of the Settlement Agreement related to work specific to the Non-Settling Defendants (along with time after November 30, 2021 in connection with this application), Class Counsel's combined lodestar is $999,335, resulting in a 0.56 multiplier to counsel's lodestar. *See* Robbins Geller Decl. at ¶¶3-4; AquaLaw Decl. at ¶¶3-4. Courts in this Circuit frequently approve fee requests in injunctive relief actions where plaintiffs' counsel, like Class Counsel here, "expended large amounts of time and labor." *Berry*, 2014 WL 4403524, at *15; *Gaston*, 2021 WL 2077812, at *7.

Moreover, "[d]istrict courts within the Fourth Circuit have regularly approved attorneys' fees awards with 2-3 times lodestar multipliers." *Genworth*, 210 F. Supp. 3d at 845, n.5 (citing cases approving lodestar multipliers of 2.6 to 2.9); *see also Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 470-71 (S.D. W. Va. 2010) (awarding fee reflecting multiplier of between 2.8

and 3.4 and noting that "Courts have generally held that lodestar multipliers falling between 2 and 4.5 demonstrate a reasonable attorneys' fee"); *Gaston*, 2021 WL 2077812, at *7 (awarding fees reflecting a "multiplier of approximately 1.85[, which] is less than or similar to those applied in similar cases"); *Berry*, 2014 WL 4403524, at *15 (awarding fees representing a "multiplier of 1.99[, which] is similar to those applied in similar cases"). The ***negative*** lodestar multiplier here confirms the reasonableness of the requested fee award, as it is well below the range of reasonableness. *See Sims v. BB&T Corp.*, 2019 WL 1993519, at *3 (M.D.N.C. May 6, 2019) (plaintiff's counsel's lodestar "is several million dollars more than the fee request and reflects a multiplier far below the typical range for similar class actions").[11]

2. *Barber* Factor No. 2: The Novelty and Complexity of the Issues Support the Requested Fee

This Settlement is the first of its kind, which is the definition of novel. The injunctive relief that Class Counsel obtained on behalf of Plaintiff and Settlement Class Members includes the first ever commitment by a flushable wipes manufacturer to meet the national municipal wastewater industry standard, along with, *inter alia*, industry-leading labeling improvements for Defendant's non-flushable products. The Litigation itself, and Class Counsel's efforts to resolve it with respect to Defendant well in advance of bringing the action, was likely a significant factor in Defendant's efforts to improve the Product. The injunctive relief achieved here (*see supra* §II.D.) includes significant benefits to Settlement Class Members as well as to the public at large. Moreover, had Class Counsel been unable to secure the Settlement, Kimberly-Clark would likely continue to assert, including at summary judgment, arguments regarding many of the complex legal and factual issues raised in the highly contested briefing of the Non-Settling Defendants' joint motion

[11] Unlike Defense Counsel, who received ongoing payment, Class Counsel litigated this action entirely on a contingent fee basis, not receiving any compensation for their services thus far. Class Counsel have expended substantial time and effort to prosecute and settle the Litigation with no guarantee of recovery and where the risk of success was highly speculative.

to dismiss. Jt. Decl. at ¶25. The novelty and complexity of the issues in the Litigation thus further support the requested fee.

3. *Barber* Factor Nos. 3 and 9: Class Counsel's Experience, Reputation, and Ability, Along with the Skill Required to Perform Their Legal Services, Supports the Requested Fee

The result obtained for the Settlement Class stems from the efforts of Class Counsel, whose experience, reputation, diligence, and skill enabled them to thoroughly investigate the facts and oversee the expert testing and analysis underlying Plaintiff's claims, and to negotiate favorable injunctive relief for the Settlement Class under challenging circumstances. *See generally* Jt. Decl.; *Genworth*, 210 F. Supp. 3d at 844 (noting the "skill required in complex cases such as this involving massive discovery efforts and complicated issues of fact and law" weighed in favor of fee award). Additionally, Class Counsel showed skill by "litigat[ing] the action and obtain[ing] this excellent settlement without the benefit of any active assistance from any governmental agency." *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992).

Additionally, the "quality of the opposition the plaintiffs' attorneys faced" during the action is an important consideration in evaluating Class Counsel's skill here. *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001). Defense Counsel in this Litigation, Sidley Austin LLP, is nationally recognized for its experience in defending cases similar to this one and other class action litigation, and has been a formidable opponent for Class Counsel in this case, as well as other flushable-wipes related litigation. Jt. Decl. at ¶23. The ability of Class Counsel to obtain such a favorable result despite Defense Counsel's impressive qualifications confirms the quality of Class Counsel's representation.

4. *Barber* Factor Nos. 8 and 10: The Result Obtained and Undesirability of the Case Support the Requested Fee

Perhaps the "most important factor for a court to consider when making a fee award is the result achieved." *Genworth*, 210 F. Supp. 3d at 843. "[C]lass action litigation should benefit the

individuals who have been harmed." *In re TJX Cos. Retail SEC Breach Litig.*, 584 F. Supp. 2d 395, 406 (D. Mass. 2008). Accordingly, a court may judge the reasonableness of the attorneys' fees relative to the benefits actually provided to class members. *Id.* at 403.

Here, the injunctive relief is an excellent result for the Settlement Class by any measure. As discussed above, the injunctive relief will provide not only economic, efficiency, and safety benefits to Settlement Class Members, but also economic benefits to taxpayers, and benefits to all consumers of the Product in the form of enhanced labeling. The recovery has been obtained through the considerable efforts of Class Counsel without the expense, delay, and uncertainty of continued litigation against Defendant. In the end, Plaintiff and the Settlement Class care most about getting a great result. The outstanding result obtained here supports Class Counsel's fee request and merits an appropriate fee that encourages counsel to seek excellent results.

Moreover, the result obtained is all the more significant given the fact that three similar class actions seeking nearly identical relief from Defendant were dismissed without securing the classwide injunctive relief obtained by Class Counsel here. *See City of Wyoming v. Procter & Gamble Co.*, No. 0:15-cv-02101-JRT-TNL (D. Minn.); *City of Perry, Iowa v. Procter & Gamble Co.*, No. 1:15-cv-08051-JMF (S.D.N.Y.); *Preserve*, No. 2:17-cv-07050-JFB-AYS (E.D.N.Y.). This fact also weighs in favor of supporting the requested fee in connection with *Barber* factor No. 10 – the undesirability of the case within the legal community in which the suit arose.

5. *Barber* Factor Nos. 5 and 12: Fee Awards in Similar Cases, and the Customary Fee for Like Work, Support the Requested Fee

The requested fee award is reasonable in light of significantly larger attorneys' fee awards in recent and similar injunctive relief class actions in the Fourth Circuit. *See, e.g.*, *Gaston*, 2021 WL 2077812, at *7 (approving total attorneys' fee award of $5.15 million for Rule 23(b)(2) settlement, finding that the plaintiffs' counsel "expended large amounts of time and labor,"

demonstrated skill and achieved an "excellent result" that provides "substantial benefits" to the class, and the defendants "agreed to pay the requested amount"); *Berry*, 2014 WL 4403524, at *6 (approving award of approximately $5.3 million for Rule 23(b)(2) settlement).

Moreover, district courts in this Circuit have recognized that a fee award that results in a 2-3 times lodestar multiplier is reasonable. *See, e.g.*, *Genworth*, 210 F. Supp. 3d at 845; *see also supra* §§V.A.1. and IV.B.3. Here, the requested fee results in a ***negative*** lodestar multiplier of 0.56, well below the range of lodestar multipliers commonly approved by courts in this Circuit.

6. *Barber* Factor No. 4: Class Counsel's Opportunity Costs in Pressing the Litigation Supports the Requested Fee

As noted above, Class Counsel has documented over 1,420 attorney and paraprofessional hours of time devoted to this case. Such a time commitment represents a significant opportunity cost for Class Counsel, in terms of other cases that could have been handled during the same period. In addition, Class Counsel advanced all of the costs of this litigation, including expert fees. This factor thus supports the court's approval of the requested amount of attorney's fees.[12]

B. The Requested Litigation Expenses Are Reasonable and Should be Granted

Payment of reasonable litigation expenses to counsel in Rule 23(b)(2) class settlements is both necessary and routine. *See, e.g.*, *Gaston*, 2021 WL 2077812, at *7 (awarding expenses in connection with Rule 23(b)(2) settlement). Class Counsel's expenses and charges here are

[12] The remaining *Barber* factors – the attorneys' expectations at the outset of the litigation (No. 6), any time limitations imposed by the client or the circumstances (No. 7), and the length and nature of the professional relationship between the attorneys and client (No. 11), also support the requested fee. As to Class Counsel's expectations at the outset of the Litigation, Class Counsel has represented Plaintiff on a contingency basis and under the ambit of Rule 23, thus Class Counsel expected any fee award to be subject to Court review and only granted if they were successful. Moreover, while there were no time limitations in this Litigation per se, the speed with which Class Counsel secured the Settlement (within months of filing the Complaint) was of the essence given the circumstances – namely, the continued harm caused by wipes that do not break down sufficiently to pass through Settlement Class Members' systems. Finally, Class Counsel has represented Plaintiff in connection with this litigation for over two years and has worked closely with Plaintiff throughout the process.

$29,344.73 and are set forth in the accompanying Class Counsel declarations. Robbins Geller Decl. at ¶5 and Ex. B, AquaLaw Decl. at ¶5 and Ex. B. These expenses and charges are modest and were reasonable and necessary to the prosecution of the claims and achieving the Settlement.

The expenses sought here – such as expert fees, service and filing fees, travel expenses, and charges for research – are precisely the type of expenses which have been awarded in other class actions in the Fourth Circuit. *See Sims*, 2019 WL 1993519, at *4 ("Reimbursable expenses include expert fees, travel, long-distance and conference telephone, postage, delivery services, settlement costs, and computerized legal research."). The Settlement Notice advised Settlement Class Members that Class Counsel would seek a fee and expense award of up to $600,000, and there have been no formal objections to date. Class Counsel respectfully requests payment of these reasonable litigation expenses.

VI. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

In its Preliminary Approval Order, the Court conditionally certified the Settlement Class for settlement purposes, thereby recognizing that Plaintiff had satisfied the requirements of Rules 23(a) and 23(b)(1). ECF No. 98 at 8. Since the Court's Preliminary Approval Order, nothing has changed to disturb the Court's conclusion that class treatment is appropriate, and there is good reason and just cause to finally certify the Settlement Class, for settlement purposes, under Rules 23(a) and 23(b)(2).

VII. CONCLUSION

Plaintiff respectfully requests that the Court enter an order granting final approval of the Settlement, finally certifying the Settlement Class, and awarding attorneys' fees and expenses of $560,655.27 and $29,344.73, respectively.

DATED: December 13, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 13, 2021, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to all counsel of record.

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