UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

Charles Tufano, Richard Warren, and Dave Gunton, as representatives of a class of similarly situated persons, and on behalf of the Pride Mobility Employee Stock Ownership Retirement Plan, Plaintiffs, v. Pride Mobility Products Corporation and the Pride Mobility Products Corporation ESOP Committee, Defendants.	Case No. 3:24-cv-00765-KM (Hon. Karoline Mehalchick)

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Plaintiffs Charles Tufano, Richard Warren, and David Gunton submit this Memorandum in support of their Motion for Final Approval of Class Action Settlement ("Settlement") with Pride Mobility Products Corporation and the Pride Mobility Products Corporation ESOP Committee ("Defendants") regarding the management of the non-company-stock assets held in the Other Investments Account ("OIA") of the Pride Mobility Employee Stock Ownership Retirement Plan ("Plan" or "ESOP"). On February 6, 2025, the Court preliminarily approved the Settlement, which provides for a Gross Settlement Amount of $2,100,000 and prospective relief to resolve the claims of the Settlement Class. The Court found on a preliminary basis that:

> (1) the Settlement is fair, reasonable, and adequate, and within the range of possible approval; (2) the Settlement has been negotiated in good-faith at arms- length between experienced attorneys familiar with the legal and factual issues of this case and facilitated by an experienced mediator following sufficient factual investigation; (3) the form and method of notice of the Settlement of the Final Fairness Hearing is appropriate; and (4) the Settlement meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and applicable Third Circuit precedents.

Dkt. 40 ¶1. The Court approved the distribution of the Notice of Settlement as specified in the Settlement Agreement. *Id.* ¶5. Since that time, an Independent Fiduciary has confirmed that the Settlement terms are reasonable, *see* Declaration of Jennifer K. Lee in Support of Final Approval ("Third Lee Dec."), Ex. 1 ("IF

Report"), and the response from the Class has been favorable, Declaration of Richard Simmons ("Simmons Dec.") ¶¶3, 5. Accordingly, Plaintiffs respectfully request that the Court grant final approval of the Settlement. While Defendants do not agree with all averments stated in this pleading, as parties to the Settlement, Defendants do not oppose the relief sought in this motion.

FACTUAL BACKGROUND

I. PROCEDURAL HISTORY

This case was filed on May 7, 2024. Dkt 1. Pre-suit, Class Counsel devoted significant resources to this matter, including interviewing the Plaintiffs, reviewing Plaintiffs' documentation, as well as investigating claims, potential defenses, the conduct of similarly situated fiduciaries, and calculating estimated losses to the Class. Dkt. 43 ¶5. On June 24, 2024, Defendants moved to dismiss the Complaint. Dkt. 24. Briefing on that motion was completed August 12, 2024. Dkts. 26, 28. While Defendants' motion was pending, the Parties participated in an all-day mediation on December 3, 2024, facilitated by Judge Mark Bennett (Ret.). Dkt. 34 ¶12. That mediation resulted in the Settlement that is the subject of this motion.

II. SETTLEMENT TERMS AND PRELIMINARY APPROVAL

Under the Settlement, Defendants will contribute a Gross Settlement Amount of $2,100,000 to resolve the Settlement Class Members' claims. Dkt. 34-1 ("Settlement") §§1.22, 4.21, 4.22. The Settlement further calls for prospective

relief, requiring Defendants to retain an independent investment manager to manage the OIA and its investment for a period of no less than three years from the Settlement Effective Date. *Id.* §7.1. After accounting for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation, the Net Settlement Amount will be distributed to Settlement Class Members according to the Plan of Allocation. *Id.* §§1.25, 5.1.

The Plan of Allocation requires the appointed Settlement Administrator, Analytics Consulting LLC ("Analytics"), to calculate a Settlement Credit Amount for each Settlement Class Member. *Id*. §5.1. The Settlement Credit Amount is based on the amount of each Settlement Class Member's average OIA balance relative to other Settlement Class Members. *Id*. Thus, Settlement Class Members will receive awards from the Settlement in proportion to their OIA balance in the ESOP. *Id*.

Current Participant Settlement Class Members will have their Settlement Credit Amount credited to their Plan account. *Id*. §5.5.1. All other Settlement Class Members have the option of receiving their Settlement Credit Amount through a rollover to an individual retirement account or other eligible employer plan, or through a direct distribution via check. *Id*. §§5.5.2, 5.5.4. Under no circumstances will any monies revert to Defendants. *Id*. §5.6.1. The aggregate balance of any checks that remain uncashed will be re-distributed to the Plan and allocated to

participants *pro rata* in proportion to their OIA balances. *Id*. In exchange for the relief provided by the Settlement, the Settlement Class will release Defendants and affiliated persons and entities (the "Released Parties") from claims outlined in the Settlement. *Id*. §1.37.

On February 4, 2025, Plaintiffs moved for preliminary approval of the Settlement. Dkt. 32. On February 6, 2025, the Court granted preliminary approval of the Settlement. Dkt. 40. On April 26, 2025, Plaintiffs moved for an award of Attorneys' Fees, Costs, and Administrative Expenses. Dkt. 41. A Final Fairness Hearing is set for June 17, 2025. Dkt. 40.

III. CLASS NOTICE AND REACTION TO SETTLEMENT

Settlement Class Members were sent direct notice ("Notice") of the Settlement via first-class U.S. Mail. Settlement §2.6 & Ex. A. The Notice included a Rollover Form to make the rollover election described above. *Id.* §2.6 & Ex. B. Prior to sending these Notices, Analytics cross-referenced Class Members' last known addresses with the United States Postal Service National Change of Address ("NCOA") Database. Simmons Dec. ¶3. For any Settlement Notices that were returned, Analytics performed a skip trace in an attempt to ascertain a valid address for the Class Member in the absence of a forwarding address. *Id.* As a result, the notice program was very effective. Out of 1,349 Settlement Notices that were mailed, only 16 were ultimately undeliverable despite these efforts. *Id.* ¶5.

Analytics also established a Settlement Website hosting the Complaint, Settlement Agreement and Exhibits, Notice, Rollover Form, Preliminary Approval Order, Plaintiffs' Motion for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Compensation, and any other Court orders related to the Settlement. Simmons Dec. ¶4. It also established a toll-free telephone line with a live operator who can answer questions. *Id.* Since mailing notices, Analytics has received twenty-one (21) emails, forty-three (43) phone calls, and sixty-nine (69) rollover forms. It has not received any objections to the Settlement. *Id.* ¶5.

IV. REVIEW AND APPROVAL BY INDEPENDENT FIDUCIARY

Pursuant to Paragraph 2.1 of the Settlement and applicable ERISA regulations,[1] the Settlement was submitted to an Independent Fiduciary (Fiduciary Counselors Inc.) for review following the Court's preliminary approval order. After reviewing the Settlement and other case documents, and interviewing counsel for each of the Parties, the Independent Fiduciary concluded on behalf of the Plan, *inter alia*:

- The Settlement terms, including the scope of the release of claims, the amount of cash received by the Plan and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.
- The terms and conditions of the transaction are no less favorable to the Plan

[1] *See* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830.

than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.

- The transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest.
- The transaction is not described in Prohibited Transaction Exemption ("PTE") 76-1.

IF Report at 4.

ARGUMENT

I. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT.

A. The Settlement Satisfies Rule 23(e)(2).

A class action cannot be settled without court approval. Fed. R. Civ. P. 23(e)(2). Approval of a proposed class action settlement proceeds in two stages: (1) preliminary approval and notice to class members of the proposed settlement; and (2) a final fairness hearing in which the Court determines whether the proposed settlement is "fair, reasonable, and adequate." *Id.*

In tandem with the requirements of Rule 23(e)(2), courts in the Third Circuit consider additional factors set forth in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975). These include "(1) the complexity and duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining a class action; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement in light of the best

recovery; and (9) the range of reasonableness of the settlement in light of all the attendant risks of litigation." *In re General Motors Corp.*, 55 F.3d 768, 785 (3d Cir. 1995) (quoting *Girsh*, 521 F.2d at 157). Further, the Third Circuit has identified additional factors that should be considered:

> the maturity of the underlying substantive issues, as measured by experience in adjudicating individual actions, . . . the extent of discovery on the merits, and other factors that bear on the ability to assess the probable outcome of a trial on the merits of liability and individual damages; . . . the comparison between the results achieved by the settlement for individual class or subclass members and the results achieved-or likely to be achieved-for other claimants; . . . whether any provisions for attorneys' fees are reasonable; and whether the procedure for processing individual claims under the settlement is fair and reasonable.

In re Prudential Ins., 148 F.3d 283, 324 (3d Cir. 1998).[2] "A court may approve a settlement even if it does not find that each of these factors weighs in favor of approval." *In re NJ Tax Sales Certificates Antitrust Litig.*, 750 F. App'x 73, 77 (3d Cir. 2018).

B. The Class Representatives and Class Counsel Have Adequately Represented the Class and Will Continue to do So.

The appointed Class Representatives, Charles Tufano, Richard Warren, and Dave Gunton, are and have been adequate class representatives. They have no conflicts with the Class and have represented the Class's interests as they would

[2] Plaintiffs address only applicable *Girsh* and *Prudential* factors and with the Rule 23(e)(2) factors, where appropriate.

their own. Dkt. 36 ¶¶4, 8; Dkt. 37, ¶¶4, 8; Dkt. 38 ¶¶4, 8. They have participated throughout this action, assisting Class Counsel in their investigation, producing documents, and being available during the mediation. Dkt. 36 ¶4; Dkt. 37 ¶4; Dkt. 38 ¶4.

Appointed Class Counsel has likewise adequately represented the Class. They invested significant resources in identifying and investigating the novel claim raised in this case. First Lee Dec. ¶¶1, 6–17, Ex. 2. Engstrom Lee attorneys comprise experienced ERISA practitioners and complex litigators who have been appointed as class counsel in more than a dozen ERISA class actions. They have ably prosecuted this action through the investigation, motion practice, and mediation. *Id.*

C. The Settlement was Negotiated at Arm's Length by Experienced Counsel and Facilitated by an Experienced Mediator.

Rule 23(e)(2)(B) requires the court to determine whether a proposed settlement "was negotiated at arm's length." The Settlement was preceded by a thorough investigation and motion practice. *See supra* at 2. Counsel on both sides are experienced in ERISA and had a clear understanding of the strengths and weaknesses of each party's case. Armed with this understanding, the Parties entered settlement negotiations facilitated by experienced mediator, Judge Mark Bennett (Ret.). Dkt. 34 ¶12. These circumstances support the conclusion that the Agreement was negotiated at arm's length. *See Mehling v. New York Life Ins. Co.*,

246 F.R.D. 467, 473 (E.D. Pa. 2007); *Pfeifer v. Wawa, Inc.*, 2018 WL 2057466, at *6 (E.D. Pa. May 1, 2018).

D. The Relief is Adequate.

1. The Complexity, Expense, and Likely Duration of the Litigation (*Girsh* factor 1).

"The first *Girsh* factor 'captures the probable costs, in both time and money, of continued litigation.'" *Wallace v. Powell*, 301 F.R.D. 144, 160 (M.D. Pa. 2014) (quoting *In re Warfarin*, 391 F.3d 516, 535-36 (3d Cir. 2004)). "It is well-recognized that 'ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation.'" *Stevens v. SEI Investments Co.*, 2020 WL 996418, at *3 (E.D. Pa. Feb. 28, 2020) (citations omitted). This case is no exception. The Parties held different views about Defendants' actions, Defendants' potential liability, and the likely outcome of this litigation. Plaintiffs alleged that Defendants' selection and retention of the Plan's OIA investments was imprudent. Defendants contend this investment was prudent in the context of the ESOP. These fact-intensive inquiries would have led to a battle of experts and conflicting evidence and testimony, which would have created uncertainty as to the ultimate outcome of the litigation. Instead, this Settlement grants immediate recovery to the Settlement Class, eliminating the delay in recovery achieved after a trial and appeal. Thus, the Settlement satisfies the first *Girsh* factor. *See e.g., Vista Healthplan, Inc. v. Cephalon, Inc.*, 2020 WL 1922902, at *17 (E.D. Pa. Apr. 21,

2020).

2. The Reaction of the Class to the Settlement (*Girsh* factor 2).

"The Second *Girsh* factor 'attempts to gauge whether members of the class support the settlement.'" *Warfarin*, 391 F.3d at 536 (quoting *Prudential*, 148 F.3d at 318). "Courts have generally assumed that 'silence constitutes tacit consent to the agreement.'" *General Motors*, 55 F.3d at 812 (citation omitted). Here, after a successful Notice campaign, no objections were filed as of the filing of this motion. Accordingly, this factor is satisfied.

3. The Stage of the Proceedings and the Amount of Discovery Completed (*Girsh* factor 3).

"The third *Girsh* factor 'captures the degree of case development that class counsel had accomplished prior to settlement,' and allows the court to 'determine whether counsel had an adequate appreciation of the merits of the case before negotiating.'" *Wallace*, 301 F.R.D. at 161 (quoting *Warfarin*, 391 F.3d at 537). Under this factor, courts "also examine whether the settlement resulted from arm's-length negotiations." *Id.* (citing *In re Corel Corp.*, 293 F. Supp. 2d 484, 491 (E.D. Pa. 2003)). When settlements result from arm's length negotiations, "the court will 'afford[] considerable weight to the views of experienced counsel regarding the merits of the settlement.'" *Id.* (quoting *McAlarnen v. Swift Transp. Co., Inc.*, 2010 WL 365823, at *8 (E.D. Pa. Jan. 29, 2010)).

Although the Parties had yet to commence formal discovery, Class Counsel

devoted significant resources to this matter pre-suit. *Supra* at 2. This pre-suit investigation and the subsequent contested motion practice provided Class Counsel with enough information to fairly evaluate the strengths and weaknesses of the Class's claim. Further, Class Counsel are experienced in the litigation of complex ERISA matters such as this, providing them further perspective on the relative strengths and weaknesses at play. Dkt. 34 ¶16. Armed with this information and experience, settlement was obtained following an all-day mediation. *Id.* ¶12. So, "although we are 'somewhat early in the litigation process,' class counsel 'have adequately developed their case and engaged in a significant degree of case development.'" *In re Philadelphia Inquirer*, 2025 WL 845118, at *9 (E.D. Pa. Mar. 18, 2025) (quoting *In re Wawa, Inc.*, 2023 WL 6690705, at *8 (E.D. Pa. Oct. 12, 2023)); *see also Ripley v. Sunoco, Inc.*, 287 F.R.D. 300, 312 (E.D. Pa. 2012). This factor favors approval.

4. The High Risks of Achieving a Successful Trial Result (*Girsh* Factors 4, 5, and 6).

The fourth, fifth, and sixth *Girsh* factors assess the trial risks of establishing liability, damages, and maintaining class certification. *Silvis v. Ambit Energy L.P.*, 326 F.R.D. 419, 432 (E.D. Pa. 2018). "These factors 'balance the likelihood of success and potential damage award if the case were to trial against the benefits of immediate settlement.'" *Id.* (quoting *Prudential*, 148 F.3d at 319); *see also In re Flonase*, 951 F. Supp. 2d 739, 744 (E.D. Pa. 2013) (noting the fourth and fifth

factors are "closely related" and may be addressed together).

Regarding the risks of establishing liability, this factor "examine[s] what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settle them." *General Motors*, 55 F.3d at 814. As to damages, this factor "attempts to measure the expected value of litigating the action rather than settling it at the current time." *In re Cendant Corp. Litig.*, 264 F.3d 201, 238–39 (3d Cir. 2001) (quoting *General Motors*, 55 F.3d at 816).

Here, the risks assessed under the fourth and fifth *Girsh* factors are high. As discussed, ERISA actions are complex and risky. *Stevens*, 2020 WL 996418, at *3; *see also In re Delphi Corp.*, 248 F.R.D. 483, 496 (E.D. Mich. 2008) (although "risk is inherent in any litigation, particularly class actions … [t]he risk is even more acute in the complex areas of ERISA law"). Here, "the outcome of this matter with respect to liability [was] far from certain." *Stevens*, 2020 WL 996418, at *5. Defendants have denied all liability and moved to dismiss the case in its entirety. Dkt. 24; *supra* at 9 (discussing the complex litigation avoided by this settlement). This is especially true because this case was one of "the first lawsuits ever filed on this topic." *See, e.g.*, Corey Rosen, NCEO, *Spate of Lawsuits Challenges ESOP Cash Investment Policy*, *available at* https://www.nceo.org/employee-ownership-blog/spate-lawsuits-challenges-esop-

cash-investment-policy (ESOP industry blog discussing this and related cases case). At the time of settlement, no Court had ruled on the merits of Plaintiffs' claims. *See Schultz v. Aerotech, Inc.*, 2025 WL 563585 (W.D. Pa. Feb. 20, 2025) (first order ruling on a motion to dismiss in a similar case, denying the motion, nine months after this action was filed and two months before this case settled). Thus, "the proposed settlement avoids the risk that Defendants be found not liable[,]" *Stevens*, 2020 WL 996418, at *5.

The same is true in relation to the risks of establishing damages. As discussed, evaluation of damages in this case would spur a battle of experts. *Supra* at 9. This battle of experts provides "no guarantee whom the [fact finder] would believe." *Warfarin*, 212 F.R.D. 231, 256 (D. Del. 2002), *aff'd* 391 F.3d 516, 537 (3d Cir. 2007). Indeed, there is "no compelling reason to think that 'a [fact finder] confronted with competing expert opinions' would accept the plaintiff's damages theory rather than that of the defendant, and thus the risk in establishing damages weigh[s] in favor of approval of the settlement." *Stevens*, 2020 WL 996418, at *5 (quoting *Cendant*, 264 F.3d at 239). The same is true here, as questions regarding the appropriate damages theory, including comparator fund selection, would persist through trial. Accordingly, this factor favors approval.

The sixth *Girsh* factor is "perfunctory," as "the district court always possesses the authority to decertify or modify a class[.]" *Prudential*, 148 F.3d at

321. Thus, this factor is easily satisfied.

5. Ability of Defendants to Withstand a Greater Judgment (Girsh factor 7).

The seventh *Girsh* factor considers "whether the defendants could withstand a judgment for an amount significantly greater than the settlement." *Warfarin*, 391 F.3d at 537–38. However, "where the defendants' ability to pay greatly exceeds the potential liability, this factor is generally neutral." *Stevens*, 2020 WL 996418, at *5 (citing *In re CertainTeed Corp.*, 269 F.R.D. 468, 489 (E.D. Pa. 2010). As information pertaining to Defendants' coffers and their resulting ability to withstand a judgment significantly greater than the Settlement is currently unknown, at worst this factor weighs neutrally on the Settlement's approval. Because the other factors weigh heavily in favor of the Settlement, it should be approved notwithstanding the potential financial wherewithal of Defendants.

6. Range of reasonableness of the settlement in light of the best recovery and risks of litigation (*Girsh* Factors 8, 9).

"The last two *Girsh* factors, often considered together, evaluate whether the settlement represents a good value for a weak case or a poor value for a strong case." *Stevens*, 2020 WL 996418, at *5 (citing *Warfarin*, 391 F.3d at 538). Here, when assessing the reasonableness of a settlement seeking monetary relief, "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing, should be compared with

the amount of the proposed settlement." *Prudential*, 148 F.3d at 322.

Plaintiffs allege that participants missed out on as much as $5.1 million in investment gains as a result of the failure to invest the OIA in a diversified stock portfolio. Dkt. 34 ¶13. However, had the Court adopted a middle ground position, such as a 60/40 mix between equities and bonds, the Plan's losses are estimated to be $2.4 million or less. Defendants contend the appropriate comparator was fixed income, and that there were minimal to no losses under this comparator. The Gross Settlement Amount of $2.1 million thus represents a recovery of between 41% to more than 100% of the estimated losses, and approximately $1,400 per Settlement Class Member. Dkt. 33 at 2. On a gross basis, the Gross Settlement Amount represents approximately 45% of the Plan's OIA assets, Dkt. 1 ¶18, and 14% of the Plan's total assets. Dkt. 25-7 at 36. These figures compare favorably to other class action settlements. *See Stevens*, 2020 WL 996418, at *6 (recovery of 1.3% of plan assets, $1,200 per class member, and 31% of maximum proposed loss reasonable); *In re Rite Aid*, 146 F. Supp. 2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action settlements have typically "recovered between 5.5% and 6.2% of the class members' estimated losses"); *In re PNC*, 440 F. Supp. 2d 421, 435–36 (W.D. Pa. 2006) (approving settlement amount that represented 12% of estimated losses).

The Settlement also provides for prospective relief. For a period of at least three years from the Settlement Effective Date, Defendants will retain an

independent investment manager to manage the OIA and its investment. Settlement §7.1. As the Independent Fiduciary noted, this non-monetary relief is "in the interests of plan participants and beneficiaries". IF Report at 11. This further supports approval of the Settlement. *See Thomas v. NCO Fin. Sys., Inc.*, 2002 WL 1773035, at *6 (E.D. Pa. July 31, 2002).

As discussed, the expense and resources consumed by a trial would have been substantial, especially when considering the need for expert testimony and likely post-trial appeals. "Thus, a settlement is advantageous to all parties," *Stevens*, 2020 WL 996418, at *6, and these factors favors approval.

7. Relevant *Prudential* Factors.

Whether Class Members are Accorded the Right to Opt Out of the Settlement: The fourth *Prudential* factor asks "whether class or subclass members are accorded the right to opt out of the settlement." *Halley v. Honeywell Int'l, Inc.*, 861 F.3d 481, 488–89 (3d Cir. 2017). The Court has preliminarily certified the Settlement Class pursuant to Fed. R. Civ. P. 23(b)(1). Dkt. 40 ¶ 2. This class is mandatory and class members may not opt out. *Thomas v. SmithKline Beecham Corp.*, 201 F.R.D. 386, 396 (E.D. Pa. 2001). Yet courts routinely approve settlements that involve mandatory settlement classes. *See, e.g., Boley v. Universal Health Services, Inc.*, No. 2:20cv-02644-MAK, ECF No. 126 (E.D. Pa. Mar. 30, 2023) (approving ERISA settlement); *Crawford v. CDI Corp.*, No. 2:20-cv-3317,

ECF No. 45 (E.D. Pa. Nov. 30, 2021) (same); *Stevens*, No. 2:18-cv-04205 at ECF No. 46 (same). Accordingly, this *Prudential* factor favors settlement.

Whether any Provisions for Attorneys' Fees are Reasonable: The fifth *Prudential* factor overlaps with Fed. R. Civ. P. 23(e)(2)(C)(iii), requiring the Court to consider "the terms of any proposed award of attorney's fees" before approving a settlement. The reasonableness of Class Counsel's request for attorneys' fees is fully discussed in their Motion for Attorneys' Fees, Costs & Administrative Expenses and Class Representative Compensation. Dkt. 42. Class Counsel's requested attorneys' fees of one-third of the Gross Settlement Amount is reasonable and standard in cases such as this. "In complex ERISA cases, courts in this Circuit and others [] routinely award attorneys' fees in the amount of one-third of the total settlement fund." *High St. Rehab., LLC v. Am. Specialty Health, Inc.*, 2019 WL 4140784, at *13 (E.D. Pa. Aug. 29, 2019).

The Independent Fiduciary also found the requested fee reasonable, noting, "the percentage requested and the lodestar multiplier are within the range of attorney fee awards for similar ERISA cases, with the most common award in similar cases equaling one-third of the settlement amount." IF Report at 8. It further observed, "[t]his Action [] involved novel issues, as well as prospective relief that adds value to the Settlement but is not counted in calculating the requested attorneys' fees." *Id.* For these reasons and those discussed in Class

Counsel's fee motion, this factor is met.

Whether the Procedure for Processing Claims is Fair and Reasonable: The final *Prudential* factor overlaps with Fed. R. Civ. P. 23(e)(2)(C)(ii), which requires consideration of "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." This factor is satisfied for the reasons set forth *infra* at 18–19.

In summary, the *Girsh* and *Prudential* factors, and requirements of Fed. R. Civ. P. 23(e)(2) are satisfied, and the Court should grant final approval of the Settlement.

E. The Settlement Treats Class Members Equitably.

Under Rule 23(e)(2)(D), the Court must consider whether the proposal treats class members equitably. The Settlement proceeds will be distributed to Class Members on a *pro rata* basis based on each Class Member's percentage of the assets invested in the Plan's OIA. Settlement §5.1. The Plan of Allocation incorporated into the Settlement is based on the amount of each Settlement Class Member's average OIA balance relative to other Settlement Class Members, with each Settlement Class Member receiving awards in proportion to their OIA balance in the Plan. *Id*. "[P]ro rata distribution of settlement funds [such as this] are consistently upheld." *Rossini v. PNC Fin. Svcs. Grp., Inc.*, 2020 WL 3481458, at *17 (W.D. Pa. June 26, 2020). In addition, Current Participant Settlement Class

Members' "distributions take[] place through the Plan[] so as to realize the tax advantage of investment in the Plan[]." *In re Schering-Plough*, 2012 WL 1964451, at *6 (D.N.J. May 31, 2023). Courts in this Circuit have found such *pro rata* distributions appropriate. *Nesbeth v. ICON Clinical Research LLC*, 2022 WL 22893879, at *4 (E.D. Pa. Mar. 10, 2022); *Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 770 (D. Md. 2022). Lastly, the Independent Fiduciary reviewed the Plan of Allocation to ensure fairness to Settlement Class Members. IF Report at 8. This factor is therefore met.

II. THE SETTLEMENT CLASS NOTICE WAS REASONABLE.

The Settlement Class notice program in this case was also reasonable and satisfied the requirements of Rule 23 and due process. The "best notice" practicable under the circumstances includes individual notice to all Settlement Class Members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice provided here.

The Settlement Administrator provided direct notice of the Settlement to the Settlement Class via first-class U.S. Mail. *Supra* at 4–5. This type of notice is presumptively reasonable. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *Mack Trucks, Inc. v. UAW*, 2011 WL 4402136, at *4 n.6 (E.D. Pa. Sept. 22, 2011). The record reflects that 98.8% of Notices were successfully delivered, confirming the Notice program's effectiveness. Simmons Dec. ¶3; *see Mirakay v.*

Dakota Growers Pasta Co., 2014 WL 5358987, at *2, 11 (D.N.J. Oct. 20, 2014) (notice that reached 80% of class was effective).

The content of the Notices was also reasonable. The Notices included, among other things: (1) the nature of the claims asserted in the Action; (2) the scope of the Settlement Class; (3) the terms of the Settlement Agreement; (4)the process for submitting a Rollover Form; (5) Settlement Class Members' right to object to the Settlement and the deadline for doing so; (6) the Settlement Class's release; (7) the identity of Class Counsel and the compensation they will seek in connection with the Settlement; (8) the date, time, and location of the Fairness Hearing; and (9) Settlement Class Members' right to appear at the Fairness Hearing. This Notice is fully consistent with the Court's Order Granting Preliminary Approval of Class Action Settlement, Dkt. 40 ¶5, and is more than sufficient to meet the Rule 23 standard. *See In re Baby Prods. Antitrust Litig.*, 708 F.3d 163, 180 (3d Cir. 2013) (notices satisfy Rule 23 if they "contain sufficient information to enable class members to make informed decisions on whether they should take steps to protect their rights, including objecting to the settlement"). Notably, no Settlement Class Member has claimed that the Notices were deficient, and to the extent that they had any questions, they could review the Settlement Website, call the toll-free telephone line, or contact the Settlement Administrator or Class Counsel.

III. THE CERTIFICATION OF THE SETTLEMENT CLASS SHOULD BE REAFFIRMED.

Finally, the Settlement Class certification should be reaffirmed for purposes of this Settlement. In its Order Granting Preliminary Approval of Class Action Settlement the Court certified the following Settlement Class:

> All Participants of the Plan between May 7, 2018 and February 4, 2025, and their Beneficiaries and Alternate Payees of record, excluding the trustee and directors of Pride Mobility Products Corporation, and excluding participants who left the Plan before vesting in any part.

Dkt. No. 40 ¶2. Nothing has changed since the Court certified the Settlement Class for Preliminary Approval. The Settlement Class is numerous (consisting of 1,349 Settlement Class Members), the settled claims involve common issues relating to the Plan, and Plaintiffs are typical of other Settlement Class Members and adequate to represent the Settlement Class based on their participation in the Plan and involvement in the lawsuit. Moreover, breach of fiduciary duty claims under ERISA are "paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class." *In re Schering Plough Corp.*, 589 F.3d 585, 604 (3d Cir. 2009). Accordingly, the Court should reaffirm its certification of the Settlement Class for purposes of final approval.

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court grant final approval of the Settlement and enter the accompanying proposed order.

Respectfully Submitted,

Dated: May 15, 2025

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 15, 2025, the foregoing was electronically filed using the CM/ECF system, causing a Notice of Electronic Filing to be transmitted to all counsel of record.

/s/Jennifer K. Lee
Jennifer K. Lee

LOCAL RULE 7.8(b)(2) CERITIFICATION OF COMPLIANCE

Pursuant to Local Rule 7.8(b)(2), the undersigned certifies as follows:

1. Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement contains 4,951 words, excluding the parts of the brief exempted by the federal rules.

2. Plaintiffs' Memorandum of Points and Authorities in Support of Motion for Final Approval of Class Action Settlement complies with the typeface requirements of Local Rule 7.8(b)(2) as this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2021, in 14-point Times New Roman.

Dated: May 15, 2025

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