UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

D. JOSEPH KURTZ, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, et al., Defendants.	Civil Action No. 1:14-cv-01142-PKC-RML CLASS ACTION
GLADYS HONIGMAN, Individually and on Behalf of All Others Similarly Situated, Plaintiff, vs. KIMBERLY-CLARK CORPORATION, Defendant.	Civil Action No. 2:15-cv-02910-PKC-RML CLASS ACTION

PLAINTIFFS' REPLY BRIEF IN FURTHER SUPPORT OF:
(1) MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT;
(2) CLASS COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND LITIGATION EXPENSES; AND
(3) CLASS REPRESENTATIVE PAYMENTS

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I. INTRODUCTION

In their opening brief, Plaintiffs and Class Counsel provided ample legal and factual bases to establish that the Settlement and application for attorneys' fees and expenses ("Fee and Expense Application") satisfy all relevant factors and warrant final approval.[1] Final Approval Brief at §§IV-V. After an extensive notice program, the Settlement Class has all but unanimously supported the applications before the Court. The lone objector primarily argues that the settlement should be restructured to foreclose Class Counsel from receiving anything remotely resembling its lodestar, instead capping the requested fee at a percentage of the funds distributed (rather than available) under the Settlement. The objection – by Theodore H. Frank[2] – disingenuously argues that Class Counsel have attempted "to coax this Court into awarding [] a windfall fee," despite eight years of contentious litigation, without payment, and a requested fee representing a discount to Class Counsel's lodestar for their efforts in securing a substantial settlement benefit. In so doing, Frank ignores controlling Second Circuit precedent directing courts to assess fees based on the "total funds ***made available***," this Court's thorough analysis of a similarly structured "flushable" wipes settlement, and the significant risks associated with prosecuting a first-of-its-kind lawsuit seeking to hold "flushable" wipes manufacturers accountable for false and misleading advertising.

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[1] Unless otherwise stated or defined, all capitalized terms herein have the meanings provided in the Settlement Agreement and General Release ("Settlement Agreement") (ECF No. 432-1) or in Plaintiffs' Memorandum of Law in Support of: (1) Plaintiffs' Motion for Final Approval of Class Action Settlement; (2) Class Counsel's Application for an Award of Attorneys' Fees and Expenses; and (3) Class Representative Payments ("Final Approval Brief") (ECF No. 443). All references to "ECF No. __" are to the docket in the *Kurtz* Action unless otherwise stated. All internal quotations and citations are omitted, and all emphasis is added, unless otherwise indicated. All references to "Ex. __" are to the exhibits to the Declaration of Vincent M. Serra in support of this brief, filed herewith, unless otherwise indicated.

[2] Recently, one of Frank's attorneys (a colleague at the Hamilton Lincoln Law Institute) falsely informed a court at a fairness hearing that Frank did not purchase the product used for his objection with knowledge of the settlement. *Williams v. Reckitt Benckiser LLC*, 2021 WL 8129371, at *12-*13 (S.D. Fla. Dec. 15, 2021), *report and recommendation adopted*, 2022 WL 1176959 (S.D. Fla. Mar. 17, 2022). It is also worth noting that while Class Counsel refrains from referring to Frank as a "professional" or "serial" objector, the court in *Williams* concluded that those descriptions are "factually correct." *Id.* at *22.

II. THE OVERWHELMINGLY POSITIVE REACTION OF THE SETTLEMENT CLASS SUPPORTS FINAL APPROVAL

The Second Circuit instructs district courts to consider the "reaction of the class to the settlement." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005). "A favorable reception by the class constitutes ***strong*** evidence that a proposed settlement is fair." *In re Citigroup Inc. Sec. Litig.*, 965 F. Supp. 2d 369, 382 (S.D.N.Y. 2013) (quoting *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974)). "[A] certain number of objections are to be expected in a class action with an extensive notice campaign and a potentially large number of class members." *In re Payment Card Interchange Fee & Merch. Disc. Antitrust Litig.*, 2019 WL 6875472, at *16 (E.D.N.Y. Dec. 16, 2019) (quoting 4 ALBA CONTE & HERBERT B. NEWBERG, NEWBERG ON CLASS ACTIONS §11.41, at 108 (4th ed. 2002)). "'If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.'" *Wal-Mart Stores*, 396 F.3d at 118.

The Settlement Class's response to the Court-approved notice program unquestionably supports approval of the Settlement. As detailed in the Declaration of Jeanne C. Finegan ("Finegan Decl.") (Ex. 1 ¶¶3-4), the online advertising notice program was implemented on June 17, 2022, ran for 45 days – ***50% longer*** than a similar notice program (developed by the same claims administrator) approved by this Court in the related *Belfiore* action[3] – generated over ***161 million*** online impressions, and ***exceeded*** the reach of the proposed notice and administration plan. The August 17, 2022 deadline for objections has now passed, and while there have been 185,354 timely claims submitted, there has been only a single objection to the Settlement, addressed below.[4]

[3] *Belfiore v. The Procter & Gamble Co.*, No. 2:14-cv-04090-PKC-RML (E.D.N.Y.).

[4] Declaration of Scott M. Fenwick ¶¶10, 12 ("Fenwick Decl.") (Ex. 2). The current estimated value of the claims submitted, assuming all are valid and based on the maximum $7.00 recovery without Proofs of Purchase, is estimated to be larger than the known claims paid out in both the *Belfiore* and *Pettit* settlements ***combined***. *See* Objection of Theodore H. Frank to Proposed Class Action Settlement and Attorneys' Fee

Additionally, there have been only 27 requests for exclusion. Fenwick Decl. at ¶12, Ex. C. Given the size of the Settlement, the number of claims submitted, and the length of the Settlement Class Period (14 years), the fact of only one objection and a very small number of requests for exclusion is noteworthy. "The fact that the vast majority of class members neither objected nor opted out is a strong indication that the proposed settlement is fair, reasonable, and adequate." *Wright v. Stern*, 553 F. Supp. 2d 337, 345 (S.D.N.Y. 2008) (approving settlement with 13 objections and 3 opt-outs out of 3,500 member class); *Dupler v. Costco Wholesale Corp.*, 705 F. Supp. 2d 231, 239 (E.D.N.Y. 2010) (approving settlement where "[o]f the 11,800,514 class members, only 127 opted out and 24 objected"); *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85-86 (2d Cir. 2001) (district court properly found that 18 objections and 72 exclusions out of 27,883 notices weighed in favor of settlement).

III. THE CLASS REPRESENTATIVE PAYMENTS AND CLASS COUNSEL'S FEE AND EXPENSE AWARD SHOULD ALSO BE APPROVED

The Settlement Class also overwhelmingly supports Plaintiffs' requested Class Representative Payments and Class Counsel's requested fee and expense award. Indeed, there were no objections at all to the requested award of litigation expenses and Class Representative Payments.[5] As for Class Counsel's representation of Plaintiffs and the Settlement Class: it was

Request (ECF No. 446, the "Frank Objection") at 11 (discussing *Belfiore* and *Pettit* actions). Notably, there were ***no objections*** to any of the four other similarly structured "flushable" wipes class action settlements of which Class Counsel is aware. And while Frank purports to object to the "Settlement," his arguments overwhelmingly focus on attorneys' fees and the settlement structure, and, to a lesser extent, the claims process. The only argument he makes challenging the Settlement relief itself regards the purported "unreasonably and artificially low" payment caps to Settlement Class Members. Frank Objection at 7, 13. Frank does not say what "reasonable" caps would be, and he dismisses the fact that the payment caps here are ***higher*** than in *Belfiore*. Indeed, the available refund with and without Proofs of Purchase is ***68% and 66% greater*** than the refunds provided in the 49-state settlement in *Pettit v. The Procter & Gamble Co.*, No. 3:15-cv-2150-RS (N.D. Cal.), respectively. Final Approval Brief at 17. "Generic desires to receive 'more' money or a 'better' result is not a proper objection." *Williams*, 2021 WL 8129371, at *34 (recommending approval of settlement with separate payment caps for claimants with and without proofs of purchase, and noting that the "settlement amounts meet or exceed the standards established by this and other courts in other cases").

[5] While Frank objects to what he describes as the "$4.1 million fee" request (Frank Objection at 8-9, 17), Class Counsel's Fee and Expense Application makes clear that it seeks $3,961,668.77 in attorneys' fees and

wholly contingent and subject to considerable risk – particularly given the first-of-its-kind nature of the *Kurtz* Action; the result achieved was very good in light of this risk; the Settlement was obtained through hard-fought litigation by experienced counsel; and the requested fee represents a discount to Class Counsel's lodestar. Final Approval Brief at §V. Reflecting these realities, only a single class member objected to the fee request, overwhelmingly confirming that the fee should be approved. *See Blessing v. Sirius XM Radio Inc.*, 2011 WL 3739024, at *4 (S.D.N.Y. Aug. 24, 2011) (approving $13 million fee and cost request despite "numerous and impassioned objections"); *infra* §IV.

Moreover, in assessing attorneys' fees, courts must analyze "public policy considerations" (*Goldberger* factor six).[6] Class Counsel's efforts in this and related consumer and wastewater-related "flushable" wipes cases have resulted not only in compensatory relief for the Settlement Class Members, but also the development of an unprecedented, truly "flushable" wipe, now widely sold by Kimberly-Clark, that is fully supported by the wastewater industry, benefitting both consumers and municipalities alike. *See* Declaration of Robert A. Villeé, submitted herewith (Ex. 3).[7] "[T]o encourage [such] positive societal effects, class counsel must be adequately compensated." *Zink v. First Niagara Bank, N.A.*, 2016 WL 7473278, at *9 (W.D.N.Y. Dec. 29, 2016); *see also* 1 NEWBERG & RUBENSTEIN ON CLASS ACTIONS, §1.8 (6th ed. June 2022 update) ("In addition to their compensatory function, class actions deter misconduct by harnessing private attorneys general to assist in the enforcement of important public policies.").

$138,331.23 in actual expenses. Final Approval Brief at 18-19. Frank lodges no specific objection to Class Counsel's requested expenses.

[6] *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

[7] *See also Comm'rs of Pub. Works of the City of Charleston v. Costco Wholesale Corp.*, 2022 WL 214531, at *5-*6 (D.S.C. Jan. 24, 2022) (detailing settlement requiring Kimberly-Clark to comply with IWSFG 2020 flushability specifications and noting mediation in *Kurtz* that included attempt to resolve proposed wastewater action). It is worth noting that none of the other "flushable" wipes actions that did in fact secure "injunctive" relief were successful in compelling a manufacturer to develop a truly "flushable" wipe that complies with wastewater – and ***not*** the wipes industry's (*e.g.*, INDA GD4) – guidelines for flushability.

IV. THE LONE OBJECTION IS WITHOUT MERIT AND SHOULD BE OVERRULED

The sole objection to the Settlement boils down to the legally unsupported contention that, to mitigate a purportedly "disproportionate recovery by the attorneys," the Settlement must be restructured so that attorneys' fees are assessed as a percentage of the settlement benefits distributed to the Settlement Class, and so that any reduction in attorneys' fees can be distributed to Settlement Class Members and not retained by Defendant. Frank Objection at 1, 4, 9, 13-17 (criticizing the "tout[ed]" $20 million settlement cap as "illusory," arguing that a "segregated fee fund" prevents the class from recovering any reduction of attorneys' fees, and concluding that these "red flags" indicate that "perverse self-dealing incentives have prevailed").[8] But Frank does not cite ***any*** Second Circuit law mandating this proposition.[9] Rather, he ignores Second Circuit precedent and instead advocates for an inflexible, categorical rule that would discard Class Counsel's efforts and achievements and leave them with little more than a tiny fraction of its lodestar.

As an initial matter, as the Court found in its Order Granting Preliminary Approval of Class

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[8] Frank also criticizes the so-called "quickpay" provision of the Settlement (Frank Objection at 14), but courts have found that similar provisions, requiring payment of fee and expense awards within, *e.g.*, 30 days of entry of a court's order awarding such amounts, do "not harm the class members in any discernible way, as the size of the settlement fund available to the class will be the same regardless of when the attorneys get paid." *Pelzer v. Vassalle*, 655 F. App'x 352, 365 (6th Cir. 2016).

[9] The out-of-circuit cases that Frank cites are inapposite. In *Pearson v. NBTY, Inc.*, 772 F.3d 778, 779-81 (7th Cir. 2014), a case in which Frank also objected, the settlement was reached only eight months after suit was filed and, importantly, the court held that the requested fees also failed under a lodestar analysis. *In re Bluetooth Headset Products Liability Litigation*, 654 F.3d 935, 939-40 (9th Cir. 2011) was a cashless settlement involving *cy pres* awards, package labeling improvements, payments to the class representatives only, and attorney's fees for class counsel. Finally, *Briseño v. Henderson*, 998 F.3d 1014, 1023, 1027 (9th Cir. 2021), which rests squarely on *Bluetooth*'s "red flag" factors that Frank adopts here, likewise applied the "heightened duty to peer" into attorneys' fees where clear-sailing provisions exist, a duty that does not exist in the Second Circuit. *See Pearlman v. Cablevision Sys. Corp*., 2019 WL 3974358, at *5 (E.D.N.Y. Aug. 20, 2019) ("To the extent there is any inference that th[e] [clear sailing] provision suggests some type of improper collusion between Plaintiffs and Cablevision, such assertion, without more, does not provide grounds for disallowing or reducing the attorney's fees."); *Blessing v. Sirius XM Radio Inc.*, 507 F. App'x 1, 4 (2d Cir. 2012), Summary Order ("To the extent objectors argue that the clear-sailing and reversionary provisions suggest improper collusion between class counsel and Sirius XM, we note that such provisions, without more, do not provide grounds for vacating the fee.") (citing *Malchman v. Davis*, 761 F.2d 893, 905 & n.5 (2d Cir. 1985), *abrogated on other grounds, Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997)).

Action Settlement (ECF No. 439 ¶2), "[t]he Settlement Agreement was reached as a result of arm's-length negotiations between the Settling Parties and their counsel." Where, as here, the Settlement is "the culmination of a complicated litigation over the course of several years between experienced, capable counsel after meaningful discovery. . . [t]he Settlement merits a presumption of fairness." *Blessing*, 2011 WL 3739024, at *1; *see also Williams*, 2021 WL 8129371, at *37 ("In the absence of any evidence of collusion or detriment to the class, the Court should give ***substantial*** weight to a negotiated fee amount, assuming that it represents the parties' best efforts to understandingly, sympathetically, and professionally arrive at a settlement as to attorney's fees."). Indeed, there is nothing inherently inappropriate about a claims-made settlement, and courts in this Circuit routinely reject challenges to them. *See, e.g.*, *Casey v. Citibank, N.A.*, 2014 WL 4120599, at *2-*3 (N.D.N.Y. Aug. 21, 2014) (rejecting objector challenges to claims-made settlement, noting that such a structure "does not impact the fairness, reasonableness, or adequacy of the proposed settlement" because, *inter alia*, the "***Court does not have the authority to impose a preferred payment structure upon the settling parties***," and declining "the objectors' invitation to infer collusion between the parties based on the payment structure").[10]

Significantly, Frank's contention that the requested fee ***must*** be assessed based solely on the final payout to Settlement Class Members not only ignores the appropriateness of the fee under a lodestar analysis (which courts in this Circuit typically apply in non-common fund cases, Final Approval Brief at 19), but is directly contradictory to Second Circuit law. As explained in *Zink*, 2016 WL 7473278, at *7, "the weight of authority" in the Second Circuit disagrees with the premise that a settlement should be valued on the basis of the number of claims submitted. As the Second Circuit itself has held:

[10] Accordingly, Frank's argument that the Settlement structure should be rejected because it is a "woefully inadequate" "method of distributing class relief" under Rule 23(e)(2)(C)(i)-(iii) is misplaced. Frank Objection at 1.

> In siding with courts that compute fees as a percentage of claims made, the District Court saw the alternative procedure as creating a 'windfall' for the attorneys. We disagree. The ***entire*** Fund, and not some portion thereof, is created through the efforts of counsel at the instigation of the entire class. An allocation of fees by percentage should therefore be awarded on the basis of the total funds ***made available***, whether claimed or not. We side with the circuits that take this approach.

Masters v. Wilhelmina Model Agency, Inc., 473 F.3d 423, 437 (2d Cir. 2007).[11] After a thorough analysis of *Masters* and its progeny, the court in *Zink* concluded that *Masters* does in fact apply to claims-made (or non-common fund) settlements. 2016 WL 7473278, at *7-*8 (noting that in both of the cases "with which *Masters* side[d], the unclaimed funds *did* revert to the defendant") (emphasis in original).[12] Thus, the relationship between the fee and the Settlement (*Goldberger* factor 5), as explained in Plaintiffs' Final Approval Brief (at 23), further supports the requested fee.

Moreover, although Frank made virtually all of the above-referenced arguments in *Williams*, a 108-page report and recommendation adopted by the district court systematically rejected each and everyone one of them. 2021 WL 8129371, at *34-*39. For example, in response to Frank's argument that "the touted dollar value of the settlement is illusory and substantially overstated because the actual money paid out will be far less than $8 million and because the unpaid settlement funds will revert back to (or, to be more technically correct, will remain with Defendants)," the magistrate judge concluded that "these types of claims-made class action settlement[s] are frequently

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[11] *See also Alleyne v. Time Moving & Storage Inc*., 264 F.R.D. 41, 59 (E.D.N.Y. 2010) ("the value of legal service rendered in the creation of a settlement fund [is not] diminished by the failure of beneficiaries to cash in, regardless of what happens to the surplus"); *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 285 (6th Cir. 2016) ("an option to file a claim creates a prospective value, even if the option is never exercised"; discussing *Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980), and rejecting *Pearson's* attempt to distinguish it); *In re Motor Fuel Temperature Sales Pracs. Litig*., 872 F.3d 1094, 1120-21 (10th Cir. 2017) (rejecting premise detailed by the Seventh Circuit in *Pearson* that attorneys' fees "should not exceed a third or at most a half of the total amount of money going to class members and their counsel" as ignoring the value of consumer class actions to society, for which "class counsel must be adequately compensated—even when significant compensation to class members is out of reach (such as when contact information is unavailable, or when individual claims are very small)").

[12] Consistent with its detailed analysis, the court in *Zink* determined that its previous reliance on *Parker v. Time Warner Entertainment Co., L.P.*, 631 F. Supp. 2d 242, 267 (E.D.N.Y. 2009), upon which Frank also relies, was misplaced and out of step with Second Circuit law. 2016 WL 7473278, at *7-*8.

approved, even if unclaimed funds revert to defendants." *Id.* at *35 (citing *Casey*, No. 5:12-cv-820 (ECF No. 222 ¶6)). Similarly, in rejecting Frank's criticisms about the disproportionate size of the fee award and defendants' retention of undistributed funds, the magistrate judge noted that "any attorney's fees approved by this Court will be paid separately by Defendants and will not reduce or impact payments to Class Members," a provision that courts view favorably and as a "reason[] to *approve* a class action settlement." *Id.* at *35-*37 (emphasis in original).

But not only has Frank recycled the very same unsuccessful arguments he made in *Williams*; he also brazenly ignores this Court's analysis of the *Belfiore* "flushable" wipes settlement, which rests on similar established legal precedents. As this Court noted at the fairness hearing in *Belfiore*, "[i]n a case where the attorneys' fees are to be paid directly by defendant and, thus, money paid to the attorneys is entirely independent of money awarded to the class, the court's fiduciary role in overseeing the award is greatly reduced because there is no conflict of interest between attorneys and class members." *Belfiore* Hr'g Tr. (ECF No. 363) at 14 (quoting *Pearlman*, 2019 WL 3974358, at *3); *see also McBean v. City of N.Y.*, 233 F.R.D. 377, 392 (S.D.N.Y. 2006) (quoting same). In other words – rather than raise "red flags," as Frank argues – the Settlement structure here ***eliminates*** any conflict between Class Counsel and the Settlement Class. *See*, *e.g.*, *Dupler*, 705 F. Supp. 2d at 245 (approving $5.38 million fee award, representing 3.3 lodestar multiplier, as reasonable, "particularly in light of the fact that class counsel's fee does not come out of a common fund"); *Blessing*, 2011 WL 3739024, at *4 (approving $13 million fee and cost award despite "the very modest award provided to each class member," where the "the fee is a separate obligation that will not come out of the Settlement amount, and was negotiated after the terms of the Settlement had been agreed upon").

Frank also argues that even if a lodestar analysis were appropriate, Class Counsel are required to submit their time and expense records in support of their fee request, but he does not

suggest anything suspicious about Class Counsel's Fee and Expense Application. Frank Objection at 17. If anything, Class Counsel's application provides considerably ***more*** detail than counsel's application in the *Belfiore* action. *E.g.*, *compare Kurtz* ECF No. 445 *with Belfiore* ECF Nos. 358-3-5. While Class Counsel is happy to provide the Court with the requested contemporaneous time detail – they have nothing to hide – given this Court's practice and familiarity with the extensive history of the litigation, the number of hours worked, the fact that other district courts in this Circuit have recently approved Class Counsel's lodestar and billing rates, and the ***negative*** 0.93 lodestar requested,[13] there is no indication that the Fee and Expense Application warrants enhanced scrutiny.[14] Indeed, the reasonableness of Class Counsel's requested fee award is further demonstrated by the fact that, despite litigating the Actions for an additional two years following the *Belfiore* settlement, Class Counsel spent ***25% fewer hours*** litigating the Actions against Kimberly-Clark than in *Belfiore*. *Compare Kurtz* ECF No. 445, Ex. A *with Belfiore* ECF No. 358-4.

Finally, Frank's criticisms of the claims process are easily refuted. The detailed declaration of Scott M. Fenwick, a Senior Director at Kroll Settlement Administration, submitted herewith,

[13] Were the Court to accept Frank's methodology for calculating fees, and assuming the 185,354 claims submitted are valid and all valued at $7.00, Class Counsel would be awarded ***less than 8%*** of its lodestar.

[14] *See Blondell v. Bouton*, 2021 WL 4173679, at *5 (E.D.N.Y. Aug. 30, 2021), *report and recommendation adopted*, 2021 WL 4173066 (E.D.N.Y. Sept. 14, 2021) (recommending approval of fee request "[a]lthough Class Counsel has not submitted contemporaneous attorney time records," and noting that "the court may look to its own familiarity with the case and its experience generally as well as to the evidentiary submissions and arguments of the parties"); *Anzurez v. La Unica Caridad Inc.*, 2021 WL 2909521, at *7 (S.D.N.Y. July 12, 2021), *report and recommendation adopted*, 2021 WL 3173734 (S.D.N.Y. July 27, 2021) ("it is permissible to provide a summary of time records . . . in lieu of actual records, [if] a person with knowledge . . . provide[s] the court with competent evidence that the summary is in fact based on time records that were contemporaneously made by each of the attorneys"); Hr'g Tr. (Ex. 4) at 160:22-24, *In re Am. Realty Cap. Props., Inc. Litig.*, No. 1:15-MC-40 (AKH) (S.D.N.Y. Jan. 23, 2019) ("I find your lodestar reasonable, the rates appropriate and, in relationship to the work that you did, reasonable."); Hr'g Tr. (Ex. 5) at 25:12-16, *Kaess v. Deutsche Bank AG*, No. 1:09-cv-01714 (GHW) (RWL) (S.D.N.Y. June 11, 2020) ("I find that these billable rates [for Robbins Geller] based on the timekeeper's title, specific years of experience, and market rates for similar professionals in their fields . . . to be reasonable in this context."); *see also Fleming v. Impax Lab'ys Inc.*, 2022 WL 2789496, at *9 (N.D. Cal. July 15, 2022) (approving Robbins Geller rates and awarding fee request representing 2.6 multiplier). If anything, as discussed above, given the nature of the settlement structure, the court's fiduciary role in overseeing the award is "greatly reduced" – not enhanced – given the nature of the Settlement.

systematically responds to Frank's purported gripes with the claims process. Fenwick Decl. ¶13. For example, while Frank claims to have had technical difficulties submitting a claim on his first attempt, his experience is not indicative of the 184,546 Settlement Class Members who successfully submitted electronic claims. Fenwick Decl. ¶10. In fact, the Claims Administrator received ***no*** inquiries from claimants experiencing "website errors," and only one inquiry regarding the functionality of the claim-filing portal, despite a "Contact" hyperlink on every page of the Settlement Website directing claimants to four separate methods of contacting the Claims Administrator (including email and electronic submission).[15] Thus, Frank's assertion that the claims process was "onerous" and "designed [to] throttle claims" – particularly in light of the extended length and reach of the notice program – is baseless. Frank Objection at 12.

V. CONCLUSION

The Settlement reached by Class Counsel is a very good one in light of the risks of continued litigation, the results achieved vis-à-vis comparable settlements, and the positive reaction from the Settlement Class. For the reasons set forth herein and in their Final Approval Brief and declarations, and because all of the factors under Rule 23, *Grinnell*, and *Goldberger* have been met, including the nearly universal support of the Settlement Class, Plaintiffs and Class Counsel respectfully request that this Court approve the Settlement, Class Counsel's requested fee and expense award, and the Class Representative payments, and overrule Frank's objection.

[15] *Id*. at ¶13. Frank's suggestion that the Settlement Website did not inform Settlement Class Members that they could submit an actual label or bar code as Proof of Purchase is false, as is his claim that the Claims Administrator's email address was not available on the website and was only "hidden on a PDF." ECF No. 446-1 at 3; Fenwick Decl. ¶13; https://www.flushablewipessettlement.com/home/faqs2/.

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Respectfully submitted,

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