IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

Jamie Todd, et al.,

Plaintiffs,

v.

Ashley Furniture Industries, LLC, et al.,

Defendants.

Case No. 3:24-cv-615-wmc

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY APPROVAL

Under Federal Rule of Civil Procedure 23(e), the Named Plaintiffs[1] submit this Memorandum of Law in Support of their Unopposed Motion for Preliminary Approval of their class action settlement (the "Settlement") with Defendants Ashley Furniture Industries, LLC, Ashley Global Retail, LLC, and Resident Home LLC (collectively, "Defendants"). This is a class action arising from Defendants' sale of mattresses that contained fiberglass as a fire-retardant material in the inner sock of the mattress. In their complaint, Plaintiffs allege that the mattresses were defective in their design and warnings. Defendants deny the material allegations in this case and deny liability.

After years of litigation, multiple mediations, and a discovery process wherein tens of thousands of documents were exchanged, the parties recently reached a proposed Settlement which

[1] Jamie Todd, o*n her own behalf and on behalf of her minor child*, G.T.; Andrew Todd, o*n his own behalf and on behalf of his minor child,* G.T.; Allen McClure; Angel McClure; Logan McClure; Jacob McClure; Killian McClure; Malinda Gipson; Kevin Douthard; Diana Angus; Gabrielle Puyat; Brian Klowas; Judy Hughes; Heather Orgeron; Stacey Kemp; Eric Young; Lisa Jenkins; Frances Burkowske; Odessa Adams; Kimberly Adams; James Wilson; Victor Cavano; Conner Petropoulos; Julie Bartlett; Raven Fowlkes-Witten; Lena Bailey; Erin Stavi; Dylan Weber; Mercedes Rosato; Sandra Melendez; Joseph Ataganian; Geraldina Perez; Donald Watson; Paula Mills; Shelley Hicks; John Palmer; Felicia Anderson; Alex Craig; Carrie Dadamo; Jessi Hardy; Lorenzo Diaz; Ashley Solis; Stephanie Jarvis; Melissa Anderson; and Nate Olsen.

will provide a $12 million, non-reversionary fund. No matter what happens in the claims process, $9 million in benefits will flow to the Class. The Settlement Fund is comprised of a $9 million pool of vouchers for use at multiple online stores and shall have a pro-rata value based upon the claims made by participating class members. In other words, regardless of claims activity, Defendants will provide to the Class a minimum of $9 million in value. The Settlement Fund also includes an additional non-reversionary fund of $3 million to pay for attorneys' fees and costs. The Settlement requires Defendants to pay all settlement administration, notice and claims costs (valued at $380,000.00) and allows for the Named Plaintiffs collectively to seek up to $85,000.00 in class representative service awards. The aforementioned benefits are in addition to the design and manufacturing changes that Defendants have already implemented, including the discontinuation of the use of fiberglass in the fire-retardant sock of mattresses they sell or distribute. Plaintiffs respectfully request that the Court preliminarily approve the settlement because it is fair, reasonable, and adequate and includes a comprehensive Notice Program that is robust, best practicable under the circumstances, and satisfies the requirements of Federal Rule of Civil Procedure 23(e).

I. NATURE OF THE LITIGATION AND PROCEDURAL HISTORY

Plaintiffs initiated this lawsuit on August 30, 2024. The currently operative Complaint alleges that certain types of mattresses sold or distributed by Defendants contained fiberglass as a fire-retardant material in the inner sock of the mattress. Plaintiffs allege that the use of fiberglass and other aspects of the mattress design were defective and potentially caused physical impacts to consumers, and the mattresses did not include sufficient warnings about the potential for the glass fibers to be released from the mattresses. Doc. 1. On November 26, 2024, Defendants filed a motion to dismiss, denying all Plaintiffs' allegations and seeking dismissal of all claims. Doc. 16.

After conducting several months of discovery, on September 10, 2025, Plaintiffs filed an Amended Complaint, adding additional Named Plaintiffs to serve as representatives for the original state consumer protection sub-classes. Doc. 56. Defendants reincorporated their arguments in their pending Motion to Dismiss, again denying all allegations and asking the Court to dismiss them. Doc. 54 and 55.

The parties continued robust discovery, including circulation of interrogatories, requests for production, disclosures and review of electronically stored information, and sample collection of test and subject mattresses. On November 25, 2025, Plaintiffs produced five expert reports in support of their consumer claims.[2]

In May 2021, counsel for Plaintiffs sent Defendants a letter, providing notice of allegations pertaining to the use of fiberglass as a fire-retardant barrier in the inner sock of certain mattresses. **Exhibit 1,** ¶ 2.1. Following this correspondence, the parties discussed potential pre-suit resolution and exchanged documents and information to assist in the parties' evaluation of the claims. Then, counsel for Ashley and the Plaintiffs participated in a pre-suit mediation on February 28, 2024, with well-respected mediator, Rodney A. Max. *Id.* ¶ 2.1, 2.2. Ultimately, this mediation was unsuccessful, but it did lay the groundwork for another mediation after conducting a year and a half of discovery. *Id.* ¶ 2.11.

On December 17, 2025, the parties participated in another mediation, this time with James B. Baldinger, in Palm Beach, Florida. *Id.* While this mediation was also unsuccessful, the parties did make progress and agreed to continue discussions with the assistance of Mr. Baldinger. Over the course of the next month, while conducting party depositions, mattress testing, and arranging

[2] The parties reached a settlement in principle before the deadline for the disclosure of Defendants' expert reports. At the parties' joint request, that deadline was vacated. Docs. 60 and 61.

for weeks of depositions and travel including expert and party depositions, the parties continued these negotiations. *See* **Exhibit 2**, Declaration of James B. Baldinger, ¶ 6. Finally, on January 21, 2026, the parties reached a settlement agreement in principle and notified the Court via their request to vacate the current scheduling order. *See* Doc. 60. The terms of the Settlement Agreement (attached hereto as **Exhibit 1**) are now presented to the Court for review and preliminary approval.

II. SUMMARY OF THE SETTLEMENT

A. The Class

Under the terms of the Settlement Agreement and Federal Rule of Civil Procedure 23(b)(3), the Parties agree to the conditional certification for settlement purposes of the following Settlement Class (the "Class") of roughly 6.2 million people:

> All individual end consumers who purchased an Affected Mattress in the United States from October 1, 2017 to June 30, 2024, which was designed, manufactured, produced, distributed, sold, or marketed by Defendants and contained fiberglass as a fire-retardant material in the inner sock of the mattress.

Exhibit 1, ¶ 1.8. Excluded from the Class are: (1) the Judges presiding over this Action, and members of their immediate families; and (2) Defendants, their subsidiaries, parent companies, successors, predecessors, any entity in which the Defendants or their parents have a controlling interest, and their current or former officers and directors. **Exhibit 1**, ¶ 1.12.

B. Settlement Benefits to the Class

The Settlement Agreement provides for a $12 million settlement, of which $9 million will be allocated for pro-rata vouchers to ashleyfurniture.com, nectarsleep.com, dreamcloudsleep.com, or sienasleep.com, for all participating class members who make claims. The $9 million will be distributed, regardless of the number of claimants. The vouchers will be transferable, stackable, and only expire after 365 days. The remaining $3 million will be subject to Plaintiffs' Counsel's application for attorneys' fees and costs at the Court's discretion. Should the Court decide to award less than $3 million, the difference will not revert to Defendants, but will instead be distributed on a pro rata basis to the participating class members. **Exhibit 1**, ¶ 3.3.5. Additionally, Defendants will pay all costs of settlement administration including notice and claims administration via the assistance of third-party settlement administrator Epiq (roughly valued at $380,000.00). **Exhibit 1**, ¶ 3.6.

C. The Release of the Class's Claims

In exchange for Defendants' distribution of Vouchers, Plaintiffs and Class Members will release and discharge Defendants from any and all claims that relate in any way to the sale of the mattresses containing fiberglass as a fire-retardant material or that were or could have been asserted in the Litigation. **Exhibit 1**, ¶¶ 5.1-5.3.

D. Class Representative Service Awards

The Named Plaintiffs in this Litigation have diligently pursued this matter on behalf of themselves and the Class. Due to their efforts, the Named Plaintiffs seek to be Class Representatives via conditional approval, and will seek Service Awards totaling $85,000.00 (collectively, for all Named Plaintiffs), subject to the Court's approval. **Exhibit 1**, ¶ 3.5. In particular, the longer serving Named Plaintiffs will seek awards of $5,000.00 each, and the recently added Named Plaintiffs will seek awards of $1,315.79 each. The Service Awards are fair, reasonable, and adequate because of Class Representatives time and effort on behalf of the Class and the substantial recovery achieved for the Class in this case.

E. Attorneys' Fees and Expenses

As part of the Settlement Agreement, counsel for Plaintiffs agreed to cap their request to the Court at $3 million total, in combined fees and expenses. Currently, Plaintiffs' counsel has spent almost $140,000.00 in expenses prosecuting this Litigation. Plaintiffs' counsel's lodestar exceeds $4.1 million and will only rise as they assist in the settlement administration and approval process. Plaintiffs' counsel is experienced in handling class actions, consumer actions, and nationwide settlement processes. Thus, because of Plaintiffs' counsel's experience, ability, and time spent to efficiently manage this Litigation to a substantial recovery, the requested fee is reasonable. There is no "clear-sailing provision" present in the Settlement Agreement. There is also no "kicker clause" in that if a fee and expense request is approved in a lower amount, the remaining funds do not revert to Defendants but instead are allocated to participating class members**.** **Exhibit 3**, Declaration of D. G. Pantazis, Jr., at ¶ 7. Lastly, Plaintiffs' counsel's combined fee and expense request equates to 25% of the total settlement.

F. Settlement Administration and Notice

The Settlement Agreement requires Defendants to pay all costs associated with Settlement Administration, Notice, and Claims. **Exhibit 1**, ¶ 3.6. Consistent with the terms of the Settlement Agreement, the parties both obtained quotes for Settlement Administration services, and selected Epiq to serve as the Settlement Administrator for this matter.

Epiq has vast experience handling the Settlement Administration for class action settlements, including consumer litigation such as this one. The proposed Notice Plan, detailed in the accompanying Declaration of Cameron R. Azar ("**Exhibit 4**") in this case is robust and consists of direct email notice to Class Members for whom Defendants maintained contact information (estimated to comprise at least 50% of the class). It also includes an intricate online advertising campaign targeted to reach over 70% of likely Class Members. The Settlement Administrator will also establish a website, toll-free hotline, and email to receive inquiries. The Long-Form Notice and all pertinent case documentation will be maintained on the website to permit the Class easy access to information about this Litigation and Settlement. **Exhibit 4**, at ¶ 36; **Exhibit 1**, at ¶ 7.3. The Notice will be sent out 120 days after the entry of any Preliminary Approval Order (the "Notice Date").

G. Class Members' Right to Opt-Out and Object

Class Members have 120 days from the Notice Date to Opt-Out of the Settlement or Object to the Settlement. **Exhibit 1**, at ¶ 7.5.1. In order to validly Opt-Out from the Settlement, Class Members must submit a Request for Exclusion via mail, email, or the settlement website. *Id*. The Class will be apprised of their right to opt-out and/or object to the Settlement through the Notice program.

H. Claim Form

Pursuant to the Settlement Agreement, if a Class Member wishes to make a claim for a voucher, there will be a link in the Email Notice to do so, and the Claim Form may be submitted via the Settlement Website. A participating Class Member will be required to make one affirmation that they purchased a mattress from the Defendants between October 1, 2017 to June 30, 2024 under the penalty of perjury. **Exhibit 1**, ¶ 7.4. If the Class Member did not receive direct email Notice, then they will be required to submit some proof of purchase (receipt, invoice, picture of mattress tag) or other information to cross-check against potential fraudulent claims. A copy of the proposed claim form is attached to the Settlement Administrator's declaration. **Exhibit 4**, Attachment 2.

I. Schedule for Settlement Administration

The Parties have provided a proposed schedule for the Settlement based upon the terms in the Settlement Agreement and the Notice Plan proposed by the Settlement Administrator:

Administrator to provide CAFA Notice required by 28 U.S.C. § 1715(b)	Within 10 days of the filing of the Motion for Preliminary Approval
Post Grant of Preliminary Approval	
Defendants to deliver Class Data to Administrator	21 days after entry of Preliminary Approval Order
Administrator to notify Class Counsel of receipt of Class Data and confirm number of Class Members	14 days after delivery of Class Data to Administrator
Administrator to provide Email Notice to Class Members	30 days after delivery of Class Data to Administrator
Administrator to establish and create the Settlement Website	30 days after delivery of Class Data to Administrator
Administrator to provide second round of Email Notice to Class Members who have not yet submitted a Claim or Request for Exclusion	30 days before Response Deadline
Response Deadline	120 days after entry of Preliminary Approval order
Objection/Exclusion Deadline	120 days after entry of Preliminary Approval order
Administrator to provide Exclusion List and copies of Requests for Exclusion to Class Counsel and Defense Counsel	14 days after Response Deadline
Final Approval Hearing	______________________, 2026 at _____

	[a.m./p.m.]
Administrator's Declaration provided to Class Counsel and Defense Counsel	14 days before deadline for Motion for Final Approval
Deadline for Class Counsel to file Motion for Final Approval of Class Action Settlement	21 days before the Final Approval Hearing
Deadline for Class Counsel to file Motion for Attorneys' Fees, Costs and Class Representative Service Payment	21 days before the Final Approval Hearing
Deadline for Settlement Administrator to Provide Declaration Detailing Distribution of Class Notice/Claims/Opt Outs/Objections	14 days before the Final Approval Hearing
Deadline to Submit Any Responses to Objections	7 days before the Final Approval Hearing
Post Grant of Final Approval	
Class Counsel to provide W-9 forms to Defense Counsel	10 days after Effective Date
Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment and the Class Representative Service Payment	30 days after Effective Date
Administrator to inform Class Counsel and Defense Counsel of calculated *pro rata* Voucher amount and, if applicable, Contingent Cash Fund	14 days after Effective Date
Defendants to provide Vouchers to Administrator	21 days after Administrator informs Class Counsel and Defense Counsel of *pro rata* Voucher and, if applicable, Contingent Cash Fund distribution amounts
Administrator to distribute Vouchers to Participating Settlement Class Members	60 days after receipt of Vouchers from Defendants
Administrator to provide Class Counsel and Defense Counsel with a report detailing all disbursements and/or payments under the Agreement	14 days after distribution of Vouchers

Deadline for Participating Settlement Class Members to report to Administrator non-receipt of Vouchers	180 days after Effective Date

III. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

A. Legal Standard

Public policy generally favors and encourages settlements. *Nat'l Cas. Co. v. White Mountains Reinsurance Co. of Am.*, 735 F.3d 549, 556 (7th Cir. 2013). Indeed, there is an "overriding public interest in favor of settlement of class action suits." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 307 (7th Cir. 1985) (quotation marks and citation omitted); *see also McKinnie v. JP Morgan Chase Bank, NA*, 678 F. Supp. 2d 806, 811 (E.D. Wis. 2009) ("Federal courts look favorably upon the settlement of class action lawsuits.").

When preliminary approval of a class action settlement is sought under Rule 23(e), the district court must consider three essential factors: (1) whether it is probable the class will be certified for purposes of judgment on the proposed settlement; (2) whether the proposed settlement is within the range of possible approval with regard to the criteria included in Rule 23(e)(2); and (3) direct notice to the class in a manner that is the practicable under the circumstances of the case. *In re TikTok, Inc., Consumer Privacy Litig*., 565 F. Supp. 3d 1076, 1083-84 (N.D. Ill. 2021). The second factor, whether the proposed settlement is within the range of possible approval, balances six additional criteria: (1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer; (2) the complexity, length, and expense of further litigation; (3) the amount of opposition to the settlement; (4) the reaction of members of the class to settlement; (5) the opinion of competent counsel; and (6) stage of the proceedings and the amount of discovery completed. *Wong v. Accretive Health, Inc.*, 773 F.3d 859, 863 (7th Cir. 2014) (citation omitted); *In re TikTok*, 565 F. Supp. 3d at 1083-84.

If the Court finds the Settlement within the range of possible approval at the time of preliminary approval, notice of the Settlement will be given to Class Members, and a hearing scheduled to consider final settlement approval. Accordingly, the Court assesses the ultimate question of fairness only after the final hearing, after notice of the settlement has been given to the class members, and after the class members have had the opportunity to voice their view of the settlement. Moore's Federal Practice, 23.165[3] (3d ed. 2005). Indeed, "[i]n this circuit, the practice is for the court to give its preliminary approval after reviewing the proposed settlement and then to give final approval after notifying the class members and holding a hearing." *Jones v. Cruisin' Chubbys Gentlemen's Club*, No. 17-cv-125-JDP, 2018 WL 11236460, at *1 (W.D. Wis. Nov. 21, 2018).

Plaintiffs now request that the Court grant preliminary approval of the Settlement, which only requires that the Court find that the proposed Settlement is fair, reasonable, and adequate and "within the range of possible approval." *Chesemore v. Alliance Holdings, Inc.*, No. 09-cv-413-wmc, 2014 WL 12730484, at *1 (W.D. Wis. Apr. 14, 2014).

B. The Class is Likely to be Certified

Under Rule 23(a), the Court must conclude that "(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interest of the class."

1. The Class Satisfies Numerosity

The numerosity requirement under Rule 23(a)(1) is satisfied where the class is so numerous that joinder of all Class Member is impracticable. Fed. R. Civ. P. 23(a)(1). The Seventh Circuit has deemed 40 class members to be sufficient to establish numerosity. *Swanson v. Am. Consumer Indus., Inc.*, 415F.2d 1326, 1333 n.9 (7th Cir. 1969). Wisconsin federal courts have recently found "thousands" of class members "easily" satisfies Rule 23's numerosity requirement. *Arandell Corp. v. Xcel Energy Inc.*, Nos. 07-cv-076, 09-cv-240, 2023 WL 2387813, at *2 (W.D. Wis. Mar. 7, 2023). Here, the 6,100,000 Class Members undoubtedly satisfy numerosity. *Thillens, Inc. v. Community Currency Exch. Ass'n of Ill., Inc.*, 97 F.R.D 668, 677 (N.D. Ill. 1983) ("Where the class is large, the numbers alone are dispositive of the impracticability of joinder.").

2. Common Questions of Law and Fact Exist

Rule 23(a)(2) requires that there be "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The Supreme Court has stated that Rule 23(a)(2)'s commonality requirement is satisfied where the plaintiffs assert claims that "depend upon a common contention" that is "of such a nature that it is capable of class-wide resolution—which means that determination its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2556 (2011). Both the majority and dissenting opinions in that case agreed that "for purposes of Rule 23(a)(2) even a single common question will do." *Id.* (internal quotation marks and citation omitted).

Here, there are questions of law and fact, given the operative legal theories, common to the proposed Class that predominate over any individual questions. These questions include, but are not limited to:

- Whether Defendants sold mattresses that did not provide sufficient warnings regarding the existence of fiberglass in the inner sock of those mattresses;
- Whether the mattresses were safe and fit for their intended purpose; and
- Whether Defendants violated the law by failing to disclose to consumers the potential effect of fiberglass as a fire-retardant material in the inner sock of the mattresses.

Thus, commonality is present in Plaintiffs' claims.

3. Class Representatives' Claims are Typical of the Class

To satisfy the typicality requirement of Rule 23(a)(3), the claims or defenses of the representative parties must be typical of the claims or defenses of the class. "[A] plaintiff's claim is typical if it arises from the same event or practice or course of conduct that gives rise to the claims of other class members and his or her claims are based on the same legal theory." *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992) (internal citations omitted). Typicality seeks to ensure that there are no conflicts between the class representatives' claims and the claims of the Class Members represented. Here, Plaintiffs' claims are typical of the claims of the Class because both claims arise out of the same course of conduct by Defendants—sale of mattresses containing fiberglass as a fire-retardant material—and rest on exactly the same legal theory—whether Defendants violated the law by failing to disclose to consumers the nature and potential risk of fiberglass used as a fire-retardant material in certain mattresses. Moreover, "[t]he typicality requirement may be satisfied even if there are factual distinctions between the claims of the named plaintiffs and those of other class members." *De La Fuente v. Stokely-Van Camp, Inc.*, 713 F.2d 225, 232 (7th Cir. 1983). Rule 23(a)(3)'s typicality requirement is satisfied.

4. The Named Plaintiffs and Their Counsel Have Adequately Represented the Class and Will Continue to Do So

The final requirement of Rule 23(a) is that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This requires an absence of potential conflicts between named representatives and class members and that [the class representatives] will vigorously prosecute the case." *Aguilar v. Husco Int'l, Inc.*, No. 08-C-0154, 2009 WL 3102791, at *2 (E.D. Wis. Sept. 24, 2009) (internal citations omitted). Plaintiffs have no conflicts with the Class and have actively participated in the case including written discovery, document production, case development, and depositions. **Exhibit 3**, ¶ 11. Moreover, Plaintiffs' counsel and their firms have significant experience in class and complex litigation in state and federal courts throughout the country. **Exhibit 3**, ¶ 10. Plaintiffs' counsel have actively litigated this case since prior to its inception on the Court's docket, vigorously prosecuted the case for multiple years, spent hundreds of thousands of dollars risking with no guarantee of recovery, and pursued this Litigation at the expense of other lawsuits the firms could have filed. *Id*. Accordingly, the Named Plaintiffs and their counsel will continue to adequately represent the Class as Class Representatives and Class Counsel.

C. The Settlement is Within the Range of Approval

The Settlement is fair, reasonable, and adequate, and well within the range of possible approval because it provides substantial benefits in the form of $9 million dollars of vouchers to all participating Class Members through the Settlement Fund. The Settlement was reached while the status of the merits of the case was still uncertain and permits the parties to avoid the uncertainty and expense of prolonged litigation. The Settlement Agreement satisfies each of the factors that courts within the Seventh Circuit analyze in assessing whether a proposed settlement agreement is fair, reasonable, and adequate:

(1) the strength of the case for plaintiffs on the merits, balanced against the extent of settlement offer;

(2) the complexity, length, and expense of further litigation;

(3) the amount of opposition to the settlement;

(4) the reaction of members of the class to settlement;

(5) the opinion of competent counsel; and

(6) stage of the proceedings and the amount of discovery completed.

Wong, 773 F.3d at 863 (citation omitted).

In weighing these factors, a district court should "recognize[] that the first factor, the relative strength of plaintiffs' case on the merits as compared to what the defendants offer by way of settlement, is the most important consideration." *Isby v. Bayh*, 75 F.3d 1191, 1199 (7th Cir. 1996). The Seventh Circuit has explained that district courts should "consider the facts in the light most favorable to the settlement." *Id*. at 1198-99 (internal quotations and citation omitted). Further, "[t]he essence of settlement is compromise . . . [t]hus, the parties to a settlement will not be heard to complain that the relief afforded is substantially less than what they would have received from a successful resolution after trial." *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 889 (7th Cir. 1985). All factors weigh in favor of granting preliminary approval of class action settlement in this matter and conditionally certifying the Class for settlement purposes.

1. The Strength of Plaintiffs' Case Compared to the Settlement Terms and Balanced with the Risks of Continued Litigation Favors Approval

"[A]n integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan*, 778 F.2d at 309. Here, Defendants dispute Plaintiffs' allegations and deny liability for any alleged harm caused to Plaintiffs and/or the Class. Defendants at all times indicated they would strenuously defend the case. This was evident in the deposition schedule that was agreed to involving over thirty (30) party depositions and five (5) expert depositions, along with voluminous mattress testing occurring throughout the country and both parties' respective labs receiving and testing multiple samples of test and subject mattresses.

Moreover, Plaintiffs evaluated the caselaw as it relates to a nationwide personal injury class[3] and multi-state consumer actions.[4] While Plaintiffs are confident they have arguments and authorities supporting their allegations and claims, the number of complicated issues in this case, which center on developing multi-state consumer classes and product testing, creates significant uncertainty. Even assuming Plaintiffs would have survived the pending motion to dismiss and achieved class certification on their strongest claims, there is no guarantee that the Court and jury would find Plaintiffs' arguments more compelling during a trial and any subsequent appeals.

There is also no doubt that continuing litigation involves additional delays as evidenced by the Court's operative scheduling order and likely appeals that may ensue from any decisions rendered. The costs of this Litigation were significant; they involved product testing and travel all over the country, voluminous review and storage of electronic information, and multiple experts to prosecute and defend a complex nationwide consumer action. The Settlement allows for Class Members to obtain certain and real benefits soon, as opposed to potentially waiting for years, and eliminates the risk of receiving no benefits at all.

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[3] *In re NCAA Student-Athlete Concussion Injury Litig.,* 314 F.R.D. 580, 604 (noting challenges "that a Rule 23(b)(3) or 23(c)(4) class for personal injury claims against the [defendant] could be certified on a nationwide… basis"); *DuRocher v. NCAA*, 2015 U.S. Dist. LEXIS 41110, *33-34 ("Medical causation and personal injury allegations raise a significant hurdle that makes class treatment questionable.").

[4] *Speerly v. GM, LLC*, 143 F.4th 306, 360 (concurrence noting that in reversing certification in a multi-state consumer class, the majority had "erected insurmountable barriers to class certification"); *Hudock v. LG Elecs. U.S.A., Inc.,* 12 F.4th 773, 777 (reversing certification in multi-state consumer class because "determination of the companies' liability would require individual determinations on causation and reliance").

Lastly, the injunctive relief sought by Plaintiffs (when they put Defendants on notice of their claims and later pursued them in their Complaint) has been effectively achieved. Several years ago, Defendants modified the warnings on the mattresses pertaining to the use of fiberglass and provided information on their websites. As of no later than the end of 2023, Defendants stopped manufacturing mattresses that use fiberglass as a fire-retardant material. Based on the foregoing, Plaintiffs evaluated the likelihood of further success in a prolonged fight, considering the higher cost and risk associated with further delay.

"Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig*., 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000) (internal citation omitted); *Hunter v. Booz Allen Hamilton Inc*., No. 2:19-cv-00411, 2023 WL 3204684, at *6 (S.D. Ohio May 2, 2023) (same). The complexity, length, and expense of continued litigation favors settlement now. Litigating this case to a favorable conclusion would require a considerable expenditure of time and resources including extensive electronic discovery, class certification, summary judgment, trial, and likely appeals. Settlement in lieu of this risk and delay is thus favorable. *Gen. Elec. Capital Corp. v. Lease Resolution Corp.*, 128 F.3d 1074, 1082 (7th Cir. 1997); *see also In re AT&T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. 330, 347 (N.D. Ill. 2010) ("Even if Plaintiffs were to succeed on the merits at some future date, a future victory is not as valuable as a present victory. Continued litigation carries with it a decrease in the time value of money, for '[t]o most people, a dollar today is worth a great deal more than a dollar ten years from now.'") (internal citation omitted)). Given the risks Plaintiffs face going forward, the significant Settlement Fund is balanced well against the obstacles Plaintiffs would be required to overcome to achieve a successful result potentially many years in the future. This factor weighs in favor of preliminary approval.

2. Settlement Opposition Analysis is Premature

Understanding that Notice is yet to be issued, and as a result, no Class Members beyond the proposed Class Representatives have had the opportunity to review the proposed Settlement nor been granted the opportunity to object or opt-out, consideration of this factor is premature. Accordingly, it should be afforded neutral value at this stage in the proceedings.

3. It is the Opinion of Competent Counsel that the Settlement is Fair, Reasonable, and Adequate Warranting Approval

Plaintiffs' counsel is experienced and familiar with consumer litigation and product litigation such as this and fully endorses the proposed Settlement. Indeed, the work of proposed Class Counsel in this Litigation, as well as their experience in prosecuting complex litigation, demonstrates that they are well-qualified to represent the Class and opine as to the fairness of the Settlement. **Exhibit 3**, ¶ 10. Plaintiffs' counsel relied on their experience to efficiently prosecute this Litigation, evaluate the contingencies and likely outcomes of class certification and trial, and negotiate a substantial Settlement Fund for the benefit of the Class. *Id*. They also had the opportunity to vet qualified experts to support their claims and understand the strengths and weaknesses involved in supporting the allegations. In doing so, Plaintiffs' counsel supports the Settlement completely and suggests this factor strongly supports granting preliminary approval.

4. The Stage of the Proceedings and the Amount of Discovery Completed Favors Settlement At this Juncture

Plaintiffs' counsel engaged in significant pre-suit development and evaluation with third parties to determine whether or not to proceed with this action. The parties collectively engaged in informal discovery prior to the initiation of the lawsuit in conjunction with the initial mediation. Then, the parties engaged in motion practice (motion to dismiss and motions to compel) and class discovery involving interrogatories, requests for production, production of documents (electronic and hard copy), testing of mattress samples, laboratory analysis, and the submission of five expert reports. On the eve of reaching the Settlement, the parties were in the midst of conducting and scheduling thirty additional depositions from West Virginia to Missouri to California. Defendants were set to disclose their own experts, and Plaintiffs were preparing their motion for class certification.

The work done to this point, the stage of the litigation, and the assistance of a skilled mediator, allowed the parties to make an informed decision weighing the pros and cons of resolution versus continued litigation. The merits of the claims, the likelihood of success at class certification, and the risks imposed by trial and appeal were all clearly in view for both sides. Plaintiffs' counsel spent significant time and effort preparing the case to reach this point and such work resulted in a significant Settlement Fund. Thus, this factor supports preliminary approval of the Settlement.

D. The Notice Program Should be Approved as it is the Best Notice Practicable Under the Circumstances

The Notice Plan provides for direct email Notice to at least half of the class and the establishment of a dynamic website, hotline, and email service. *See In re AT & T Mobility Wireless Data Servs. Sales Litig.*, 270 F.R.D. at 351 (approving direct notice via email). The Notice Program also includes targeted advertisements and publication of the notice nationwide. **Exhibit 4**, ¶¶ 24-35. Accordingly, the Notice Program includes a high rate of direct notice to Class Members which is desirable and targeted advertisements to reach additional Class Members who do not receive direct notice.

Further, the Settlement provides for a claims process that requires minimal documentation from Class Members while conferring significant benefits to the Class. **Exhibit 1**, ¶ 7.4. Class Members receiving direct Email Notice can simply enter a unique claim ID, affirm they purchased a mattress, and submit their claim. Class Members who did not receive direct notice (because Defendants do not have their contact information) must simply upload some form of proof (receipt, invoice, picture of mattress or tag) and affirm they purchased a mattress to submit a claim. This process is simple but still protects against potential fraudulent claims that might impede pro-rata value to Class Members who submit valid claims. Accordingly, the simplified claims process weighs in favor of preliminary approval of the Settlement.

Under Rule 23(e), the Court "must direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). Thus, Rule 23(e) requires notice that is "reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the [settlement proposed] and afford them an opportunity to present their objections." *Towers v. City of Chicago*, 173 F.3d 619, 628 (7th Cir. 1999).

The proposed Notice meets these requirements. The Settlement Administrator will provide Notice pursuant to the Notice Program as follows: the Settlement Administrator shall send the Email Notice to all Class Members for whom Defendant has valid email addresses and include links to the claims process and settlement website. **Exhibit 1**, ¶ 7.3.1. The Email Notice, attached as **Exhibit A** to the Settlement Agreement, is clear and concise and includes all information required by Rule 23(c)(2)(B)[5]. Furthermore, the Settlement Administrator will establish a Settlement Website, a toll-free telephone number that Class Members can call for more information

[5] Specifically, it provides detailed information concerning: (a) the rights of Class Members, including how and by when to lodge objections or opt out; (b) the nature of the litigation and the claims at issue; (c) the proposed Settlement; (d) the available recoveries to Class Members; (e) the process for filing a proof of claim; (f) that fees and expenses are to be sought by Plaintiffs' counsel from the Settlement Fund; and (g) the date of the Final Approval Hearing. It further advises Class Members on how to obtain additional information about the Settlement, including the Long Form Notice and Settlement Agreement, from the Settlement Website.

regarding the Settlement, and a dedicated email to receive communications about the Settlement. **Exhibit 1**, ¶ 7.7.1.

The proposed Notice Program is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). Thus, the proposed method of Notice described above satisfies due process requirements. *See Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173 (1974); *see also* **Exhibit 4,** ¶¶ 40-48.

E. The Rule 23(b)(3) Requirements are Satisfied

Rule 23(b)(3) requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating of the controversy." Fed. R. Civ. P. 23(b)(3). Predominance and superiority exist in this case. While there are numerous questions common to the Class, the overwhelming issues are whether the mattresses were safe for their intended purpose, and whether there were proper warning labels on the mattresses. This demonstrates commonality under Rule 23(a)(2) and predominates over any individual issues. The key elements of Plaintiffs' claims—whether Defendants failed to adequately warn Class Members of the potential risk of fiberglass material and whether Class Members suffered damages, for example—are common issues that predominate for the entire Class, and thus the class is "sufficiently cohesive to warrant adjudication by representation." *Chicago Teachers Union, Local No. 1 v. Board of Educ. of City of Chicago*, 797 F.3d 426, 444 (7th Cir. 2015) (citation omitted). Moreover, the predominance requirement "scarcely demands commonality as to all questions." *Id.* Accordingly, the predominance element under Rule 23(b)(3) is satisfied.

Furthermore, a class action is the superior method for the fair and efficient adjudication of the claims in this case. Class Members' individual damages and the large size of the Class makes it too burdensome and expensive to prosecute each Class Member's claims individually as such endeavors would require significant laboratory testing and expert retention. Moreover, judicial economy is promoted through resolving this matter under the superior method of a class action. *Mullins v. Direct Digital, LLC*, 795 F.3d 654, 658 (7th Cir. 2015). With Rule 23(a) and Rule 23(b)(3) satisfied, certification of the proposed Settlement Class is appropriate.

F. The Class Representative Service Awards are Reasonable

The Named Plaintiffs have been integral to this case's prosecution and remain consistently engaged in this Litigation. Their work involved reviewing pleadings, conducting written and oral discovery, producing documents, providing sample mattresses for inspection, and approving the terms of the Settlement Agreement. **Exhibit 3**, ¶ 11. Their collective efforts resulted in a $12 million Settlement Fund and are worthy of a legitimate Service Award.

Plaintiffs' counsel intends to file an application seeking that the Court grant $5,000.00 to each of the Todd and McClure family members[6] who have served as Named Plaintiffs since the beginning of the case, and $1,315.79 to each Named Plaintiff who was added into the case as a state consumer sub-class representative[7]. Accordingly, Plaintiffs' counsel and the Named Plaintiffs request that the Named Plaintiffs be awarded these Service Awards, after the filing of their application for same, as each are reasonable under the circumstances and warrant preliminary

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[6] Jamie Todd; Andrew Todd; Allen McClure; Angel McClure; Logan McClure; Jacob McClure; Killian McClure.

[7] Malinda Gipson; Kevin Douthard; Diana Angus; Gabrielle Puyat; Brian Klowas; Judy Hughes; Heather Orgeron; Stacey Kemp; Eric Young; Lisa Jenkins; Frances Burkowske; Odessa Adams; Kimberly Adams; James Wilson; Victor Cavano; Conner Petropoulos; Julie Bartlett; Raven Fowlkes-Witten; Lena Bailey; Erin Stavi; Dylan Weber; Mercedes Rosato; Sandra Melendez; Joseph Ataganian; Geraldina Perez; Donald Watson; Paula Mills; Shelley Hicks; John Palmer; Felicia Anderson; Alex Craig; Carrie Dadamo; Jessi Hardy; Lorenzo Diaz; Ashley Solis; Stephanie Jarvis; Melissa Anderson; and Nate Olsen

approval. *See Farnham v. Caribou Coffee Co*., 2017 U.S. Dist. LEXIS 214929, *29 (approving $10,000 incentive fee award and noting "[t]he requested award falls on the lower half of the acceptable range").

G. Plaintiffs' Counsel's Attorneys' Fees and Expenses are Reasonable

If Preliminary Approval is granted, proposed Class Counsel will separately file a motion for an award of attorneys' fees and costs in the combined amount of $3 million. **Exhibit 3**, ¶ 14. Plaintiffs' counsel have expended almost $140,000.00 in costs to this point in the prosecution of this Litigation with no guarantee of recovery or reimbursement. Plaintiffs' counsel's lodestar is over $4.1 million dollars and will continue to increase as they work to finalize this Settlement. *Id*., at ¶ 12. And when compared to the percentage of the total settlement, Plaintiffs' counsel's combined expense and fee request amounts to 25% of the settlement. This calculation excludes settlement administration costs, notice, and claims handling costs (roughly $380,000.00 total), requested service awards ($85,000.00), and all of the prospective relief obtained by the Plaintiffs (see § III(C)(1) *infra*).

Wisconsin federal courts routinely grant fee requests above this amount. *See Farnham*, 2017 U.S. Dist. LEXIS 214929, at *39 (approving attorneys' fees of 1/3 of the net settlement fund and noting "30% is an appropriate fee recovery in this case, where the net settlement fund is around $10 million." (internal citations omitted)); *Arandell Corp.*, 2023 WL 2387813, at *3-4 (preliminarily approving a fee request of 35% plus litigation expenses and noting that "the same 35% net fee recovery was approved in six prior Wisconsin class settlements."); *Chesemore v. Alliance Holdings, Inc.*, No. 09-cv–413, 2014 WL 4415919, at *7 (W.D. Wis. Sept. 5, 2014). Moreover, there is a "strong presumption that the lodestar represents the reasonable fee." *City of*

Burlington v. Dague, 505 U.S. 557, 562 (1992). Since Plaintiffs' counsel's lodestar surpasses the requested fee amount, it is presumptively reasonable.

Notably, there is no "clear sailing" clause in the Settlement, nor any "kicker clause" and Plaintiffs' forthcoming fee and expenses request will be publicized to the Class and subject to approval by this Court, which will retain discretion to ensure any fee and expense request is reasonable. SA ¶ 3.3. Finally, the Settlement is not contingent upon any award of fees and costs which were agreed to separately after the Class's portion of the Settlement Fund was agreed to in principle. **Exhibit 3**, ¶ 15; **Exhibit 2**, ¶ 10. While Plaintiffs' counsel will more fully develop this request in their fee and expense application, the prerequisites for preliminary approval are met.

H. CAFA Requirements are Met

1. Defendants Will Provide Notice to State and Federal Officials and The Proposed Schedule Meets CAFA Requirements

The Class Action Fairness Act ("CAFA") requires that each defendant participating in a proposed settlement must provide certain notice to the appropriate federal and state officials no later than 10 days after the proposed settlement is filed. 28 U.S.C. § 1715(a-b). Defendants, through the Administrator, are prepared to do so under the terms of the Agreement. **Exhibit 1**, ¶ ¶ 11.10. Additionally, the settlement timeline proposed by the parties (§ II(I) *infra*) allows for compliance with CAFA's requirements to not issue an order granting final approval of the settlement until at least 90 days have passed since the later of the dates on which the federal and state officials were served with the required notice. 28 U.S.C. § 1715(d).

2. The Court Should Determine if the Settlement is a Coupon Settlement and Apply the Appropriate Level of Scrutiny

The Seventh Circuit has interpreted the CAFA coupon settlement provision (28 U.S.C. § 1712) to require a Court to decide whether a non-cash settlement amounts to a coupon settlement, and if so, to apply additional scrutiny to its terms before issuing approval. Here, Plaintiffs' counsel encourages the Court to evaluate the Settlement's terms in its entirety, in light of § 1712. To be clear, the Seventh Circuit has "rejected a narrow definition of coupon by rejecting, for purposes of § 1712, a proposed distinction between vouchers (good for an entire product) and coupons (good for price discounts)." *Levitt v. Southwest Airlines Co. (In re Southwest Airlines Voucher Litig.),* 799 F.3d 701, 706 (internal citations omitted). And while much of the caselaw addressing this evaluation is premised on a challenge to attorneys' fees, CAFA itself simply prescribes that in "a proposed settlement under which class members would be awarded coupons, the court may approve the proposed settlement only after a hearing to determine whether, and making a written finding that, the settlement is fair, reasonable, and adequate for class members." 28 U.S.C. § 1712(e).

Here, Plaintiffs submit that this Settlement does not qualify as a coupon settlement after applying the Seventh Circuit's analysis. However, if the Court determines that the settlement is a coupon settlement, it is still a settlement that warrants approval after applying the requisite additional scrutiny because as stated previously, it is a fair, reasonable and adequate settlement for the class. Plaintiffs' counsel encourages the Court to evaluate and approve the settlement under either prong of the inquiry.

(a) The Settlement is Not a Coupon Settlement

While CAFA's coupon provision has often been described as lacking clarity[8] or worse[9], the Seventh Circuit and the Ninth Circuit have done a good job creating a road map for Courts to

[8] *See Levitt v. Southwest Airlines Co. (In re Southwest Airlines Voucher Litig.),* 799 F.3d 701, 706.
[9] *See Cantu-Guerrero v. Lumber Liquidators, Inc. (In re Lumber Liquidators Chinese-Manufactured Flooring Prods. Mktg., sales Practices & Prods. Liab. Litig.)*, 27 F.4th 291, 298.

follow when evaluating the issue because "[t]he term 'coupon' is undefined in the statute." *McKnight v. Hinojosa*, 54 F.4th 1069, 1075. Specifically, the Seventh Circuit prescribed that

> The potential for abuse is greatest when the coupons have value only if a class member is willing to do business again with the defendant . . ., when the coupons have modest value compared to the new purchase for which they must be used, and when the coupons expire soon, are not transferable, and/or cannot be aggregated.

In re Sw. Airlines Voucher Litig., 799 F.3d 701, 706 (7th Cir. 2015). Similarly, the Ninth Circuit uses a three-factor test to determine if a particular form of relief is a coupon:

> (1) whether class members have 'to hand over more of their own money before they can take advantage of' a credit, (2) whether the credit is valid only 'for select products or services,' and (3) how much flexibility the credit provides, including whether it expires or is freely transferrable.

McKnight, 54 F.4th at 1075 (internal citations omitted).

Here, the voucher fund is set at $9 million no matter how many Class Members participate. The vouchers are freely transferrable and may be aggregated. They may be used at multiple stores. There is no minimum purchase amount, and Defendants have represented that there are thousands of items available for sale across these multiple stores for less than the likely voucher value. The vouchers do not expire until 365 days from issuance. Because the parameters of the vouchers do not meet the criteria for a coupon under CAFA, § 1712 should not apply.

(b) If the Court Disagrees, the Settlement Should Still be Approved

Even if the Court determines that the Settlement amounts to a coupon settlement under CAFA, the Settlement still warrants approval because it is fair, reasonable and adequate.

First, as mentioned in the previous section, the typical concerns regarding coupons are not present here as most of the factors under *In re Sw. Airlines Voucher Litig.*, 799 F.3d 701, 706 (7th Cir. 2015) are not present. Moreover, after Plaintiffs first raised the matters at issue, Defendants modified the disclaimers on their mattress tags and websites regarding the use of fiberglass as a fire-retardant material in the inner sock of certain mattresses, and subsequently stopped using that material in their mattresses. And now the Settlement will create a $9 million, non-reversionary fund to provide the class with additional relief in the form of vouchers that can be used on a wide variety of products. The Settlement Agreement provides for Defendants to pay all settlement administration, notice, and claims administration costs, valued at $380,000.00 and provides for attorneys' fees and costs to be paid from a separate, albeit, non-reversionary fund, in the amount of $3 million. These benefits, evaluated under the Rule 23 parameters, and even under the heightened standard of § 1712, reflect a significant and substantial result for the class, in the face of long odds and expensive, complicated litigation. Accordingly, even if viewed as a coupon settlement under § 1712 of CAFA, the settlement is fair, reasonable and adequate and warrants preliminary approval and likely final approval after holding a fairness hearing and entering a written order pursuant to § 1712(e).

CONCLUSION

For the reasons set forth herein, Plaintiffs respectfully request that the Court 1) certify the Class for the purposes of settlement, appointing the Named Plaintiffs as Class Representatives and their counsel as Class Counsel, 2) preliminarily approve the Settlement as set forth in the Settlement Agreement, 3) approve the form and manner of Notice of the Settlement to the Class, and 4) set a hearing date for Final Approval of the proposed Settlement.

Respectfully submitted,
/s/ D. G. Pantazis, Jr.

D. G. Pantazis, Jr.
Brian M. Clark
Eric Sheffer
WIGGINS CHILDS PANTAZIS
FISHER GOLDFARB LLC
The Kress Building
301 Nineteenth Street North
Birmingham, Alabama 35203
T: (205) 314-0557
F: (205) 314-0757
dgpjr@wigginschilds.com
bclark@wigginschilds.com
esheffer@wigginschilds.com

Daniel B. Snyder, Wis # 1037585
Gregory A. Cade
Kevin B. McKie
Gary Anderson
Jordan Andrews Cade
ENVIRONMENTAL LITIGATION GROUP, P.C.
2160 Highland Ave. S.
Birmingham, AL 35205
T: (205) 328-9200
F: (205) 328-9456
GregC@elglaw.com
kmckie@elglaw.com
Gary@elglaw.com
jordan@elglaw.com

Christopher Cueto, IL #6192248
James E. Radcliffe, IL #6330315
LAW OFFICE OF CHRISTOPHER CUETO, LTD.
7110 West Main Street
Belleville, IL 62223
ccueto@cuetolaw.com
jradcliffe@cuetolaw.com

Lloyd M. Cueto, IL #6292629
Law Office of Lloyd M. Cueto, P.C.
7110 West Main Street
Belleville, IL 62223
cuetolm@cuetolaw.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on February 25, 2026, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, which will serve a Notice of Electronic Filing generated by CM/ECF on all counsel of record.

Matthew Splitek (WI Bar No. 1045592)
QUARLES & BRADY LLP
33 E. Main Street, Suite 900
Madison, WI 53703
(608) 283-2454
matthew.splitek@quarles.com

Edward C. Barnidge (pro hac vice)
Teresa M. Wogoman (pro hac vice)
Ikenna N. Ugboaja (pro hac vice)
WILLIAMS & CONNOLLY, LLP
680 Maine Avenue S.W.
Washington, DC 20024
(202) 434-5000
ebarnidge@wc.com
twogoman@wc.com
iugboaja@wc.com

Attorneys for Defendants

D. G. Pantazis, Jr.
Of Counsel