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

Jamie Todd, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Case No.: 3:24-cv-615-wmc
	)	
Ashley Furniture Industries, LLC, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS'
<u>MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT</u>

COME NOW, the Class Representatives, by and through Class Counsel, and hereby submit the following Memorandum in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

I. INTRODUCTION

Plaintiffs respectfully request that the Court issue final approval to the Settlement reached in this class action lawsuit. Specifically, and pursuant to Federal Rule of Civil Procedure 23, Plaintiffs move the Court for an Order:

1. Certifying the Class for settlement purposes pursuant to Federal Rule of Civil Procedure 23;

2. Finding that the Settlement Agreement is fair, reasonable, and adequate;

3. Granting Class Counsel's request for attorneys' fees and expenses in the amount of $3 million total (attorneys' fees in the amount of $2,860,926.18 and expenses in the amount of $139,073.82).

4. Granting Class Counsel's request for Class Representative Service Payments to the Class Representatives;

5. Dismissing Plaintiffs' claims pending before it with prejudice and without costs, except as explicitly provided for in the Settlement Agreement;

6. Approving the Release and that, as of the Effective Date, the Released Class Claims will be released as to the Released Parties; and

7. Confirm the appointment of the Class Representatives and Class Counsel.

The Court previously granted Preliminary Approval to the Settlement on March 19, 2026. Doc. 70. Notice was issued pursuant to the Order, and the response to the Settlement has been largely favorable. The Court should therefore grant final approval after the fairness hearing scheduled for September 24, 2026, by entering the accompanying proposed Final Approval Order (**Exhibit 1,** [Proposed] Final Approval Order and Judgment) making the Settlement final, and allowing Class Members to obtain the Settlement benefits.

II. SETTLEMENT UPDATES AND THE NOTICE PROGRAM

On March 19, 2026, this Court preliminarily approved the proposed class action Settlement between Plaintiffs and Defendants in this case. Preliminary Approval Order ("PAO"), Doc. 70.

As the Court is aware, the Settlement provides for a $12 million settlement fund, $9 million of which will be allocated on a pro rata basis to Class Members who have submitted valid and timely claims. Based on data available at the time of filing, those Vouchers will be approximately $60 each, and can be spent at one of multiple online stores maintained by the Defendants. The remaining $3 million is subject to Class Counsel's fee and expense request, with any reduction inuring to the Class. The Settlement provides for Class Representatives to seek $85,000.00 in service awards, and for Defendants to pay the costs of settlement administration, valued at $380,000.00.

As stated in the Settlement Agreement and Plaintiffs' Motion for Preliminary Approval, Defendants no longer sell mattresses with fiberglass fire-retardant materials, and have added information regarding fiberglass to their websites. Doc. 70., at 2. Accordingly, the injunctive relief sought by the Amended Complaint has effectively been achieved.

After the Court granted preliminary approval and in accordance with the Court's order, the Settlement Administrator, Epiq, effectively implemented a robust notice program. Email notice, approved by the Court, was sent to 3,168,568 verified Class Members. In total, Epiq sent 9,072,478 direct notice emails to Class Members. Epiq established a settlement website that was visited 823,088 times through today's date. Epiq created a call center and received 1,494 telephone calls. Epiq conducted a robust internet campaign to extend the reach of the direct notice program and website. The Settlement was also discussed in the national media[1].

On August 18, 2026, Class Counsel filed its Motion for Attorneys' Fees, Expenses, and Case Contribution Awards ("Motion for Attorneys' Fees"). *See* Docs. 90-96. Class Counsel requested that the Court allow another Notice to be provided after the filing of its fee petition. Doc. 86. The Court granted this request, keeping the objection and opt-out period open through September 16, 2026. Doc. 87.

As of today's date, 144,446 claims have been received. Eight (8) objections have been received, and 165 Class Members have opted-out of the Settlement.

The low percentage of objections and opt-outs strongly supports a finding that the Settlement is "fair and reasonable." *See, e.g., In re Mex. Money Transfer Litig*., 164 F. Supp. 2d 1002, 1021 (N.D. Ill. 2000) (granting final approval of settlement with 25 objections & finding the fact that "99.9% of class members have neither opted out nor filed objections to the proposed settlements … is strong circumstantial evidence in favor of the settlements."). Plaintiffs submit the

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[1]*See* e.g. https://www.forbes.com/sites/forbes-personal-shopper/2026/05/07/nectar-dreamcloud-siena-mattress-fiberglass-settlement/ *last accessed 9/3/2026.

highly successful notice program implemented pursuant to the Settlement meets the requirements of due process and Federal Rule of Civil Procedure 23 and should be finally approved.

V. ARGUMENT

On March 19, 2026, the Court correctly found that the Settlement met the requirements of Federal Rule of Civil Procedure 23(a) and 23(b). Doc. 70. Since that Order, the parties have satisfied the requirements of Rule 23(e). The Settlement Class should now be finally certified for settlement purposes.

A. The Rule 23(a) Requirements Are Satisfied for Purposes of Settlement.

1. Numerosity

Rule 23(a) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, there are approximately 6.2 million class members, which the Court found to satisfy the numerosity requirement. Doc. 70, at 3.

2. Commonality

A class must also have questions of law or fact in common. Fed. R. Civ. P. 23(a)(2). In the PAO, the Court determined that there are three common questions for all members of the putative settlement class:

> (1) whether defendants sold mattresses that did not provide sufficient warnings regarding the existence of fiberglass in the inner sock of those mattresses; (2) whether the mattresses were safe and fit for their intended purpose; and (3) 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.

Doc. 70, at 4 (citation omitted). Accordingly, "commonality exists because these questions are central to the resolution of each plaintiff's claim and likely predominate over individual questions." *Id.* These factors have not changed. Accordingly, commonality exists.

3. Typicality

The Class Representatives must also have claims that are typical of the claims or defenses of the absent class members. Fed. R. Civ. P. 23(a)(3). In the PAO, the Court reasoned that:

> this requirement is satisfied because the proposed class representatives' 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' as the rest of the claims of the putative class—"whether defendants violated the law" by selling an unsafe product or "failing to warn and disclose to consumers the nature and potential risk of using fiberglass as a fire-retardant material in certain mattresses." Therefore, the pursuit of the class representatives' claims also advances the interests of the class.

Doc. 70, at 4-5 (internal citations omitted). That same reasoning still applies so typicality exists here.

4. Adequacy

The Class Representatives and their counsel must also be adequate under Fed. R. Civ. P. 23(a)(4). In the PAO, the Court concluded that the proposed class representatives are adequate to represent the class "because their interests are the same, as all members seek compensation from defendants for the alleged sale of unsafe mattresses with inadequate warnings and disclosures." Doc. 70, at 5 (citations omitted). As to Class Counsel, the Court concluded that "plaintiffs' counsel and their firms appear to have significant experience litigating class and complex suits in federal courts across the country. Counsel is also sufficiently qualified and experienced to represent the proposed class. Overall, the court concludes that the proposed class meets all the Rule 23(a) prerequisites." *Id.*

The notice program has confirmed this finding. Counsel, via the assistance of the Settlement Administrator, has conducted an extensive and far-reaching notice program, advising the absent Class Members of the Settlement, and their options to object, opt-out, or participate. Class Counsel has engaged with class members to answer questions and help them navigate the settlement process. Class Counsel has ensured that the communications and the settlement website have remained updated. The Class Representatives[2] have also remained engaged, and filed their own claims, continuing to signal a desire to participate and represent the Class adequately and faithfully.

Prior to and at the fairness hearing, Class Counsel intends to continue to provide information to the Court and the Class so that all may make informed decisions regarding the Settlement. The adequacy requirement remains satisfied.

C. Rule 23(b)(3) Requirements Are Still Satisfied.

Plaintiffs seek certification of the Settlement Class under Rule 23(b)(3). The Rule has two components: 1) predominance, and 2) superiority. Fed. R. Civ. P. 23(b)(3). "[C]ertification requires the class have questions of law or fact common to class members [that] predominate over any questions affecting only individual members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Doc. 70, at 5-6 (internal quotations omitted). The Court should find that predominance and superiority still exist.

1. Predominance

The Court has sufficiently articulated the standard for predominance under Rule 23, and found it to be present in this Settlement:

> Predominance exists where a class representative's general allegations and common evidence establish a prima facie case for the class. *Costello v. BeavEx, Inc.*, 810 F.3d 1045, 1060 (7th Cir. 2016) (quoting *Blades v. Monsanto Co.*, 400 F.3d 562, 566 (8th Cir. 2005)). The presence of individual questions does not prevent a common issue from predominating unless those individual questions overwhelm the questions common to the class. *Bell*, 800 F.3d at 378–79; *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 468 (2013). Here, the court agrees that "the overwhelming issues[,] . . . whether the mattresses were safe for their intended purpose, [] whether there were proper warning labels on the

[2]As mentioned in Class Counsel's fee petition, one Class Member (Malinda Gipson) chose to opt-out and not participate. Accordingly, she is not an adequate class representative. Class Counsel submits to the Court she should be removed as a Class Representative under Rule 23.

> mattresses, ... and whether class members suffered damages," predominate over individual issues. (Pls.' Br. in Supp. of Prelim. Settlement Approval (dkt. #65) 21.)

Doc. 70, at 6. Nothing has changed since the entry of the PAO to warrant a reversal of this analysis, and the Court should continue to find that predominance exists.

2. Superiority

The final requirement is to determine if "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). In finding this to be true, the Court stated in the PAO:

> This requirement is intended to ensure that a class action is the preferred method to "achieve economies of time, effort, and expense, and promote uniform decisions as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *Suchanek v. Sturm Foods, Inc*., 764 F.3d 750, 759 (7th Cir. 2014) (quoting *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997)). Here, after considering the significant expense of retaining experts to litigate individual cases, compared to the somewhat lower value of each class members' individual damages, and the large size of the class, the court concludes that a single class-action proceeding is superior compared to likely duplicative, expensive, individual adjudication of each plaintiff's claims.

Doc. 70, at 6-7. No facts have changed to warrant a reversal of this determination; thus, a class action is superior to individual adjudication, satisfying this final requirement.

D. The Settlement Agreement Warrants Final Approval.

A class action settlement may only be approved after a hearing and a finding that the settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(1)(C). To determine whether a settlement is fair, adequate, and reasonable the Court considers the following factors:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arm's length;
>
> (C) the relief provided for the class is adequate, taking into account:
>
> (i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
(iii) the terms of any proposed award of attorney's fees, including timing of payment; and
(iv) any agreement required to be identified under Rule 23 (e)(3); and

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

Fed. R. Civ. P. 23(e)(2). These considerations remain unchanged from the Court's findings at the Preliminary Approval stage, and overlap with the factors articulated by the Seventh Circuit prior to the amendment of Rule 23 in 2018 which include: (i) the strength of plaintiffs' case compared to the terms of the settlement; (ii) the complexity, length, and expense of continued litigation; (iii) the amount of opposition to the settlement; (iv) the presence of collusion in gaining a settlement; and (v) the stage of proceedings and amount of discovery completed. *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Under these factors, approval of the Settlement is warranted.

1. The Class Representatives and Class Counsel Have Adequately Represented the Settlement Class.

The Court previously appointed the Plaintiffs as Class Representatives and determined that "counsel are experienced and adequate counsel and appoints them as class counsel for settlement purposes only." Doc. 70, at 7-8. Since their appointment, the Class Representatives and Class Counsel have continued to do work on behalf of the Class, particularly to advise absent class members of their rights and obligations in relation to the Settlement, and providing information to the Court in accordance with the Court imposed deadlines.

Class Counsel has advised the Court of the voluminous amount of work performed by Class Counsel and the Class Representatives to not only formulate, litigate, and resolve this case, but also to continue to comply with the provisions of Rule 23, including the notice Program and presentation through the fairness hearing. Plaintiffs hereby incorporate the details provided in Class Counsel's fee petition, along with the accompanying exhibits, to reflect the adequacy of their representation. *See*, Docs. 90 - 96.

The Class Representatives claims are aligned with the claims of the other Settlement Class Members, and the procedural history of the case supports finding that the Class had been adequately represented by the Class Representatives and Class Counsel.

2. The Settlement Was Reached Through Arm's Length Negotiations.

The Court previously found that the "settlement was almost certainly reached through arm's length negotiation" in accordance with Fed. R. Civ. P. 23(e)(2)(B), observing that it was "facilitated by experienced mediators, with class representatives and class counsel adequately representing the class up to this point." Doc. 70, at 9. "A settlement reached after a supervised mediation receives a presumption of reasonableness and the absence of collusion." 2 McLaughlin on Class Actions § 6:7 (8th ed. 2011); *see also Daluge v. Cont'l Cas. Co.*, 15-cv-297-wmc, 2018 U.S. Dist. LEXIS 183713, at *8 (W.D. Wis. Oct. 25, 2018) (approving class settlement "reached in arms-length mediation with an experienced mediator, after class counsel had conducted a pre-filing investigation, conducted substantial legal research, prepared an initial and amended complaints").

That presumption applies here, as the Parties intensely negotiated and mediated potential resolution with two experienced mediators and over multiple sessions, spanning multiple years. The Court should confirm its opinion in the PAO that "concluded that class representation and settlement negotiation have been fair and adequate." Doc. 70, at 9.

3. The Costs, Risk, and Delay of Trial and Appeal Favor Final Approval.

As the Court noted in the PAO, the primary concern when evaluating settlement fairness is "the strength of the plaintiffs' case as compared to the proposed settlement." Doc. 70, at 9-10; *see also Kaufman v. Am. Express Travel Related Servs*., 877 F.3d 276, 284 (7th Cir. 2017); *Synfuel Techs., Inc. v. DHL Express (USA), Inc.*, 463 F.3d 646, 653 (7th Cir. 2006). Nevertheless, "[b]ecause the essence of settlement is compromise, courts should not reject a settlement solely because it does not provide a complete victory to plaintiffs." *In re AT & T Mobility Wireless Data Servs. Sales Litig*., 270 F.R.D. 330, 347 (N.D. Ill. 2010).

In the PAO, the Court concluded that this factor, too, weighs in favor of approving the proposed class settlement, citing the "complex factual and legal issues and discovery that remain." Doc. 70, at 10. The Court noted that it "remains somewhat skeptical, however, about the fairness of the proposed settlement in the form of Vouchers to defendants' companies, especially relative to a cash payout to class counsel" and further indicated that it "will need more information about the likely usefulness and value of these Vouchers for class members before the final fairness hearing. *Id.*

As of September 3, 2026, 144,446 Class Members have submitted claims. Accordingly, each pro-rata Voucher will be worth approximately $60. The Vouchers can be used at any of the following websites: ashleyfurniture.com, nectarsleep.com, dreamcloudsleep.com, and sienasleep.com. As explained in the accompanying Declaration of Louise Crooks, as of July 31, 2026, there were 5,921 in-stock product items available on ashleyfumiture.com that were priced at $60 or below. **Exhibit 2**, Declaration of Louise Crooks ("Crooks Decl." ¶ 4). These items include a range of home goods and furnishings encompassing, among many other things, desks, bookcases, home decor items, rugs, sheets, mattress protectors, and pillows that each Claimant would be likely to purchase within the redemption period. *Id.*; *see also* Crooks Decl. Ex. A (listing thousands of products available under $60). Thus, while the Voucher must be used in a single transaction, there is significant and real purchasing power associated with the Vouchers. Doc. 91, at 12. Class members can elect to purchase one (or more) of thousands of home goods or furnishings at or below the amount of the Voucher without paying anything to Defendants, or can receive a substantial discount on items priced above that amount. Crooks Decl. ¶¶ 4-7. The Class Members may choose to purchase items wholly paid for by their Vouchers, or they may choose a dollar-for-dollar reduction in the price of some other items they want to purchase. The Vouchers can be combined with other existing discounts, and aggregated. This provides the consumer with choice, flexibility, and purchasing power.

Class Counsel has also submitted a declaration from Anya Verkhovskaya from Class Experts Group, LLC, who confirmed the structure of the settlement maximizes the value of the vouchers to the class members. *See Generally*, Doc. 95.

Collectively, this information should provide the Court with ample evidence to evaluate the Settlement and the Voucher payment, and confirm its original belief that the Settlement is fair, reasonable and adequate, particularly compared to the additional expense and risk of protracted litigation and appeal.

4. The Method of Distributing Relief to the Class is Effective.

Under Rule 23 (e), "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims," is also a relevant factor in determining the adequacy of relief. Fed. R. Civ. P. 23(e)(2)(C)(ii). Here, the notice program and Claim Form were designed to provide expedient relief to Settlement Class Members.

Class Members who filed claims will receive their Voucher via the email address identified in their Claim. Doc. 65-1, Settlement Agreement § 4.5. The Voucher can then be used immediately, for the next 365 days, without even leaving their homes. No additional activity is required by Class Members who have submitted valid and up-to-date contact information with their claim. *Id.* This procedure is efficient and cost-effective, and reasonable under the particular circumstances of this case. Thus, the method of distributing relief to the Settlement Class Members further indicates that the Settlement is fair, reasonable, and adequate.

5. The Proposed Attorneys' Fees are Fair and Reasonable.

Rule 23(e)(2(C)(iii) requires the Court to consider the "terms of any proposed award of attorneys' fees, including timing of payment." Class Counsel has provided its Motion for Attorneys' Fees well in advance of the fairness hearing, and the Class has had time to respond and object to and opt-out after having reviewed the full request. Class Counsel incorporates by reference the arguments and exhibits contained in Docs. 90-96 as evidence that the fee and expense request is also fair and reasonable.

6. No Additional Agreements

There are no additional agreements to address under Fed. R. Civ. P. 23(e)(2)(C)(iv) and thus this factor is neutral or carries no weight.

7. The Settlement Treats Class Members Equitably.

Federal Rule of Civil Procedure 23(e)(2)(D) requires that the Settlement "treat[] class members equitably relative to each other." The proposed Settlement does not treat the Settlement Class Members differently in any way, and provides an equal Voucher amount based upon the number of mattresses purchased. *See, e.g.*, *Lewis v. Newfold Digit., Inc.,* 2026 U.S. Dist. LEXIS 78056, *19 (S.D. Ind. April 1, 2026) ("It guarantees Class Members a right to submit a Claim Form, and those with Approved Claim Forms will receive an equal portion of the Settlement Fund, treating each of the 453 Class Members who have the same legal claims the same way"). Thus, this final factor supports approval.

8. The Class Action Fairness Act

The Parties have provided the requisite Notice required under the Class Action Fairness Act; Epiq has provided details of this process in the attached declaration. *See* Epiq Declaration, attached hereto as **Exhibit 3**. Class Counsel has also consistently highlighted the necessity for the Court to evaluate this Settlement in light of 28 U.S.C. § 1712, as it involves Voucher payouts instead of cash. The Court has, at all times, done its job in addressing this inquiry. *See e.g*. Doc. 70 at 12-16.

Consistent with their presentation at preliminary approval, their motion for attorneys' fees, and their forthcoming response to the Objectors, Class Counsel submits that this Settlement is not a coupon settlement under 28 U.S.C. § 1712. However, Class Counsel also encourages the Court to evaluate the Settlement's overall fairness (including counsel's request for fees) under the CAFA, in the event it was to determine the Settlement is not a coupon settlement, and find that under either method of evaluation, the Settlement should be approved. Class Counsel submits that the Settlement as presented, is fair, reasonable, and adequate, under either analysis, and warrants Final Approval.

VI. CONCLUSION

For these reasons, the Class Representatives and Class Counsel respectfully request that the Court Grant this Motion for Final Approval and enter an Order consistent with the proposed Final Approval Order. *See* **Exhibit 1**.

Respectfully submitted,

/s/ D. G. Pantazis, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on September 3, 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.

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