IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

TREVOR WHITE; TERRENCE CORRIGAN, SR.; SARAH M. SERABIAN; and ASTORRIA SASSANO; individually and on behalf of all others similarly situated, Plaintiffs, v. PBM NUTRITIONALS, LLC, a Delaware limited liability company, Defendant.	Case No. 22PH-CV00931

PLAINTIFFS' SUGGESTIONS IN SUPPORT OF UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs Trevor White, Terrence Corrigan, Sr., Sarah M. Serabian, and Astorria Sassano (together, "Plaintiffs"), individually and as Class Representatives, respectfully submit these Suggestions in Support of Plaintiffs' Motion for Final Approval of the Class Action Settlement.[1]

I. INTRODUCTION

A court may approve a class action settlement under Rule 52.08 after finding that the settlement is fair, reasonable, and adequate. When determining whether to approve a settlement, the court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the

[1] Capitalized terms used herein but not defined herein shall have the meaning ascribed to such terms in the Settlement Agreement.

range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members.[2]

Plaintiffs ask this Court to approve the Class Action Settlement Agreement (the "Settlement") fully and finally, filed in connection with Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement, because it is fair, reasonable, and adequate. Specifically, and most importantly, the Settlement provides significant monetary and injunctive relief to the Class Members, and this relief is fair, reasonable, and adequate. In addition, the parties have already incurred substantial expenses, and continued litigation will result in the further expenditure of party and judicial resources. Class and defense counsel fully concur that the Settlement is fair, reasonable, and adequate. Based on the assessment of the relevant factors, the Settlement should be finally approved by this Court.[3]

II. BACKGROUND OF THE LITIGATION

This case arises out of Plaintiffs' allegations that Defendant PBM Nutritionals, LLC ("Defendant") deceptively and unlawfully packaged, marketed and labeled its powder baby and infant formulas under the following brands: Well Beginnings, Meijer Bay, Little Journey, Wesley Farms, Burt's Bees Baby, Berkley Jensen, Parent's Choice, Earth's Best Organic, Comforts, Up & Up, Babies "R" Us, Member's Mark, and Bobbie Baby, which are sold in a variety of sizes, and collectively referred to herein as "Products" or a "Product." Specifically, Plaintiffs allege that

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[2] *See Bachman v. A.G. Edwards, Inc.,* 344 S.W.3d 260 (Mo.App. E.D. 2011), citing *Ring v. Metro. St. Louis Sewer Dist.,* 41 S.W.3d 487, 492 (Mo.App. E.D. 2000); *State ex rel. Byrd v. Chadwick,* 956 S.W.2d 369, 378 n. 6 (Mo.App. W.D. 1997); *see also Petrovic v. Amoco Oil Co.,* 200 F.3d 1140, 1150, 1152 (8th Cir. 1999).

[3] Lead Class Counsel filed separately an application for Attorneys' Fees and Costs and Class Representative Service Awards on October 11, 2022. The Settlement provides that any order or proceedings related to fees and costs will not affect the finality of the Settlement or the benefits available thereunder to the Class. *See* Settlement, at Section 7.2.

Defendant represented that the Products make a certain number of fluid-ounce bottles of formula; however, contrary to these representations, the Products contain nowhere near enough powder formula to make the represented number of bottles of liquid formula when following the "Instructions for Preparation & Use" on the side labels of the Products.

Plaintiffs' Petition and Jury Demand – Class Action was filed on July 11, 2022, and includes claims for violations of the Missouri Merchandising Practices Act ("MMPA"), Unjust Enrichment, Breach of Express Warranty, and Breach of Implied Warranty.

This Settlement is a product of engagement between the Parties, which was preceded by intensive case investigation by Plaintiffs. Since shortly after delivery of a demand letter and an exchange of initial telephone conversations between the Parties, the Parties had been engaged in intensive settlement discussions for over five months. Those settlement efforts included: an initial settlement demand; provision of Plaintiffs' laboratory test results to Defendant; informal discovery from Defendant to Plaintiffs; informal settlement discussions between the parties; a half-day mediation with a neutral mediator, the Hon. Wayne Andersen (Ret.) of JAMS; and additional follow-up negotiations after the mediation, which ultimately resulted in the Settlement Agreement.

On or about July 14, 2022, the parties executed the Settlement Agreement. On July 21, 2022, Plaintiffs moved for preliminary approval of the settlement, which the Court granted.

The operative terms of the Settlement provide for substantial monetary and programmatic relief as follows:

- The Defendant shall commence the process of either (1) removing the Challenged Language from the Labeling of the Products or (2) revising the Challenged Language such that the representations regarding the number of bottles of formula that each Product can deliver shall be based on the number of bottles that can be

made from the powder contents of the Products when following the instructions printed on the Products' labels for preparation of an individual bottle. Defendant shall not manufacture any Products with Labeling containing the Challenged Language during the period (the "Restricted Period") beginning no later than April 21, 2023 (the ninth-month anniversary of the Preliminary Approval Order ("PAO") Date, and ending on July 21, 2025 (the three-year anniversary of the entry of the PAO Date), other than Products containing demonstrably accurate information on the Label. If Class Counsel believes that the Labeling of any Product does not comply, they shall provide written notice to Defendant of the specific facts and circumstances of any alleged non-compliance and discuss in good faith with Defendant appropriate changes, if any, to the then-existing Labeling; to the extent agreed, Defendant will then have 120 days from the date of such agreement to bring its practices into compliance. If no agreement is reached, Class Counsel may apply to the Court to enforce the Agreement.

- Defendant agreed to provide cash benefits under a two-tiered structure with a gross potential payout of US $2,000,000 (two million dollars) in the aggregate. Class members have the ability to claim $2.00 per Unit purchased, up to $10.00 where Class Members do not have a valid Proof of Purchase, and up to $30.00 with a valid Proof of Purchase.

Defendant also agreed to pay service awards to the Class Representatives in the amount of $3,500 each (for up to a maximum amount of $17,500), to compensate for their efforts in bringing the Action and for achieving the benefits of the Settlement on behalf of the Settlement Class. Defendant further agreed that it would not oppose an Application for an Attorneys' Fees and Costs

award in an amount of not more than $600,000 (exclusive of settlement administration fees and costs, which will be paid directly by Defendant). Defendant agreed that contingent on entry of the Final Approval Order, it would pay the amounts approved by the Court. On October 11, 2022, Class Counsel filed a Motion for an Attorneys' Fees and Costs Award, and Class Representative Service Awards seeking an award of attorneys' fees and costs in the amount of $600,000 and Class Representative Service Awards in the amount of $3,500 each (in the total aggregate amount of $14,000).

For the reasons stated below, the Settlement is fair, adequate, and reasonable and should be approved. This Honorable Court should enter an Order approving the Settlement and ordering the other appropriate relief and rulings which are sought herein.

III. THE CLASS SHOULD BE CERTIFIED FOR PURPOSES OF THIS SETTLEMENT.

Plaintiffs request that this Court certify a Settlement Class under Rules 52.08(a), (b)(2) and (b)(3) of the Missouri Rules of Civil Procedure. "Among current applications of Rule 23(b)(3), the 'settlement only' class has become a stock device." *State ex rel. Byrd v. Chadwick*, 956 S.W.2d 369, 377 (Mo. Ct. App. 1997). Here, the Parties have agreed, and Plaintiffs ask that the Class be certified, as follows, for the limited purposes of this Settlement:

> All residents of the United States who purchased in the United States the Products during the Class Period for personal and household use and not for resale. Excluded from the Settlement Class are the following: (a) Persons who purchased or acquired any Products for resale; (b) the Released Parties; (c) all Persons who file a timely and valid Opt-Out; (d) Plaintiffs' Counsel, their employees, and counsel as well as the household members of Plaintiffs' employees and counsel; (e) Defendant's Counsel, their employees, and counsel as well as the household members of Defendant's employees and counsel; (f) federal, state, and local governments, political subdivisions or agencies of federal, state and local governments; and (g) the judicial officers, courtroom staff, and members of their households overseeing the Action.

The prerequisites of Rule 52.08(a) that must be considered before a class can be certified are (1) numerosity; (2) commonality; (3) typicality; and (4) adequacy. Here, numerosity[4] is satisfied because it would be impractical to bring tens of thousands of Class Members before the Court individually. Commonality[5] and typicality[6] are satisfied with respect to the Settlement because there are issues of fact and law that are common to the Class, and the Class Representatives' and the Class Members' claims arise from the same event or course of conduct by Defendant. In addition, the conduct and facts related to Defendant's manufacturing and labeling of the Products give rise to the same legal theories, and the underlying facts are substantially similar. Furthermore, the Class Representatives and Class Counsel have adequately represented the Class, having achieved a common nucleus of Settlement benefits that will provide important and immediate monetary and injunctive relief for all Class Members.[7]

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[4] "A plaintiff does not have to specify an exact number of class members to satisfy the numerosity prerequisite for class certification but must show only that joinder is impracticable through some evidence or reasonable, good faith estimate of the number of purported class members." *Dale v. DaimlerChrysler Corp.*, 204 S.W.3d 151, 167 (Mo. App. W.D. 2006), citing *Linquist v. Bowen*, 633 F.Supp. 846, 858 (W.D. Mo.1986). "To support a finding of the numerosity prerequisite of Rule 52.08(a)(1), the trial court can accept 'common sense assumptions.'" *Dale*, 204 S.W.3d at 167, quoting *Snider v. Upjohn Co.*, 115 F.R.D. 536, 539 (E.D. Pa.1987).

[5] The commonality "threshold is not that high and does not require that every question be common to the class, but merely that one or more significant questions of law or fact are common to the case." *Hopkins v. Kansas Teacher Cmty. Credit Union*, 265 F.R.D. 483, 487 (W.D. Mo. 2010) (citations omitted); *see also Jenkins v. Raymark Indus., Inc.*, 782 F.2d 468, 472 (5th Cir. 1986) ("The threshold of commonality is not high.").

[6] The typicality prerequisite is met even despite factual variances if (1) the named representatives' "and the class members' claims arise from the same event or course of conduct by the defendant, (2) the conduct and facts give rise to same legal theory, and (3) the underlying facts are not markedly different." *Mitchell v. Residential Funding Corp.*, 334 S.W.3d 477 (Mo. App. W.D. 2010), citing *Plubell v. Merck & Co., Inc.*, 289 S.W.3d 707, 715 (Mo. App. W.D. 2009). Typicality is not defeated by speculative variations in the claims, and no showing of the likelihood of an individual's success on the merits is required. *Id.*

[7] *See, gen., Ring*, 41 S.W.3d at 492 ("The adequacy of class representation can be determined by looking at the settlement.").

Because Rule 52.08(b)(2) contains no "predominance" or "superiority" requirements,[8] the Settlement Class should be certified under Rule 52.08(b)(2) without further analysis.

With respect to Rule 52.08(b)(3), the predominance inquiry for class certification asks whether the class is "seeking to remedy a common legal grievance." *Plubell v. Merck & Co.*, 289 S.W.3d 707, 712 (Mo. Ct. App. 2009). Predominance does not require that all issues be common to the class members. *Id.* Rather, it requires that common issues substantially predominate over individual ones. *Id.* Additionally, a single common issue may be the overriding one in the litigation, even though the suit also entails numerous remaining individual questions. Here, predominance is satisfied because the single, predominant, common issue is whether or not Defendant made misrepresentations and false statements in the labeling of its Products. *Id.* ("Because that issue—the legality of [Defendant's] conduct—is common to all the class members, and because that issue is at the core of the case, the court did not abuse its discretion in finding the predominance requirement satisfied.").

With respect to superiority, the Court considers whether "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." *Dale v. DaimlerChrysler Corp*, 204 S.W.3d 151, 181 (Mo. Ct. App. 2006). The superiority requirement requires the trial court to balance, in terms of fairness and efficiency, the merits of a class action in resolving the controversy against those of "alternative available methods" of adjudication. *Id.* The balancing must be in keeping with judicial integrity, convenience, and economy. *Id.* In balancing the relative merits of a class action versus alternative available methods of adjudicating the controversy, the trial court may consider: "the inability of the poor or uninformed to enforce

[8] *See* Rule 52.08(b); *see also In re St. Jude Medical, Inc.*, 425 F.3d 1116, 1121 (8th Cir. 2005) ("Rule 23(b)(2) contains no predominance or superiority requirements"); *Pipes v. Life Investors Ins. Co. of America*, 254 F.R.D. 544, 551 (E.D. Ark. 2008) (same).

their rights, and the improbability that large numbers of class members would possess the initiative to litigate individually." *Id.* The primary focus of the superiority analysis is the efficiency of the class action over other available methods of adjudication. *Id.*

Here, superiority is met because tens of thousands of class members have had the opportunity to file claims. Hence, judicial economy would dictate that all such possible claims be tried in one class action lawsuit, rather than thousands of individual lawsuits. Moreover, in the absence of a class action, the potential expense of the litigation in relation to the relatively small recovery amount for each Class Member would prevent most, if not all, injured parties from initiating a lawsuit. Hence, judicial economy and efficiency would dictate again that all such possible claims be tried in one class action lawsuit, rather than allowing numerous injured parties to abstain from vindicating their rights in court. *See Dale*, 204 S.W.3d at 181.

For these foregoing reasons, Plaintiffs ask this Court to certify this Class for Settlement purposes.

IV. NOTICE, OPT-OUTS, AND OBJECTORS

Pursuant to the Court's Preliminary Approval Order, dated July 21, 2022, and the Declaration of Jeanne C. Finegan, APR ("Finegan Decl."), Kroll Settlement Administration ("Kroll") (filed September 26, 2022), beginning on or about August 19, 2022, the Settlement Administrator disseminated the Settlement Notice by setting up a state-of-the-art notice campaign, which included launching the Settlement Website, publication notice, online and mobile advertising, and launching a toll-free telephone number through which Class Members can access Settlement information. Finegan Decl., at ¶¶ 12-16. A complete summary of the Notice process ordered by the Court, and its success and effectiveness, is set out in the Finegan Decl. Specifically, Ms. Finegan states that the implemented Notice plan had a reach of an estimated 76% of targeted

Class Members, on average 2.5 times. *Id*. at ¶ 17. While the claims period remains open, the fact that over 140,000 claims have already been filed is a further testament to the robust nature of the Notice plan. See Declaration of Andrea Dudinsky ("Dudinsky Decl."), of Kroll, attached hereto as Exhibit B.

The deadline for Opt-Outs and Objections from the Court's July 21, 2022, Order granting Preliminary Approval was October 18, 2022. There were no Objections and only two Opt-Outs timely received during this timeframe. *See* Dudinsky Decl., at ¶ 9; and Report re: Objections and Requests for Exclusion (Opt-Outs), attached hereto as Exhibit C (the "Exclusions Report").[9] This positive reaction from the Class is truly extraordinary and further demonstrates the strength of the Settlement.

Counsel for both Plaintiffs and Defendant and their respective clients fully concur that the proposed Settlement is fair, reasonable, and adequate. Of the tens of thousands of potential objectors, there were no objections to the Settlement.

Further, Class Counsel, who have substantial experience in prosecuting and negotiating class action litigation, have recommended approval of the proposed Settlement as in the best interest of the Settlement Class.[10]

[9] Pursuant to the Preliminary Approval Order, a list of the persons requesting to be excluded from the Settlement is incorporated into the Exclusions Report, and the exclusion requests are appended thereto.

[10] *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) (noting that the court is "entitled to give consideration to the opinion of competent counsel that the settlement [is] fair, reasonable, and adequate"); *see also, Weinberger v. Kendrick*, 698 F.2d 61, 74 (2d Cir. 1982) (absent fraud or collusion, courts should be hesitant about substituting their own judgment for that of counsel).

V. THE SETTLEMENT SHOULD BE APPROVED.

A. Legal Standard Governing Approval of Settlements

"When determining if a settlement is fair, reasonable, and adequate, the Court must consider: (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of the plaintiff's success on the merits; (5) the range of possible recovery; and (6) the opinions of class counsel, class representatives and absent class members."[11]

While the decision to approve a class settlement is squarely left to the court's discretion,[12] "[p]ublic policy and the law favor the settlement of disputes."[13] The preference for settlement applies "particularly in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation."[14]

When determining whether a settlement is fair, the question is not whether the settlement is the best of all possible deals: "Settlement is the offspring of compromise; the question we address is not whether the final product could have been prettier, smarter or snazzier, but whether

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[11] *See Bachman v. A.G. Edwards, Inc.,* 344 S.W.3d 260 (Mo. App. E.D. 2011), quoting *Ring v. Metro. St. Louis Sewer Dist.*, 41 S.W.3d 487, 492 (Mo. App. E.D. 2000); *see also State ex rel. Byrd v. Chadwick,* 956 S.W.2d 369, 378 n. 6 (Mo. App. W.D. 1997).

[12] *See Bachman,* 344 S.W.3d at 265.

[13] *Hilton v. Davita, Inc*., 302 S.W.3d 157, 159 (Mo. App. E.D. 2009), citing *State ex rel. Malan v. Huesemann,* 942 S.W.2d 424, 427 (Mo. App.1997); *Holtmeier v. Dayani*, 862 S.W.2d 391, 403 (Mo. App.1993).

[14] *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation,* 55 F.3d 768, 784 (3d Cir. 1995); *see, also, e.g., Ehrheart v. Verizon Wireless,* 609 F.3d 590, 595 (3d Cir. 2010) ("The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings. This policy also ties into the strong policy favoring the finality of judgments and the termination of litigation. Settlement agreements are to be encouraged because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.").

it is fair, adequate and free from collusion."[15] A reviewing court's function is not to second-guess the settlement's terms; rather, "[t]he court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that [ ] the settlement, taken as a whole, is fair, reasonable and adequate to all concerned."[16]

B. The Settlement is Fair, Reasonable, and Adequate.

1. There is no evidence of fraud or collusion.

The proposed Settlement resulted from intensive, arms-length negotiations between very experienced attorneys over the course of a half-day mediation session with a renowned, independent, and neutral mediator, and several weeks of further negotiations. There is not, nor could there be, any evidence of fraud or collusion regarding the Settlement. Since shortly after delivery of a demand letter and an exchange of initial telephone conversations between the Parties, the Parties engaged in intensive settlement negotiations for over four and a half months. These initial discussions led to a half-day mediation spearheaded by the Hon. Wayne Andersen (Ret.). After the mediation session, the parties continued to negotiate with one another for weeks to flesh out the Settlement framework and the details of its proposed implementation. The Parties continued to negotiate and exchange confidential business and technical information regarding settlement details by examining potential approaches to injunctive relief. There was no reverse auction, as Defendant only negotiated a settlement with Class Counsel since the mediation. Finally, no attorneys' fees were negotiated until after the substantive relief for the Class had been agreed upon.

[15] *Hanlon v. Chrysler Corp.,* 150 F.3d 1011, 1027 (9th Cir. 1998).

[16] Officers for Justice v. Civil Serv. Comm'n, 688 F.2d 615, 625 (9th Cir. 1982).

2. The case was adequately developed for the parties to reach an informed agreement, and the complexity, and likely duration of the litigation favor approval.

The parties entered into the settlement negotiations only after extensive investigation of the facts and law, which included a substantial pre-suit investigation by Plaintiffs. In addition, the parties engaged in an exchange of confidential information, including sensitive business information, which helped shape the Settlement terms. Representatives of the parties also attended numerous virtual meetings and conferences, wherein they engaged in a further exchange of information and evaluation of the claims at issue. These efforts provided Plaintiffs and their experienced counsel with sufficient information to thoroughly analyze the strengths and weaknesses of the case and, subsequently, to negotiate and consummate the Settlement proposed to the Court.

Both sides have been vigorously represented by their respective counsel and have invested substantial time and incurred substantial expenses pursuant to this representation. There is no doubt that the time and expense of continuing the litigation would significantly increase costs. In particular, the costs of conducting discovery would be substantial. In addition, experts would need to be involved, produce reports, and be deposed, likely resulting in substantial additional motion practice. This complexity militates in favor of a relatively early resolution, which has been achieved here.

Even if this case were tried to finality, there is a substantial risk that Class Members may not receive as much as they would under the proposed Settlement, or anything at all. Avoiding the unnecessary risk, and unwarranted expenditure of resources and time, would benefit the Parties and the Court. To continue to litigate this case in hopes of obtaining greater relief would be expensive and wasteful of both Party and judicial resources.

Moreover, if this Action were tried to finality, it would likely be years before it would be finally resolved, meaning it would also be years before the Class would receive a benefit, if any. The complexity and expected duration of this Action, compared against the "certainty" and "immediacy" of the significant relief provided for the Class, weigh heavily in favor of approval.[17]

3. The stage of the proceedings and the amount of discovery completed favor approval.

While it is true that the Parties executed the Settlement shortly after this case was filed, the history of the litigation in its entirety tells a different story. Beginning in September 2021, Class Counsel conducted its own thorough and rigorous pre-litigation investigation, including with respect to the label representations on the Products and the number of fluid-ounce bottles of formula that the Products actually yield; a comprehensive laboratory analysis of the Products and claims at issue; evaluation of those test results as compared to test results for other manufacturers of baby formula; thoroughly researched the law and facts pertinent to Plaintiffs' claims and any potential defenses; and assessed the risks of prevailing on each of the respective claims on pre-trial motions and at trial. In addition, Lead Class Counsel worked to coordinate five different law firms representing the Plaintiffs. Moreover, the Parties engaged in informal discussions for over four and a half months. Thus, although the initial petition in this case was filed in July 2022, the investigation and analysis of the claims at issue began almost a year prior to that date.

In addition, following execution of the Settlement, the parties exchanged additional confirmatory and confidential information, which supported the parties' negotiations and the Settlement terms. *See* Declaration of L. DeWayne Layfield ("Layfield Decl."), attached hereto as Exhibit A. This information demonstrates the strength of the Settlement. As part of the Settlement,

[17] *See In Re Omnivision Technologies, Inc.*, 559 F. Supp. 2d 1036, 1041-1042 (N.D. Cal. 2008) (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 458 (9th Cir. 2000)).

Class Members have the ability to claim $3.00 per Unit purchased. Tier 1 claimants will receive a maximum of $10.00 per Household to Settlement Class Members without the need to provide any proof of purchase. Tier 2 claimants will receive a maximum of $30.00 per Household to Settlement Class Members who provide a valid Proof of Purchase. These benefits will be provided without the time and expense of litigating this case to trial—which is a tremendous recovery for the Class.

4. The probability of the Plaintiffs' success on the merits and the range of possible recovery in relation to the benefits provided by the Settlement favor approval.

Without a settlement, Plaintiffs and Class Members face a risk of losing on the merits of their claims at trial and receiving no relief at all.[18] Since the inception of this litigation, Defendant has denied and continues to deny Plaintiffs' allegations and all claims of wrongdoing or liability of any kind. Defendant maintains that no misrepresentations were made, and that Defendant acted lawfully under state and federal law.

The Settlement secures for the Class Members significant monetary relief and ensures that Defendant will remove the Challenged Language from its Products. Each Class Member obtains not only the benefit of the programmatic relief, but also the opportunity to recoup some or all their alleged damages; and the Settlement avoids the risk that Class Members would not obtain anything should the case be decided on summary judgment or at trial in favor of Defendant. The proposed Settlement is within the range of possible approval because it provides—today, not years from now—real, substantial, and practical benefits to the Class. This factor, the most important of all the factors, weighs in favor of approval of the Settlement.

[18] *See, e.g.*, *Bachman*, 344 S.W.3d at 266 (suggesting the "most important" factor may be the strength of the case on the merits compared to the relief provided).

5. There is no meaningful opposition to the settlement.

Counsel for both Plaintiffs and Defendant and their respective clients fully concur that the proposed Settlement is fair, reasonable, and adequate. Of the estimated tens of thousands of potential Class Members, there were no objections to the Settlement. Moreover, despite the opportunity to do so, only two class members have submitted requests to opt out of the Settlement. *See* Dudinsky Decl., at ¶ 9; and the Exclusions Report. Class Counsel, who have substantial experience in prosecuting and negotiating class action litigation, recommend approval of the proposed Settlement as in the best interest of the Settlement Class.[19]

VI. CONCLUSION

For the foregoing reasons, the Settlement is fair, reasonable, and adequate, and should be approved.

Dated: October 20, 2022

Respectfully submitted,

TREVOR WHITE; TERRENCE CORRIGAN, SR.; SARAH M. SERABIAN; and ASTORRIA SASSANO, Individually, and on Behalf of Classes of Similarly Situated Individuals, Plaintiffs

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[19] *See Isby v. Bayh*, 75 F.3d 1191, 1200 (7th Cir. 1996) (noting that the court is "entitled to give consideration to the opinion of competent counsel that the settlement [is] fair, reasonable, and adequate"); *see also, Weinberger v. Kendrick,* 698 F.2d 61, 74 (2d Cir. 1982) (absent fraud or collusion, courts should be hesitant about substituting their own judgment for that of counsel).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was delivered on this 20th day of October 2022, via the Missouri Court System's Electronic Filing System to all counsel of record.

By: /s/ Bryce Crowley
Bryce Crowley

EXHIBIT A

Declaration of L. DeWayne Layfield

IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

TREVOR WHITE; TERRENCE CORRIGAN, SR.; SARAH M. SERABIAN; and ASTORRIA SASSANO; individually and on behalf of all others similarly situated, Plaintiffs, v. PBM NUTRITIONALS, LLC, a Delaware limited liability company, Defendant.	Case No. 22PH-CV00931

DECLARATION OF L. DEWAYNE LAYFIELD IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

I, L. DeWayne Layfield, hereby declare as follows:

1. I am an attorney licensed to practice before all state courts in Texas, have been admitted pro hac vice in this Court, and am the managing member of the Law Office of L. DeWayne Layfield, PLLC. The Law Office of L. DeWayne Layfield, PLLC is one of the firms that is Lead Class Counsel for Plaintiffs in the above-referenced action. I make this declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement.

2. I am one of the attorneys that is primarily responsible for representing Plaintiffs in this action. In addition to the support of highly experienced staff at Law Office of L. DeWayne Layfield, PLLC this matter was also ably prosecuted by a team of esteemed litigators who are experienced in complex litigation. Pursuant to the Preliminary Approval Order, Lead Class Counsel in this matter includes KamberLaw LLC, the Law Office of L. DeWayne Layfield, PLLC,

Southern Atlantic Law Group, PLLC, and Steelman Gaunt Crowley. In addition, Class Counsel, under the Settlement Agreement, also includes the Law Office of Howard W. Rubenstein PA.

3. I have actively participated in all aspects of this litigation, including the negotiation of the settlement, and am fully familiar with the proceedings in the matter in which the parties seek resolution. If called upon, I am competent to testify that the following facts are true and correct based upon my personal knowledge.

4. I specifically incorporate by reference my declaration in support of Plaintiffs' Motion for an Attorneys' Fees and Costs Award, and Class Representative Service Awards, filed October 11, 2022.

5. This case arises out of Plaintiffs' allegations that Defendant PBM Nutritionals, LLC ("Defendant") deceptively and unlawfully packaged, marketed and labeled its powder baby and infant formulas under the following brands: Well Beginnings, Meijer Bay, Little Journey, Wesley Farms, Burt's Bees Baby, Berkley Jensen, Parent's Choice, Earth's Best Organic, Comforts, Up & Up, Babies "R" Us, Member's Mark, and Bobbie Baby, which are sold in a variety of sizes, and collectively referred to herein as "Products" or a "Product." To be precise, the specific brands and sizes of the Products that are at issue in this Class Action are those listed on Exhibit C to the Settlement Agreement, which has been preliminarily approved by the Court. The definition of "Product" and "Products" herein is limited to those products listed on Exhibit C to the Settlement Agreement. Specifically, Plaintiffs alleged that Defendant represented that the Products make a certain number of fluid-ounce bottles of formula; however, contrary to these representations, the Products contain nowhere near enough powder formula to make the represented number of bottles of liquid formula when following the "Instructions for Preparation & Use" on the side labels of the Products.

6. This litigation required considerable skill and experience to result in such a successful conclusion. The case required investigation and a mastery of complex factual circumstances, the ability to develop creative legal theories, and the skill to respond to a host of legal defenses. In addition, Defendant is represented by the prominent and well-respected law firm of Duane Morris, LLP. This class action case against Defendant required advanced planning and scientific investigation involving experts and certified laboratory facilities, strategic skills, imagination, resourcefulness, and management abilities of the highest order to match a highly qualified, experienced, and formidable opposition. The prosecution and settlement of this litigation required a very high degree of competence, experience, and ability by Class Counsel.

7. During an in-person mediation session (held via zoom), the parties candidly expressed the strengths and weaknesses of their positions in a full and professional process spearheaded by the Hon. Wayne Andersen (Ret.). Although all aspects of an agreement were not reached during the mediation, the parties, with the continued assistance of the Hon. Judge Andersen, were able to continue to negotiate, and ultimately reached a Settlement that provides meaningful cash compensation to Settlement Class Members, as well as substantial injunctive relief, and avoids the risks and delay of further litigation. The process of the independent and mediated negotiation sessions took a significant investment of time and effort over the course of several months. The results achieved in this case are fair, reasonable, adequate, and in the best interests of the Class. They provide substantial relief to all class members, including that:

- Defendant will provide injunctive relief through the removal or revision of the Challenged Language from the labels of the Products, which we separately value at approximately $5,174,982.00; and

- Defendant has agreed to a two-tiered structure to provide monetary relief to Class Members, under which Defendant will provide cash benefits to Settlement Class Members who timely file Claims by the Claims Deadline and who provide either Proofs of Claim or a valid claim form to the Settlement Administrator. The two-tier structure provides compensation for both Class Members with Proof of Purchase and those without Proof of Purchase.

8. I believe that the substantive work accomplished by Class Counsel and their collective trial experience created a credible threat of success in ongoing litigation, which was critical to obtaining a Settlement of such a high caliber.

9. Throughout the mediation and negotiation efforts, and in advising our clients of the proposed settlement, Class Counsel has at all times considered the fairness, reasonableness and adequacy of the settlement for the Class, taking into account: the strength of Plaintiffs' case; the risk, expense, complexity, and likely duration of any further litigation; the risk of certifying a class and then maintaining class action status through trial; the amount offered in settlement and the experience; and views of Plaintiffs' counsel.

10. The Parties have agreed under the proposed Settlement that PBM Nutritionals will pay US $2.0 million into the Settlement Fund for compensation to Class Members as monetary benefits. *See* Settlement Agreement, attached as Exhibit 1 to the Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

11. Class Counsel further represents that, consistent with controlling law and ethical standards promulgated by the Missouri Bar, no Plaintiff attorneys have requested or been offered any compensation, appointment, or benefit by Defendant during negotiations related to the

settlement of this case other than the proposed attorneys' fees and costs outlined above, which are subject to court approval.

12. Against the backdrop of Class Counsel's collective experience in prosecuting complex class actions, we have considered the claims set forth in the Complaint and our continued confidence in the merit of those claims, the scope of relief offered in the settlement compared to the potential relief at the conclusion of litigation, and the risks and costs of continued litigation. Taking these factors into account, it is my opinion that the proposed Settlement is fair, reasonable, and adequate, well within the range of possible approval, and therefore deserving of the Court's final approval.

13. On July 21, 2022, this Court entered an Order granting Preliminary Approval of the Settlement now before this Court for Final Approval. Since that time, Class Counsel has worked closely with Defense Counsel and the Settlement Administrator, Kroll Settlement Administration ("Kroll"), to ensure that all aspects of the Preliminary Approval Order were carried out.

14. Specifically, Class Counsel has expended significant time working with Kroll involving claims administration: issuing Notice to Class Members, processing claims, responding to inquiries, and conducting other activities relating to class notice and administration under the Parties' supervision.

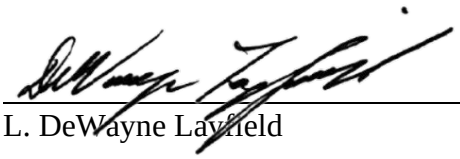
15. The fairness, reasonableness, and adequacy of the Settlement is further supported by the overwhelmingly positive Class Member response to the Settlement. Specifically, and as detailed more fully in the Declaration of Andrea Dudinsky of Kroll ("Dudinsky Decl.") (a true and correct copy of which is incorporated as Exhibit B to the Suggestions in Support of Final Approval), as of October 18, 2022, Kroll has received over 140,000 claims.

16. In contrast, as of the exclusion and objection deadline of October 18, 2022, only two Opt-Outs and no Objections have been received from actual Class Members. *See* Dudinsky Decl., at ¶ 9; and Report re; Objections and Requests for Exclusion (Opt-Outs), a true and correct copy of which is attached to the Suggestions as Exhibit C.

17. Having reached full agreement on terms and conditions of the Settlement, received the Court's Preliminary Approval, and garnered the overwhelming support of Class Members, and the Class Representatives, Plaintiffs now respectfully request that this Court grant Final Approval to the Settlement; enter Final Judgment; and Dismiss the Action with prejudice.[1]

18. I declare under penalty of perjury under the laws of the State of Texas that the foregoing is true and correct.

Executed this 20th day of October, 2022
Chambers County, Texas



L. DeWayne Layfield

[1] Lead Class Counsel has separately moved for an award of Attorneys' Fees and Costs and Class Representative Service Awards, filed October 11, 2022.

Exhibit B

Declaration of Andrea Dudinsky, Senior Manager
Kroll Settlement Administration LLC

IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

TREVOR WHITE; TERRENCE CORRIGAN, SR.; SARA M. SERABIAN; and ASTORRIA SASSANO individually and on behalf of all others similarly situated, Plaintiff, v. PBM NUTRITIONALS, LLC, a Delaware limited liability company, Defendant.	:	Case No. 22PH-CV00931

DECLARATION OF ANDREA DUDINSKY
OF KROLL SETTLEMENT ADMINISTRATION LLC
IN CONNECTION WITH FINAL APPROVAL OF SETTLEMENT AGREEMENT

I, Andrea Dudinsky, declare as follows:

1. I am a Senior Manager of Kroll Settlement Administration LLC ("Kroll"),[1] the Settlement Administrator appointed in the above-captioned case, whose principal office is located at 2000 Market Street, Suite 2700, Philadelphia, Pennsylvania 19103. I am over 21 years of age and am authorized to make this declaration on behalf of Kroll and myself. The following statements are based on my personal knowledge and information provided by other experienced Kroll employees working under my general supervision. This declaration is being filed in connection with final approval.

2. Kroll has extensive experience in class action matters, having provided services in class action settlements involving antitrust, securities fraud, labor and employment, consumer, and

[1] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Settlement Agreement (as defined below).

government enforcement matters. Kroll has provided notification and/or claims administration services in more than 3,000 cases.

3. Kroll was appointed as the Settlement Administrator to provide notification and administration services in connection with a settlement agreement (the "Settlement Agreement") entered into in connection with the above-captioned case, referred to herein as the "Settlement". Kroll's duties in connection with the Settlement have and will include: (a) establishing a post office box for the receipt of mail; (b) establishing a toll-free number; (c) creating a Settlement Website with online Claim filing capabilities; (d) establishing an email address to receive Settlement Class Member inquiries; (e) receiving and processing Claim Forms; (f) receiving and processing Opt-Outs; and (g) such other tasks as counsel for the settling Parties or the Court request Kroll perform.

4. On June 27, 2022, Kroll designated a post office box with the mailing address *White v. PBM Nutritionals*, c/o Kroll Settlement Administration LLC, PO Box 225391, New York, NY 10150-5391 to receive Opt-Out requests, Claim Forms, Objections, and correspondence from Settlement Class Members.

5. On July 27, 2022, Kroll established a toll-free number, (833)-512-2316, for Settlement Class Members to call and obtain additional information regarding the Settlement through an Interactive Voice Response ("IVR") system. As of October 14, 2022, the IVR has received 34 calls.

6. On August 2, 2022, Kroll created a dedicated Settlement Website entitled www.pbmlabelsettlement.com. The Settlement Website "went live" on August 19, 2022, and contains details of the Settlement, frequently asked questions, all related court documents, and copies of the notices, and allowed Settlement Class Members an opportunity to file a Claim Form online.

7. On August 18, 2022, Kroll established an email address, info@pbmlabelsettlement.com, to receive and reply to email inquiries from Settlement Class Members pertaining to the Settlement.

8. The last day to submit Opt-Outs/Objections is October 18, 2022, and the last day to submit Claim Forms is November 30, 2022. As of October 19, 2022, Kroll has received 130 Claim Forms through the mail and 140,838 Claim Forms filed electronically through the Settlement Website. Kroll is still in the process of reviewing and validating Claim Forms. To prevent Claims Forms from being filed by individuals outside the Class and to curtail fraud, Settlement Class Members were provided a unique "Class Member ID" during the Claim filing process. The Class Member ID is required for Settlement Class Members to file a Claim Form online.

9. As of October 19, 2022, Kroll's records indicate that it has received 2 timely Opt-Out requests and no Objections to the Settlement.

I declare under penalty of perjury under the laws of the State of Missouri that the above is true and correct to the best of my knowledge and that this Declaration was executed on October 19 2022, in Kansas City, Missouri.

Andrea Dudinsky

ANDREA DUDINSKY

Exhibit C

Report re: Objection and Requests for Exclusions (Opt-Outs)

IN THE CIRCUIT COURT OF PHELPS COUNTY
STATE OF MISSOURI

TREVOR WHITE; TERRENCE CORRIGAN, SR.; SARAH M. SERABIAN; and ASTORRIA SASSANO; individually and on behalf of all others similarly situated, Plaintiffs, v. PBM NUTRITIONALS, LLC, a Delaware limited liability company, Defendant.	Case No. 22PH-CV00931

REPORT RE: OBJECTIONS AND REQUESTS FOR EXCLUSION (OPT-OUTS)

Pursuant to the Court's July 21, 2022 Order preliminarily approving the class action Settlement Agreement in this matter, Plaintiffs hereby submit a report from the Settlement Administrator stating the total number of Objections received and Persons who have submitted timely and valid Requests for Exclusion (or Opt-Out) from the Settlement Class.

According to the Settlement Administrator, no Objections were filed, and there have been only two timely Opt-Out requests received in this matter. See Declaration of Andrea Dudinsky ("Dudinsky Decl."), from Kroll Settlement Administration LLC ("Kroll"), attached as Ex. B to Plaintiffs' Suggestions in Support of Final Approval. (Dudinsky Decl., at ¶ 9). The names of the

two Persons requesting Exclusion are: (1) Callie Green, and (2) Chelsea Frederick; and their respective Exclusions Requests are appended hereto (redacted to remove personal information).

Dated: October 20, 2022

Respectfully submitted,

TREVOR WHITE; TERRENCE CORRIGAN, SR.; SARAH M. SERABIAN; and ASTORRIA SASSANO, Individually, and on Behalf of Classes of Similarly Situated Individuals, Plaintiffs

By: /s/ Bryce Crowley

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Attorneys for Plaintiff and the Putative Class

OPT-OUT

White v. PBM Nutritionals, LLC

Case No. 22PH-CV00931

Chelsea Frederick
[redacted]

I wish to be excluded from the *White v. PBM Nutritionals, LLC* Class Action.

Dated: 10/17/2022

DocuSigned by:
CHELSEA FREDERICK
Chelsea Frederick

OPT-OUT

White v. PBM Nutritionals, LLC

Case No. 22PH-CV00931

Callie Green
[redacted]

I wish to be excluded from the *White v. PBM Nutritionals, LLC* Class Action.

Dated: 10/17/2022

DocuSigned by:
Callie Green

Callie Green