UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

IN RE: EVENFLO CO., INC. MARKETING, SALES PRACTICES AND PRODUCTS LIABILITY LITIGATION This Document Relates To: ALL ACTIONS	MDL No. 20-md-02938-DJC Hon. Denise J. Casper

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

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases

Court Rules

I. INTRODUCTION

Plaintiffs,[1] all purchasers of the "Big Kid" Evenflo belt-positioning booster seat ("Booster Seat"), negotiated a nationwide class action settlement with defendant Evenflo Co., Inc. ("Evenflo") that provides substantial monetary and non-monetary benefits to individuals who purchased a Booster Seat between January 1, 2008 and December 31, 2022 (the "Class Period"). Plaintiffs alleged that Evenflo falsely marketed its Booster Seats as being safe for children weighing less than 40 pounds and as having been side-impact tested—while they were neither.

This class action Settlement provides for a $3,500,000.00 non-reversionary cash common fund, plus $25 credits for each Class Member towards future purchases of Evenflo products through the Evenflo website (based on the number of Booster Seats purchased, with a limit of 2 per claimant).[2] The Settlement also provides to the Class substantial non-monetary benefits including informational notices for all Class Members, agreement regarding future marketing disclosures, and the dissemination of an educational video regarding booster seat safety.

On April 28, 2025, the Court preliminarily approved the Settlement; preliminarily certified the Settlement Class; preliminarily appointed the named Plaintiffs as Settlement Class Representatives; and preliminarily appointed Steve W. Berman of Hagens Berman Sobol Shapiro LLP, Mark P. Chalos of Lieff Cabraser Heimann & Bernstein LLP, and Martha A. Geer of

[1] The named Plaintiffs in this action—all of whom support final approval of the Settlement—are Mona-Alicia Sanchez, Heather Hampton, Karyn Aly, Debora de Souza Correa Talutto, Sakina Taylor, Jessica Greenshner, Becky Brown, Anna Gathings, Joseph Wilder, Talise Alexie, Jeffrey Lindsey, Theresa Holliday, Amy Sapeika, Emily Naughton, Karen Sanchez, Danielle Sarratori, David Schnitzer, Carla Matthews, Cassandra Honaker, Lauren Mahler, Tarnisha Alston, Ashley Miller, Lindsay Reed, and Kristin Atwell. *See* Declarations of Settlement Class Representatives in Support of Final Approval of the Settlement.

[2] All capitalized terms used and not otherwise defined herein have the same meaning as defined in the Settlement Agreement.

Bryson Harris Suciu & DeMay, PLLC (formerly of Milberg Coleman Bryson Phillips Grossman PLLC) as Settlement Class Counsel. ECF No. 218.

Now, Plaintiffs seek final certification of the Settlement Class and final approval of the Settlement. The proposed Settlement Class should be certified because it satisfies the requirements for class certification under Fed. R. Civ. P. 23(a) and 23(b)(3) for the same reasons this Court found in granting Preliminary Certification. Further, the Settlement satisfies Rule 23's fair, adequate, and reasonable approval standard for the same reasons this Court found in granting Preliminary Approval. For these reasons, Plaintiffs respectfully request that the Court certify the Settlement Class and grant final approval of the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. The litigation and mediation

After numerous lawsuits were filed challenging Evenflo's claims regarding the safety of its Booster Seats, the Judicial Panel on Multidistrict Litigation ordered that the pending actions be transferred to this Court on June 2, 2020. MDL No. 2938, ECF No. 90. Co-Lead Counsel filed a Consolidated Amended Class Action Complaint on October 20, 2020, alleging that Evenflo had falsely advertised its Booster Seats as (1) being safe for children weighing less than 40 pounds and (2) having been side impact tested without disclosing the true nature and results of its testing. ECF No. 67. Evenflo responded by filing a Motion to Dismiss on November 20, 2020. ECF No. 80. This Court granted the Motion to Dismiss on the ground that Plaintiffs lacked Article III standing. ECF No. 119. The First Circuit affirmed in part (as to injunctive relief), reversed in part, and remanded for further proceedings. *In re Evenflo Co.*, 54 F.4th 28 (1st Cir. 2022), *cert. denied*, 144 S. Ct. 93 (2023).

Following issuance of the mandate and remand to this Court, the parties agreed to engage in mediation. ECF No. 131. On April 5, 2023, the parties participated in an in-person mediation with retired Judge Louis M. Meisinger. ECF No. 215, Declaration of Mark P. Chalos ("Chalos Decl.") ¶ 9. Although the parties were unable to reach agreement, they continued to negotiate through August 2023.

While engaging in attempted settlement negotiations, Evenflo opposed Plaintiffs' Motion for Leave to File a Second Consolidated Amended Complaint on June 5, 2023. ECF No. 151. On August 29, 2023 (ECF No. 161), the Court heard oral argument and subsequently granted the Motion to Amend in part and denied it in part. ECF No. 164. Twenty-five named Plaintiffs from 19 States filed the Second Consolidated Amended Class Action Complaint ("SAC") on January 4, 2024. ECF No. 167.

The parties participated in extensive discovery negotiations for over a year that culminated in Evenflo producing over 465,000 pages of documents. Chalos Decl. ¶ 13. Evenflo in turn sought and received both documents and interrogatory responses from each of the Class Representatives. After negotiations regarding the scope of Evenflo's requests, the Class Representatives supplemented their responses. *Id.* ¶ 14. Ultimately, however, Evenflo moved to compel and the parties fully briefed Evenflo's request for disclosure of medical information about the Class Representatives' children and social media posts related to the Booster Seat. ECF Nos. 184, 185, 195, 203.

On October 30, 2024, the parties participated in a second mediation, this time overseen by Robert Meyer with JAMS. Chalos Decl. ¶ 15. While no settlement was reached during the actual mediation, the parties continued, with Mr. Meyer's assistance, to negotiate. Mr. Meyer made a mediator's proposal, which the parties accepted with some modifications. ECF No. 216,

Declaration of Robert A. Meyer ("Meyer Decl.") ¶ 11. The parties memorialized their agreement in a Term Sheet dated December 5, 2024. Chalos Decl. ¶ 16. The parties then negotiated and finalized the formal Settlement Agreement. *Id.* ¶ 16 and Ex 1.

B. Summary of the settlement

The Settlement requires Evenflo to establish a settlement fund that will provide for payment of cash benefits to the Settlement Class, as well as the costs of notice and administration, Plaintiffs' Service Awards, and attorneys' fees and costs. Settlement II(DD). Evenflo will pay the amount of $3,500,000 cash into a common fund which will be non-reversionary to Evenflo. Settlement XII(A). Settlement Class Members will be entitled to submit one claim (for a maximum of two seats). Settlement IX(A). Each claim entitles the Settlement Class Member to receive (1) a pro rata cash payment from the Settlement Fund and also (2) a $25 credit towards the purchase of Evenflo products directly from Evenflo at www.evenflo.com. Settlement IX(A), XII(D)-(F). There is no aggregate or per household cap on the number of credits being made available to the Class.

The cash amount that each claim will receive from the Settlement Fund is set forth in the Settlement Agreement's Distribution Plan. Settlement XIII(B). For each valid claim the Class Member will receive a *pro rata* amount of the common fund after the deduction of settlement-related costs (including the expenses of the settlement administrator and the costs of notice to the Settlement Class) and any Court-awarded attorneys' fees, expense reimbursements, and service awards. *Id.*

In addition, Evenflo has agreed to substantial non-monetary benefits that will educate parents and other consumers about safe use of Booster Seats. Evenflo will make two informational notices available to Settlement Class Members, including (1) a notice regarding

the minimum weight for safe use of the Booster Seat, and (2) a notice about Evenflo's side-impact testing of the Booster Seat. Settlement XI(B). The precise language of those notices is set forth in the Settlement Agreement. *Id*. Evenflo will also create and post an educational video discussing transitioning a child from a front-facing harnessed car seat with a tether to a Booster Seat. Settlement XI(D). The video will include specified language regarding NHTSA and American Academy of Pediatrics' recommendations and will appear on Evenflo's Facebook page and on the blog page of Evenflo's website. *Id*.

In addition, Evenflo is agreeing to "conform its marketing of belt-positioning booster seats as it concerns child weight recommendations to comply with federal regulations established by NHTSA" and "not to market its booster seats as being tested in any other manner not regulated by NHTSA without identifying the testing standard as having been developed by Evenflo and not NHTSA or another governmental body." Settlement XI(C).

As consideration for these monetary and non-monetary benefits, Plaintiffs and Class Members agree to release Evenflo from all claims that have or could have been asserted against it in this action and all putative class actions and individual actions composing this consolidated case, as specified in the Settlement Agreement. Settlement II(A), XVI(A). The release does not, however, encompass claims arising from personal injuries or wrongful death. *Id*.

C. Preliminary Approval

On April 28, 2025, the Court preliminarily approved the Settlement Agreement and preliminarily certified the Settlement Class defined as follows:

> All Persons in the United States, including the District of Columbia and any U.S. territories (including without limitation Puerto Rico, Guam, and the U.S. Virgin Islands), who purchased an Evenflo "Big Kid" booster seat in the United States during the Class Period. The "Class Period" includes purchases between January 1, 2008 and December 31, 2022. Excluded from the Settlement Class are the judge to whom this case is

> assigned, any member of the judge's immediate family, and the judge's staff and their immediate families.

ECF No. 218. The Court also preliminarily appointed Co-Lead Counsel as Lead Class Counsel, appointed Epiq Class Action and Claims Solutions, Inc. ("Epiq") as the Settlement Administrator, and directed Epiq to effectuate the provision of notice to Settlement Class Members in accordance with the Settlement Agreement. *Id*.

D. Class Notice

The Settlement Administrator implemented a multifaceted notice campaign that included an ambitious direct notice plan, a digital media campaign, as well as press releases and other organic media efforts to reach Settlement Class Members. Supplemental Declaration of Cameron R. Azari ("Azari Decl.") ¶¶ 11-25. Ultimately, over 95% of Settlement Class Members with verified contact information were notified and 72% of the class overall was provided with the court-approved notice. Azari Decl. ¶¶ 7, 17.

To begin, Epiq coordinated with Defendant and Lead Class Counsel to receive the last-known contact information available for the Settlement Class. *Id.* ¶ 11. This facilitated 165,668 email notices and 842,583 initial postcard notices, resulting in 957,858 notices to identified Settlement Class Members—a 95% success rate. *Id.* ¶¶ 12, 14, 17. Whenever possible, Epiq directly contacted class members through email and postcard notices, including repeated attempts when initial information was undeliverable. *Id.* ¶¶ 13-16. To optimize delivery, Epiq verified physical and email addresses prior to notice being sent. *Id.* ¶¶ 12-13, 15. In addition to this robust direct notice campaign, Epiq undertook an effective digital media campaign to distribute notice to target audiences across numerous platforms—Facebook, Instagram, X, Google Display Network, parenting websites—and estimates delivering approximately 214,000,000 digital impressions. *Id.* ¶¶ 20-24. The success of the outreach is evident by the fact

that the settlement website received substantial activity, including over six million page hits and over 1.4 million sessions. *Id.* ¶ 27.

After millions of Settlement Class Members were notified about the preliminarily approved settlement, Epiq received only eight requests for exclusion, and *zero objections*. *Id.* ¶ 30. Instead, Class Members overwhelmingly chose to take the benefits of the settlement, a process made easy by the settlement administration process. Settlement Class Members who provided a valid email address or mailing address when registering their product for a warranty or recall, or when purchasing their product on Evenflo.com, received a "one click" option to submit claims without filing a claim form. *Id.* ¶ 31. Approximately 239,606 claims were submitted and verified,[3] including 31,823 with a Unique ID from the "one click" option from class members who received direct notice. *Id.*

Since the close of the claims deadline on November 24, 2025, Epiq has dedicated significant, extra time and resources to continue processing valid claims. As anticipated by the exponential growth in fraudulent claims in similar consumer-product settlements of this sort with millions of potential class members spanning several years of product purchases, a high number of claims had between 2 to 15 indicia of fraud. *Id.* ¶¶ 32-35. Epiq employed a comprehensive fraud detection system to identify valid claims from Settlement Class Members and will continue this work prior to distribution. *Id.* ¶ 38.

III. ARGUMENT

A. The Settlement Class meets the requirements of Rule 23(a) and the Court should certify the Class for settlement purposes.

[3] The Settlement Administrator received 733,298 claims overall but is still analyzing a large number for evidence of fraud. Azari Decl. ¶¶ 31, 35.

As this Court concluded in granting preliminary approval, conditionally certifying the Settlement Class, and directing notice to Settlement Class Members, the Settlement Class meets all of the requirements for class certification under Federal Rules of Civil Procedure 23(a) and 23(b)(3). ECF No. 101 at 2-4. This remains true, and the Settlement Class should be certified.

To certify a class for settlement purposes, the Court must determine that the proposed Settlement Class satisfies each requirement of Federal Rule of Civil Procedure 23(a) and at least one subpart of Rule 23(b). *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997); *Walmart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). Settlement classes face a lower standard for certification than classes intended for litigation, as the manageability of the class at trial need not be assessed. *Amchem*, 521 U.S. at 620.

1. The Class is sufficiently numerous.

Rule 23(a)(1) requires that a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Here, the proposed Settlement Class consists of all persons in the United States who purchased at least one Booster Seat between January 1, 2008 through December 31, 2022. Over that period of time, millions of Booster Seats were sold. ECF No. 167, SAC ¶ 225. Numerosity is beyond dispute.

2. Questions of law or fact are common to the Class.

Rule 23(a)(2) requires a showing of the existence of "questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). For commonality to be satisfied, there must be at least one common issue of fact or law resolution of which "affect[s] all or a substantial number of the class members." *In re M3 Power Razor Sys. Mktg. & Sales Prac. Litig.*, 270 F.R.D. 45, 54 (D. Mass. 2010).

Here, there are numerous issues of fact and law common to the Settlement Class, including among others: (a) whether Evenflo's uniform claims about its side-impact testing of Booster Seats and the minimum safe weight for their use are false or misleading, (b) whether Settlement Class Members paid an inflated price (a premium) for the Booster Seats because of Evenflo's misrepresentations, and (c) how much of a premium the Settlement Class Members paid. The commonality requirement is met.

3. Plaintiffs' claims are typical.

Rule 23(a)(3) requires that the class representatives' claims be "typical of the claims . . . of the class." Fed. R. Civ. P. 23(a)(3). Here, Plaintiffs' claims and the Class Members' claims all arise from the same uniform representations: that the Booster Seats were side-impact tested and were safe for children weighing less than 40 pounds. And, as a result of those misrepresentations, purchasers of the Booster Seats overpaid for the seats. The proposed Settlement Class meets the typicality requirement.

4. Plaintiffs will fairly and adequately protect the Class.

Rule 23(a)(4) requires that the representative plaintiffs "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). "This requirement has two parts. The plaintiffs must show first that the interests of the representative party will not conflict with the interests of any of the class members, and second, that counsel chosen by the representative party is qualified, experienced, and able to vigorously conduct the proposed litigation." *In re M3 Power Razor Sys.*, 270 F.R.D. at 55.

First, Plaintiffs' "interests align" with those of the Settlement Class, as they all are similarly interested in obtaining relief for Evenflo's misconduct in advertising that its Booster Seats were side-impact tested and safe for children under 40 pounds. Plaintiffs have also

adequately and vigorously represented the Settlement Class Members by spending significant time assisting Class Counsel, including providing necessary information for complaints, as well as documents and information to respond to Evenflo's discovery requests.

Second, Plaintiffs have retained qualified and competent counsel with extensive experience litigating, trying, and settling class actions, including consumer protections cases like this one, throughout the country. Chalos Decl. ¶¶ 24-33; *see Glass Dimensions, Inc. v. State St. Bank & Tr. Co.*, 285 F.R.D. 169, 179 (D. Mass. 2012) ("[T]he counsel chosen by the class representative must be qualified, experienced, and able to vigorously conduct the proposed litigation"). The requirements of Rule 23(a) are, therefore, met for the purposes of certifying a Settlement Class.

B. The Class meets the requirements of Rule 23(b)(3) for a Settlement Class.

In addition to the requirements of Rule 23(a), a proposed class must satisfy at least one of the prongs of Rule 23(b). Plaintiffs seek certification under Rule 23(b)(3), which requires that (1) common questions of law or fact predominate over those affecting only individual class members and (2) class treatment is superior to other adjudication methods. *See* Fed. R. Civ. P. 23(b)(3). The proposed Settlement Class meets both of these requirements.

1. Common questions of law or fact predominate over individual issues.

Rule 23(b)(3) requires a finding that common issues of law or fact predominate over any issues unique to individual class members. Predominance requires that "questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen, Inc. v. Conn. Retirement Plans and Trust Funds*, 568 U.S. 455, 459 (2013).

Here, the common questions discussed above predominate. The core facts of this case involve Evenflo's uniform conduct that harmed all Settlement Class members in the same

manner. Plaintiffs claim "that all class members are entitled to the same legal remedies premised on [Defendant's] same alleged wrongdoing, and the issues affecting every claimant are substantially the same." *Meaden v. HarborOne Bank*, 2023 WL 3529762, at *3 (D. Mass. May 18, 2023)

2. Class treatment is the superior method of adjudication.

Rule 23(b)(3) requires a class action to be "superior to other available methods for fairly and efficiently adjudicating the controversy." Where "there are thousands of potential class members with small claims resulting from a common issue" (here, millions of potential class members), "a class action is the most feasible mechanism for resolving the dispute." *Meaden*, 2023 WL 3529762, at *3. In fact, there is no realistic alternative to a class action here. *See Smilow v. Southwestern Bell Mobile Sys., Inc.*, 323 F.3d 32, 41-42 (1st Cir. 2003) ("The policy at the very core of the class action mechanism is to overcome the problem that small recoveries do not provide the incentive for any individual to bring a solo action prosecuting his or her rights."). Thus, class treatment here is plainly superior to other available methods.

C. The Court should appoint Co-Lead Counsel as Settlement Class Counsel.

Rule 23(g) separately requires the Court to appoint Class Counsel when it certifies a class. The Court has already found that Co-Lead Counsel satisfy the factors set forth in Rule 23(g). ECF No. 218 at 3. Co-Lead Counsel have vigorously litigated this case, including investigation of claims, litigation of dispositive motions, appellate briefing, and discovery. Given the work Co-Lead Counsel have performed, their experience in consumer class action litigation, their knowledge of the applicable law, and the resources they have already committed, they should be given final appointment as Class Counsel under Fed. R. Civ. P. 23(g)(1)(A).

IV. THE SETTLEMENT MERITS FINAL APPROVAL.

After Preliminary Approval, Federal Rule of Civil Procedure 23 requires a final evaluation of a proposed class action settlement. Fed. R. Civ. P. 23(e)(2). At this stage, the Court must determine whether to approve the settlement as "fair, reasonable, and adequate." *Id.* In making this determination, the Court must consider whether (1) the proposed Class Representatives and Class Counsel have adequately represented the class; (2) the Settlement was negotiated at arm's length; (3) the relief provided is adequate; and (4) the Settlement treats class members equitably relative to each other. *Id*.

In recently amending Rule 23, the Advisory Committee recognized that the various Circuits had independently generated their own lists of factors to consider in determining whether a settlement is fair, reasonable, and adequate. Fed. R. Civ. P. 23(e)(2) advisory committee note 2018 amendment. In the First Circuit, district courts have considered the factors set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974), in assessing the reasonableness of a settlement. *See*, *e.g.*, *New England Carpenters Health Benefits Fund v. First DataBank, Inc.*, 602 F. Supp. 2d 277, 281 (D. Mass. 2009). As detailed below, consideration of the factors articulated in Rule 23(e)(2) and in *Grinnell* support final approval.

A. The Settlement Class has been vigorously represented.

Rule 23(e)(2) first asks whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2)(A). Relevant considerations include the information available to counsel negotiating the settlement, the stage of the litigation, and the amount of discovery taken. Fed. R. Civ. P. 23(e)(2) advisory committee note 2018 amendment.

Plaintiffs have pursued the objective they share with the Settlement Class of showing that Evenflo engaged in false and misleading advertising by working with Class Counsel in the

preparation of the complaints and also responding to document requests and interrogatories, including supplementing those responses after discovery negotiations. Chalos Decl. ¶ 14.

Plaintiffs' counsel have vigorously represented the proposed Settlement Class. Counsel's representation has included (1) investigation of initial complaints and the First and Second Consolidated Amended Complaints; (2) extensive research and analysis to address Evenflo's comprehensive motion to dismiss; (3) successful appellate litigation including briefing and oral argument; (4) investigation and preparation of the proposed SAC; (5) briefing and argument on the motion for leave to amend and Evenflo's comprehensive opposition to that motion; (6) substantial document discovery and discovery negotiations; (7) gathering of Plaintiffs' documents and relevant information to respond to Evenflo's discovery requests; (8) motion to compel briefing; (9) participation in two mediations and extensive subsequent settlement discussions; and (10) achievement of a favorable settlement on behalf of the Settlement Class. Chalos Decl. ¶¶ 7-16. This factor weighs in favor of Final Approval.

B. The Settlement was negotiated at arm's length.

Rule 23(e)(2) next asks whether the settlement "was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). To ensure negotiations were at arm's length, courts look to the "conduct of the negotiations," recognizing that "the involvement of a neutral or court-affiliated mediator or facilitator in those negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23(e)(2) advisory committee note 2018 amendment.

A settlement that is the product of "arm's length negotiations conducted by experienced counsel" is "presumed to be reasonable." *Nat'l Ass'n. of Deaf v. Massachusetts Inst. of Tech.*, 2020 WL 1495903, at *4 (D. Mass. Mar. 27, 2020). In addition, the negotiations in this case

occurred with assistance of two neutral mediators, which "reinforces that the Settlement Agreement is non-collusive." *New England Biolabs, Inc. v. Miller*, 2022 WL 20583575, at *3 (D. Mass. Oct. 26, 2022).

Here, following the first mediation with retired Judge Meisinger, Class Counsel, who are experienced consumer class action litigators, continued to engage in settlement negotiations with Evenflo. Although even with the assistance of the second mediator, Robert Meyer, the parties were unable to reach a settlement during the actual mediation, Mr. Meyer continued to work with the parties until a resolution in principle was finally achieved. Chalos Decl. ¶ 15; Meyer Decl. ¶ 11. Class Counsel continued to work over the next several weeks to obtain more favorable settlement provisions for the Settlement Class. Chalos Decl. ¶¶ 15-16.

In addition, the Settlement itself includes no indicia of collusion. Attorneys' fees were *not* negotiated—the Court will decide them. There is *no* "clear-sailing" provision—a provision that the defendant will not object to a fee request—and under no circumstances will any amount of the Settlement revert to Evenflo. *See Bezdek v. Vibram USA, Inc.*, 809 F.3d 78, 84 (1st Cir. 2015) (holding that although a clear-sailing agreement is not per se unreasonable "courts are directed to give extra scrutiny to such agreements"). That the Settlement was negotiated at arms' length supports the finding that the Settlement is likely fair, reasonable and adequate.

C. The Settlement provides meaningful relief to the Class.

The next factor under Rule 23(e)(2) asks whether "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 distribution plan, including the claims process; (iii) the terms of any proposed award of attorney's fees; and (iv) any agreement made in connection with the proposal. Fed. R. Civ. P. 23(e)(2)(C). These factors overwhelmingly support final approval.

Avoiding years of additional, risky litigation in exchange for immediate and significant cash payments is a principled compromise that works to the clear benefit of the Classes in this case. *See* Fed. R. Civ. P. 23(e)(2)(C).

1. The Settlement relief outweighs the costs, risks, and delay of trial and appeal.

The $3.5 million cash Settlement Fund is substantial, especially given that Class Members will also receive a $25 credit (and a second $25 credit if they have a valid claim for two Booster Seats). As the SAC shows, Plaintiffs purchased their Booster Seats for as little as $29.88 and a maximum of around $50.00. ECF No. 167 ¶¶ 23, 34, 56, 76, 87, 107, 116, 174, 182. Damages in this case would be calculated based on the amount that Class Members overpaid for their Booster Seats as a result of Evenflo's fraudulent claims about its Booster Seats, which could be a percentage of the market price as determined through expert testimony. *See In re Dial Complete Marketing and Sales Practices Litigation*, 320 F.R.D. 326, 334 (D.N.H. 2017). Depending on the final number of claimants, Settlement Class Members will likely recover a significant percentage of what they could recover at trial. It is not knowable at this point the exact amount each Class Member will receive because they are entitled to a *pro rata* share of the Settlement Fund.[4]

In addition to the monetary relief, the Settlement includes meaningful non-monetary benefits, including corrective notices to Class Members, educational materials, and commitments to specified business practices. *Compare Bezdek v. Vibram USA, Inc.*, 79 F. Supp. 3d 324, 346-47 (D. Mass. 2015), *aff'd*, 809 F.3d 78 (1st Cir. 2015) ("Injunctive relief has been recognized as a

[4] Settlement Class Counsel will provide the Court with the final amount each Class Member will receive prior to the Final Approval hearing.

meaningful component of a settlement agreement, particularly where it mimics the injunctive relief that the plaintiffs could achieve following trial.").

The benefits provided through the proposed Settlement are significant given the costs and risks of further litigation. This litigation has been pending since 2020. Continued litigation—including completion of merits discovery, expert discovery, class certification litigation, summary judgment, trial, and any appeals—would likely take several more years. Settlement is preferable because of its guarantee of recovery to the Settlement Class without substantial additional delay as compared to continued litigation, which could prove to be lengthy and could result in a lower or no recovery.

2. The Notice Plan and Claims Process support final approval.

The notice plan, claims process, and distribution plan have ensured adequate and equitable relief for all Settlement Class Members and support final approval. To satisfy Rule 23 and due process, notice must be "reasonably calculated to reach the absent class members." *Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 56 (1st Cir. 2004). Further, the Court must consider the effectiveness of the parties' "proposed method of distributing relief to the class, including the method of processing class-member claims." Fed. R. Civ. P. 23(e)(2)(C)(ii).

The Court previously held that Plaintiffs' proposed notice plan was "the best notice practicable under the circumstances of this [a]ction" and complied "fully with the requirements of the Federal Rules of Civil Procedures, the United States Constitution, and any other applicable law." ECF No. 218 at 3. Over the past nine months, the Settlement Administrator carried out the notice plan with the Court-approved notice documents and within the time outlined by the Court. Azari Decl. ¶¶ 11-18. The notice plan was successful, reaching millions of Class Members—approximately 72% of the Class. *Id.* ¶ 7.

Settlement Class Members were offered multiple accessible avenues to submit claims. More than 31,823 claims were submitted through a streamlined "one click" option, 239,606 were filed online, and 727 paper claims were mailed. *Id.* ¶¶ 31, 35. The multi-channel approach ensured that class members with varying levels of technological access could make claims.

Once claims were received, the Settlement Administrator devoted—and continues to devote—significant time and resources to process legitimate claims. *Id.* ¶¶ 37-38. This effort included the deployment of state-of-the-art fraud detection and analysis tools. Each claim was evaluated against 30 distinct, recognized indicators of fraud, and the results of that analysis were presented to Class Counsel. *Id.* ¶ 35.

Courts evaluating a claims process should consider whether it appropriately "deter[s] or defeat[s] unjustified claims" without becoming "unduly demanding" for legitimate claimants. Fed. R. Civ. P. 23(e) advisory committee note to 2018 amendment. The claims process here has struck that balance. Settlement Class Members were provided not only multiple ways to submit claims, but also multiple methods to substantiate their validity. Settlement II (II). Coupled with the Settlement Administrator's robust fraud detection measures, this approach ensured that legitimate claims could be submitted without undue burden, while unjustified claims were properly excluded—thereby protecting the recovery of the class.

3. Class Counsel seek reasonable Attorneys' Fees and Expenses and reasonable service awards for Settlement Class Representatives.

Plaintiffs have separately filed a Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Rewards for Settlement Class Representatives. ECF No. 224. Since that filing, Settlement Class Counsel have collectively expended an additional 248.7 hours prosecuting this litigation, bringing the total lodestar value of counsels' additional time to $199,691. Supplemental Chalos Decl. ¶ 4. Co-Lead Counsel will not seek any additional

compensation for work performed after August 31, 2025. *Id.* ¶ 6. For the reasons set forth in Plaintiffs' Memorandum in Support of that motion (ECF No. 225), this factor supports final approval of the Settlement.

4. There are no agreements between the parties other than the Settlement Agreement.

No side agreements required to be identified under Rule 23(e)(2)(c)(iii) exist. This provision is aimed at "related undertakings that, although seemingly separate, may have influenced the terms of the settlement by trading away possible advantages for the class in return for advantages for others." Fed. R. Civ. P. 23(e), advisory committee note 2003 amendment. Plaintiffs have not entered into any such agreements.

D. The Distribution Plan ensures settlement funds will be equitably and effectively distributed to Settlement Class Members.

The final Rule 23(e)(2) inquiry is whether the Settlement Agreement "treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2)(D). The proposed Settlement is a common fund settlement, without any preferential treatment of the Class Representatives or any segments of the Class. Class Counsel has requested Service Awards (also called "incentive payments") for the Class Representatives. Settlement XV. However, "[c]ourts have blessed incentive payments for named plaintiffs in class actions for nearly a half century[.]" *Murray v. Grocery Delivery E-Services USA Inc.*, 55 F.4th 340, 352 (1st Cir. 2022). The First Circuit has confirmed that it "choose[s] to follow the collective wisdom of courts over the past several decades that have permitted these sorts of incentive payments, rather than create a categorical rule that refuses to consider the facts of each case." *Id.* at 353.

E. The *Grinnell* factors support final approval.

In addition to the factors articulated in Rule 23(e)(2), district courts in the First Circuit also evaluate the fairness, reasonableness, and adequacy of a proposed settlement under the factors set forth in *Grinnell*.[5] However, as the Advisory Committee has noted with regard to the lists of additional factors Circuits have independently generated to consider in determining whether a settlement is fair, reasonable, and adequate, "[a] lengthy list of factors can take on an independent life, potentially distracting attention from the central concerns that inform the settlement-review process." Fed. R. Civ. P. 23(e)(2) advisory committee note 2018 amendment. Thus, the Committee instructs parties to "present the settlement to the court in terms of a shorter list of core concerns, by focusing on the primary procedural considerations and substantive qualities that should always matter to the decision whether to approve the proposal." *Id*. Here, the core concerns that should inform the Court's evaluation of the Settlement weigh in favor of final approval of the Settlement.

First, the complexity, expense, and likely duration of this MDL; the stage of the proceedings and the amount of discovery completed; and the risks involved all weigh heavily in favor of final approval. This litigation has spanned more than 5 years, including substantial discovery and a successful appeal to the First Circuit. Continued litigation—including completion of merits discovery, expert discovery, class certification litigation, summary judgment, trial, and any appeals—would likely take several more years. The legal issues are

[5] The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation, (2) the reaction of the class to the settlement, (3) the stage of the proceedings and the amount of discovery completed, (4) the risks of establishing liability, (5) the risks of establishing damages, (6) the risks of maintaining the class action through the trial, (7) the ability of the defendants to withstand a greater judgment, (8) the range of reasonableness of the settlement fund in light of the best possible recovery, and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. 495 F.2d at 463.

complex, involving multiple states' laws, complex analysis of consumer pricing, the impact of regulatory actions, and layered questions of potential federal preemption. Absent a settlement, the parties would continue to aggressively litigate this case, as they have, and Plaintiffs would face significant risks at class certification, summary judgment, and trial. Consideration of these *Grinnell* factors support a finding that the Settlement is fair, reasonable, and adequate.

Second, the positive response of Settlement Class Members to the proposed Settlement weighs in favor of final approval. Reaction to a settlement is "positive when the number of objectors is minimal compared to the number of claimants, provided notice effectively reached absent class members." *Gulbankian v. MW Mfrs., Inc.*, 2014 WL 7384075, at *2 (D. Mass. Dec. 29, 2014). Here, there were 239,606 verified claims with zero objections and only eight class members electing to opt out. Azari Decl. ¶ 30. This is well within the range of approval by courts in this district. *Cf. Bezdek*, 79 F. Supp. 3d at 347 (finding class members' reaction supported final approval with 154,927 claims, 23 opt outs, and 3 objections); *In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 96 (D. Mass. 2005) (10,614 claims, 49 opts out, and 10 objectors).

Finally, the amount of the Settlement is well within the range of reasonableness in light of the best possible recovery and the risks the parties would have faced if the case had continued to verdicts as to both liability and damages. Avoiding years of additional, expensive, risky litigation, Settlement Class Members will receive immediate and significant cash payments. These factors support final approval of the Settlement.

V. CONCLUSION

For the above reasons, Plaintiffs respectfully request that the Court (1) certify the Settlement Class; (2) appoint the named Plaintiffs as Settlement Class Representatives; (3) appoint Settlement Class Counsel as counsel for the Settlement Class; and (4) approve the Settlement as fair, reasonable, and adequate.

DATED: February 2, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on February 2, 2026, I caused the foregoing to be filed via the Court's electronic filing system which will notify all counsel of record of the same.

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