UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT
HARTFORD DIVISION

Beth Andrew-Berry, individually and as a representative of the GWA, LLC 401(k) Profit Sharing Plan and a class of similarly situated persons,

Plaintiff,

v.

George A. Weiss and GWA, LLC,

Defendants.

Case No.: 3:23−CV−00978−OAW

August 4, 2025

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

On May 30, 2025, this Court preliminarily approved the Parties' Class Action Settlement Agreement, which resolves Class Representative Beth Andrew-Berry's claims against Defendants GWA, LLC ("GWA") and George. A. Weiss. The Class's claims arise under the Employee Retirement Income Security Act ("ERISA") and relate to the GWA, LLC 401(k) Profit Sharing Plan (formerly known as the George Weiss Associates, Inc. 401(k) Profit Sharing Plan) (the "Plan").[1] In its preliminary approval order, ECF No. 59, the court found the Settlement to be fair on a procedural and substantive basis. The Court also recognized that "Plaintiff and Defendants were and are represented by capable counsel who are experienced and knowledgeable in complex class litigation," *id.* at 10, and that the Settlement amount "is a substantial recovery given the number of members in the class," *id.* at 11.

Since that time, an independent fiduciary to the Plan, Newport Trust Company, LLC ("Newport Trust"), reviewed the Settlement terms and concluded that the terms are reasonable. *See* Declaration of Michelle C. Yau in Support of Motion for Final Approval and Motion for Attorneys' Fees, Expense Reimbursements, and Class Representative Service Award ("Yau 2nd Decl."), Ex. 1 (hereinafter, "Newport Trust Report"). As discussed further below, an independent fiduciary is required where, as here, a settlement will release claims of an ERISA-governed Plan.

If approved, the Settlement will result in a substantial gross average recovery of $26,000 per Class Member. Plaintiff respectfully requests that the Court grant final approval of the Settlement expeditiously in light of the fact that both Defendants have filed for bankruptcy. The Settlement represents a meaningful recovery for all Class Members, which is especially critical

[1] Unless otherwise specified, all capitalized terms have the meaning assigned to them in Article 1 of the Parties' Settlement Agreement, which appears on the docket at ECF No. 52-1 (the "Settlement" or "Settlement Agreement").

given the financial uncertainty for former employees caused by GWA's bankruptcy and cessation of its operations. Defendants do not oppose this motion as Parties to the Settlement, and, as of the date of this motion, the Class has lodged no objections to the Settlement.

BACKGROUND[2]

I. Procedural History

Class Representative Andrew-Berry, the former head of Human Resources at Defendant GWA, filed this Action individually and on behalf of the Plan and its participants on July 24, 2023. *See* ECF No. 1. In summary, Plaintiff alleged that Defendants—both fiduciaries of the Plan—violated ERISA by investing the Plan's assets entirely in a hedge fund named the Weiss Multi-Strategy Partners (Cayman) Ltd. Fund and a mutual fund named the Weiss Multi-Strategy Fund (together, the "Weiss Funds"), both affiliated with GWA. The ERISA claims alleged against them were: (1) breaches of their fiduciary duties; (2) prohibited transactions in violation of ERISA; and (3) co-fiduciary liability for each other's alleged breaches of fiduciary breaches. *Id.* at 26-32, Counts I-IV. Defendants moved to dismiss the Complaint on October 31, 2023, ECF Nos. 32-34, Plaintiff responded on December 11, 2023, ECF Nos. 36-37, and Defendants replied on January 11, 2024, ECF No. 38.

II. Discovery and Mediation

While the motion to dismiss was pending, Plaintiff sought to engage in discovery, but Defendants asserted that discovery should be delayed until after their motion to dismiss was resolved. The Court ordered the Parties to meet and confer to discuss "reasonable limitations on discovery pending resolution of the motion to dismiss." ECF No. 31. The Parties agreed to proceed

[2] Parts I – II of this Background section were previously recounted in Plaintiff's briefing in support of her Motion for Preliminary Approval of the Settlement, ECF No. 51, and Plaintiff's contemporaneous briefing in support of her Motion for Attorneys' Fees, Expense Reimbursements, and Class Representative Service Award. For ease of reference, those parts are recounted again here.

with discovery with certain limitations. *See* Declaration of Michelle C. Yau in Support of Plaintiff's Motion for Preliminary Approval ("Yau 1st Decl."), ECF 52 ¶ 18. During this discovery period, Plaintiff served requests for production on Defendants, to which Defendants produced thousands of pages of documents. *Id.* ¶ 19. These documents related to the Plan, its investment, and the Class Members' Plan accounts. *See id.* ¶ 20. Class Counsel also engaged a highly qualified financial expert consultant to assist in evaluating the evidence and estimating potential damages for the Class Members. *See id.*; *see also* Declaration of Steve Pomerantz in Support of Plaintiff's Motion for Final Approval ("Pomerantz Decl.") ¶ 22, Ex. 1.

On April 4, 2024, before the Court ruled on the motion to dismiss, the Parties jointly moved to stay the case for ten weeks to mediate. *See* ECF No. 42. On April 29, 2024, however, GWA filed a voluntary petition under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York (hereinafter, "N.Y. Bankruptcy Court"). Voluntary Petition, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743 (Bankr. S.D.N.Y. Apr. 29, 2024), ECF No. 1. On May 13, 2024, GWA filed a Notice of Bankruptcy in this Court, apprising the Court that prosecution of the case was automatically stayed as to GWA pursuant to Section 362(d) of the Bankruptcy Code. *See* ECF No. 44.

Defendants also advised Plaintiff "that it would be necessary to postpone the mediation, as the bankruptcy filing called into question whether a fiduciary insurance policy held by GWA . . . remained available in light of the automatic stay." *See* ECF No. 45 ¶ 4. On June 12, 2024, GWA and related debtors moved to lift the automatic stay in the N.Y. Bankruptcy Court to allow for advancement of defense costs from a fiduciary liability policy. Motion for Relief from Stay, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743, (Bankr. S.D.N.Y. June 12, 2024), ECF No. 76. Plaintiff opposed this motion to the extent that the insurance policy would be

used on anything other than resolving this Action. Plaintiff's Limited Objection to Motion for Relief from Stay, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743, (Bankr. S.D.N.Y. June 26, 2024), ECF No. 106. Thereafter, Plaintiff's and GWA's bankruptcy counsel negotiated the appropriate scope of stay relief and, on July 2, 2024, the N.Y. Bankruptcy Court entered an order approving the relief sought in the motion, as amended following discussions with Class Counsel. Order, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743 (Bankr. S.D.N.Y. July 2, 2024), ECF No. 122. Later, on August 6, 2024, the N.Y. Bankruptcy Court entered an order approving a stipulation between the Debtors and Plaintiff modifying the automatic stay to permit GWA to participate in mediation on August 15, 2024. Stipulation and Order, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743 (Bankr. S.D.N.Y. Aug. 6, 2024), ECF No. 162.

Once Weiss received approval from the Bankruptcy Court to move forward with mediation, the Parties engaged in private mediation with Robert Meyer of JAMS on August 15, 2024. *See* Yau 1st Decl. ¶ 26. Following extensive arms'-length negotiations (both during the mediation and thereafter, all with the assistance of Mr. Meyer), the Parties signed a term sheet on August 23, 2024. *Id.* The Parties then executed a comprehensive Settlement Agreement. *Id.* Under the Settlement, $7,900,000.00 will be paid into a common settlement fund (the "Qualified Settlement Fund"). Settlement §§ 1.34, 5.2. Following any Court-approved deductions for (a) attorneys' fees and expenses, (b) the class representative service award, and (c) administrative expenses, the Net Settlement Amount will be distributed to the Settlement Class. *Id.* §§ 1.36, 7.1-7.3.

Almost a year later, on June 4, 2025, Mr. Weiss also filed for Chapter 11 bankruptcy in the Southern District of Florida. *See* Voluntary Petition, *In re George Allen Weiss*, 1:25-bk-16349 (Bankr. S.D. Fla. June 4, 2025), ECF No. 1. Class Counsel again consulted with their bankruptcy counsel and were admitted into the U.S. Bankruptcy Court for the Southern District of Florida (hereinafter, "Fla. Bankruptcy Court") in order to address Mr. Weiss's motion

to lift the automatic stay in the Fla. Bankruptcy Court, which would allow the Parties to proceed with the settlement approval proceedings as contemplated by this Court's Order. *See* Motion for Limited Relief from the Automatic Stay, *In re George Allen Weiss*, 1:25-bk-16349 (Bankr. S.D. Fla. June 20, 2025), ECF No. 43. Class Counsel appeared at the hearing where the motion for stay relief was presented, and the Fla. Bankruptcy Court granted the motion on July 30, 2025. *See* Order, *In re George Allen Weiss*, 1:25-bk-16349 (Bankr. S.D. Fla. July 30, 2025), ECF No. 118.

III. Overview of Settlement Terms

A. The Settlement Class

In granting preliminary approval of the Settlement Agreement, the Court preliminarily certified the following Settlement Class:

> [A]ll participants and beneficiaries of the GWA, LLC 401(k) Profit Sharing Plan (F/K/A the George Weiss Associates, Inc. 401(k) Profit Sharing Plan) from July 24, 2017 to the Effective Date of Settlement, excluding Defendant George A. Weiss and any of his relatives, heirs, or trusts for which he and/or his family members are beneficiaries or trustees.

ECF No. 59 at 13; Settlement § 1.11. Based on information from the Plan's recordkeeper, there are 302 Class Members. *See* Declaration of Jeff Mitchell in Support of Final Approval ("Mitchell Decl.") ¶ 9.

B. Monetary Relief and Plan of Allocation

Under the Settlement, GWA or its insurers will pay a Gross Settlement Amount of $7,900,000 into a Qualified Settlement Fund. Settlement §§ 1.34, 5.2. After accounting for any Attorneys' Fees and Expenses, Administrative Expenses, and the Class Representative Service Award approved by the Court, the Net Settlement Amount will be distributed to eligible Class Members in accordance with the Plan of Allocation in the Settlement. *Id.* §§ 6.1-6.8.

The Plan of Allocation provides for calculation of a Settlement Allocation Score for each Class Member, which reflects the Member's level of investment in the Weiss Funds relative to other Class Members. *Id.* Based on that score, the Settlement Administrator will determine the amount each Class Member will be paid from the Settlement. *Id.* § 6.1(b). If the dollar amount of the settlement payment to a Class Member is calculated by the Settlement Administrator to be less than $2.00, then that Class Member's pro rata share will be zero (to minimize administrative expenses associated with any *de minimis* payments) and will be reallocated among the remaining Class Members on a pro rata basis. *Id.*

All Class Members will receive their payment by check, unless they elect to have their distribution rolled over to an individual retirement account or other eligible employer plans. *Id.* §§ 6.2-6.3. The Settlement Agreement also provides for automatic payments to Beneficiaries and Alternate Payees under a Qualified Domestic Relations Order. *Id.* § 6.4. Participants are not required to submit a claim form to receive payment. *See id.* §§ 6.2-6.4; Mitchell Decl., Ex. 1 ("Class Notice") § 7.

C. Release of Claims

In exchange for the relief provided by the Settlement, the Settlement Class and the Plan will release Defendants and affiliated parties (the "Released Defendant Parties") from all claims:

- That were asserted in the Action or that arise out of, relate to, are based on, or have any connection with any of the allegations, acts, omissions, purported conflicts, representations, misrepresentations, facts, events, matters, transactions or occurrences that were asserted in the Action . . . or could have been asserted based on the identical factual predicate;[3]
- [T]hat would be barred by *res judicata* based on the Court's entry of the Final Approval Order;
- [T]hat arise from or relate to the direction to calculate, the calculation of, and/or the method or manner of the allocation of the Net Settlement Amount pursuant to the Plan of

[3] The release language goes on to provide certain examples that are not repeated here due to space limitations. The full release language, incorporated by reference, appears in Section 1.40 of the Settlement Agreement.

Allocation; or

- [T]hat arise from or relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

Settlement § 1.40. The Released Claims do not include claims to enforce the Settlement Agreement or claims for denial of benefits from the Plan. *Id.* §§ 1.40, 8.1(c).

IV. Class Notice and Reaction to Settlement

Pursuant to the Court's Preliminary Approval Order, Analytics Consulting LLC ("Analytics"), the Court-appointed Settlement Administrator, mailed Notices of Settlement to the Class Members ("Class Notice") to each of the Class Members identified by the Plan's recordkeeper on June 20, 2025. *See* Mitchell Decl. ¶¶ 7-9. In total, 302 Class Notices were mailed, *id.* ¶ 9, each with a copy of the Rollover form; *id.* ¶ 10; *see id.*, Ex. 2 ("Rollover Form").

Prior to sending these Notices, Analytics cross-referenced the addresses on the class list with the United States Postal Service National Change of Address database and updated addresses as needed. Mitchell Decl. ¶ 8. In the event that any Class Notices were returned without a forwarding address, Analytics conducted a search to ascertain a valid address for the affected Class Member and re-mailed the Notices and Rollover Forms to the updated addresses. *Id.* ¶ 11. As a result, the notice program was very effective. Out of 302 Class Notices that were mailed, only one (or 0.33%) was ultimately undeliverable. *Id.* ¶ 12.

The Class Notice provided fulsome information to the Settlement Class regarding, among other things: (1) the nature of the claims; (2) the scope of the Settlement Class; (3) the terms of the Settlement; (4) Class Members' right to object to the Settlement and the deadline for doing so; (5) the Class's release of claims; (6) the identity of Class Counsel and the amount of compensation they would seek in connection with the Settlement; (7) the amount of the proposed Class

Representative Service Award; (8) the date, time, and location of the final approval hearing; and (9) Class Members' right to appear at the final approval hearing. *See* Class Notice.

If any Class Members desired further information, Analytics established a settlement website at www.WeissERISAsettlement.com. Mitchell Decl. ¶ 13.

> Among other things, the Settlement Website includes: (1) a "Frequently asked Questions" page containing a clear summary of essential case information; (2) a "Home" page and "Important Dates" page, each containing a clear notice of applicable deadlines; (3) a "Important Case Documents" page, which includes case and settlement documents for download (including, among other things, the Settlement Agreement, Class Notice, Rollover Form, and the Court's Preliminary Approval Order); (4) contact information for Class Counsel and Defendants' Counsel; and (5) email, phone, and U.S. mail contact information for Analytics.

Id. In addition, Analytics created and has maintained a toll-free telephone support line (1-877-620-4842) as a resource for Class Members seeking information about the Settlement. *Id*. ¶ 14. This telephone number was referenced in the Notices and also appears on the Settlement Website. *Id.* Several Class Members have contacted Analytics via the toll-free telephone, email, and mailing address that was provided in the Class Notice. Specifically, as of July 30, 2025, Analytics "received 31 calls to the telephone support line, 12 emails, and 1 communication via U.S. mail regarding the settlement." *Id.* ¶ 15.

The deadline to submit objections to the Settlement is August 14, 2025. ECF No. 59 at 13. As of the date of this motion, Class Counsel and Analytics are not aware of any objections to the Settlement. Yau 2nd Decl. ¶ 29; Mitchell Decl. ¶ 15.

V. Independent Fiduciary Review

Pursuant to Section 3.2 of the Settlement and the applicable Department of Labor ("DOL") regulation set forth in the Prohibited Transaction Exemption 2003-39 (the "PTE 2003-39"), "Release of Claims and Extensions of Credit in Connection with Litigation," the Settlement was reviewed by an independent fiduciary, Newport Trust, following the Court's Preliminary Approval

Order. *See* 68 Fed. Reg. 75632 (Dec. 31, 2003), *as amended*, 75 Fed. Reg. 33830 (June 15, 2010). As set forth in PTE 2003-39, several requirements must be met for an ERISA-governed plan to release claims against plan fiduciaries. 75 Fed. Reg. 33830 at 33836−37. Among other things, PTE 2003-39 requires that a settlement be "reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone." *Id.* at 33836. Accordingly, Newport Trust was retained to review and consider whether to approve the Settlement, including (i) the scope of the release of claims, (ii) the Settlement recovery, (iii) the Plan of Allocation, (iv) whether the Settlement terms are reasonable, and (v) whether the Settlement complied with all relevant requirements set forth in PTE 2003-39. *See* Newport Trust Report.

"As part of its investigation, the team from Newport Trust spoke at length with Class Counsel and Defendants' Counsel about the litigation, the proposed Settlement, and Counsel's evaluation of the risks, including the costs of litigation versus the likelihood of full recovery." Yau 2nd Decl. ¶ 43. After reviewing the Settlement, Newport Trust issued a report dated July 25, 2025, whereby Newport Trust, acting as an independent fiduciary to the Plan, approved and authorized the Settlement based on its determination that the Settlement satisfied the requirements of PTE 2003-39. *See* Newport Trust Report. Newport Trust found, among other things, that:

> i. the Settlement terms, including the scope of the release of claims, the $7,900,000 Settlement amount and any non-monetary relief provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone;
>
> ii. the terms and conditions of the transaction are no less favorable to the Plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; and
>
> iii. the transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.

Id. at 2-3. In sum, the review and approval of the Settlement by Newport Trust, an independent fiduciary with expertise in ERISA, provides additional support that the Settlement is fair and reasonable.

ARGUMENT

I. The Settlement Meets the Standard for Final Approval

Rule 23(e) of the Federal Rules of Civil Procedure requires judicial approval of any settlement that will bind absent class members. Fed. R. Civ. P. 23(e)(2). After notice to class members and a hearing, a court may approve a class action settlement if it is "fair, adequate, and reasonable, and not a product of collusion." *Joel A. v. Giuliani*, 218 F.3d 132, 138−39 (2d Cir. 2000).

The decision whether to approve a proposed class action settlement is a matter of judicial discretion. *See Maywalt v. Parker & Parsley Petroleum Co.*, 67 F.3d 1072, 1077-79 (2d Cir. 1995). However, there is "strong judicial policy in favor of settlements, particularly in the class action context." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005) (quoting *In re PaineWebber Ltd. P'ships Litig.*, 147 F.3d 132, 138 (2d Cir. 1998)); 4 Newberg on Class Actions § 11:41 (4th ed. 2002). As a result, "courts . . . give proper deference to the private consensual decision of the parties . . . [and] should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation" *Clark v. Ecolab, Inc.*, 2009 WL 6615729, at *3 (S.D.N.Y. Nov. 27, 2009) (internal quotation marks and citations omitted). Accordingly, courts will "stop short of the detailed and thorough investigation that [they] would undertake if [they] were actually trying the case" because "[s]uch procedure would emasculate the very purpose for which settlements are made." *City of Detroit v. Grinnell Corp.*, 495 F.2d 448, 462 (2d Cir. 1974), *abrogated on other grounds by Goldberger v. Integrated Res., Inc.*, 209 F.3d 43 (2d Cir. 2000).

When deciding whether to approve a settlement under Rule 23(e)(2), courts consider four factors: (1) the adequacy of representation; (2) the existence of arms'-length negotiations; (3) the adequacy of relief; and (4) the equitableness of treatment of class members. Fed. R. Civ. P. 23(e)(2). Each of these factors support preliminary approval of the Settlement here.[4]

A. The Class Is Adequately Represented

Rule 23(e)(2)(A) requires a Court to find that "the class representatives and class counsel have adequately represented the class."

Class Representative Andrew-Berry has adequately represented the Settlement Class. At the outset of the case, she signed a written acknowledgement of her duties as the class representative, and she has fulfilled those duties throughout the course of this case. *See* Declaration of Beth Andrew-Berry in Support of Preliminary Approval ("Andrew-Berry 1st Decl."), ECF No. 53 ¶¶ 4-6; *see also* Declaration of Beth Andrew-Berry in Support of Final Approval and Attorneys' Fees, Expense Reimbursements, and Class Representative Service Award and Final Approval ("Andrew-Berry 2nd Decl."). Among other things, Plaintiff: (1) searched for and retained Cohen Milstein to represent the class; (2) assisted counsel in the investigation of this matter; (3) provided Class Counsel with critical evidence of Defendants' breaches; (4) identified key witnesses and sources of information; (5) reviewed case materials (pleadings, settlement agreement, etc.); (6) produced documents to Defendants as part of Plaintiff's initial disclosures; and (7) regularly communicated with Class Counsel about the case. Andrew-Berry 2nd Decl. ¶ 5; Yau 2nd Decl.

[4] The Rule 23(e) factors "supplement rather than displace the[] '*Grinnell*' factors" previously applied in this Circuit. *In re GSE Bonds Antitrust Litig.*, 2019 WL 6842332, at *1 (S.D.N.Y. Dec. 16, 2019). The nine *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; (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation." *Grinnell Corp.*, 495 F.2d at 463. Consistent with the intent of the 2018 amendments, only those *Grinnell* factors that are relevant to this Settlement are addressed here.

¶¶ 48-51. Plaintiff also falls within the proposed Settlement Class and is not aware of any conflicts between herself and any other Class Members. Andrew-Berry 1st Decl. ¶¶ 2-3, 6.

Class Counsel is also more than adequate. As the Court acknowledged, Class Counsel are "capable counsel who are experienced and knowledgeable in complex class litigation." ECF No. 59 at 10. Cohen Milstein Sellers & Toll PLLC ("Cohen Milstein") is a leader in class action litigation generally and has a premier ERISA class action practice that is nationally recognized. Yau 1st Decl. ¶ 4. Based on its many successes, Cohen Milstein was selected as the Plaintiff Law Firm of the Year – 2025 by *The National Law Journal*, and Michelle Yau—lead Plaintiff's Counsel on this matter—was selected as one of the "Elite Women of the Plaintiffs Bar" in 2025. Yau 2nd Decl. ¶ 5. Cohen Milstein has previously been named one of the ten "Most Feared Plaintiffs Firms" by *Law360* and a "class action powerhouse" by Forbes. Yau 1st Decl. ¶ 4.

Cohen Milstein also has had a dedicated ERISA litigation practice for over twenty years and has played a significant role in the development of employee benefits law. *Id.* ¶ 5. Cohen Milstein's ERISA practice was named by *Law360* as "Practice Group of the Year—Benefits" in 2019, 2021, and 2022. *Id.* And from 2022 through 2025, the leading attorney-ranking service, *Chambers USA*, placed Cohen Milstein's in its highest ranking for ERISA litigation of nationwide ERISA litigation firms (First Band). Yau 2nd Decl. ¶ 7. As seasoned class action practitioners, Class Counsel have successfully achieved hundreds of millions of dollars in recovery for ERISA classes arising from use of proprietary funds in their 401(k) plans and asserting similar claims, including in recent cases against New York Life Insurance, Wells Fargo, T. Rowe Price, and BlackRock. Yau 1st Decl. ¶ 6; Yau 2nd Decl. ¶¶ 8, 14.

In this case, Class Counsel also thoroughly investigated the claims, litigated the motion to dismiss, vigorously sought discovery from Defendants, engaged a financial expert to determine

the amount of damages suffered by the Class, and skillfully negotiated the present Settlement, all while managing concurrent bankruptcy proceedings in two different bankruptcy courts. *See supra* at 2-5; Yau 2nd Decl. ¶¶ 24-25, 36. Accordingly, Class Representative Andrew-Berry and Class Counsel have more than adequately represented the class.

B. The Settlement Was Negotiated at Arm's Length After Extensive Discovery

The second Rule 23(e) factor examines whether "the proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2)(B). "[T]he stage of the proceedings and the amount of discovery completed" are pertinent to the Court's review for procedural fairness. *Kemp-DeLisser v. Saint Francis Hosp. & Med. Ctr.*, 2016 WL 6542707, at *8 (D. Conn. Nov. 3, 2016) (citation omitted). Moreover, negotiations with the assistance of an experienced mediator are also indicative of procedural fairness. *See Glover v. Conn. Gen. Life. Ins. Co.*, 2024 WL 4036721, at *9 (D. Conn. Sept. 4, 2024) ("That the negotiations included active participation by an experienced mediator supports finding that the Settlement is procedurally fair." (citation omitted)); *see also Morris v. Affinity Health Plan, Inc.*, 859 F. Supp. 2d 611, 618 (S.D.N.Y. 2012) ("The involvement of Ruth D. Raisfeld, Esq., an experienced and well-known employment and class action mediator, is . . . a strong indicator of procedural fairness.").

Discovery provided Plaintiff with adequate information to settle the case. Defendants produced, and Plaintiff reviewed, 1,945 documents in response to Plaintiff's requests for production, which included foundational Plan documents, documents related to Defendants' investments, and Class Members' Plan accounts. Yau 1st Decl. ¶¶ 19-20; *see Godson v. Eltman, Eltman, & Cooper, P.C.*, 328 F.R.D. 35, 56 (W.D.N.Y. 2018) ("To approve a proposed settlement, the Court need not find that the parties have engaged in extensive discovery . . . it is enough for the parties to have engaged in sufficient investigation of the [claims.]" (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 176 (S.D.N.Y. 2000)). Class Counsel also

engaged a financial expert consultant to assist in evaluating the evidence and in estimating potential damages. Yau 1st Decl. ¶ 20; *see also* Pomerantz Decl. Finally, as the Court recognized, the Parties engaged in mediation with an experienced JAMS mediator and only after extensive arms'-length negotiation, came to an agreement. *See* ECF No. 59 at 10 ("the Agreement resulted from negotiations mediated by JAMS, a reputable and well-regarded arbitration firm, after and while the parties engaged in discovery."); *see also* Yau 1st Decl. ¶ 26. These measures allowed Class Counsel to sufficiently assess the strengths and potential weaknesses of the case prior to entering the Settlement Agreement. Yau 1st Decl. ¶ 20. Accordingly, these circumstances favor settlement approval.

C. The Settlement Provides Significant Relief to Class Members that is Adequate Based on All Relevant Considerations

As the Court recognized, the Parties' negotiations resulted in a Settlement that provides substantial relief to the Settlement Class. *See* ECF No. 59 at 11 (the Settlement amount "is a substantial recovery given the number of members in the class."). The $7.9 million settlement amount is a robust monetary recovery that represents a significant portion of the alleged losses sustained by the Plan. Specifically, Plaintiff's financial expert consultant estimated that the total losses associated with Defendants' alleged breaches of fiduciary duties were between $21.8 million to $47.9 million. Pomerantz Decl. ¶ 22. Based on this estimate, the $7.9 million recovery represents approximately 17 to 36% of the total estimated losses.[5] *Id.* This is an excellent outcome given that both named Defendants have declared bankruptcy, leaving no solvent party from whom the Class could recover.

[5] Dr. Pomerantz assessed the losses the Plan suffered as a result of the alleged fiduciary breaches. Pomerantz Decl. ¶¶ 10-13. He determined that the Plan's losses ranged from $21.8 to $47.9 million. *Id.* ¶ 22. Due to a scrivener's error, Plaintiff's Motion for Preliminary Approval stated the Plan's losses ranged from $21.8 to $46.9 million. ECF No. 51 at 12. The range of recovered losses—approximately 17% to 36%—remains unchanged due to the *de minimis* impact of the scrivener's error.

Moreover, Plaintiff's percentage of recovery is on par with numerous other ERISA class action settlements across the country, including in this Circuit. *See, e.g.*, *Kohari v. MetLife Grp., Inc.*, 2025 WL 100898, at *10 (S.D.N.Y. Jan. 15, 2025) (19-27% of total estimated losses "is well within the range found to be fair and reasonable."); Memorandum, *Krohnengold v. N.Y. Life Ins. Co.*, No. 1:21-cv-01778 (S.D.N.Y. Feb. 26, 2024), ECF No. 194 at 13, *approved by* Order (S.D.N.Y. July 18, 2024), ECF No. 202 (ERISA settlement involving proprietary funds represented between 20-25% of the total calculated losses); Memorandum of Law, *Kohari v. MetLife Grp., Inc.*, No. 1:21-cv-06146 (S.D.N.Y. Nov. 20, 2023), ECF No. 133 at 12, *approved by* Final Approval Order (S.D.N.Y. Jan. 14, 2025), ECF No. 139 (ERISA settlement involving proprietary funds represented 19% of plaintiffs' highest measure and 27% of plaintiffs' lowest measure of damages); Memorandum of Law, *Jacobs v. Verizon Commc'ns. Inc.*, No. 1:16-cv-01082 (S.D.N.Y. July 7, 2023), ECF No. 234 at 20 (settlement represented approximately 13−29.2% of alleged losses to plan), *approved by* Final Approval Order (S.D.N.Y. Nov. 21, 2023), ECF No. 247; Memorandum of Law, *Bhatia v. McKinsey & Co., Inc.*, No. 1:19-cv-01466 (S.D.N.Y. Feb. 3, 2021), ECF No. 101 at 15 (settlement represented 21-22% of disputed fees paid to McKinsey affiliate), *approved by* Order (S.D.N.Y. Feb. 17, 2021), ECF No. 110.[6]

If approved, the Settlement will provide an average gross recovery of $26,000 per Class Member. This is a meaningful recovery, especially given the fact that both Defendants are currently insolvent.

[6] *See also* Memorandum in Support of Motion for Final Approval, *Toomey v. DeMoulas Super Mkts., Inc.*, No. 1:19-cv-11633 (D. Mass. Mar. 24, 2021), ECF No. 95 at 10, *approved by* Order (D. Mass. Apr. 7, 2021), ECF No. 100 (approving settlement that represented approximately 15-20% of alleged losses); Memorandum in Support of Preliminary Approval, *Price v. Eaton Vance Corp.*, No. 1:18-cv-12098 (D. Mass. May 6, 2019), ECF No. 32 at 12, *approved* Order (D. Mass. Sept. 24, 2019), ECF No. 57 (23% of alleged losses); *Sims v. BB&T Corp.*, 2019 WL 1995314, at *5 (M.D.N.C. May 6, 2019) (19% of estimated losses); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2018 WL 8334858, at *4 (C.D. Cal. July 30, 2018) (approximately 17.7% of losses under plaintiffs' highest model), *judgment entered*, 2018 WL 8334847 (C.D. Cal. July 30, 2018); *Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, 2018 WL 2183253, at *5 (N.D. Cal. May 11, 2018) (approximately 10% of losses under plaintiffs' highest model).

The specific subfactors enumerated in Rule 23(e)(2)(C) further support approval of the Settlement. Those factors include:

> (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).

Fed. R. Civ. P. 23(e)(2)(C). Each of these factors are briefly discussed below.

1. The Risks, Costs, and Delay of Further Litigation Were Significant

In the absence of a settlement, Plaintiff would have faced extreme risks—both the typical litigation risks as well as collectability risks due to GWA and Mr. Weiss's bankruptcies. *See, e.g.*, *Kemp-DeLisser*, 2016 WL 6542707, at *7 ("Many courts recognize the particular complexity of ERISA breach of fiduciary duty cases such as this one," which "is in addition to the general risk inherent in litigating complex claims to their conclusion." (citation modified)); *In re WorldCom, Inc. ERISA Litig.*, 2004 WL 2338151, at *6 (S.D.N.Y. Oct. 18, 2004) (noting that there is a "general risk inherent in litigating complex claims such as these to their conclusion"), *order clarified sub nom. In re Worldcom, Inc. ERISA Litig.*, 2004 WL 2922083 (S.D.N.Y. Dec. 17, 2004).

Several hurdles remained for Plaintiff at the time of settlement. First, Plaintiff had not yet filed for class certification, which Defendants likely would have opposed. Second, in the event the Court granted class certification, Defendants likely would have moved for summary judgment based on a recent Second Circuit decision affirming summary judgment in favor of defendants in another ERISA proprietary funds case in the Southern District of New York. *See Falberg v. Goldman Sachs Grp., Inc.*, 2024 WL 619297 (2d Cir. Feb. 14, 2024). Although Plaintiff believes

Falberg is distinguishable on its facts, the decision highlights the risks of a case such as this one. Third, and last, if the case had proceeded to trial, Defendants might have prevailed. *See, e.g.*, *Sacerdote v. N.Y.U.*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018) (ERISA breach of fiduciary duty bench trial decided in favor of defendants), *aff'd*, 9 F.4th 95 (2d Cir. 2021); Judgment, *Vellali v. Yale Univ.*, No. 3:16-cv-01345 (D. Conn. July 13, 2023), ECF No. 622 (jury returned a verdict in favor of defendants on all claims). And even if Plaintiff prevailed on liability, issues regarding proof of loss would have remained. *See* Restatement (Third) of Trusts § 100 cmt. b(1) (2012) (determination of losses in breach of fiduciary duty cases is "difficult"); *Sacerdote*, 328 F. Supp. 3d at 280 (finding that "while there were deficiencies in the Committee's [fiduciary] processes—including that several members displayed a concerning lack of knowledge relevant to the Committee's mandate—plaintiffs have not proven that . . . the Plans suffered losses as a result").

Moreover, while Plaintiff strongly believed in the merits of her claims, continuing the litigation would have, at a minimum, resulted in complex and costly proceedings that would have delayed relief to the class. ERISA 401(k) cases such as this "often lead[] to lengthy litigation." *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015). Indeed, ERISA class cases can extend for a decade before final resolution, sometimes going through multiple appeals. *See, e.g.*, *Tussey v. ABB, Inc.*, 850 F.3d 951, 954-56 (8th Cir. 2017) (recounting lengthy procedural history of case that was initially filed in 2006 and remanding to district court a second time); *Tibble v. Edison Int'l*, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining remaining issues ten years after suit was filed in 2007). The duration of these cases is, in part, a function of their complexity, which further weighs in favor of approving the Settlement. *See In re Marsh ERISA Litig.*, 265 F.R.D. 128, 138 (S.D.N.Y. 2010) ("Many courts have recognized the complexity of ERISA breach of fiduciary duty" cases.).

Lastly, the risks of delay and non-recovery were particularly acute in this Action due to GWA and Mr. Weiss's bankruptcies. *See* Voluntary Petition, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743, ECF No. 1; Voluntary Petition, *In re George Allen Weiss*, 1:25-bk-16349, ECF No. 1. Both Defendants are now subject to an automatic stay pursuant to Section 362(d) of the Bankruptcy Code, which has been lifted solely to allow Defendants to participate in these settlement proceedings. *See* Order, *In re George Allen Weiss*, 1:25-bk-16349 (Bankr. S.D. Fla. July 30, 2025), ECF No. 118; Stipulation and Order, *In re Weiss Multi-Strategy Advisers LLC*, No. 1:24-bk-10743 (Bankr. S.D.N.Y. Aug. 6, 2024), ECF No. 162; *see also Springer v. Code Rebel Corp.*, 2018 WL 1773137, at *3-4 (S.D.N.Y. Apr. 10, 2018) (recognizing that an automatic stay due to defendant's bankruptcy would significantly delay proceedings). Even if Plaintiff were ultimately successful in winning a monetary judgment years from now, Defendants' bankruptcies would make it difficult (at best) to collect any judgment. *Guevoura Fund Ltd. v. Sillerman*, 2019 WL 6889901, at *8 (S.D.N.Y. Dec. 18, 2019) (determining that defendant's bankruptcy weighed in favor of approving settlement because the bankruptcy "adds substantially to the difficulties and risks facing plaintiff's counsel in achieving a recovery for a class" (collecting cases)). Thus, given the risks, costs, and delay of further litigation, it was reasonable and appropriate for Plaintiff to reach a settlement on the terms that were negotiated.

2. The Proposed Method of Distributing Relief to the Class Is Effective

The proposed method of distributing the Settlement proceeds is fair and reasonable. As previously stated, all Class Members will receive a check, unless they elect a tax-qualified rollover of their distribution to an individual retirement account or other eligible employer plan. *See supra* at 18-19; *see also* Settlement § 6.3(a). This method of distribution is both effective and efficient, and similar to methods that have been approved in other 401(k) settlements in the Second Circuit. *See* Class Action Settlement Agreement, *Krohnengold*, No. 1:21-cv-01778 (S.D.N.Y. Feb. 26,

2024), ECF No. 176-1 § 5, *approved by* Order (S.D.N.Y. July 18, 2024), ECF No. 202; Memorandum of Law, *Beach v. JPMorgan Chase Bank*, No. 1:17-cv-00563 (S.D.N.Y. Aug. 21, 2020), ECF No. 220 at 7, 19, *approved by* Order, 2020 WL 6114545 (S.D.N.Y. Oct. 7, 2020). Further, any uncashed checks will "be paid as a *cy pres* award to the Council of Economic Education," *see* Settlement § 6.6, and will not revert to Mr. Weiss, GWA, or GWA's insurers.[7]

3. The Settlement Terms Regarding Attorneys' Fees Are Reasonable

As set forth more fully in Plaintiff's pending Motion for Attorneys' Fees, the Settlement terms relating to attorneys' fees are also fair and reasonable. The Settlement does not provide for the award of a specific amount of attorneys' fees and is not conditioned on the award of any such fees. *See* Settlement § 7. For purposes of the present case, Class Counsel have voluntarily limited their request for attorneys' fees to one-third of the Gross Settlement Amount, consistent with the amounts approved in other ERISA cases in this Circuit. *See* Final Order and Consent Judgment, *Haddock v. Nationwide Life Ins. Co.*, No. 3:01-cv-01552 (D. Conn. Apr. 9, 2015), ECF No. 601 (approving 35% fee in ERISA case); *see also* Order, *Beach*, No. 1:17-cv-00563 (S.D.N.Y. Oct. 7, 2020), ECF No. 232 (approving 33% attorneys' fee in ERISA case); Order, *Jacobs*, No. 1:16-cv-01082 (S.D.N.Y. Nov. 21, 2023), ECF No. 247 (same); *In re J.P. Morgan Stable Value Fund ERISA Litig.*, 2019 WL 4734396, at *4-6 (S.D.N.Y. Sept. 23, 2019) (same); Order, *Carver v. Bank of New York Mellon*, No. 1:17-cv-10231 (S.D.N.Y. May 23, 2019), ECF No. 11 (same); Order, *Leber v. The Citigroup 401(k) Pension Plan Inv. Comm.*, No. 1:07-cv-09329 (S.D.N.Y. Jan. 3, 2019), ECF No. 294 (same); *Osberg v. Foot Locker, Inc.*, No. 1:07-cv-1358 (S.D.N.Y. June 8, 2018), ECF No. 423, at 3-5 (same); *Andrus v. New York Life Ins. Co.*, No. 1:16-cv-05698 (S.D.N.Y. June 15, 2017), ECF No. 83, at 2 (same); *In re Marsh ERISA Litig.*, 265 F.R.D. at 149

[7] A *cy pres* award to the Council of Economic Education was approved in a similar 401(k) settlement. *See* Order, *Moitoso v. FMR LLC*, No. 1:18-cv-12122 (D. Mass. Sept. 21, 2021), ECF No. 274.

(same); *Spann v. AOL Time Warner Inc.*, 2005 WL 1330937, at *3, *9 (S.D.N.Y. June 7, 2005) (same).

Lastly, Newport Trust, acting as the Plan's Independent Fiduciary, expressly found that "the amount of the attorneys' fees and other amounts paid from the recovery [] are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims foregone." Newport Trust Report at 1-2.

4. There Are No Separate Agreements

As the Settlement states, "[t]his Settlement Agreement and all of the exhibits appended hereto constitute the entire agreement of the Parties with respect to their subject matter" and "[n]o representations or inducements have been made by any Party hereto concerning the Settlement Agreement or its exhibits other than those contained and memorialized in such documents." Settlement § 12.5. Accordingly, there are no separate agreements bearing on the proposed Settlement. *See* Fed. R. Civ. P. 23(e)(2)(C)(iv).

5. The Settlement Treats Class Members Equitably

Finally, the Settlement treats Class Members equitably. A uniform formula is used to calculate settlement payments for all Class Members, which is designed to allocate the Net Settlement Amount to Class Members based on their share of the alleged losses or profits associated with the Weiss Funds. *See supra* at 5-6. This is equitable, and consistent with the manner of allocation approved by other courts in this Circuit. *See, e.g.*, Memorandum of Law, *Beach*, No. 1:17-cv-00563 (S.D.N.Y. Aug. 21, 2020), ECF No. 220 at 20 ("the Plan of Allocation developed in concert with Plaintiffs' damages expert [treats class members equitably], by allocating the Net Settlement Amount among all eligible Class Members on a pro rata basis in proportion to their share of total estimated damages."), *approved by* Order, 2020 WL 6114545

(S.D.N.Y. Oct. 7, 2020).[8] Moreover, these payments will be efficiently distributed to Class Members without requiring them to submit a claim form. *See* Class Notice § 7. Class Members only need to submit paperwork if they wish to request a rollover of their Settlement payment into an existing retirement account to avoid taxes. *See id.*

D. The Independent Fiduciary and Class Members Support the Settlement.

The positive responses from the Independent Fiduciary and the Class further support the Settlement. After completing the review required by Section 3.2 of the Settlement and applicable law (*see supra* at 8-10), the Independent Fiduciary approved "the Settlement terms, including the scope of the release of claims, the $7,900,000 Settlement amount and any non-monetary relief provided for in the Settlement, and the amount of any attorneys' fee award or any other sums to be paid from the recovery," finding all to be reasonable. *See* Newport Trust Report at 2. Moreover, to-date, the Settlement has received approval from the Class as no Class Member objections have been submitted. *See* Yau 2nd Decl. ¶ 29. The Court may infer from this that the overwhelming majority of Class Members believe the Settlement is fair, reasonable, and adequate. *Wal-Mart*, 396 F.3d at 118 ("the absence of substantial opposition is indicative of class approval[.]"); *see also, e.g.*, *Kemp-DeLisser*, 2016 WL 6542707, at *8 ("A lack of objection from any class members after members received notice of the settlement 'is an extremely strong indication' that the proposed Settlement is fair." (quoting *In re Marsh*, 265 F.R.D. at 139)); *EB v. New York City Dep't of Educ.*, 2015 WL 13707092, at *2 (E.D.N.Y. July 24, 2015) ("No class member has objected, which demonstrates that the class approves of the settlement and supports its final approval."); *Maley v.*

[8] The $2.00 cutoff for Settlement payments is also consistent with the Court-approved Settlement in *Beach*. *See Beach*, No. 1:17-cv-00563 (S.D.N.Y. May 22, 2020), ECF 212-1 § 5.1(b).

Del Glob. Techs. Corp., 186 F. Supp. 2d 358, 362 (S.D.N.Y. 2002) ("[T]he lack of objections may well evidence the fairness of the Settlement." (citation omitted)).[9]

II. The Class Notice Plan Was Effective and Reached Virtually All Class Members

The class notice program also was reasonable and satisfied the requirements of Due Process and Rule 23. *See* Fed. R. Civ. P. 23(e)(1)(B). The "best notice" practicable under the circumstances includes individual notice via United States mail to all class members who can be identified through reasonable effort. Fed. R. Civ. P. 23(c)(2)(B). That is precisely the type of notice provided here. *See* Settlement § 3.1(b).

As noted above, the Settlement Administrator mailed the Court-approved Class Notices via United States Mail on June 20, 2025. *See supra* at 7-8. This type of notice is presumptively reasonable. *See* Fed. R. Civ. P. 23(c)(2)(B); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812 (1985); *accord Langford v. Devitt*, 127 F.R.D. 41, 45 (S.D.N.Y. 1989) ("[N]otice mailed by first class mail has been approved repeatedly as sufficient notice of a proposed settlement."). Ultimately, only one notice was undeliverable resulting in a 99.67% success rate on delivery of the Class Notices. Mitchell Decl. ¶ 12.

With respect to the content, the Class Notice includes all relevant information, *see supra* at 7-8, and "fairly apprise[s] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them in connection with theproceedings." *Lomeli v. Sec. & Inv. Co. Bahrain*, 546 Fed. App'x 37, 41 (2d Cir. 2013) (citation omitted); *see also In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (notice "need only

[9] *See also Charron v. Pinnacle Grp. N.Y. LLC*, 874 F. Supp. 2d 179, 198 (S.D.N.Y. 2012) ("The Court cannot help but conclude that the silence and acquiescence of 99% of the Class Members speaks more loudly in favor of approval than the strident objections of the 1% against it."), *aff'd sub nom. Charron v. Wiener*, 731 F.3d 241 (2d Cir. 2013); *In re Merrill Lynch & Co., Inc. Rsch. Reports Sec. Litig.*, 246 F.R.D. 156, 167−68 (S.D.N.Y. 2007) ("[T]he relatively small number of objections . . . militate in favor of approving the settlement as be [sic] fair, adequate, and reasonable.").

describe the terms of the settlement generally." (citation omitted)). To the extent that Class Members desired further information, the Class Notice was supplemented through the Settlement Website and telephone support line. *See supra* at 8. This further supports the reasonableness of the Notice.

III. The Court Should Certify the Class for Final Approval

As previously stated, in its Preliminary Approval Order, the Court preliminarily certified the following Settlement Class:

> All participants and beneficiaries of the GWA, LLC 401(k) Profit Sharing Plan (F/K/A the George Weiss Associates, Inc. 401(k) Profit Sharing Plan) from July 24, 2017 to the Effective Date of Settlement, excluding Defendant George A. Weiss and any of his relatives, heirs, or trusts for which he and/or his family members are beneficiaries or trustees.

ECF No. 59 at 13; *see also* Settlement § 1.11.

In support of preliminary approval, Plaintiff established that: (1) the class was sufficiently numerous; (2) Plaintiff raised common issues in the Complaint; (3) Plaintiff's claims are typical of other class members' claims; (4) Plaintiff is an adequate class representative; (5) Class Counsel is experienced and competent; (6) class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(A) due to the risk of inconsistent adjudications; and (7) class certification is appropriate under Fed. R. Civ. P. 23(b)(1)(B) because any individual adjudication would be dispositive of the interests of other class members. *See* ECF No. 51 at 19-24. Nothing has changed since the Court preliminarily certified the class for preliminary approval except for Class Counsel's continued, diligent efforts to protect Class Members' interests in Defendants' bankruptcy proceedings. Accordingly, the Court should reaffirm its certification of the Settlement Class for purposes of final approval.

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court expeditiously enter an order granting final approval of the Settlement in the form submitted herewith.

Respectfully Submitted,

Dated: August 4, 2025

/s/ Michelle C. Yau

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