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IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

RYAN STRASSBURGER, individually, and on behalf of all others similarly situated, Plaintiff, v. SIX FLAGS THEME PARKS INC., a Texas corporation, SIX FLAGS ENTERTAINMENT CORPORATION, a Delaware corporation, and GREAT AMERICA LLC, d/b/a SIX FLAGS GREAT AMERICA, an Illinois limited liability company, Defendants.	No. 2020CH06208 CLASS ACTION

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

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INTRODUCTION

Plaintiff Ryan Strassburger, individually and as Class Representative on Behalf of All Similarly Situated Persons and a proposed Settlement Class ("Plaintiff"), hereby moves for final approval of the class-wide Settlement Agreement entered into between the Parties to this Action, a true and correct copy of which is attached as Exhibit A to the Declaration of Yeremey Krivoshey ("Krivoshey Decl.") filed herewith.[1] As detailed herein, the Settlement provides meaningful relief to Settlement Class Members in a timely and efficient manner, while avoiding several substantial risks of non-recovery that continued litigation would have posed. By any reasonable measure, the Settlement represents a fair, reasonable, and adequate resolution to this litigation. Accordingly, Plaintiffs respectfully request that the Court grant final approval to the Settlement and approve their request for attorney's fees, expenses, and Service Awards.

I. BACKGROUND OF THE LITIGATION

In March 2020, as a result of the COVID-19 pandemic, Defendants were forced to temporarily close their amusement and theme parks that were open at the time. Krivoshey Decl. ¶ 4. On October 8, 2020, Plaintiff Strassburger filed a Class Action Complaint in the Circuit Court of Cook County, Illinois, Chancery Division, Case No. 2020CH06208, alleging that Defendants wrongfully charged their customers monthly membership fees while their parks that otherwise would have been open were shut down due to the COVID-19 pandemic. Plaintiff Strassburger asserted claims for violations of the Illinois Consumer Fraud and Deceptive Business Practices Act, the Illinois Uniform Deceptive Trade Practices Act, and for breach of express warranties, negligent misrepresentation, fraud, unjust enrichment, money had and received, conversion, and breach of contract. *Id.* ¶ 5.

[1] Unless otherwise defined herein, all capitalized terms have the same force, meaning and effect as ascribed in Paragraph 1 ("Definitions") of the Settlement Agreement.

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Prior to Plaintiff Strassburger's filing of his Complaint in this case, non-parties Francis Ruiz, Shariyar Rezai-Hariri, and Sophia McConnell litigated related cases in the Central District of California entitled *Ruiz v. Magic Mountain LLC, et al.*, Case No. 2:20-cv-03436 (C.D. Cal.), *Rezai-Hariri v. Magic Mountain LLC, et al.*, Case No. 8:20-cv-00716 (C.D. Cal.), and *McConnell v. Six Flags Entertainment Corporation, et al.*, Case No. 2:20-cv-03665 (C.D. Cal.) (collectively the "California Actions"). Krivoshey Decl. ¶ 6. Plaintiff's Counsel here, Bursor & Fisher, P.A., the Khashayar Law Group, and the Law Offices of Ronald A. Marron were also counsel in the California Actions. Without the assistance of non-parties Ruiz, Rezai-Hariri, and Sophia McConnell, and the time and energy they spent litigating the California Actions, this Settlement would not be possible

The Parties exchanged and met and conferred concerning a number of discovery requests in the context of mediation. *Id.* ¶ 7. In response, Defendants provided critical information concerning their sales and pricing of their membership plans, the dates and time periods when Defendants were forced to shut down each of their relevant parks due to the pandemic, the amount of money Defendants charged their customers while their parks were closed, the number and identity of class member accounts that were charged, the types and nature of their memberships, and their membership cancellation and pause policies and practices. Plaintiff's counsel also conducted extensive independent investigation of the memberships, Defendants' corporate structure, Defendants' advertising and sale of the memberships, Defendants' COVID-19 response and public statements, Defendants' membership cancellation and pause policies and practices, class member response to Defendants' pandemic-related closures, and have corresponded with hundreds of class members as part of their investigation. *Id.*

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Counsel for Plaintiff and counsel for Defendants have engaged in substantial arm's-length negotiations in an effort to resolve this action. On September 4, 2020, the Parties participated in a full-day mediation with Jill Sperber, Esq. of Judicate West. When that mediation did not result in settlement, the Parties attended a second mediation with Ms. Sperber on September 9, 2020, where the Parties executed a binding term sheet setting out the material terms of the Settlement Agreement. *Id.* ¶ 8.

On June 30, 2021, Plaintiff filed his Motion for Preliminary Approval of the Settlement. After hearing argument on Plaintiff's Motion, on September 10, 2021, the Court granted that Motion and preliminarily approved the Settlement. *Id.* ¶ 13.

II. SUMMARY OF THE SETTLEMENT

The Settlement in this case provides substantial material benefits to the Settlement Class in that it makes Class Members whole. Each Class Member that had an active membership during the Class Period will automatically receive a free month of membership for each month their park was closed, as well as an upgrade to the next tier of membership through the end of 2022. Settlement Agreement ¶ 42(i). Importantly, these free months will be applied as credits without Class Members having to file a claim. *Id.* As an alternative to receiving free months, a Class Member with an active membership can request and receive a gift card for the monthly membership charges (including taxes, but excluding miscellaneous fees) to the Class Member while his or her Home Park was closed due to the pandemic but was otherwise scheduled to be open. *Id.* Similarly, for those Class Members who paused their membership, but were charged prior to doing so, will automatically receive for each such membership 1 month of free membership for each 30 days between the closure of the Class Member's Home Park due to the pandemic and the date that Class Member paused that membership. *Id.* ¶ 42(iii). All

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membership add-ons (such as parking or dining benefits) paid for by Class Members during the Class Period will also be automatically extended for the same duration and available during the free months. *Id.* ¶ 42. Further, Class Members may also submit a valid Claim Form to receive either 1 Golden Ticket or 5,000 Membership Rewards points. *Id.* ¶ 43. As for Class Members who cancelled their memberships, they are eligible to receive one voucher for a complimentary admission ticket for each six months they were charged for a membership while their Home Park was closed but scheduled to be open. *Id.* ¶ 42(iv). The Parties estimate that the amount available simply from the credits to Class Members is equivalent to $83,635,365.92 in value to Class Members. *See* Krivoshey Decl. Ex. W, 6/29 Declaration of Mark Kupferman, ¶ 6. Further, the 5,000 membership points can be redeemed for items ranging from $8 to $50, while a single day pass ticket (Golden Ticket) is valued at $74.99. *Id.* ¶¶ 7-8.

The Settlement also provides significant injunctive relief designed to ensure that Class Members with active accounts had the opportunity to pause their accounts. Settlement Agreement ¶ 44. In particular, Defendants automatically provided direct notice by email or mail (where no email address is available) to Class Members of their right to pause any payments due under their membership(s) for the duration of time that their Home Park was closed due to COVID-19 or March 1, 2021, whichever was later. *Id*. Defendants performed their obligations pursuant to this "Pause Option," Section 43(i), on September 24, 2020. *Id*.

III. NOTICE WAS EFFECTIVE

After determining that an action may be maintained as a class action, a court may order such notice that it deems necessary to protect the interests of the class. 735 ILCS 5/2-803. "[W]hether notice is to be given at all and the kind of notice which may be required are matters for the trial court's discretion." *Carrao v. Health Care Serv. Corp.*, 118 Ill. App. 3d 417, 429 (1st

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Dist. 1983). This discretion is subject only to the limits of due process, *see id*., which requires that "members of the plaintiff class have an opportunity to be heard and to participate in the litigation, an opportunity to 'opt out' of the litigation, and adequate representation of absent class members' interests." *Sec. Pac. Fin. Servs. v. Jefferson*, 259 Ill. App. 3d 914, 921 (1st Dist. 1994). "The question of what notice must be given to absent class members to satisfy due process necessarily depends upon the circumstances of the individual action." *Miner v. Gillette Co.*, 87 Ill. 2d 7, 15 (1981). Here, the Court approved the proposed Notice Plan, which called for direct notice to all Settlement Class Members via email and/or U.S. Mail. 9/10 Preliminary Approval Order ¶ 10.

Pursuant to the Notice Plan, Defendants provided the Settlement Administrator "a data file containing 982,630 records. The data file's key components were Six Flags order number, Six Flags Home Park location, purchasers first name, purchasers last name, primary mailing address and email address." *See* Krivoshey Decl. ¶ 15, Ex. C [Declaration of Mark Rapazzini ("11/10 Rapazzini Decl.")] ¶ 4. On September 24, 2021, the Settlement Administrator "caused the emailing of the email Notices to 982,622 Class Members with an email in the Class List. Of the 982,622 emails attempted for delivery, 19,915 emails bounced. Of the 19,915 bounced records, all had a physical address." *Id.* ¶ 9. On October 8, 2021, the Settlement Administrator "caused the mailing of Notices to the 19,923 Class Members. Notice was mailed to the 19,915 Class Members whose emails bounced and to 8 Class Members without an email address." *Id.* ¶ 10. Of those, 961 were returned as undeliverable. *Id.* ¶ 12. As of November 5, 2021, Kroll has re-mailed Notices to the 658 addresses obtained through the skip-trace process. *Id.* The Settlement Administrator has also received 227 Notices returned by the USPS with a forwarding address, which it has re-mailed 227 of the forwarded Notices to the updated addresses provided

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by the USPS. *Id.* ¶ 11. All told, direct notice was provided to at least 962,707 of the 982,622 Settlement Class Members (approximately 97.97 percent). *Id.* ¶ 9. In addition to the direct notice, the Settlement Administrator operated a toll-free telephone number to respond to Settlement Class Member inquiries. *Id.* ¶ 7. Through this number, the Settlement Administrator responded to over 650 inquiries about the settlement, provided information on how to opt-out or object, and updated the addresses of Settlement Class Members with addresses different than those the Settlement Administrator had on file so they can successfully be mailed payment if the settlement is finally approved. *Id.*

Given that virtually everyone in the Settlement Class received individual notice, the effectuation of the Court-approved notice plan easily satisfies due process. *See Carrao*, 118 Ill. App. 3d at 429-30 (noting that while due process may require individual notice to class members whose identity and address can be readily obtained from defendant's files, it does not require individual notice in all circumstances).

CLASS ACTION SETTLEMENT APPROVAL PROCESS

Strong judicial and public policies favor the settlement of complex class action litigation, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain. *See Quick v. Shell Oil Co.*, 404 Ill. App. 3d 277, 282 (3rd Dist. 2010); *see also* 4 Alba Conte & Herbert B. Newberg, Newberg on Class Actions § 11.41 (4th ed. 2002) (hereinafter Newberg). Courts review proposed class action settlements using a well-established two-step process. Newberg § 11.25, at 38-39; *GMAC Mortg. Corp. of Pa. v. Stapleton*, 236 Ill. App. 3d 486, 492 (1st Dist. 1992). The first step is a preliminary, pre notification hearing to determine whether the proposed settlement is "within the range of possible approval." Newberg, § 11.25, at 38-39; *Armstrong v. Bd. of Sch. Dirs. of City*

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of Milwaukee, 616 F.2d 305, 314 (7th Cir. 1980), overruled on other grounds. If the Court finds the settlement proposal is "within the range of possible approval," the case proceeds to the second step in the review process: the final approval hearing. Newberg, § 11.25, at 38-39. Plaintiff is presently at the second step of this two-step process.

ARGUMENT

Upon final approval, the Settlement reached in this matter will provide Settlement Class Members with substantial relief that they otherwise would be unable to obtain. Because the Settlement reached by the Parties is fair, reasonable, and provides adequate compensation to the Settlement Class, and because the Notice Program effectively notified class members of their rights under the Settlement Agreement, the Settlement warrants final approval by the Court.

I. THE SETTLEMENT SHOULD BE FINALLY APPROVED

Section 2-801 provides that a court may approve a proposed class settlement "on a finding that it is fair, reasonable, and adequate." 735 ILCS 5/2-801; *see also* Fed. R. Civ. P. 23(e)(2). In assessing the fairness, reasonableness, and adequacy of a proposed class settlement, Illinois courts consider the following factors: "(1) the strength of the case for the plaintiffs on the merits, balanced against the money or other relief offered in settlement; (2) the defendant's ability to pay; (3) the complexity, length and expense of further litigation; (4) the amount of opposition to the settlement; (5) the presence of collusion in reaching a settlement; (6) the reaction of members of the class to the settlement; (7) the opinion of competent counsel; and (8) the stage of proceedings and the amount of discovery completed." *City of Chicago v. Korsha*k, 206 Ill. App. 3d 968, 972 (1st Dist. 1990); *see also GMAC Mortg. Corp. of Pa. v. Stapleton*, 603 N.E.2d 767, 773 (1992). In this case, as the Court has already found in granting preliminary

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approval of the Settlement, these factors weigh in favor of finding the Settlement fair, reasonable, and adequate, warranting its final approval.

A. The Settlement Provides Substantial Relief

As to the first factor, the Settlement in this case provides substantial material benefits to the Settlement Class in that it makes Class Members whole. Each Class Member that had an active membership during the Class Period will automatically receive a free month of membership for each month their park was closed, as well as an upgrade to the next tier of membership through the end of 2022. Settlement Agreement ¶ 42(i). Importantly, these free months will be applied as credits without Class Members having to file a claim. *Id.* As an alternative to receiving free months, a Class Member with an active membership can request and receive a gift card for the monthly membership charges (including taxes, but excluding miscellaneous fees) to the Class Member while his or her Home Park was closed due to the pandemic but was otherwise scheduled to be open. *Id.* Similarly, for those Class Members who paused their membership, but were charged prior to doing so, will automatically receive for each such membership 1 month of free membership for each 30 days between the closure of the Class Member's Home Park due to the pandemic and the date that Class Member paused that membership. *Id.* ¶ 42(iii). All membership add-ons (such as parking or dining benefits) paid for by Class Members during the Class Period will also be automatically extended for the same duration and available during the free months. *Id.* ¶ 42. Further, Class Members may also submit a valid Claim Form to receive either 1 Golden Ticket or 5,000 Membership Rewards points. *Id.* ¶ 43. As for Class Members who cancelled their memberships, they are eligible to receive one voucher for a complimentary admission ticket for each six months they were charged for a membership while their Home Park was closed but scheduled to be open. *Id.* ¶ 42(iv).

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Another negotiated component of the Settlement Agreement is injunctive relief designed to ensure that Class Members with active accounts had the opportunity to pause their accounts. Settlement Agreement ¶ 44. In particular, Defendants automatically provided direct notice by email or mail (where no email address is available) to Class Members of their right to pause any payments due under their membership(s) for the duration of time that their Home Park was closed due to COVID-19 or March 1, 2021, whichever was later. *Id.* Defendants performed their obligations pursuant to this "Pause Option," Section 43(i), on September 24, 2020. *Id.*

While Plaintiff believes he would likely prevail on his claims, he is are also aware that Defendants deny the material allegations of the Complaint and intend to pursue several legal and factual defenses. They also recognize that they would face risks at summary judgment, and trial. Defendants vigorously denies Plaintiff's allegations and asserts that neither Plaintiff nor the Class suffered any harm or damages. In addition, Defendants would no doubt present a vigorous defense at trial, and there is no assurance that the Class would prevail or even if they did, that they would not be able to obtain an award of damages significantly more than achieved here absent such risks. Taking these realities into account and recognizing the risks involved in any litigation, the relief available to each Settlement Class Member in the Settlement represents a truly excellent result for the Settlement Class.

In addition to any defenses on the merits Defendants would raise, should litigation continue Plaintiff would also be required to prevail on a class certification motion, which would be highly contested and for which success is certainly not guaranteed. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011) ("Settlement allows the class to avoid the inherent risk, complexity, time and cost associated with continued litigation") (internal citations omitted). "If the Court approves the [Settlement], the present lawsuit will come to an end and

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[Settlement Class Members] will realize both immediate and future benefits as a result." *Id.* Approval would allow Plaintiff and the Settlement Class Members to receive meaningful and significant payments now, instead of years from now or never. *See id.* at 582.

Additionally, the fairness, reasonableness, and adequacy of the instant Settlement are supported by comparison with other false advertising settlements, where cases were litigated for years before settling for substantially less relief to the class. *See, e.g.*, *DiFrancesco v. UTZ Quality Foods Inc.*, 1:14-cv-14744 (D. Mass. Sept. 13, 2019) (settlement of $1.25 million to resolve a proposed class action asserting that certain of the defendant's snack foods were deceptively labeled as being "all natural" after more than four years of litigation). Here, the Parties estimate that the amount available simply from the credits to Class Members is equivalent to $83,635,365.92 in value to Class Members. Ex. W, 6/29 Declaration of Mark Kupferman, ¶ 6. Further, the 5,000 membership points can be redeemed for items ranging from $8 to $50, while a single day pass ticket (Golden Ticket) is valued at $74.99. *Id.* ¶¶ 7-8. This result is exceptional—and is certainly fair, reasonable, and adequate and warrants Court approval.

B. Defendants' Ability To Pay Is A Neutral Factor

The second factor that can be considered by courts is the Defendants' ability to pay the settlement sum. Defendants' financial standing to pay the settlement has not been placed at issue here. Like any nationwide class action, however, Defendants' ability to satisfy a class-wide judgment is extremely speculative. In any event, the fact that Defendants might have the ability to pay a larger amount is not relevant when the proposed settlement is otherwise fair, reasonable, and adequate and a judgment could be larger and represent a significantly more negative impact on the company's financials. *See Glaberson v. Comcast Corp.*, 2015 WL 5582251, at *7 (E.D.

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Pa. Sept. 22, 2015) (collecting cases). This factor is thus neutral, neither favoring nor disfavoring approval of the settlement. *Id*. at *8.

C. Continued Litigation Is Likely To Be Complex, Lengthy, And Expensive

The third factor asks whether the settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation. *See City of Chicago*, 206 Ill. App. 3d at 972. "Settlement allows the class to avoid the inherent risk, complexity, time, and cost associated with continued litigation." *Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 586 (N.D. Ill. 2011). "As courts recognize, a dollar obtained in settlement today is worth more than a dollar obtained after a trial and appeals years later." *Goldsmith v. Tech. Solutions Co.*, No. 92 C 4374, 1995 WL 17009594, at *4 (N.D. Ill. Oct. 10, 1995). The settlement here allows Settlement Class Members to receive immediate relief, avoiding lengthy and costly additional litigation.

In absence of settlement, it is certain that the expense, duration, and complexity of the protracted litigation that would result would be substantial. Not only would the Parties have to undergo significant motion practice before any trial on the merits is even contemplated, but evidence and witnesses from throughout the United States and beyond would have to be assembled for any trial. Further, given the complexity of the issues and the amount in controversy, the defeated party would likely appeal both any decision on the merits as well as on class certification. As such, the immediate and considerable relief provided to the Settlement Class under the Settlement Agreement weighs heavily in favor of its approval compared to the inherent risk and delay of a long and drawn-out litigation, trial, and appeal. Protracted and expensive litigation is not in the interest of any of the Parties or Settlement Class Members. *See Shaun Foley*, 2016 IL App (2d) 150236, ¶ 19 (affirming trial court's finding that third *Korshak*

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factor was satisfied where further litigation would have "require[d] the parties to incur additional expense, substantial time, effort, and resources").

D. The Positive Reaction To The Settlement Supports Final Approval

The fourth and sixth *Korshak* factors – the amount of opposition to the settlement and Class Members' reaction to the settlement – are closely related and often examined together. *See, e.g., City of Chicago*, 206 Ill. App. 3d at 973. Here, the Settlement Class's reaction to the settlement has been overwhelmingly positive, and weighs strongly in favor final approval. The Settlement Administrator successfully implemented the Notice plan and the total combined success rate of the email campaigns and mail notices was over 97%. 11/10 Rapazzini Decl. ¶ 9. Moreover, as of November 5, 2021, the Settlement Administrator has received 94 claim forms received through the mail and 6,137 claims filed electronically through the Settlement Website. *Id*. ¶ 15. Class Counsel and the Settlement Administrator anticipate that additional Claim Forms will be filed between now and the November 24, 2021 Claims Deadline. Further, only two Settlement Class Members have objected and only two have requested to be excluded from the Settlement. *See id*. ¶¶ 13-14. Pursuant to the Preliminary Approval Order, Plaintiff will respond to any additional objections on or before December 3, 2021.[2]

[2] One of the two objections is better construed as an opt out rather than an objection. *See* Krivoshey Decl. Ex. D, 9/24 Henenfent Objection ("I object to the settlement agreement and will not appear at the Fairness Hearing. …. I still wish to pursue action against Six Flags."). The second objection fails to provide all required information and should therefore be disregarded. *Compare* Krivoshey Decl. Ex. E, 10/29 Aragon Objection, *with* 9/10 Order ¶ 12 ("Class Members who object must set forth: (a) their full name; (b) their Six Flags membership ID number, (c) a written statement of their objection(s) and the reasons for each objection; (d) a statement of the number of objection(s), if any, the objector has previously filed, including the name of the case and court for each; (e) a statement of whether they intend to appear at the Fairness Hearing (with or without counsel); (f) their signature; (g) a statement, sworn to under penalty of perjury, attesting to the fact that he or she was charged for his or her Six Flags monthly membership while his or her Home Park was closed due to the pandemic and normally would have been open; (h) details of the charges for their Six Flags membership while his or her Home Park was closed due to the pandemic and normally would have been open, including the amounts and dates of such charges; and (i) the case name and number of the Action."). Regardless, the fact that only two Class Members have submitted objections indicates that the

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E. The Settlement Was The Result Of Arms'-Length Negotiations Between The Parties After A Significant Exchange Of Information

The fifth factor considers the presence of any collusion by the Parties in reaching the proposed settlement. *City of Chicago*, 206 Ill. App. 3d at 972. There is an initial presumption that a proposed settlement is fair and reasonable when it was the result of arm's-length negotiations. Newberg, § 11.42; *see also Sabon, Inc.*, 2016 IL App (2d) 150236, ¶ 21 (finding no collusion where there was "no evidence that the proposed settlement was not the product of 'good faith, arm's-length negotiations'"). Here, the Settlement was reached only after arm's-length negotiations between counsel for the Parties, with the assistance of Ms. Jill Sperber, Esq., an experienced class action mediator. Krivoshey Decl. ¶ 8. On September 4, 2020, the Parties participated in a full-day mediation with Ms. Sperber. *Id.* Since the September 4, 2020 mediation did not result in settlement, the Parties attended a second mediation with Ms. Sperber on September 9, 2020, where the Parties executed a binding term sheet setting out the material terms of this Agreement. Moreover, negotiations began only after an exchange of information regarding the size and composition of the Settlement Class. *Id*. And even then, finalizing the settlement the Court preliminarily approved took additional months of back-and-forth negotiations. *Id.* Such an involved process underscores the non-collusive nature of the Settlement. Finally, given the fair result for the Settlement Class in terms of the monetary and prospective relief, it is clear that this Settlement was reached as a result of good-faith

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Class views the Settlement favorably, which weighs heavily in favor of final approval and further supports the "presumption of fairness." *See, e.g., Shaun Foley*, 2016 IL App (2d) 150236, ¶ 20 (affirming trial court's finding that opposition to class settlement was "de minimus" – and thus weighed in favor of settlement approval – where two objections were filed out of a class of over 1.8 million members); *Massiah v. MetroPlus Health Plan, Inc.*, 2012 WL 5874655, at *4 (E.D.N.Y. 2012) ("The fact that the vast majority of class members neither objected nor opted out is a strong indication of fairness.").

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negotiations rather than any collusion between the Parties. Accordingly, this factor weighs in favor of final approval.

F. The Settlement Agreement Has Support Of Experienced Class Counsel

The seventh factor is the opinion of competent counsel as to the fairness, reasonableness, and adequacy of the proposed settlement. *See City of Chicago*, 206 Ill. App. 3d at 972. Class Counsel believes that the Settlement is in the best interest of the Settlement Class Members because the Settlement Class Members will be provided an immediate payment instead of having to wait for lengthy litigation and any subsequent appeals to run their course which might not resolve in favor of the Settlement Class Members in all events. Due to the many potentially meritorious defenses that Defendants have indicated that it will raise should the case proceed through litigation – and the resources that Defendants have committed to defend and litigate this matter – it is possible that the Settlement Class Members would receive no benefit whatsoever in the absence of this Settlement. Plaintiff is also aware of the general risks faced by consumers in class actions, and that consumer class actions often settle for substantially less than the damages alleged due to the difficulties in proving damages and certifying the class. *See, e.g.*, *In re Whirlpool Corp. Frontloading Washer Prods. Liab. Litig.*, 2016 WL 5338012, at *15 (N.D. Ohio Sept. 23, 2016) (approving settlement providing each class member with cash refunds of 17.9%-20.9% of alleged damages as fair and reasonable); *cf. Kitzes v. Home Depot, U.S.A., Inc.*, 872 N.E.2d 53, 61 (Ill. Ct. App. 2007) (affirming denial of certification because differences in consumers' knowledge defeated predominance).

Where, as here, "class counsel has extensive experience in the prosecution of [complex consumer class actions] and it is class counsel's opinion that the proposed settlement is fair, reasonable, and in the best interest of all class members," this factor supports final approval. *Shaun Foley*, 2016 IL App (2d) 150236, ¶ 22. Given Class Counsel's extensive experience

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litigating similar class action cases in federal and state courts across the country, including other false advertising cases, this factor also weighs in favor of granting final approval. *See* Krivoshey Decl. ¶ 30, Ex. R (firm resume of Bursor & Fisher, P.A.); Khashayar Decl. ¶ 4, Ex. A (firm resume of Khashayar Law Group); Marron Decl. ¶ 4, Ex. A (firm resume of Law Offices of Ronald Marron); *see also GMAC*, 236 Ill. App. 3d at 497 (giving weight to the fact that class counsel supports the class settlement in light of its experience prosecuting similar cases).

G. The Parties Exchanged Information Sufficient To Assess The Adequacy Of The Settlement

The eighth factor is structured to permit the Court to consider the extent to which the court and counsel were able to evaluate the merits of the case and assess the reasonableness of the settlement. *City of Chicago*, 206 Ill. App. 3d at 972. Here, the Parties exchanged information regarding the facts and size of the class, and thoroughly investigated the facts and law relating to Plaintiff's allegations and Defendants' defenses. Krivoshey Decl. ¶ 7. This allowed each Party to better understand the other's position and to crystalize the case's critical issues. *Id.* It was only at that point that the Parties attended a mediation, after which they continued to discuss their views until an agreement-in-principle was reached. *Id.* Months later, by the time the Parties had finalized their agreement, it is clear that they had sufficient information to evaluate the merits of their respective positions. This factor, then, like all the others (save the neutral second factor), strongly supports final approval of the settlement.

CONCLUSION

For the reasons stated above and in the contemporaneously filed Fee Petition, Plaintiff respectfully requests that the Court finally approve the settlement. A proposed Final Order and a proposed Final Judgment are submitted herewith as Exhibit X and Exhibit Y to the Krivoshey Declaration.

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RYAN STRASSBURGER, individually,
and on behalf of all others similarly situated,

Dated: November 10, 2021

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that he served a true and correct copy of this document via email to the following:

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