UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REBECCA M. MCCUTCHEON, *et al.* **On behalf of themselves and on behalf of all others similarly situated,** **Plaintiffs,** **- v-** **COLGATE-PALMOLIVE CO., *et al.*** **Defendants.**	**No. 16-cv-4170 (LGS)**

PLAINTIFFS' NOTICE OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR APPROVAL OF NOTICE TO THE CLASS

PLEASE TAKE NOTICE that, upon Plaintiffs' Memorandum In Support of Plaintiffs' Motion for Preliminary Approval of Class Action Settlement and for Approval of Notice to the Class (to be filed once the Court has the opportunity to rule on Plaintiffs' August 29, 2025 letter motion to exceed word limits, *see* Dkt. 332), the undersigned will move before the Honorable Lorna G. Schofield of the United States District Court for the Southern District of New York, at the United States District Courthouse, 40 Foley Square, New York, NY 10007, at a time and place to be scheduled by this Court, for an order in accordance with Fed. R. Civ. P. 23(e), that would

(1) Grant preliminary approval of the parties' August 29, 2025 Class Action Settlement Agreement (attached hereto as Exhibit 1), under which Plaintiffs' and the 1,177 member Class's claims in this case will be dismissed in exchange for a Total Settlement Amount of $332 million, because the proposed resolution was the product of arm's-length negotiations, is fair, reasonable, and adequate, and is likely to receive final approval by this Court;

(2) Grant approval of the proposed notice to be mailed and the proposed notice for publication to the Class, in terms of both their content and their manner of dissemination;

(3) Set a date for a fairness hearing and deadlines for the interim steps of mailing and publication of the notices, the filing of Class member objections, Plaintiffs' motion for final approval, and Class Counsel's application for attorneys' fees and expenses and the Class representative's service award.

Defense counsel have authorized undersigned counsel to represent that although Defendants do not join in Plaintiffs' forthcoming Memorandum in Support of this motion, Defendants concur in the relief requested in this motion, *i.e.,* that the proposed Preliminary Approval Order should be entered and that the proposed mailed and publication notices be approved.

The Parties' proposed Preliminary Approval Order (which is also an exhibit to the Settlement Agreement) is attached hereto as Exhibit 2. In accordance with Section III.C.5 of this Court's Individual Rules and Procedures for Civil Cases, a proposed schedule for settlement, including dates for proposed class notice, submission of objections and exclusion requests and a fairness hearing, is attached hereto as Exhibit 3.

CONCLUSION

WHEREFORE, for the reasons stated herein, and for such other reasons as may appear to the Court, Plaintiffs respectfully request that the Court grant preliminary approval to the proposed settlement and enter the parties' proposed Preliminary Approval Order.

Dated: August 29, 2025

Respectfully submitted,

/s/*Eli Gottesdiener*

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

REBECCA M. MCCUTCHEON, *et al.* **On behalf of themselves and on behalf of all others similarly situated,** **Plaintiffs,** **- v-** **COLGATE-PALMOLIVE CO., *et al.*** **Defendants.**	**No. 16-cv-4170 (LGS)**

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT AND FOR APPROVAL OF NOTICE TO THE CLASS

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INTRODUCTION

In June 2025, after nine years of fiercely contested litigation, the parties to this ERISA pension benefits class action case reached an agreement in principle to settle it. *See* Dkt. 328. Now, after additional negotiations over the concrete terms of the agreement and working with their actuaries to ensure the completeness and accuracy of the participant benefit calculations and data needed to implement it, the agreement has been fully memorialized and is ready for the Court to consider on this motion for preliminary approval. *See* Mtn. Ex. 1, Class Settlement Agreement ("Agreement").

Under the Agreement, Defendants Colgate-Palmolive Company ("Colgate"), Colgate-Palmolive Co. Employees' Retirement Income Plan (the "Plan"), the Employee Relations Committee of Colgate-Palmolive Co., Laura Flavin, and Daniel Marsili ("Defendants") will pay **$332 million** (the "Total Settlement Amount") to settle the claims brought by Plaintiffs on behalf of the certified Class alleging that the Plan failed to pay them, as a necessary supplement to the legally insufficient lump sums Class members originally received, residual annuities ("RAs") calculated in accordance with the 2005 Residual Annuity Amendment (the "RAA") and other operative provisions of the Plan, and ERISA's "equal value" rule—ERISA § 205(g), 29 U.S.C. § 1055(g); IRC § 417(e) ("417(e)"). The $332 million Total Settlement Amount is non-reversionary. After subtracting court-approved fees and expenses, it will be paid directly to Class members, without there being any need for the Class member to prove, elect, or file anything: they will automatically receive their additional benefits in the form of (1) an immediate lump sum to make up for missed prior RA payments (on average dating back roughly

30 years), and (2) future RA payments, provided the Class member (or the Class member's spouse at the time of the original payment) is alive as of August 1, 2025.[1]

The Total Settlement Amount of $332 million represents nearly everything Plaintiffs sought through this litigation: it is **more than 97.72%** of the total residual annuities Plaintiffs claimed and, subject to the contingencies described below, established that they are owed, calculated exactly as they alleged they should be calculated, brought forward until today with interest at 5%. *See* Declaration of Lawrence Deutsch, E.A. ("Deutsch Decl.") ¶ 2. Plaintiffs established (subject to such contingencies) their right to 100% of these residual annuities by virtue of:

(1) having successfully litigated this case through final judgment in 2020, *see McCutcheon v. Colgate-Palmolive Co.*, 481 F.Supp.3d 252 (S.D.N.Y. 2020) ("*McCutcheon I*"), defended that judgment on appeal, *see McCutcheon v. Colgate-Palmolive Co.*, 62 F.4th 674 (2d Cir. 2023) ("*McCutcheon II*"), and successfully opposed Colgate's petition for certiorari, *see* 144 S. Ct. 99 (2023); and

(2) having successfully obtained a revised final judgment to defeat Defendants' attempt to reduce their liability to the Class, *see McCutcheon v. Colgate-Palmolive Co.*, 2024 WL 1332817 (S.D.N.Y. Mar. 28, 2024) ("*McCutcheon III*"), and defended that revised final judgment on appeal, *see McCutcheon v. Colgate-Palmolive Co.*, 2025 WL 1009539 (2d Cir. Apr. 4, 2025) ("*McCutcheon IV*").

Given that Plaintiffs have in hand these rulings entitling them to the residual annuities they claimed, the question arises: why did Plaintiffs settle (for 97.72%)? There are two inter-related reasons: (1) because, after *McCutcheon IV* was handed down in April, Defendants

[1] In the case of deceased Class Members and/or deceased spouses, their estates or successors will receive the lump sum to make up for missed prior RA payments.

retained the right to file a petition for certiorari in the Supreme Court seeking a complete or partial reversal of *McCutcheon II* and/or *McCutcheon IV*; and (2) because even assuming Defendants failed to obtain review or reversal, they would have succeeded in delaying for *another* year or more payment to the 1,177 member Class who should have received their RAs decades ago and most of whom are in their 70s or older. That is why, in April, undersigned counsel agreed, after consulting with Plaintiff McCutcheon (appointed by the Court in 2017 to represent the certified Class, *see McCutcheon v. Colgate-Palmolive Co.*, 2017 WL 3206339 (S.D.N.Y. July 27, 2017)), to discuss a potential settlement with Defendants, with the assistance of a mediator. *See* Declaration of Eli Gottesdiener ("Gottesdiener Decl.") ¶ 13.

The parties agreed on JAMS mediator Marc E. Isserles and, after extensive preparations including the exchange of multi-part mediation statements and a 13 hour-long June 2 mediation, the parties reached an agreement in principle that, as noted above, would provide the Class with approximately 98% of their residual annuities—exactly as they alleged they should be calculated, brought forward with interest until today—without further delay. Deutsch Decl. ¶ 2; Gottesdiener Decl. ¶ 10.

Plaintiffs were and are confident that they would have again successfully opposed Defendants' attempt to obtain review and a complete or partial reversal in the Supreme Court. But Plaintiffs believed and believe settlement now is preferable to continued litigation because it eliminates any risk of Supreme Court review and, more importantly, eliminates any further delay from the certiorari process and the possibility of even more substantial delays if Defendants raised new or additional data or calculation disputes at any point during the continued pendency of the case. This is a case in which prompt payment is vitally important: the average age of the Class is age 71; a significant percentage of Class members are in their 70s; many are over 80;

and Plaintiffs' actuary estimates that fully 12% of the Class will die in the next 5 years. *See* Deutsch Decl. ¶ 3. Further delay would significantly harm Class members' ability to actually enjoy the benefits they should have received decades ago, either because they will have died, or simply because they may be too old to enjoy those benefits.[2] Under the circumstances, it made sense for Plaintiffs to give Defendants a small discount, in exchange for not filing for certiorari and making payment now, because Class members would be certain both to receive their residual annuities (brought forward with interest until today) and to do so promptly.

Indeed, under the proposed settlement—even after accounting for the maximum possible award of attorneys' fees under the Agreement, *see* Agreement § 1Q (29% of the Total Settlement Amount ($96.28 million)); the maximum estimated expense reimbursement ($2.9 million in expenses); the maximum estimated settlement administration Costs ($150,000), *id.* § 1GGG; and the maximum possible Class representative's service award for Ms. McCutcheon, *id.* § 1U ($10,000)—the 1,177 members of the Class would receive, on average, an immediate lump sum payment from the Plan (to make up for missed prior RA payments) of more than **$175,000**, ***plus*** future RA payments valued on average at more than $**20,000**—in other words, a total average net settlement benefit worth more than **$195,000**. Deutsch Decl. ¶ 4.[3]

[2] For example, while according to the latest data Mr. Ramaswami, whom the Court may recall was discussed in multiple briefs over the years, is still alive (as is his spouse), he turned 94 years old earlier this year. While drafting this brief, undersigned learned that Paul Caufield (Ms. McCutcheon's former spouse, a Class member, and the second named plaintiff) recently died, and was thus denied the ability to enjoy any of the benefits which he should have been paid over the course of the last 27 years.

[3] The median immediate lump sum payment is more than $**119,000**; the median value of future RA payments is approximately $**19,000**; and the median total net settlement benefit is approximately $**139,000**. *Id.* Ms. McCutcheon's net settlement benefit is worth a total of just north of $**98,000** consisting of an immediate lump sum of approximately $**85,000** and future RA payments to her worth about $**13,000**. *Id.*

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By any measure, the proposed $332 million non-reversionary settlement is an outstanding result. Now, instead of the additional delay and uncertain course of further litigation, the settlement provides an expeditious route to certain recovery for all Class members, and the settlement amount is equal to nearly 100% of the residual annuities Plaintiffs claimed they are owed, brought forward with interest until today, calculated exactly as Plaintiffs claimed they should be calculated and this Court has so ordered, with nothing for Class members to prove, elect, or file.

At this juncture, all the Court is being asked is to find that the settlement is likely to be approved as fair, reasonable, and adequate, which will permit notice of the terms to be sent to the Class. The Court should also approve the proposed Mailed Notices (Agreement Ex. 3A-F) and the proposed Publication Notice (Agreement Ex. 4) because, in terms of both their content and their manner of dissemination, they are the best practicable under the circumstances and comply with Rule 23's requirements and due process. Defendants do not join in this brief and disagree with the characterization of the facts as set forth herein; however, Defendants concur that preliminary approval should be granted and that notice to the Class should issue. *See* Gottesdiener Decl. ¶ 2.

FACTUAL BACKGROUND

I. Background, Case History, Settlement Negotiations

1. This case, filed in 2016 and sometimes referred to by the parties as "*Colgate II*," concerns Defendants' alleged failure to pay residual annuities to 1,177 former Colgate employees in violation of the terms of the Plan, the 2005 RAA, and 417(e). A predecessor case sometimes referred to by the parties as "*Colgate I*," *see In re Colgate-Palmolive Co. ERISA Litigation*, Master File No. 07-cv-9515 (LGS) (S.D.N.Y.), filed in 2007, was a related, partially-

settled litigation concerning, among other things, allegedly insufficient lump sums that covered some 8,600 class members. At the conclusion of *Colgate I* in 2014, the parties carved out the RA claims at issue here.

2. Both *Colgate I* and *Colgate II* arose out of Colgate's 1989 conversion of the Plan's basic formula for calculating retirement-age annuities from a traditional final-average-pay formula to a cash-balance formula calculated by reference to a hypothetical "Account," the "Personal Retirement Account" or "PRA." *McCutcheon II*, 62 F.4th at 678 & n.2. Under the amended 1989 version of the Plan, for the first time, participants were able to elect their benefit in the form of a lump sum instead of an annuity. *Id.* at 679.

3. As part of the conversion, Colgate offered employees with pre-July 1, 1989 benefits (which includes the *Colgate II* Class) certain enhanced benefits and enacted special Plan provisions applicable only to them. Under Plan Appendices B, C, and D, these participants became entitled to a benefit consisting of the "larger of" their traditional "grandfathered" annuity benefit or their new, cash balance annuity (or the "PRA Annuity"). *Id.* Participants who elected to make employee contributions post-July 1989 to continue accruing benefits under the pre-July 1989 traditional formula—which describes virtually all members of the Class here—became entitled to an annuity benefit under Appendix C § 2 that is the "larger of" their Appendix C § 2(b)(i) grandfathered annuity or their Appendix C § 2(b)(ii) PRA-based Annuity (consisting of their PRA Annuity plus the annuity based on their employee contributions). *Id.*

4. In 2007, separate suits were filed against Defendants by four different law firms (one of which was Gottesdiener Law Firm, PLLC) in various jurisdictions. *Id.* at 683. The complaints were consolidated in this District in 2008 in the case that came to be referred to as *Colgate I*. Ultimately *Colgate I* consisted of basically two issues. One was that the Plan violated

ERISA's prohibition of causing participants to earn too much of their benefit in later years, referred to as the "backloading" claim brought by the "Backloading Class." The other was that the Plan violated "equal value," minimum lump sum requirements of 417(e) by failing to perform proper "whipsaw" calculations with respect to participants' PRA-based benefits. For this claim, the "PRA Lump Sum Class" sought an additional, corrective lump sum.

5. In May 2010, after three years of litigation, Defendants and the *Colgate I* plaintiffs reached an agreement in principle to settle that case in its entirety with a $30 million payment to the PRA Lump Sum Class and a $15 million payment for the Backloading Class.

6. In the process of working out the details of the calculations for the settlement, undersigned counsel inquired how Defendants had ensured that participants with winning Appendix grandfathered benefits had been properly paid their 417(e) minimum lump sums. After considerable back and forth, Defendants eventually disclosed that by 2005, they had recognized that by merely paying participants with winning Appendix grandfathered benefits the amounts contained in their PRA, they had failed to pay them their 417(e) lump sums. Colgate therefore enacted the 2005 Residual Annuity Amendment ("RAA"), retroactively effective to 1989, to remedy the problem. Defendants also eventually disclosed that Defendants had failed to implement the 2005 RAA on a retroactively effective basis as the amendment required. *Id.*

7. The 2005 RAA, which as noted applies retroactively "[e]ffective as of July 1, 1989," amends the Plan's § 6.4(a)(i) lump sum provision, and grants relief from deficient lump-sum payments both on a going-forward basis and retroactively to some individuals who had already received deficient lump sums. *Id.* at 683. That relief is in the form of a "residual" annuity (the RA) that generates monthly payments (in addition to the lump sum already paid)

commencing on the date of the lump sum payment, and in an amount equal to the difference in value between the deficient lump sum and the amount actually due. *Id.* at 682-83, 686, 692.

8. The revelations that the RAA existed and that Defendants had never retroactively implemented its provisions effectively torpedoed the original agreement to settle *Colgate I*, particularly in light of Colgate's position that the RAA was only intended to correct, and only did correct, Colgate's underpayment of the Appendix grandfathered formula benefit, as opposed to the underpayment of whatever formula under the Appendix yielded the participant the greatest benefit. In October 2013, the parties to *Colgate I* reached a partial settlement. The Defendants agreed to carve out participants' RAA claims, and the Plaintiffs agreed to credit Defendants for any *Colgate I* settlement payment against any RA that later was determined to be owed. *Id.* at 683.

9. Defendants began preparations to implement the RAA around the time this Court granted final approval to the partial *Colgate I* settlement (July 2014). Consistent with their interpretation that the RAA did not encompass the cash balance Appendix formula benefit and their contention that that interpretation is entitled to deference, Defendants' calculations did not include participants' winning cash balance Appendix benefit (that is, only used participants' traditional grandfathered benefit). Deutsch Decl. ¶ 5. Additionally, Defendants' calculations applied a discount for pre-retirement mortality ("PRMD"), both in the calculation of the age 65 actuarial equivalent of the lump sum participants originally received ("AE of LS paid") and determination of the RA commencing prior to age 65. *Id.* The result was that when Defendants implemented the RAA in 2014—awarding approximately 285 participants RAs worth approximately $9.2 million (consisting of immediate lump sums to make up for missed prior RA payments, plus the value of future RA payments)—in the view of undersigned counsel, some

participants who should have received a RA received none, and other participants who did receive a RA failed to receive the RA they were actually due. *Id.*

10. Rebecca McCutcheon (then known as Rebecca Staley) was one of those participants who received no RA in July 2014. Her former husband, Paul Caufield (recently deceased, *see supra* n.2) who was a plaintiff but not a Class representative in this suit, did receive a RA because Colgate recognized that it underpaid the 417(e) value of his grandfathered benefit, but in the view of undersigned counsel, he was owed a larger RA because Colgate improperly ignored his winning Appendix C account-based benefit and improperly applied PRMD. In July 2014, Ms. McCutcheon, represented solely by undersigned counsel—the other plaintiff firms involved in *Colgate I* declined to join undersigned counsel in *Colgate II*, citing its excessive risk, *see* Gottesdiener Decl. ¶ 5—filed an administrative claim with the Plan for a RA. Undersigned counsel prosecuted the administrative claim and appeal for two years: Ms. McCutcheon's claim was denied in November 2014, the denial was appealed in January and April 2015, and her appeal and additional requests for additional documents and information were denied in June 2015 and May 2016, respectively.

11. This case, *Colgate II*, filed in June 2016, originally consisted of five counts. *See* Dkt. 1. All counts other than Count II—the unpaid benefits count—have been voluntarily dismissed or are otherwise no longer at issue.[4] Count II consisted of 4 alleged "Errors" that

[4] Count I alleged that Defendants violated 29 U.S.C. § 1133(a)(2) by failing to provide Plaintiffs with all documents, records, and other information relevant to their claim for benefits. Count III alleged Defendants should be held in contempt for violations of the Court's Final Order and Judgment in *Colgate I*. Count IV alleged Defendants violated 29 U.S.C. § 1022 for allegedly not disclosing the RAA in a summary plan description or summary of material modification. Plaintiffs alleged a breach of fiduciary duty claim in Count V.

Defendants made in their 2014 RAA calculations when determining the RA to be paid to participants. At this point only two of those errors remain, Errors 1 and 3.[5]

12. Error 1 is that Defendants improperly calculated the Appendix benefit and violated 417(e) and the terms of the RAA by ignoring any benefit other than the traditional formula grandfathered benefit (in particular, by ignoring the Appendix C § 2(b)(ii) PRA-plus-Employee Contribution benefit) (Error 1A) and by miscalculating the Appendix C § 2(b)(ii) PRA-Plus-Employee Contribution Benefit for participants under age 55 when they were originally paid (Error 1B). Error 3 is that Defendants violated 417(e) by discounting for PRMD in two distinct but related ways: by using survivorship in determining the annuity attributable to the lump sum originally paid via a projection of the value of that lump sum to age 65; and by discounting for pre-retirement mortality in determining the early retirement factor to apply to determine the residual annuity owed on the original payment.

13. It was clear from the outset of this litigation that Defendants would vigorously defend against Errors 1 and 3 on numerous grounds—as Defendants in fact did, both in this Court and the Court of Appeals. If accepted, these defenses, individually or in combination, would have resulted in no recovery at all for the Class, or recoveries orders of magnitude less than that eventually achieved. As background for the settlement approval factors addressed in the Argument section below, in ¶¶ 14-29 below, we survey the many defenses Defendants mounted throughout the course of this litigation and their consequences if accepted.

[5] Errors 2 and 4 were decided against Plaintiffs on Defendants' motion for summary judgment, *see* Dkt. 265, which rulings Plaintiffs did not appeal. Error 2 alleged that Defendants miscalculated some participants' grandfather benefit by using the wrong Plan provision to determine the Estimated Primary Insurance Amount when calculating benefits under the grandfathered formula. Error 4 alleged while the *Colgate I* settlement required future RAs to be offset by *Colgate I* settlement proceeds, the Plan itself was not amended prior to applying the offsets to the payments; and if the Plan were retroactively amended now, that would result in an impermissible cutback in benefits under ERISA § 204(g).

14. **The release defense**. Defendants argued that through this lawsuit Plaintiffs were improperly trying to use the RAA carve-out to attempt to recover whipsaw damages that they had agreed to forego in the *Colgate I* settlement, and that the Court should enforce the *Colgate I* release barring all claims regarding "the sufficiency or correctness of . . . lump sum distributions by the Plan." *See, e.g.*, Defs. MTD Reply, Dkt. 33 at 3 ("Plaintiffs would have this Court believe that Colgate paid [$30 million] to settle claims made by former Plan participants seeking a greater PRA-based lump sum in *Colgate I* but not claims relating to that exact same PRA-based lump sum expressed as an annuity").[6] If Defendants prevailed on that defense, the Class' damages would have been reduced by approximately 96%, *i.e.*, from approximately $340 million to approximately $12 million—*i.e.*, the value of the Error 3 PRMD claim standing alone, available to a relatively small subset of Class members. *See* Deutsch Decl. ¶ 6.

15. **The statute of limitations defense**. Defendants also argued that Plaintiffs' claims were time-barred because there was a clear repudiation by the Plan that was known or should have been known to Plaintiffs of any further benefits—lump sum or annuity—when the Plan made original lump sum payments in amounts equal to Class members' cash balance accounts.[7] Again, if Defendants prevailed on that defense, the Class' total damages would have been almost entirely eliminated, leaving only the $12 million Error 3 claim. *See* Deutsch Decl. ¶ 7.

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[6] *See* Defs. Br., *McCutcheon II* Dkt. 74 at 51 and Defs. Reply, *McCutcheon II* Dkt. 75 at 15 & n.4 (similarly arguing that *Colgate I* resolved Plaintiffs' Error 1 claims).

[7] Defendants also argued, *see* Defs. MTD Br., Dkt. 26 at 16-19; Defs. MTD Reply, Dkt. 33 at 5-9, that the enactment (and non-disclosure) of the 2005 RAA did not re-start the limitations clock because (assuming it could be construed as Plaintiffs construed it, as covering cash balance benefits) it merely sought to rectify injuries occurring long ago, and its non-implementation or incorrect implementation in 2014 did not cause Class members to suffer a "fresh" injury per *Ruppert v. Alliant Energy Cash Balance Pension Plan*, 726 F.3d 936, 942 (7th Cir. 2013) (finding time-bar in analogous situation because there was no new injury).

16. **The textual, extrinsic evidence, and deference-to-the administrator defenses**. Further, Defendants claimed that the RAA was not intended to cover, and by its terms did not cover, any alleged underpayment of the Appendix PRA cash balance formula benefit, *i.e.*, it was only intended to remedy the underpayment of the grandfathered benefit. Defendants argued that the RAA was clear and unambiguous in that regard; in the alternative, that there was objective extrinsic evidence that rendered the RAA ambiguous; and in a third alternative, that even without regard to such evidence the text was ambiguous and hence the Plan administrator's interpretation, so long as not arbitrary and capricious, would control under *Conkright v. Frommert*, 559 U.S. 506 (2010), and that that interpretation was confirmed by the abundant and admissible objective evidence establishing that the RAA was adopted only to correct the underpayment of grandfather benefits. Defs. SJ Br., Dkt. 236 at 6-7, 15-18, 20-22; Defs. Br., *McCutcheon II* Dkt. 74 at 3-7, 25-48. If successful, this defense would have single-handedly eliminated the Class's Error 1 claim, again leaving only the limited $12 million Error 3 claim. *See* Deutsch Decl. ¶ 8.

17. **The reformation defense**. Defendants next argued that even if the RAA text was unambiguous in Plaintiffs' favor, that text was due to a drafting error and contrary to the sponsor's intent, as demonstrated by documentary and testimonial evidence of the persons involved in the drafting and adoption of the Amendment, with the result that the sponsor should be permitted to correct that drafting error via plan reformation. Defs. SJ Br., Dkt. 236 at 27-28. If Defendants prevailed on that defense, nothing would have remained of Error 1 and, again, damages would have been reduced to $12 million under Error 3. *See* Deutsch Decl. ¶ 9.

18. **The RAA gateway defense**. Defendants also argued, *see* Defs. SJ Br., Dkt. 236 at 6-7, 15-18, 20-22; Defs. Br., *McCutcheon II* Dkt. 74 at 3-7, 25-48, that the gateway eligibility

provision contained in the first sentence of the first paragraph of the RAA—"a Member who, under any of Appendices B, C or D, is entitled to a greater benefit than [her] Accrued Benefit"—barred virtually all Class members from claiming an entitlement to a RA because that language had to be read as requiring that a participant's Appendix benefit must exceed the participant's Accrued Benefit based on the total Account (including employee contributions) and not solely on the employer contributions to their Account. If Defendants prevailed on that defense, it also would have eliminated nearly the entirety of the value of the Class's Error 1 claim, reducing damages by over $300 million. *See* Deutsch Decl. ¶ 10.

19. **The 417(e) does not apply defense**. Defendants also argued that 417(e) did not apply to the RAA because the RA is an annuity and 417(e) only applies to the payment of lump sums. *See, e.g.*, Defs. SJ Br., Dkt. 236 at 26 & n.10; Defs. SJ Reply, Dkt. 249 at 12; Defs. Br., *McCutcheon II* Dkt. 74 at 48-54. If Defendants prevailed on that defense, it would have permitted them to argue (as they did argue to this Court and the Court of Appeals, *see* Defs. SJ Opp., Dkt. 281 at 2-3, 8-9; Defs. Br., *McCutcheon II* Dkt. 74 at 54-58; Defs. Reply, *McCutcheon II* Dkt. 75 at 27-29) that they could use a rate of their choosing in implementing the RAA when determining the AE of LS paid or the discount of the age 65 RA to the immediately payable RA, such as Plan § 1.3's Actuarial Equivalent 20-year Treasury bond rate plus 1% (the "20+1"), with the result that Defendants would have completely eliminated the Error 1 claim and negated almost $330 million of Class members' damages. *See* Deutsch Decl. ¶ 11.

20. **The Appendix benefit equals the AE of the LS Paid defense**. Defendants also argued that the Appendix C § 2(b)(ii) benefit and the AE of LS paid were necessarily the same amount because they were both defined in the Plan as the actuarial equivalent of the Account, and that therefore they must be read as being one and the same thing. *See, e.g.*, Defs. SJ Br.,

Dkt. 236 at 6 ("a comparison of the two forms will always equal zero"); *id.* at 18 & n.7, 24-25; Defs. Br., 2d Cir. *McCutcheon II* Dkt. 74 at 11, 31-33 ("same benefit," "identically" defined). If this defense prevailed, it would have eliminated the Error 1 claim and nearly $330 million in damages. *See* Deutsch Decl. ¶ 12.

21. **The alternative projection rate defenses**. In addition to the preceding seven defenses, Defendants mounted at least four separate defenses in response to Plaintiffs' contention that the Class member's Account plus Employee Contributions had to be projected to age 65 and converted to an annuity using an interest rate equal to the 20+1% rate per Plan § 1.3. Depending on the specific defense, this could have entirely eliminated Error 1 damages, reduced damages by more than $100 million, or reduced them by approximately $30 million, as shown in the paragraphs immediately following this one.

22. *First*, Defendants argued that the RAA permitted Defendants to project and convert the Account plus Employee Contributions at the "Applicable Interest Rate" (either the PBGC rate or the 30-year Treasury rate). *See, e.g.*, Defs. SJ Opp., Dkt. 281 at 2-3. This would have resulted in a "wash" and no additional benefit due because the Class member's Appendix C § 2(b)(ii) benefit in that case would equal the lump sum that they had already received, leaving only the Error 3 claim. *See* Deutsch Decl. ¶ 13.

23. *Second*, Defendants argued in the alternative that the Plan contains no instruction as to how to project (versus convert) the Account to age 65 and that therefore the Court should defer to Plan administrator's suggested use of the Plan's (much lower in most years at issue) interest crediting rate, *see* Defs. SJ Opp., Dkt. 281 at 2-3, 8-9; Defs. Br., *McCutcheon II* Dkt. 74 at 56-58. If the Court had done so, damages would have been approximately 28% less (*i.e.*, approximately $95 million less) than they were using the 20+1% rate. *See* Deutsch Decl. ¶ 13.

24. *Third*, Plaintiffs also faced the substantial risk that for all participants paid before age 55, the Court would have construed the Plan to require or at least permit Defendants in the exercise of the Plan administrator's discretion to project Class member Accounts plus Employee Contributions using the 20+1% *minus 2%* for the portion of the period prior to age 55, based on Defendants' prior consistent interpretation (as described in Error 1B) and application of the second paragraph of Plan § 1.3 which modifies the 20+1% rate "[f]or purposes of converting a Member's Account into a single life annuity payable for the life of the Member starting immediately" when the annuity commences "before age 55." 1994 Plan, § 1.3; *see also* Deutsch Rep., Dkt. 263 at 55-56 (arguing against this interpretation). Had the Court adopted this interpretation, it would have reduced damages by a total of 34% or $115 million, as compared to the result if the 20+1% rate were applied for the entire period. *See* Deutsch Decl. ¶ 13.

25. *Fourth*, after the case had been litigated to final judgment and affirmed on appeal, Defendants argued that at a minimum the 20+1% rate could not be used to project the portion of the Class members' benefit attributable to Employee Contributions and that the 417(e) rate had to be used, either per ERISA § 204(c)(2), 29 U.S.C. § 1054(c)(2); IRC § 411(c) or per the February 2014 PBGC amendment to the Plan, *see* Defs. Revised FJ Mtn. Opp., Dkt. 299 at 2-12; Defs. Br., *McCutcheon IV* Dkt. 35 at 32-36, with the result that damages would be reduced by 10% or approximately $35 million compared to the result if Employee Contributions were projected and converted at the 20+1% rate. *See* Deutsch Decl. ¶ 13.

26. **The main PRMD defense**. As to Error 3, Defendants argued that the IRS permits and the Plan required application of PRMD (because it stated that actuarial equivalence included the use of a mortality table) and that, whether or not 417(e) applied to the determination of benefits under the RAA, Defendants were within their rights to reflect the possibility of death

in the determination of the RA through the application of PRMD, both in the determination of the AE of LS paid and in the discount of the age 65 RA into the immediate RA. Defs. SJ Br., Dkt. 236 at 31-33; Defs. Br., *McCutcheon II* Dkt. 74 at 7-8, 58-60. Assuming Plaintiffs overcame all Defendants' defenses with respect to Error 1, if Defendants prevailed on this, their main PRMD defense, this alone would have succeeded in reducing Class damages by more than 28% or $94 million. *See* Deutsch Decl. ¶ 14.

27. **The main PRMD defense plus any of the eight complete Error 1 defenses**. If Defendants prevailed on their main PRMD defense and also succeeded as to Error 1 in demonstrating any of the eight complete Error 1 defenses discussed above, Class damages would have been eliminated entirely. *See* Deutsch Decl. ¶ 15.

28. **The main PRMD defense plus a partial Error 1 defense**. If Defendants prevailed on their main PRMD defense and established that they could properly determine the Appendix C § 2(b)(ii) benefit using the Plan's interest crediting rate in lieu of the 20+1% rate, they would have reduced Class damages by approximately 71% or by $243 million. *See* Deutsch Decl. ¶ 16. If Defendants prevailed on their main PRMD defense and established that they could properly determine benefits for participants paid before age 55 using the 20+1% rate minus 2%, they would have reduced Class damages by approximately 56% or by $191 million. *Id.* If Defendants prevailed on their main PRMD defense and established that the portion of the benefit attributable to Employee Contributions should be projected at the 417(e) rate, they would have reduced Class damages by approximately 36% or by $123 million. *Id.*

29. **The partial PRMD defense**. Finally, after this case had already been litigated to final judgment and affirmed on appeal, Defendants argued that if the PRMD were prohibited in the determination of the AE of LS, it should still be allowed in the discount of the age 65 RA

into the immediate RA. Defs. Revised FJ Mtn. Opp., Dkt. 299 at 2-12; Defs. Br., *McCutcheon IV* Dkt. 35 at 32-36. Even this limited use of PRMD, assuming no complete or partial Error 1 defense was successful, would have reduced Class damages by 15% or $51 million. *See* Deutsch Decl ¶ 17.

30. As the foregoing list of defenses makes clear, Defendants litigated this case vigorously at every step. Following the filing of the Complaint, Defendants moved to dismiss, arguing, among other things as to Count II Errors 1 and 3, that Plaintiffs' claims were barred by the *Colgate I* release and/or the statute of limitations. Dkts. 25-27. In February 2017, this Court denied Defendants' motion. *See* Dkt. 35, 2017 WL 744600 (S.D.N.Y. Feb. 24, 2017).

31. In July 2017, overruling Defendants' objections, this Court certified a class consisting of "any person who, under any of Appendices B, C or D of the Plan, is entitled to a greater benefit than his or her Accrued Benefit as defined in Plan § 1.2, provided such person received a lump sum payment from the Plan, and the beneficiaries and estates of any such person." Dkt. 75, 2017 WL 3206339 (S.D.N.Y. July 27, 2017).

32. In August 2017, Magistrate Judge Fox bifurcated the case and ordered only Counts I and II to proceed. Dkt. 76.

33. Discovery lasted more than two years and was highly contentious, with Defendants making multiple attempts to restrict the scope of discovery to what they referred to as the "administrative record" and block Plaintiffs' inquiries into Defendants' prior interpretations and application of both the RAA and the Appendix benefit, Defendants' adoption of the RAA and reformation defense, as well as Defendants' adoption of the February 2014 amendment to the RAA and its 2014 implementation of the RAA. Judge Fox and this Court were repeatedly called upon to referee the parties' discovery disputes, the vast majority of which

were decided in Plaintiffs' favor. *See, e.g.*, Dkts. 112, 113, 126, 180, 197, 202 (orders enforcing Plaintiffs' right to requested documents and deposition testimony).

34. As a result of these rulings, Plaintiffs were able to engage in substantial fact and expert discovery. Plaintiffs received and analyzed many thousands of distinct electronically stored information and hard-copy documents and spreadsheets, having served multiple rounds of document requests, requests for admission, and interrogatories on Defendants, having served multiple subpoenas on, and received extensive document productions from, third-party entities involved with the Plan and having engaged in dozens of meet-and-confers with defense counsel in order to secure their eventual voluntary release of many thousands of documents, spreadsheets and benefit calculation worksheets that Defendants had long denied Plaintiffs. *See* Gottesdiener Decl. ¶ 12. Plaintiffs took 10 defense-side depositions, some in multiple sessions, including of Defendants' Rule 30(b)(6) designee, Defendants' actuarial consultant, Defendants' primary ERISA and tax counsel, Defendants' in-house ERISA counsel, Defendants' litigation counsel (as a fact witness regarding the benefit claim denial and appeal denial), and key Colgate employees responsible for the Plan's administration. *Id.* Plaintiffs also deposed Defendants' actuarial expert and defended the deposition of Plaintiffs' actuarial expert and of Ms. McCutcheon. *Id.*

35. In April 2019, the Court ordered the parties to mediate, giving them the option of hiring a private mediator or using a court-appointed mediator. Defendants, then represented by Morgan Lewis and Bockius LLP, refused to employ a private mediator unless Plaintiffs agreed to make an initial settlement demand of under $100 million, which Plaintiffs declined to do. *Id.* ¶ 6. The court mediation office assigned a mediator (Joel W. Sternman of Katten Muchin

Rosenman LLP) who convened an in-person mediation in mid-July 2019. That mediation was unsuccessful.[8]

36. At the close of all discovery, at the Court's direction, Defendants moved for summary judgment on Counts I and II, seeking rulings in their favor on all four Errors alleged under Count II and raising, as to Errors 1 and 3, virtually all of the defenses summarized above in ¶¶ 14-29. *See* Dkts. 235-39, 249.

37. On July 10, 2020, the Court ruled in Defendants' favor on Error 2 and Error 4, and ruled against Defendants on Error 1 and Error 3 in such a fashion that it was clear that the Court would rule in Plaintiffs' favor on Error 1 and Error 3. *See* Dkt. 265.

38. After ruling on Defendants' motion for summary judgment on the most important claims of the Complaint, the Court ordered the parties to inform the Court whether they intended to attempt another mediation prior to the Court scheduling further proceedings, and if so, whether they would use a private mediator or a court-appointed mediator or magistrate judge. Dkt. 266. Defendants (still represented by Morgan Lewis) again refused Plaintiffs' request that the parties retain a private mediator, with the result that the Court appointed Magistrate Judge Gorenstein to preside over the mediation. Dkt. 276. However, as far as Plaintiffs are aware, Judge Gorenstein did not contact either side, *see* Gottesdiener Decl. ¶ 7, and shortly thereafter this Court granted Plaintiffs leave to file for summary judgment and granted that motion in August 2020. *See McCutcheon I*, 481 F.Supp.3d 252 (S.D.N.Y. 2020).[9]

[8] Plaintiffs offer this and other related evidence regarding settlement contained in this submission, consistent with Fed. R. Evid. 408(b), not to prove liability but to provide proof that the content of the parties' negotiations were non-collusive and their ultimate fruitful outcome warrants preliminary (and, eventually, final) approval as "fair, reasonable, and adequate." *See* Fed. R. Civ. P. 23(e)(2).

[9] The Court also granted Plaintiffs' request to dismiss Counts III-V with prejudice and entered a separate order rejecting Defendants' reformation defense. *See* Dkts. 274-75.

39. Prior to the briefing and ruling on Plaintiffs' motion for summary judgment, Defendants retained two additional new firms—Cravath, Swaine & Moore LLP and Covington & Burling LLP—to represent them. After the parties had briefed, and Plaintiffs had prevailed on, Plaintiffs' summary judgment motion, Class counsel reached out to Cravath to ask whether Defendants might after all wish to retain a private mediator to see if the parties could reach a mutually acceptable settlement agreement. *See* Gottesdiener Decl. ¶ 8. In early October 2020, Defendants (through Cravath) responded in the affirmative, and the parties agreed on David Brodsky as mediator. However, the November 2020 mediation was unsuccessful. *Id.*

40. Defendants appealed to the Second Circuit. In early 2023, in *McCutcheon II*, the Court of Appeals ruled against Defendants, affirming this Court's final judgment in all respects, including as to two components of that judgment that would be especially relevant upon remand: (1) this Court's order directing Colgate to recalculate the class members' Appendix C § 2(b)(ii) age-65 annuity benefit using a Plan-prescribed 20+1% rate; and (2) the Court's order directing Colgate to recalculate class members' RA without reducing them through a PRMD. *Id.* at 696-99.

41. Following the Second Circuit's ruling in *McCutcheon II*, Defendants informed Plaintiffs that in their view they retained two defenses that were not foreclosed by either *McCutcheon I* or *McCutcheon II* that they wished to present to the Court that, if accepted, would reduce Class damages by "tens of millions of dollars." Dkt. 299 at 11. These defenses would have (1) permitted Colgate to apply a lower than 20+1% rate to calculate the Employee Contribution portion of the Appendix C § 2(b)(ii) Annuity; and (2) permitted Colgate to apply a PRMD to reduce class members' residual annuities at the final step of the calculation process (the reduction of the age 65 RA to the participant's age on the original date of payment).

Combined, had these defenses succeeded, it would have reduced Class damages by approximately 24% or $80 million. *See* Deutsch Decl. ¶ 18.

42. Plaintiffs did not accept Defendants' contentions and requested leave to file a motion to revise the final judgment to specifically address and overrule Defendants' defenses, both on the merits and on law-of-the-case grounds. Dkt. 293.

43. While the parties were briefing Plaintiffs' motion for a revised final judgment, they entered into direct settlement negotiations. Eventually, Defendants offered Plaintiffs $278 million to settle but Plaintiffs rejected that offer because they again believed it insufficient. *See* Gottesdiener Decl. ¶ 9.

44. Meanwhile, Defendants filed a petition for certiorari in the Supreme Court, seeking reversal of this Court's final judgment as affirmed in *McCutcheon II*. *See* Pet. (Case No. 22-1210) at i (June 12, 2023) (arguing the existence of a circuit split concerning the admissibility of extrinsic evidence supporting the reasonableness of a plan administrator's interpretation of plan terms that a court views as unambiguous and contrary to the administrator's interpretation, and that such evidence was erroneously disregarded in this case; also arguing the existence of a circuit split as to deference owed to an administrator's interpretation of terms involving actuarial assumptions, and that such deference was improperly withheld in this case).

45. Plaintiffs responded to Defendants' petition for certiorari, arguing that no such circuit splits existed and *McCutcheon I* and *II* were properly decided. *See* Pls. Br. In Opp. (Case No. 21-1210) at 14-21 (July 31, 2023). The Supreme Court denied certiorari. 144 S. Ct. 99 (Oct. 2, 2023).

46. In March 2024, this Court granted Plaintiffs' motion for a revised final judgment, agreeing with Plaintiffs' arguments both on the merits and on law-of-the-case grounds.

McCutcheon III, 2024 WL 1332817 (S.D.N.Y. Mar. 28, 2024). On April 26, 2024, the Court entered an amended final judgment which included 20 step-by-step instructions (some with sub-steps) on how to calculate the back payments due, and the monthly payments going forward. Dkt. 319 at 1-4.

47. Defendants appealed to the Second Circuit, which in April 2025 held Defendants' asserted defenses were barred by the law-of-the-case. *McCutcheon IV*, 2025 WL 1009539 (2d Cir. Apr. 4, 2025). Defendant retained the right to again file a petition for certiorari in the Supreme Court, seeking a complete or partial reversal of *McCutcheon II* and/or *McCutcheon IV*.

48. The parties subsequently conferred and agreed to try again to reach an accord and retained JAMS mediator Marc E. Isserles as mediator. Gottesdiener Decl. ¶ 10. After a 13 hour-long arms'-length mediation held June 2, 2025, *id.*, the parties reached an agreement in principle that would provide a settlement amount without further delay of nearly 100% of their unpaid residual annuities, calculated exactly as they alleged they should be calculated, brought forward with interest until today.

49. The parties believe in the merits of their respective positions. However, to avoid the expense, uncertainty and delay of further protracted litigation, the parties entered into the proposed settlement. Defendants believe the settlement is in the best interests of the Plan. Plaintiffs and their counsel likewise believe that the benefits promised by this Agreement make the settlement fair, reasonable, and adequate, and in the best interests of the Class.

II. The Proposed Settlement

A. The Non-Reversionary Total Settlement Amount

As outlined above, the Agreement provides for Defendants' payment of a non-reversionary Total Settlement Amount of **$332 million**. *See* Agreement § 2A. The net

settlement proceeds—*i.e.*, the Total Settlement Amount less Court-ordered deductions—would be distributed to or on behalf of the members of the 2017 certified Class, *i.e.*, the Plan participants, their spouses (as of the original payment date) or, to the extent applicable their beneficiaries, alternate payees, and/or estates, as listed on the Spreadsheet attached to the Settlement Agreement as Attachment A. *Id.* § 1TT, § 2A, § 4 (in particular §§ 4B4 and 4C), § 14. No portion of the $332 million settlement is conditioned on applications by Class members: 100% of the Total Settlement Amount (net of Court-approved deductions) will be used to provide Class members with (1) immediate lump sum payments to make up for all missed prior RA payments and (2) future RA payments, provided the Class member (or the Class member's spouse at the time of the original payment) is alive as of August 1, 2025. *Id.* § 4B3.

B. The Final Benefits

The Final Benefits available for payment to the Class is the Total Settlement Amount minus: (1) the Court-approved Class Counsel's Fees (including expenses); and (2) the Class Representative's Service Award that the Court approves, if any; and (3) Settlement Administration Costs. *See* Agreement § 4C.

1. Class Counsel's Fees. Plaintiffs' counsel will seek an award of attorneys' fees of no more than 29% of the Total Settlement Amount in addition to reimbursement of litigation expenses that are estimated to not exceed $2.9 million (virtually all of which is for reimbursement of amounts paid to Plaintiffs' actuarial expert over the past 11 years). *See* Agreement § 1Q. In addition, Counsel will seek reimbursement of Settlement Administration Costs of an amount not to exceed $150,000, which is to cover the Notice Administrator's costs and the cost of the ERISA Enrolled Actuary who will calculate all Class members' individual settlement benefits according to the Agreement's plan of allocation and including all other costs

and expenses in connection with future work that will be necessary to oversee and monitor implementation of the settlement and distribution of its proceeds and notice to the Class. *Id.* § 1GGG.

2. Class Representative's Service Award. Plaintiff McCutcheon, who had to respond to Defendants' discovery requests and undergo a deposition and who actively participated in the parties' multiple mediations and settlement discussions as Class representative, *see* Gottesdiener Decl. ¶ 15; Declaration of Rebecca McCutcheon ("McCutcheon Decl.") ¶ 2, will petition the Court for an award of additional compensation for services rendered to the Class at the same time that counsel files the fee petition. *See* Agreement § 1U (not to exceed $10,000).

C. The Individual Settlement Benefits.

The Agreement calls for a determination of each Class member's RA settlement benefit based on what Plaintiffs contend are the results of the 20 step-by-step instructions (some with sub-steps) that the Court ordered in its April 26, 2024 amended final judgment for calculating the RA back payments due, and the monthly RA payments going forward. *See Colgate II*, Dkt. 319 at 1-4; Agreement § 1A-I and § 4. All calculations—of both the estimated settlement benefits for purposes of notice, and final benefits for purposes of distribution—were and/or will be completed by the ERISA Enrolled Actuary referenced above. *Id.* § 4A.

Prior to arriving at each Class member's final benefit, the Class member's April 25, 2024 Judgment Benefit will be equal to the sum of (1) for each month the annuity was or should have been paid, the difference between the RA that should have been paid and the RA actually paid, if any, brought forward with interest at 5% (the same rate selected by Defendants in 2014 to apply to missed payments, and not disputed by Plaintiffs as an appropriate rate to use), and (2) the

present value of expected future additional RA payments, based upon the assumptions prescribed in the Court's April 2024 Amended Final Judgment. *Id.* § 1A-I. The final benefit will then be determined, via the Plan of Allocation, by applying a factor to the April 26, 2024 Judgment Benefit that represents a *pro rata* reduction to account for (1) the member's share of the settlement discount and (2) all court-approved deductions (*i.e.*, attorneys' fees and expenses, settlement administration costs and the Class representative service award, if any). *Id.* § 4B and C. Under the Agreement, in no event will any Class member's total net settlement benefit be less than $1,000 (which impacts 8 Class members). *Id.* §§ 1NN, 4B3.

Each Class member's net settlement benefit will be paid as (1) an immediate lump sum (to make up for missed RA payments prior to August 2025 plus any additional missed payments between August 2025 and the date monthly payments actually commence), and (2) future monthly RA payments, provided the Class member (or the Class member's spouse at the time of the original payment) is alive on the date monthly payments actually commence. *Id.* § 4B4.

III. Proposed Notice to the Class – Releases of Liability from the Class

The parties have agreed as to the form and content of both the Mailed Notice and Publication Notice, attached as Exhibits 3A-F and 4 to the Settlement Agreement (Motion Ex. 1), in order to adequately inform all Class members of their rights under the terms of the proposed Settlement, in the event the settlement is approved. The Mailed Notice explains the case history; the Settlement reached; the plan of allocation; the procedure for obtaining final approval; and procedures for objecting to or commenting on the proposed settlement and/or the requested attorneys' fees and Class representative service award once they are submitted. *See* Agreement

Ex. 3A-F.[10]

Each Mailed Notice will be personal to the recipient and will contain a specific estimate of that individual Class member's Settlement Benefit based on the assumption that the Court awards the requested attorneys' fees, the maximum estimated expense reimbursement, the maximum estimated settlement administration cost, and the requested Class representative service award. *See, e.g.*, Agreement Ex. 3A at 1. The Mailed Notice informs Class members that should the deductions that the Court ultimately awards be less than the maximums, their resulting net benefit would be proportionately higher than estimated. *Id.* at 4, Q&A 4A. In that context, the Mailed Notice reminds Class members of their rights to object. *Id.*

The Publication Notice will be published in *USA Today* and will also discuss the case history, the proposed settlements, the procedure for obtaining final approval and procedures for objecting to or commenting on the settlement and/or the attorneys' fee, expense award, and/or class representative service awards once they are submitted. *See* Agreement Ex. 4.

Plaintiffs will seek entry of a Final Order and Judgment, *see* Agreement Ex. 2, in accordance with the terms of the Agreement dismissing with prejudice all claims in the lawsuit and releasing Defendants. As described in the Mailed Notice, after final approval each Class member will be deemed to have released claims in accordance with the terms of the Agreement. Agreement Ex. 3A at 4, Q&A 4C.

[10] The six (6) different notices (Agreement Ex. 3A-F) are largely identical but contain slight differences depending upon whether the participant and/or the spouse is alive. For example, a participant who is still alive would receive back payments, future payments, and have payments continue after the participant's death to the spouse at the time of the original payment. In contrast, that individual's spouse at the time of the original payment (who could be a different spouse than the current spouse, as is the case with Ms. McCutcheon) would receive no back payment, and no current payments, but would receive payments upon death of the participant. Because of these differences, the parties believe that different notices should be provided based upon whether back payments are being received, and whether current payments are being received, and, in the case of deceased participants or spouses, the need for information regarding an estate or successors.

Finally, the Mailed and Publication Notices will direct Class members to the website dedicated to the proposed settlement (www.colgatepensionclassaction.com) which will contain copies of the notices, settlement agreement, and major case filings and opinions, and will go live if and when the Court grants preliminary approval. *Id.* at 8, Q&A 15; Agreement Ex. 4.

ARGUMENT

I. The Proposed Settlement Meets the Standard for Preliminary Approval

Preliminary approval of a class action settlement is appropriate where "the parties... show[] that the court will likely be able to approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B). Rule 23(e)(2) identifies factors that courts must consider in determining whether a settlement is "fair, reasonable, and adequate," including whether (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal, (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims, (iii) the terms of any proposed award of attorney's fees; and (vi) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other. Fed. R. Civ. P. 23(e)(2).

In addition, the Second Circuit considers the following factors, known as the *Grinnell* factors, most of which are subsumed within the Rule 23(e)(2) factors:

> (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.

Detroit v. Grinnell Corp., 495 F.2d 448, 463 (2d Cir. 1974) (citations omitted). A proposed

settlement is substantively fair if the totality of the *Grinnell* factors weigh in favor of that conclusion. *See Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 117 (2d Cir. 2005).

Here, Plaintiffs are requesting that the Court take the first step in the settlement approval process and grant preliminary approval of the proposed Settlement. As stated above and discussed further below, the proposed Settlement—providing for a non-reversionary Total Settlement Amount of $332 million, corresponding to nearly 98% of all the benefits the Class contends it is owed—is an extraordinarily favorable result for the Class and plainly "'within the range of possible approval."' *In re Initial Pub. Offering Sec. Litig.*, 243 F.R.D. 79, 87 (S.D.N.Y. 2007).

A. Ms. McCutcheon and Class Counsel Have Adequately Represented the Class

The record demonstrates that Plaintiff McCutcheon's interests in this case are aligned with those of the other Class members, that she and Class Counsel have vigorously advocated for the Class's interests throughout the exceptionally long history of this case, and have obtained highly favorable results. The decision to settle was informed by a thorough investigation of the relevant claims and defenses; extensive discovery, motion practice, and repeat litigation in the District Court, Court of Appeals, and the Supreme Court; extensive consultation with the Class's actuarial expert; and participation in hard-fought settlement negotiations over an extended period of time. *See* Gottesdiener Decl. ¶¶ 11-12; McCutcheon Decl. ¶¶ 2-3. Accordingly, this factor weighs in favor of approval.

B. The Proposed Settlement Is the Result of Arm's-Length Negotiations

As detailed above, the proposed Settlement was reached only after extensive, arm's-length negotiations extending over a substantial period of time and only after prior attempts at settlement earlier in the case (including two prior mediations and prior direct negotiations) had

failed. This factor weighs in favor of approval. *Moses v. N.Y. Times Co.*, 79 F.4th 235, 243 (2d Cir. 2023).

C. The Relief Provided Is Adequate Taking into Account the Relevant Considerations

In assessing a settlement, a court must determine whether the relief provided for the class is adequate, taking into account, among other considerations: (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; and (iii) the terms of any proposed award of attorney's fees . . . . Fed. R. Civ. P. 23(e)(2).[11] Consideration of these factors shows the proposed settlement is clearly worthy of preliminary approval.

1. The Relief is Adequate Taking into Account the Costs, Risks, and Delay of Trial and Appeal

The proposed settlement is "fair, reasonable and adequate" for purposes of Rule 23(e)(2). It provides the Class, on a non-reversionary basis, an amount equal to nearly 98% of the benefits the Class claims it is owed, calculated in the exact manner in which Plaintiffs claimed those benefits need to be calculated, brought forward with interest to today to account for delayed payment, without Class members having to prove, elect, or file anything.

If there had been no settlement, it is possible, even if relatively unlikely, that the result of Defendants' petition for certiorari would be a materially lower recovery for the Class or no recovery at all. At a minimum, both sides would have been required to expend significant additional costs and resources if the litigation continued, and the payment of additional benefits, if any, could have been delayed for several more years. As the *Colgate III* and *IV* decisions

[11] The Rule also requires consideration of "any agreement required to be identified under Rule 23(e)(3)," *i.e.*, any side agreement made in connection with the proposed settlement. Counsel represents that there are no such agreements. Gottesdiener Decl. ¶ 16.

demonstrate, Defendants have been persistent in introducing new defenses and issues at every stage of the proceedings, even after a final judgment and appeal. A little more than 2% discount is a very small price to pay for receipt of a risk-free payment now—which, particularly given the advanced age of many Class members, has significant value—as well as insurance against the possibility of a significantly lesser recovery or no recovery at all.

2. The Relief is Adequate Taking into Account the Proposed Method for Distributing Relief

The Agreement includes well-established procedures in ERISA cases for efficiently distributing the non-reversionary Settlement Benefits Fund to all 1,177 members of the Class in a simple and direct way: Class members do not have to prove, elect or file anything, but will automatically receive their additional benefits in the form of (1) an immediate lump sum (to make up for missed prior RA payments) and (2) future monthly RA payments, provided the Class member (or the Class member's spouse as of the original payment date) is alive as of August 1, 2025. The Plan of Allocation is simple and straight-forward, applying a purely *pro rata* reduction to account for the member's share of the approximately 2% settlement discount and all court-approved deductions. This factor weighs in favor of approval.

3. The Relief is Adequate Taking into Account Class Counsel's Proposed Fee Award

At this stage of the proceedings, the Court is not called upon—nor in a position before Class Counsel file their fee petition and the Class reacts to it—to rule on Class Counsel's request for an award of attorneys' fees equal to 29% of the Total Settlement Amount. Nevertheless, as will be shown in the forthcoming fee petition, Counsel submits that a 29% fee award here would be reasonable and well-deserved, as well as consistent with "'a jealous regard to the rights of those who are interested in the fund,'" *Goldberger v. Integrated Resources Inc.*, 209 F.3d 43, 53

(2d Cir. 2000), and this Court's three-step approach to applying the *Goldberger* factors as set forth in *In re Colgate-Palmolive Co. ERISA Litigation*, 36 F. Supp. 3d 344 (S.D.N.Y. 2014). Class Counsel devoted more than a decade of time, money, and resources to an extraordinarily complicated and difficult case that, as was clear from the outset, could have been lost or derailed at any number of stages. This case does not present any of the windfall dangers identified by courts that have applied a "megafund" reduction. The only reason why the Class won, through settlement, an amount equal to nearly 100% of the residual annuities (plus interest) they claimed they were due—and the only reason why the common fund consequently reached megafund proportions—is because of Counsel's skill and tenacity in overcoming each and every one of the multiple defenses Colgate interposed to defeat or reduce the Class' recovery and because Counsel were willing to bear the risks of a long and difficult litigation—including years of contentious and intensive discovery, two rounds of summary judgment, two appeals and a Supreme Court *certiorari* briefing—in which there was no script or playbook to follow, no templates from previous cases to borrow, no case law precedent serving as a basis: residual annuities were completely unchartered legal territory; on everything, Class Counsel was starting from scratch.

Counsel will show that the Court should find that the reasonable baseline fee for this case should be set at no less than 29%, consistent with the relevant available data concerning cases of comparable size, given the complexity (*i.e.*, ERISA pension benefit calculations), magnitude (*i.e.*, litigated to judgment and defended on appeal) and duration (*i.e.*, more than a decade) of this case, with the remaining *Goldberger* factors (risk, quality of representation and public policy) confirming a 29% award. In two ERISA pension benefit cases recently decided in this District that have close parallels to this case, the courts awarded undersigned counsel 33.3% of the large

common funds generated in those cases. *Osberg v. Foot Locker, Inc.*, No. 07 Civ. 1358 (KBF), Dkt. 423 (S.D.N.Y. June 8, 2018) ($290 million fund; awarding a $95.2 million fee); *Laurent v. PricewaterhouseCoopers LLC*, No. 06 Civ. 2280 (JPO), Dkt. 310 (S.D.N.Y. Jan. 23, 2023) ($267 million fund; awarding a $89 million fee).

Alternatively, Counsel will show that if the Court were to set a lower than 29% reasonable baseline fee, it should grant an upward adjustment to 29% because of (1) the unusually high risk of non-recovery; (2) the extraordinarily high percentage of damages recovery achieved; and/or (3) the public policy of showing counsel in future meritorious cases that it pays for them to assume the added risk, delay, and difficulties of litigating the case to judgment to secure complete relief for the class, as Counsel did here. Finally, Counsel will show that this case cross-checks well under the lodestar method, as the requested fee corresponds to a multiplier lower than the one this Court approved in *Colgate I*, a case considerably less risky and novel than this one. *See In re Colgate*, 36 F.Supp.3d at 347, 353 (approving a 5.2 multiplier).[12]

D. All Class Members Are Treated Equitably Relative to Each Other

The Settlement does not grant preferential treatment to anyone since Plaintiff's and Class

[12] Here, it is expected that by April 15, 2026, approximately 90% of the Settlement Benefits Fund will have been distributed. *See* Deutsch Decl. ¶ 19. The Settlement Agreement contemplates, "[s]ubject to the Court ordering a different, more delayed disbursement schedule," a single payment to Class Counsel of all fees and costs awarded by the Court within 10 days after the Approval Date—*i.e.*, approximately mid-January 2026, assuming a ruling on or about the proposed date of December 8, 2025 for the final approval hearing. Agreement § 11A. Defendants request, for internal administrative reasons, that they be permitted to comply with the award in one single payment. However, Class Counsel wish to honor the Court's preferred past practice of ordering dispersal of attorneys' fees in two installments, with the second installment payable only when class members will have received all or nearly all of their settlement benefits. Accordingly, Class Counsel will propose in their fee petition that, in the event the Court determines it is appropriate here to alter the disbursement schedule in Agreement § 11A, the Court direct that the entirety of the fee awarded be paid in January but with half directed to a segregated interest bearing account, held by a mutually acceptable escrow agent (such escrow account to be established by Class Counsel at their expense), that will not disperse to Counsel until the later of April 15, 2026, or such time when 90% of the Settlement Benefits Fund have been distributed.

members' estimated and final benefits will be calculated in exactly the same manner. This factor weighs in favor of preliminary approval.

E. The *Grinnell* Factors Are Also Met

1. The Complexity, Expense, and Likely Duration of the Litigation Supports Approval of the Settlement

The first factor of the *Grinnell* analysis overlaps with the Rule 23(e)(2)(C)(i) factor of "the costs, risks, and delay of trial and appeal" addressed above. If the case did not settle, there would have been further complex, risky and expensive litigation in the Supreme Court and possibly upon remand.

2. The Reaction of the Settlement Class to the Settlement

Plaintiff McCutcheon has participated throughout the prosecution of the case, was actively involved in the decision to enter into the Settlement, and wholeheartedly endorses it. *See* McCutcheon Decl. ¶¶ 2-3. This factor is otherwise inapplicable at this stage, as notice has not yet been distributed to the rest of the Class.

3. The Stage of the Proceedings

After more than 11 years, Class Counsel's thorough knowledge of the merits and potential weaknesses of the claims alleged permitted them to intelligently weigh the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendants.

4. The Risk of Establishing Liability and Damages

The fourth and fifth *Grinnell* factors (the risks of establishing liability and the risk of establishing damages) are addressed above under Rule 23(e)(2)(C)(i) ("costs, risks, and delay of trial and appeal"). For the same reasons explained above, Plaintiffs have satisfied the fourth and fifth *Grinnell* factors.

5. The Risks of Maintaining the Class Action Through Trial

Although Defendants opposed certification, there is no appreciable risk that this case might not be maintained on a class-wide basis through to its final conclusion. This factor thus does not weigh in favor of settlement.

6. The Ability of Defendants to Withstand a Greater Judgment

This factor "drops out" because there is no concern that Defendants could not withstand a greater judgment. *In re Namenda Direct Purchaser Antitrust Litig.*, 462 F.Supp.3d 307, 315 (S.D.N.Y. 2020).

7. The Reasonableness of the Settlement in Light of the Best Possible Recovery and the Attendant Risks of Litigation

The eighth and ninth *Grinnell* factors are addressed above under Rule 23(e)(2)(C)(i) ("costs, risks, and delay of trial and appeal"). For the same reasons explained above, Plaintiffs have satisfied the eighth and ninth *Grinnell* factors.

II. The Proposed Notice Satisfies Rule 23

Rule 23(e)(1) requires that the district court "direct notice in a reasonable manner to all class members who would be bound by the proposal." The polestar for assessing the adequacy of notice, whether through the lens of Rule 23 or constitutional due process, is "reasonableness," *Wal-Mart Stores*, 396 F.3d at 114, which in turn is "a function of anticipated results, costs, and amount involved." *In re Nissan Motor Corp. Antitrust Litig.*, 552 F.2d 1088, 1099 (5th Cir. 1977). As shown above, both the manner of dissemination and the forms of the notice proposed here aim to ensure "the best notice that is practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

A. The Content of the Proposed Notice Satisfies Rule 23

The Mailed Notice and Publication Notice provide all of the required information concerning Class members' rights and obligations under the proposed settlement. The Notices set forth the background of the litigation, the Class definition, and the key terms of the settlement. The Notices contain sufficient detail to permit each Class member to make an informed decision about whether to support or oppose the settlement as well as how to obtain additional information, whether through the website or by contacting Class Counsel directly. *See In re Gen. Tire & Rubber Co. Sec. Litig.*, 726 F.2d 1075, 1086 (6th Cir. 1984). The Notices detail the procedures for filing objections to the settlement, the fee petition, or the request for service award to the Class representative, and for requesting to be heard at the final approval hearing. The Notices arguably go beyond the requirements of the Rule by providing a specific estimate of each Class member's settlement benefit.

B. The Method of Disseminating Notice to Class Members Satisfies Rule 23

The method of transmitting the Notice also satisfies Rule 23. The Notice Administrator (Continental DataLogix LLC, according to the parties' recommendation) will have Class members' social security numbers and the last known mailing addresses with which to contact all Class members. Using that information, the Notice Administrator will update each Class member's address and cause the Notice to be mailed via the U.S. Postal Service to each Class member. If any Notice is returned as undeliverable, the Notice Administrator will take further steps to obtain correct addresses and re-mail the Notice to those recipients. Dissemination of the Mailed Notice via the Postal Service is the usual notification method for class action certifications and settlements. *See In re Prudential Ins.*, 148 F.3d 283, 326-28 (3d Cir. 1998).

Under the circumstances here, it is sufficient to make only one publication of the Publication Notice in *USA Today*. Defendants' Class member address data coupled with the Notice Administrator's address update efforts will assure the best practicable communication with Class members and will provide individualized notice via the Postal Service.

CONCLUSION

WHEREFORE, for the reasons stated herein and for such other reasons as may appear to the Court, Plaintiffs respectfully request that the Court grant preliminary approval to the proposed settlement, enter the parties' proposed Order, authorize mailed and published notice to the Class, and schedule the hearing on final approval of the settlement.

Dated: September 2, 2025

Respectfully submitted,

/s *Eli Gottesdiener*

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CERTIFICATE OF COMPLIANCE

I hereby certify in accordance with Local Rule 7.1(c) that the foregoing memorandum of law does not exceed 11,450 words as permitted by the Court in Dkt. 334. The document contains 11,447 words.

/s *Eli Gottesdiener*

Eli Gottesdiener