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 FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

Pursuant to Fed. R. Civ. P. 23(e), 23(h), and 54(d)(2), and this Court's October 8, 2025 Order granting preliminary approval of the Parties' Class Action Settlement and Approving Notice to the Class (Dkt. 342), Plaintiffs respectfully submit this Memorandum of Law in Support of their Motion for Final Approval of Class Action Settlement. Defendants Colgate-Palmolive Company ("Colgate"), Colgate-Palmolive Co. Employee's Retirement Income Plan (the "Plan"), the Employee Relations Committee of Colgate-Palmolive Co., Laura Flavin, and Daniel Marsili ("Defendants") join in this request. *See* Dkt. 337, 9/2/25 Declaration of Eli Gottesdiener ¶ 2 ("9/2/25 Gottesdiener Decl.").

As the Court knows, Plaintiffs in this ERISA case alleged that Defendants failed to pay them residual annuities ("RAs") as a supplement to the legally insufficient lump sums Class members originally received, calculated in accordance with the 2005 Residual Annuity Amendment (the "RAA") and other operative provisions of the Plan, and as would be required by ERISA's "equal value" rule—ERISA § 205(g); IRC § 417(e) ("417(e)"). The $332 million non-reversionary proposed settlement, represents **nearly 98%** (97.72%) of the total residual annuities Plaintiffs claimed that they are owed, calculated exactly as they alleged they should be calculated, brought forward with interest until the settlement date. It is, by any metric, a spectacular result. The percentage recovery exceeds by orders of magnitude not merely the typical percentage recovery in class action settlements that courts find fair, reasonable, adequate, and worthy of approval but the recovery percentages achieved in outlier cases that courts single out for particular commendation. Even after accounting for the maximum proposed deductions for attorneys' fees and expense reimbursement, settlement administration costs, and a named plaintiff service award, the settlement would yield the 1,177 Class members an average net settlement benefit of almost $200,000: approximately $175,000 in the form of an immediate

lump sum payment (to make up for missed prior RA payments, plus future RA payments worth another approximately $20,000. *See* Dkt. 336, Declaration of Lawrence Deutsch, E.A. ("9/2/25 Deutsch Decl.") ¶ 4.

This near-total victory is all the more remarkable considering the extremely long odds that Plaintiffs and Class Counsel faced of winning anything. As this Court knows, in most high-profile, high-stakes class actions, multiple plaintiffs' law firms file separate actions and then vie to be appointed lead counsel. But here, not only did no other lawyers approach undersigned Counsel to join the case or tried to compete for control of it, but each of the three other ERISA law firms that had co-counseled the predecessor *Colgate I* lawsuit declined undersigned counsel's invitation to share in the risk and expense of this case because they considered the chance of success so low. *See* 9/2/25 Gottesdiener Decl. ¶ 5. Indeed, as detailed in Plaintiffs' memorandum in support of their motion for preliminary approval, *see* Dkt. 339 at ¶¶ 14-29, from this case's inception all the way until the settlement agreement was reached a few months ago, any positive outcome for the Class was always highly uncertain and at numerous junctures any positive recovery could have well been a mere fraction of the final $332 million, near 100% RA recovery outcome.[1]

The fact that the Class can now, with no further risk or delay, immediately receive practically everything that they could have achieved through continued litigation in exchange for a very small discount, makes the proposed $332 million settlement worthy of final approval. The Class concurs: no member of the Class has objected, and indeed numerous Class members have affirmatively expressed support for the proposed Settlement. Dkt. 355, Declaration of

[1] A detailed description of this lawsuit, including the procedural history, settlement negotiations, and settlement terms, also contained Plaintiffs' preliminary approval memorandum, *see* Dkt. 339 at 5-27, and the accompanying declarations, Dkts. 336-38, are incorporated by reference.

Ritesh Patel ("Patel Decl.") ¶ 23; Dkt. 356, 12/29/25 Declaration of Eli Gottesdiener ("12/29/25 Gottesdiener Decl.") ¶ 3. Accordingly, and as shown in detail below, the Court should grant final approval of the proposed settlement agreement as fair, reasonable, and adequate.

As also shown below, the Court should also find that the notice plan was effectively implemented. In accordance with the Court's preliminary approval order, the Notice Administrator, Continental DataLogix, mailed between October 29 and November 7, 2025 an individualized notice to each living Participant and Spouse Class member and all known Potential Successors as to deceased Class members and caused a general notice to be published in *USA Today* on October 28, 2025. *See* Patel Decl. ¶¶ 10-15 (also discussing additional, November 26, 2025 outreach to a subset of Potential Successors as to deceased Class members not yet, as of that date, heard from).

The Notice Administrator reports that the mailed notice campaign was highly successful, with thus far only very small number of notices requiring follow-up. *Id.* ¶ 16-20 (reporting a success rate of more than 98% of all 3,229 notices mailed, and a more than 98% success rate as to the notices mailed to the 1,330 persons or estates entitled to payment). Further confirming the success of the notice campaign, both the Notice Administrator and Class Counsel have directly heard from many hundreds of Class members, whether through email or phone calls. Patel Decl. ¶ 21; 12/29/25 Gottesdiener Decl. ¶ 3. There is thus ample evidence that class members received timely notice consistent with the requirements of the law. *See, e.g., Air Lines Stewards Local 550 v. American Airlines, Inc.*, 455 F.2d 101, 108 (7th Cir. 1972).

ARGUMENT

I. THE PROPOSED SETTLEMENT SHOULD BE APPROVED

A court may only approve a proposed class action settlement if it determines that the settlement is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). In making this

determination, the court considers various factors, 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 attorneys' fees; and (iv) 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).

The Second Circuit also directs consideration of a set of factors, most of which overlap with Rule 23(e)(2). *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). An assessment of all these factors shows that the Court should grant final approval of the proposed settlement.

A. Plaintiff 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, and that she and Class Counsel have vigorously advocated for the Class's interests throughout the exceptionally long history of this case and have obtained exceptional results. Plaintiff's and Class Counsel's decision to settle this case was informed by a thorough investigation of the relevant claims and defenses; extensive discovery, motion practice, and repeat litigation in the Court of Appeals and the Supreme Court; consultation with their actuarial expert; and participation in extensive, hard-fought settlement negotiations over an extended period. *See* Dkt. 339 at 5-22. This weighs in favor of approval.

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

As shown in detail in the motion for preliminary approval, the record demonstrates that the proposed settlement is the result of extensive, arm's-length negotiations between counsel,

conducted on June 2, 2025 under the auspices of an experienced, highly regarded professional mediator (JAMS mediator Marc E. Isserles). Efforts to settle this case date back many years and include two prior failed mediations as well as unsuccessful direct negotiations. *See* 9/2/25 Gottesdiener Decl. ¶¶ 6-10. The fact that the proposed settlement is the result of arm's length negotiations weighs in favor of approval. *Moses v. N.Y. Times Co*., 79 F.4th 235, 243 (2d Cir. 2023).

C. The Relief Provided by the Settlement 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).[2] Consideration of these factors shows the proposed settlement is clearly worthy of final approval.

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

The proposed settlement is not simply "adequate" taking into account the costs, risks, and delay of trial and appeal; it is a fabulous outcome in both absolute and relative terms based on any metric. It provides the Class, on a non-reversionary basis, 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 the settlement date to account for delayed payment, without Class members having to do, file, or prove anything.

[2] 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. 9/2/25 Gottesdiener Decl. ¶ 16.

If the Court were to not approve the settlement, it is possible 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 be required to expend significant additional costs and resources if the litigation were to continue, and the payment of additional benefits, if any, could be delayed for several more years. Although the likelihood of Supreme Court review and reversal is not particularly high, given that the Class is exposed to the risk of a reduction or elimination of the gains they have achieved to date through litigation, and settlement ensures Class members will receive payment as promptly as possible, the settlement is clearly worthy of final approval. A mere 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. *See In re Prudential Sec. Ltd. P'ships Litig.*, 163 F.R.D. 200, 210 (S.D.N.Y. 1995) ("Instead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery for the Class").

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

The Agreement includes well-established procedures for efficiently distributing the non-reversionary Net Settlement Fund to all 1,177 members of the Class in a simple and direct way: Class members do not have to prove anything, but will automatically receive their (1) additional benefits in the form of an immediate lump sum (to make up for missed prior RA payments) and (2) future RA payments, provided the Class member is alive or is deemed under the Agreement to be alive as of August 1, 2025. This factor weighs in favor of approval.

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

As shown in Class Counsel's fee petition, Dkt. 348, Counsel's request for an award of

attorneys' fees equal to 29% of the settlement amount is 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) and per this Court's class counsel fee jurisprudence.

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

The settlement does not grant preferential treatment to anyone, since each Class member's RA and missed RA payments to date will be calculated in exactly the same manner, based upon the information specific to that Class member, such as their age, date of original payment, and original payment amount. This factor weighs in favor of 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 *Grinnell* factor overlaps with the Rule 23(e)(2)(C)(i) "the costs, risks, and delay of trial and appeal" factor addressed above, which as shown there is plainly satisfied here. *See In re Prudential*, 163 F.R.D. at 210 ("Instead of the lengthy, costly, and uncertain course of further litigation, the settlement provides a significant and expeditious route to recovery for the Class").

2. The Reaction of the Settlement Class to the Settlement

The Class's reaction has been very positive: no member of the Class has objected, and indeed numerous Class members have affirmatively expressed support for the proposed Settlement. *See* Patel Decl. ¶ 23; 12/29/25 Gottesdiener Decl. ¶ 3. This favorable class reaction "significant[ly]" supports the proposed settlement's reasonableness. *See, e.g., Wal-Mart Stores, Inc.*, 396 F.3d at 119.

3. The Stage of the Proceedings

After more than 11 years, Class Counsel's intimate 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 are addressed above under Rule 23(e)(2)(C)(i) ("costs, risks, and delay of trial and appeal"). For the same reasons explained above, the proposed settlement satisfies 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 is typically relevant only when a settlement is less than what it might otherwise be but for the fact that the defendant's financial circumstances do not permit a greater settlement." *In re Namenda Direct Purchaser Antitrust Litigation*, 462 F.Supp.3d 307, 314 (S.D.N.Y. 2020). Here, Plaintiffs do not contend that Defendants could not withstand a greater judgment. "This factor, therefore, drops out." *Id.* at 315.

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, the proposed settlement satisfies the eighth and ninth *Grinnell* factors.

II. THE NOTICE PROVIDED TO THE CLASS WAS ADEQUATE

Plaintiffs previously demonstrated to the Court's satisfaction that the form and content of both the mailed individualized notice to the Class and the general publication notice, attached to the Agreement and motion for preliminary approval and incorporated by reference in the Court's Order granting preliminary approval, complied with the standards of due process and Rule 23. *See* Preliminary Approval Order, Dkt. 342 ¶ 7.

As noted above, the Notice Administrator reports that the mailed notice went out as the Court directed, that the publication notice was timely published in *USA Today*, and that the additional outreach to Potential Successors not yet heard from as of November 26, 2025 was also timely sent. Additionally, Class Counsel confirms the establishment of the Class member website dedicated to the proposed settlement (ColgatePensionClassAction.com), and that copies of the major filings and orders issued in the case are and have been posted for Class members' inspection since shortly after the Court's Preliminary Approval Order issued. 12/29/25 Gottesdiener Decl. ¶ 2.

The Notice Administrator reports that the mailed notice campaign was highly successful, with thus far only very small number of notices requiring follow-up. *Id.* ¶¶ 15-20. A total of 3,229 notices were mailed to the 1,671 known living Participant and Spouse Class Members, *plus* the estates of the 288 deceased Class members *plus* the 1,270 relatives (Potential Successors) for the 288 deceased Class members that the Notice Administrator located. *Id.* ¶ 10. As of the date of Notice Administrator's declaration (December 18, 2025), there were effectively only 64 notices of the 3,229 Notices mailed that currently remain undeliverable. *Id.* ¶ 18. That is a success rate of more than 98%, which in the Administrator's experience is a notably high success rate. *Id.*

Similarly, viewed from the perspective of the number of persons or estates currently

entitled to **payment** (versus merely entitled to notice as a potential future payee or a potential successor who may or may not be entitled to payment), the notice plan has also been highly successful. While the Class consists of 1,177 Participant Class Members, there are a total of 1,330 separate persons (or estates, in the case of deceased Class Members) currently entitled to payment. *Id.* ¶ 19. As of the date of Notice Administrator's declaration, of the total of 1,330 persons or estates entitled to payment, notice has thus far been unsuccessful as to 22 such persons or estates, which also translates into a success rate of more 98%. *Id.*

Further confirming the success of the notice campaign, both the Notice Administrator and Class Counsel have directly heard from many hundreds of Class members, whether through email or phone calls. Patel Decl. ¶¶ 21; 12/29/25 Gottesdiener Decl. ¶ 3.

There is thus ample evidence that class members received timely notice consistent with the requirements of the law. *See, e.g., Air Lines Stewards Local 550*, 455 F.2d at 108. Accordingly, the Court should confirm the adequacy of the notice and that the notice plan was effectively implemented.

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 this motion.

Dated: December 29, 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 8,750 words. The document contains 2,998 words.

/s *Eli Gottesdiener*
Eli Gottesdiener