UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

AUBREY SREDNICKI, individually, and on behalf of all others similarly situated,

Plaintiffs,

- against –

CIGNA HEALTH AND LIFE INSURANCE COMPANY,

Defendant.

Case No. 3:23-cv-00243

CLASS ACTION

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, CONDITIONAL CERTIFICATION OF SETTLEMENT CLASS, APPROVAL OF SETTLEMENT NOTICE AND SCHEDULING OF FINAL APPROVAL HEARING

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 3

A. Summary of Claims and Defenses 3

B. Procedural History and Discovery 5

III. OVERVIEW OF THE SETTLEMENT AGREEMENT 6

A. The Settlement Class 6

B. The Settlement Relief 7

C. Notice to Class Members 7

D. Released Claims 8

E. Attorneys' Fees and Expenses and Lead Plaintiff Incentive Award 8

IV. PRELIMINARY APPROVAL IS APPROPRIATE 8

A. The Relief Provided is Adequate in Light of the Costs, Risks and Delay of Litigation 10

B. The Proposed Settlement Was Negotiated at Arm's Length and Plaintiffs and Plaintiff's Counsel have Adequately Represented the Class 11

C. The Settlement Provides an Effective Means of Distributing Relief to Class Members 12

D. The Provisions of the Settlement Related to Attorneys' Fees are Reasonable 12

E. The Settlement Treats Class Members Equitably Relative to Each Other 13

V. THE PROPOSED CLASSES MEET THE PREREQUISITES FOR CLASS CERTIFICATION UNDER FED. R. CIV. P. 23 14

A. Numerosity, Commonality, Typicality and Adequacy 15

B. Predominance of Common Issues and Superiority 16

VI. NOTICE 18

VII. PROPOSED SCHEDULE 19

VIII. CONCLUSION 20

TABLE OF AUTHORITIES

Cases

Amchem Prods., Inc. v. Windsor,
521 U.S. 591 (1997).. 16, 17

Bynum v. Dist. Of Columbia,
217 F.R.D. 43 (D.D.C. 2003).. 17

Cross v. 21st Century Holding Co.,
No. 00 Civ. 4333 (MBM), 2004 WL 307306 (S.D.N.Y. Feb. 18, 2004)................................. 15

Detroit v. Grinnell Corp.,
495 F.2d 448 (2d Cir. 1974) 10

Dura-Bilt Corp. v. Chase Manhattan Corp.,
89 F.R.D. 87 (S.D.N.Y. 1981) 17

Edwards v. North American Power & Gas LLC,
No. 14-cv-01714 (VAB), 2018 WL 1582509 (D. Conn. March 30, 2018) 11

Elliot v. Leatherstocking Corp.,
No. 10 Civ. 0934 (MAD) (DEP), 2012 WL 6024572 (N.D.N.Y. Dec. 4, 2012)...................... 14

Hall v. ProSource Technologies, LLC,
No. 14 Civ. 2502 (SIL), 2016 WL 1555128 (E.D.N.Y. Apr. 11, 2016) 13

In re Aggrenox Antitrust Litig.,
No. 14 Civ. 02516, 2017 WL 4278788 (D. Conn. Sept. 19, 2017) 11

In re Currency Conversion Fee Antitrust Litig.,
MDL No. 1409, 2006 WL 3247396 (S.D.N.Y. Nov. 8, 2006) 9

In re Lupron Mktg. and Sales Practices Litig.,
228 F.R.D. 75 (D. Mass. 2005).. 16

In re Michael Milken & Assoc. Sec. Litig.,
150 F.R.D. 57 (S.D.N.Y. 1993) 11

In re NASDAQ Market-Makers Antitrust Litig.,
176 F.R.D. 99 (S.D.N.Y. 1997) 9

In re PaineWebber Ltd. Partnerships Litig.,
147 F3d 132 (2d Cir. 1998) 9

In re PaineWebber Ltd., *P'ships Litig.*,
171 F.R.D. 104 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997)............................... 10, 11

In re Warner Chilcott Ltd. Sec. Litig.,
No. 06 Civ. 11515, 2008 WL 5110904 (S.D.N.Y. Nov. 20, 2008) 8

Maywalt v. Parker and Parsley Petroleum Co.,
67 F.3d 1072 (2nd Cir. 1995) 19

Myers v. Hertz Corp.,
624 F.3d 537 (2d Cir. 2010) 17

Phillips Petroleum Co. v. Shutts,
472 U.S. 797 (1985)... 18

Strougo v. Bassini,
258 F. Supp. 2d 254 (S.D.N.Y. 2003) 8

Viafara v. MCIZ Corp.,
No. 12 Civ. 7452 (RLE), 2014 WL 1777438 (S.D.N.Y. May 1, 2014) 14

Wal-Mart Stores, Inc. v. Dukes,
564 U.S. 338 (2011)... 9

Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005) 9

Wells v. Allstate Ins. Co.,
210 F.R.D. 1 (D.D.C. 2002)... 17

Rules

Fed. R. Civ. P. 23 .... 9, 10

Fed. R. Civ. P. 23(a) 15, 18

Fed. R. Civ. P. 23(a)(1)-(4).. 15

Fed. R. Civ. P. 23(b) 15

Fed. R. Civ. P. 23(b)(3).. 16, 17, 18

Fed. R. Civ. P. 23(c)(2)(B) 18

Fed. R. Civ. P. 23(e) 9

Fed. R. Civ. P. 23(e)(1)(B)(i)... 10

Fed. R. Civ. P. 23(e)(2) 10

Fed. R. Civ. P. 23(e)(2)(C)(ii) 12

Fed. R. Civ. P. 23(e)(2)(C)(iii) 12

Fed. R. Civ. P. 23(e)(2)(D) 13

Fed. R. Civ. P. 23(e)(3) 10

Other Authorities

MANUAL FOR COMPLEX LITIGATION, FOURTH (2015) 9

William B. Rubenstein, NEWBERG ON CLASS ACTIONS (5th ed. 2015) 9

Plaintiff Aubrey Srednicki, individually and on behalf of the Settlement Class (as defined in the Settlement Agreement),[1] respectfully submits this memorandum of law in support of her motion for preliminary approval of class action settlement, preliminary certification of settlement class, approval of notice plan and setting of a final approval hearing. A copy of the Settlement Agreement, setting forth the complete terms of the Settlement, is attached as Exhibit 1 to the Declaration of William H. Narwold ("Narwold Decl.").

I. INTRODUCTION

Plaintiff's claim against the Cigna Health and Life Insurance Company ("Cigna" or "Defendant") in her Complaint [ECF No. 1] ("Complaint") is straightforward. Plaintiff alleges that Cigna improperly calculated and charged deductible and co-insurance cost shares to certain individuals who received laboratory services covered by or entitled to receive benefits pursuant to employee welfare benefit plans insured by Cigna and/or for which Cigna administered claims for benefits. Plaintiff further alleges that in so doing, Cigna misrepresented the amount of the cost share in the explanation of benefit forms. As discussed further below, this *Srednicki* action and settlement resolve the claims of one of the plaintiffs (and a class of individuals similarly situated to her) in the ongoing litigation in *Neufeld v. Cigna Health and Life Ins. Co.,* No. 17-cv-01693-KAD (D. Conn.).[2]

Neufeld has been extensively litigated in the five years since it was filed in October 2017. Although the bulk of the case remains in litigation, the parties agreed that the claims of Plaintiff Srednicki and individuals similarly situated to her, although related to those of the broader class

[1] Capitalized terms used herein are defined in the Settlement Agreement.

[2] The individual and class claims of all other *Neufeld* plaintiffs are **not** resolved, are unaffected by this settlement, and will proceed accordingly.

alleged in the *Neufeld* action, are sufficiently distinct to be resolved separately. Accordingly, the parties agreed to a $300,000 settlement fund that, *inter alia,* is expected to provide 100% compensation to a 5,000-person Settlement Class. Settlement Agreement (Ex. 1) at ¶ 1.38. Under the terms of the Settlement, Class Members do ***not*** need to file a claim form to obtain their recovery. Narwold Decl. at ¶ 5. Rather, Class Members will receive a substantive Notice (*see* Exhibit A to the Settlement Agreement) and will automatically receive their full recovery unless they affirmatively opt-out.

As explained in detail below, the Settlement is fair, reasonable, and adequate, and grants 5,000 Class Members full recovery while also narrowing the scope of the remaining *Neufeld* litigation before this Court. Accordingly, Plaintiffs move the Court for entry of an order:

(1) Preliminarily approving the Settlement as set forth in the Settlement Agreement;

(2) Preliminarily certifying the Settlement Class;

(3) Preliminarily appointing Plaintiff Aubrey Srednicki as the Settlement Class Representative;

(4) Preliminarily appointing William H. Narwold, Meghan S.B. Oliver, and Charlotte Loper of Motley Rice LLC; and Robert A. Izard, Craig A. Raabe, Seth R. Klein, and Christopher M. Barrett, of Izard Kindall & Raabe LLP; as Plaintiff's Counsel;

(5) Approving the proposed Settlement Notice;

(6) Appointing Rust Consulting as Settlement Administrator;

(7) Scheduling a Final Approval Hearing; and

(8) Staying all other proceedings in this *Srednicki* action except those related to the Final Approval Hearing.

II. BACKGROUND

A. Summary of Claims and Defenses

Plaintiff, on behalf of herself and all others similarly situated, alleges in her Complaint that Cigna improperly calculated and charged deductible and co-insurance cost shares to certain individuals covered by or entitled to receive benefits pursuant to employee welfare benefit plans insured by Cigna and/or for which Cigna administered claims for benefits. Specifically, Plaintiff alleges that Cigna improperly calculated cost shares with regard to services provided through Health Diagnostic Services ("HDL"), the internal laboratory for Cigna Medical Group that ceased operations in 2018; through LabCorp; and/or through Sonora Quest (the "Contested HDL Fees"). Plaintiff further alleges that in so doing, Cigna misrepresented the amount of the cost shares based on the Contested HDL Fees in the explanation of benefit forms and violated ERISA.

For example, on June 19, 2017, Plaintiff Srednicki obtained a blood test from Laboratory Corporation of American Holdings (doing business as "LabCorp"), an in-network provider. The cash price for this test to an uninsured customer of LabCorp was only $449.00. Complaint, ¶ 4. Cigna listed on the EOB that the provider was "HLTH DIAG LAB"—not LabCorp—and that the "Amount Billed" was $17,362.66, almost 40 times greater than the uninsured cash price. *Id.* The EOB provided by Cigna stated that Cigna provided a "Discount" of $14,572.66, over 32 times greater than the cash price, and that the "Covered Amount" for the test with a cash price of $449.00 was $2,787.00, more than 6 times greater than the cash price. *Id.* Cigna further stated on the EOB that of the "Covered Amount" of $2,787.00, the Plan paid $471.02 (roughly the cash

price) and Plaintiff Srednicki was required to pay an additional $2,315.98 in deductible and coinsurance payments. *Id.*

Defendant denies and disputes that it engaged in any improper or illegal conduct. *See generally* Settlement Agreement (Ex. 1) at p. 2. Moreover, Defendant has raised many defenses in the context of the *Neufeld* action (*see* [ECF 132] at pp. 36-44) and has opposed class certification in that action (see [ECF 181]), which Defendant asserts could defeat Plaintiff Srednicki's ability to establish liability and/or damages for the present Class (as defined below) and her individual claim if this case were not to settle. Specifically, Defendants argue that: (1) Cigna's plans expressly allow Cigna to calculate benefits based on the rates paid to alleged managers or vendors rather than the amounts providers contracted with these entities may charge the entities for their services; (2) Cigna's agreements with ASO plan sponsors likewise expressly disclose how Cigna will pay for services provided and/or arranged through entities like HDL and Cigna was at all times acting in good faith when it determined benefit payments for claims provided through these arrangements; and (3) Plaintiffs would face insurmountable hurdles to certify a litigation class due to, among other things: (i) variations in Cigna's plan language; (ii) the necessity for individualized inquiries on a number of issues including whether any particular plan member was harmed by Cigna's practices; and (iii) likely difficulties managing a class action given the aforementioned variances and individualized inquiries required to litigate each Class member's claim.

Although the parties disagree as to the merits and strengths of Srednicki's claims and Defendant's defenses, the parties agree that Settlement on the terms set forth in the Settlement Agreement and discussed below is warranted and proper in this case.

B. Procedural History and Discovery

On October 6, 2017, Jeffrey Neufeld filed a putative class action complaint against Cigna in the U.S. District Court for the District of Connecticut pleading various claims related to Cigna's alleged miscalculation of cost-share payments for benefits purchased or rented from providers/vendors. *See* Docket in *Neufeld v. Cigna Health and Life Ins. Co.,* No. 17-cv-01693-KAD (the "*Neufeld* Action") at [ECF 1]. The putative class action complaint was subsequently amended, and in the course of those amendments additional *Neufeld* Lead Plaintiffs, including Aubrey Srednicki, joined the *Neufeld* Action. In the context of the *Neufeld* action, Plaintiff Aubrey Srednicki raised allegations concerning the Contested HDL Fees. *See generally* [ECF 130] at ¶¶ 18-21, 68-71, 85-87.

The *Neufeld* parties substantially completed document and written discovery, including the production of benefit claims data related to Srednicki's Contested HLD Fees allegations. During that process, the parties agreed that settlement of Srednicki's Contested HDL Fees claims, both on her own behalf and on behalf of a class of similarly situated individuals, would be appropriate, separate from ongoing litigation in the broader *Neufeld* action. Narwold Decl. at ¶ 4. Although Cigna denies any wrongdoing, Cigna produced in the context of settlement discussions a detailed spreadsheet listing the Contested HDL Fees for each person similarly situated to Ms. Srednicki assuming the validity of Plaintiff's theory of her case. *Id.* Plaintiff submitted the data provided by Cigna to her own expert for review and analysis, who confirmed Cigna's calculations. *Id.* Following extensive settlement discussions, and the parties agreed to a $300,000 settlement that is expected to provide 100% compensation of the Contested HDL Fees to the 5,000-person Settlement Class, as well as cover all costs of administration and all litigation fees and expenses. *See* Settlement Agreement (Ex. 1) at ¶ 2.3.

Pursuant to the terms of the Settlement Agreement, the *Neufeld* Plaintiffs on February 10, 2023, notified the Court of the signing of the separate *Srednicki* Settlement Agreement and moved for leave to amend their *Neufeld* complaint to remove Srednicki's claims concerning the Contested HDL Fees for purposes of refiling them in the separate *Srednicki* Complaint and seeking preliminary approval of a class action settlement related thereto. *See* [ECF 230]. The Court granted leave on February 14, 2013 [ECF 231], and, in accord with the terms of the Settlement Agreement, Srednicki has on this date filed her separate Complaint and, simultaneously therewith, this motion for Preliminary Approval of Class Action Settlement and other relief.

III. OVERVIEW OF THE SETTLEMENT AGREEMENT

The complete terms and conditions of the Settlement are set forth in the Settlement Agreement (Exhibit 1 to the Narwold Declaration). The most salient terms are summarized below.

A. The Settlement Class

The Settlement Agreement defines the Settlement Class as:

> [A]ll Persons who were or are enrolled in a Plan, who received laboratory services from LabCorp and/or Sonora Quest through Cigna HealthCare of Arizona, Inc., Cigna Medical Group, or Health Diagnostic Laboratory, on or after October 7, 2011, and whose Cost Share for such services was greater than the amount they would have owed had their cost-sharing responsibility been based on the amount paid by Cigna HealthCare of Arizona, Inc., Cigna Medical Group, or Health Diagnostic Laboratory to LabCorp and/or Sonora Quest for those services.
>
> Excluded from the Settlement Class are: (1) any of Cigna's officers or directors; (2) the judicial officers to whom this case is assigned and any members of their staffs and immediate families; (3) any heirs, assigns, or successors of any of the persons or entities described in parts (1) and (2) of this paragraph; and (4) anyone who opts-out of the Settlement pursuant to ¶8.1 [of the Settlement Agreement].

See generally Settlement Agreement (Ex. 1) at ¶ 1.38.

B. The Settlement Relief

The Settlement Agreement establishes a $300,000 Settlement Fund. Settlement Agreement (Ex. 1) at ¶ 2.3. Based upon the data from Cigna that Srednicki obtained and analyzed, Plaintiff's Counsel presently anticipate that, barring unforeseen circumstances, each Class Member who does not opt out will receive a Settlement award in the amount of the entire Contested HDL Fees paid by that Class Member. Moreover, any Class Member who paid less than $5 in total Contested HDL Fees will receive a minimum total payment of $5. *Id.* at ¶ 1.27. Class Members do ***not*** need to complete a claim form to obtain their award. Rather, all Class Members who do not opt out will automatically be sent checks. Narwold Decl. at ¶ 5.

Plaintiff expects that, including the $5 minimum payment, the total paid to Class Members will be approximately $145,000. The remainder of the Settlement Fund will be used to pay costs of administration and to pay any attorneys' fees, expenses, and/or any lead plaintiff payment awarded by the Court. Plaintiff's Counsel do not presently expect that payments to Class Members will be reduced by any award by the Court of Attorneys' Fees or an Incentive Award or by any other costs or expenses connected to the Settlement.

C. Notice to Class Members

Under the terms of the Settlement Agreement, Cigna will provide the last known mailing address of each Class Member, and the Settlement Administrator will send the long-form notice of the Settlement (in the form attached as Exhibit A to the Settlement Agreement) to every Class Member at that last-known address (as updated by customary address databases used by the Settlement Administrator). The Settlement Administrator will also establish a Settlement website which will include a link to download the long-form notice as well as links to key

documents in the case. *See* Settlement Agreement (Exhibit 1) at ¶ 5.2. As discussed above, Class Members will not need to file claim forms, and checks will automatically be sent to all Class Members who do not opt-out.

D. Released Claims

Plaintiffs and Class Members will provide a release to Defendant and the other Released Parties covering the claims that were or could have been asserted specifically in the *Srednicki* Complaint. *See* Settlement Agreement (Ex. 1) at ¶¶ 1.31, 6.1.

E. Attorneys' Fees and Expenses and Lead Plaintiff Incentive Award

The Settlement Agreement provides that Plaintiff's Counsel may seek an award of Attorneys' Fees (defined as including expenses) out of the Settlement Fund, as well as an Incentive Award for Plaintiff Srednicki. Settlement Agreement (Ex. 1) at ¶ 9. In accord with that provision, the [Proposed] Notice notifies Class Members that Plaintiff's Counsel "will ask the Court for combined attorneys' fees, expenses and costs of up to $110,000" and "for a lead plaintiff Service Award in the amount of $7,500 to be paid to Class Representative Aubrey Srednicki." Settlement Agreement (Ex. 1) at Ex. B, ¶ 13. As discussed above, Plaintiff's Counsel do not anticipate that their request for Attorneys' Fees or an Incentive Award will reduce payment to Class Members of the expected benefit in the amount of the full Contested HDL Fees (or, where the total Contested HDL Fees is less than $5, a payment of $5).

IV. PRELIMINARY APPROVAL IS APPROPRIATE

Public policy strongly favors the pretrial settlement of class action lawsuits. *See Strougo v. Bassini*, 258 F. Supp. 2d 254, 257 (S.D.N.Y. 2003); *see also In re Warner Chilcott Ltd. Sec. Litig.*, No. 06 Civ. 11515, 2008 WL 5110904, at *1 (S.D.N.Y. Nov. 20, 2008) ("The settlement of complex class action litigation is favored by the Courts.") (citations omitted); *In re*

PaineWebber Ltd. Partnerships Litig., 147 F3d 132, 138 (2d Cir. 1998); *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116 (2d Cir. 2005). Fed. R. Civ. P. 23(e) requires judicial approval for any class-wide compromise of claims, and approval of a proposed settlement is a matter within the district court's discretion. Once a proposed class action settlement is reached, "a court must determine whether the terms of the proposed settlement warrant preliminary approval. In other words, the court must make a 'preliminary evaluation' as to whether the settlement is fair, reasonable and adequate." *In re Currency Conversion Fee Antitrust Litig.*, MDL No. 1409, 2006 WL 3247396, at *5 (S.D.N.Y. Nov. 8, 2006) (citations omitted); *see also In re NASDAQ Market-Makers Antitrust Litig.*, 176 F.R.D. 99, 102 (S.D.N.Y. 1997) ("Preliminary approval of a proposed settlement is the first in a two-step process required before a class action may be settled.").

Under Rule 23, courts considering approval of class action settlements follow a three-step procedure. *See* MANUAL FOR COMPLEX LITIGATION, FOURTH ("MCL"), §§ 21.632 - 21.634 (2015); *see also Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345 (2011). First, a court must preliminarily approve the proposed settlement. *See* MCL § 21.632. Second, notice of the settlement is disseminated to all affected class members. *Id.* § 21.633. Third, the court holds a hearing at which class members may be heard regarding the settlement, and at which evidence and argument concerning the fairness, adequacy, and reasonableness of the settlement may be presented. *Id.* § 21.634. This procedure safeguards the due process rights of class members and enables the court to fulfill its role as the guardian of class interests. *See* William B. Rubenstein, NEWBERG ON CLASS ACTIONS § 13.1 (5th ed. updated 2015).

Preliminary approval of the proposed Settlement is appropriate here because it is both procedurally and substantively fair, adequate, and reasonable. *See* Fed. R. Civ. P. 23(e). Federal

Rule 23 provides that preliminary approval should be granted, and notice to the class authorized, if "the court will likely be able to . . . approve the proposal under Rule 23(e)(2)." Fed. R. Civ. P. 23(e)(1)(B)(i). Rule 23(e)(2) provides the factors to be considered in determining whether a settlement merits final approval:

> (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, including timing of payment; 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). This standard is easily met here.

A. The Relief Provided is Adequate in Light of the Costs, Risks and Delay of Litigation

In assessing a proposed settlement, a court need only determine whether the Settlement falls within a "'range of reasonableness.'" *PaineWebber*, 171 F.R.D. at 130 (citation omitted). Moreover, in assessing the proposed Settlement, the Court should balance the benefits afforded the Class, including the *immediacy* and *certainty* of a recovery, against the continuing risks of litigation. *Detroit v. Grinnell Corp.*, 495 F.2d 448, 463 (2d Cir. 1974). Here, as discussed above, all Class Members are expected to receive a complete recovery of the Contested HDL Fees without any of the risks that ongoing litigation would entail. Accordingly, the "relief provided" is

not just adequate and reasonable, but outstanding. This factor alone justifies preliminary approval of the Settlement.

B. The Proposed Settlement Was Negotiated at Arm's Length and Plaintiffs and Plaintiff's Counsel have Adequately Represented the Class

Where a settlement is reached only after extensive arm's-length negotiations by competent counsel who had more than adequate information regarding the circumstances of the action and the strengths and weaknesses of their respective positions, it is entitled to a "strong initial presumption of fairness." *In re PaineWebber Ltd.*, *P'ships Litig.*, 171 F.R.D. 104, 125 (S.D.N.Y. 1997), *aff'd*, 117 F.3d 721 (2d Cir. 1997). The opinion of experienced counsel supporting the Settlement is entitled to considerable weight in a court's evaluation of a proposed settlement. *In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 57, 66 (S.D.N.Y. 1993); *see also Edwards v. North American Power & Gas LLC,* No. 14-cv-01714 (VAB), 2018 WL 1582509, at * (D. Conn. March 30, 2018) (granting preliminary approval to class settlement where [t]he parties engaged in extensive settlement discussions" over several years "includ[ing] multiple mediation attempts and private settlement attempts"). Moreover, in approving class action settlements, courts often defer to the judgment of experienced counsel who have engaged in arm's-length negotiations. *See In re Aggrenox Antitrust Litig.*, No. 14 Civ. 02516, 2017 WL 4278788, at *3 (D. Conn. Sept. 19, 2017) ("The Court finds that the proposed settlement, which . . . was arrived at by arm's-length negotiations by highly experienced counsel after years of litigation, falls within the range of possibly approvable settlements . . . .").[3]

[3] Plaintiff's Counsel have substantial experience in ERISA class actions and other complex litigation, have been appointed class counsel in numerous prior cases. *See, e.g.*, Narwold Decl., Ex. 2 (Firm Resume of Motley Rice LLC), Ex. 3 (Firm Resume of Izard Kindall & Raabe LLP).

Here, Plaintiff has engaged in extensive litigation, discovery and arms'-length negotiation with Defendant to arrive at the Settlement. The underlying (and ongoing) *Neufeld case* has been vigorously litigated over the course of several years, including thorough fact and expert discovery. As part of that process, Defendant specifically produced data relevant to Srednicki's individual claims and the related claims of the similarly situated Settlement Class, which data was reviewed by Plaintiff's expert, and all parties agreed after arms'-length negotiation that a settlement that expects a full recovery to the *Srednicki* Settlement Class is appropriate.

C. The Settlement Provides an Effective Means of Distributing Relief to Class Members

Fed. R. Civ. P. 23(e)(2)(C)(ii) requires the Court to consider "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims." Here, as discussed above, every Class Member will receive direct mailed Notice of the Settlement, and every Class Member who does not affirmatively opt-out will ***automatically*** receive checks constituting their Settlement benefits ***without the need to file a claim form***. Accordingly, the method of payment could not be more effective or efficient for distributing Settlement proceeds to individual Class Members.

D. The Provisions of the Settlement Related to Attorneys' Fees are Reasonable

Fed. R. Civ. P. 23(e)(2)(C)(iii) requires the Court to consider "the terms of any proposed award of attorney's fees, including timing of payment." Here, Plaintiff respectfully submits that that the anticipated request for Attorney's Fees are fair and reasonable. As discussed above, the [Proposed] Notice notifies Class Members that Plaintiff's Counsel "will ask the Court for combined attorneys' fees, expenses and costs of up to $110,000." Settlement Agreement (Ex. 1) at Ex. B, ¶ 13. As also discussed above, Plaintiff's Counsel do not anticipate that their request for

Attorneys' Fees will reduce recovery to Class Members of the full Contested HDL Fees or $5 (whichever is greater). Accordingly, Class Members will not be adversely affected by the Attorneys' Fees that Plaintiff's Counsel intend to seek. Moreover, an Attorneys' Fee request of up to $110,000 will constitute only a small percentage of Plaintiff's Counsel's actual lodestar and expenses after five years of work on the overall *Neufeld* litigation, which work was essential to ultimately resolving the *Srednicki s*ubset of claims in this Settlement.

Finally, the Settlement is not contingent upon approval of Attorneys' Fees. Settlement Agreement (Ex. 1) at ¶ 9.4. Rather, the Court will separately and independently determine the appropriate amount of Attorneys' Fees to award to Plaintiff's Counsel. *Id.*

Accordingly, Plaintiffs respectfully submit that an Attorneys' Fee request of no more than $110,000 is fair and reasonable.

E. The Settlement Treats Class Members Equitably Relative to Each Other

The Proposed Settlement treats class members equitably relative to each other, as required by Federal Rule 23(e)(2)(D). All Class Members are receiving the greater of their actual Contested HDL Fees or $5, with the minimum in place to ensure that all Class Members providing a release are receiving genuine value. Plaintiff respectfully submits that such an outstanding recovery is on its face fair and equitable to all Class Members.

As discussed above, Plaintiff also intends to request an Incentive Award of $7,500 for her work prosecuting the case on behalf of the Class. Providing incentive awards to consumers who come forward to represent a class is a necessary and important component of class action practice. *See Hall v. ProSource Technologies, LLC*, No. 14 Civ. 2502 (SIL), 2016 WL 1555128, at *9 (E.D.N.Y. Apr. 11, 2016) ("Courts regularly grant requests for service awards in class actions to compensate plaintiffs for the time and effort expended in assisting the prosecution of

the litigation, the risks incurred by becoming and continuing as a litigant, and any other burdens sustained by the plaintiffs.") (internal quotations and citations omitted); *Viafara v. MCIZ Corp.*, No. 12 Civ. 7452 (RLE), 2014 WL 1777438, at *16 (S.D.N.Y. May 1, 2014); *Elliot v. Leatherstocking Corp.*, No. 10 Civ. 0934 (MAD) (DEP), 2012 WL 6024572, at *7 (N.D.N.Y. Dec. 4, 2012). Accordingly, awarding Plaintiff an additional sum for personally extending herself to benefit the Class as a whole is fair, reasonable and equitable.

* * *

In sum, taking into account all factors for consideration, Plaintiff respectfully submits that the proposed Settlement merits preliminary approval and full consideration by the Settlement Class.

V. THE PROPOSED CLASSES MEET THE PREREQUISITES FOR CLASS CERTIFICATION UNDER FED. R. CIV. P. 23

For settlement purposes only, Plaintiff seeks certification of the following Settlement Class:

> [A]ll Persons who were or are enrolled in a Plan, who received laboratory services from LabCorp and/or Sonora Quest through Cigna HealthCare of Arizona, Inc., Cigna Medical Group, or Health Diagnostic Laboratory, on or after October 7, 2011, and whose Cost Share for such services was greater than the amount they would have owed had their cost-sharing responsibility been based on the amount paid by Cigna HealthCare of Arizona, Inc., Cigna Medical Group, or Health Diagnostic Laboratory to LabCorp and/or Sonora Quest for those services.
>
> Excluded from the Settlement Class are: (1) any of Cigna's officers or directors; (2) the judicial officers to whom this case is assigned and any members of their staffs and immediate families; (3) any heirs, assigns, or successors of any of the persons or entities described in parts (1) and (2) of this paragraph; and (4) anyone who opts-out of the Settlement pursuant to ¶8.1 [of the Settlement Agreement].

Fed. R. Civ. P. 23(a) sets forth four prerequisites to class certification referred to in the short-hand as: (i) numerosity; (ii) commonality; (iii) typicality; and (iv) adequacy of representation. In addition, a class must meet one of the three requirements of Fed. R. Civ. P. 23(b).

A. Numerosity, Commonality, Typicality and Adequacy

The Class meets the numerosity, commonality, typicality, and adequacy standards of Fed. R. Civ. P. 23(a)(1)-(4). First, the number of proposed Class Members is such that it is impractical to join all of the Class Members in one lawsuit. *See Cross v. 21st Century Holding Co.*, No. 00 Civ. 4333 (MBM), 2004 WL 307306, at *1 (S.D.N.Y. Feb. 18, 2004) (certifying where the number of persons in the class logically exceeded 100). Here, data provided by Cigna establishes that there are approximately 5,000 members of the Settlement Class. *See* Narwold Decl. at ¶ 5.

Second, for preliminary class certification and settlement purposes, the commonality requirement is satisfied. Plaintiff's claims all revolve around a core factual allegation: Cigna improperly calculated and charged the Contested HDL Fees as described above. Common issues exist regarding whether Cigna did engage in the alleged miscalculation, and common evidence will be essential to each Class Members' claim that Cigna had a policy and practice of engaging in such miscalculations.

Third, for preliminary class certification and settlement purposes, the typicality requirement is satisfied. Plaintiff in this action alleges precisely the same ERISA claims, under the same legal theories for the same allegedly wrongful conduct as the other Class members.

Fourth, for preliminary class certification and settlement purposes, Plaintiff is an adequate class representative because she does not have any claims antagonistic to or in conflict with those of the other Class Members, as Plaintiff is pursuing the same legal theories as the rest

of the Class relating to the same conduct. With regard to Plaintiff's Counsel's qualifications, both Plaintiff Counsel firms have extensive backgrounds in litigating ERISA class actions and other complex litigations, have been appointed class counsel in prior cases, and have the resources necessary to prosecute this action to its conclusion. *See, e.g.*, See, e.g., Narwold Decl., Ex. 2 (Firm Resume of Motley Rice LLC), Ex. 3 (Firm Resume of Izard Kindall & Raabe LLP).

B. Predominance of Common Issues and Superiority

Fed. R. Civ. P. 23(b)(3) authorizes class actions to proceed where "questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and [] a class action is superior to other available methods for fair and efficient adjudication of the controversy. The matters pertinent to these findings include: (A) the class members' interests in individually controlling the prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action." *Id.* The "predominance" and "superiority" provisions were intended "to cover cases 'in which a class action would achieve the economies of time, effort, and expense, and promote . . . uniformity of decision as to persons similarly situated, without sacrificing procedural fairness or bringing about other undesirable results." *In re Lupron Mktg. and Sales Practices Litig.*, 228 F.R.D. 75, 92 (D. Mass. 2005) (citing *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 615 (1997)).

Where, as here, a court is deciding on the certification question ***in the context of a proposed settlement class***, questions regarding the manageability of the case for trial purposes do

not have to be considered. *Amchem*, 521 U.S. at 619.[4] Moreover, predominance "does not require that ***all*** questions of law or fact be common; it only requires that the common questions *predominate* over individual questions." *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 93 (S.D.N.Y. 1981) (emphasis added); *see Myers v. Hertz Corp.*, 624 F.3d 537 (2d Cir. 2010) (predominance is satisfied "if resolution of some of the legal or factual questions that qualify each class member's case as a genuine controversy can be achieved through generalized proof, and if these particular issues are more substantial than the issues subject only to individualized proof.").

Plaintiff's theory in this case is that Cigna violated ERISA by miscalculating Class Members' cost share in connection with the Contested HDL Fees. *See generally* Complaint [ECF 1]. For preliminary class certification and settlement purposes, this uniform question under federal ERISA law predominates over any individual issues.

The superiority requirement of Fed. R. Civ. P. 23(b)(3) is also satisfied. Under this requirement, "maintaining the present action as a class action must be deemed by the court to be superior to other available methods of adjudication. A case will often meet this standard when 'common questions of law or fact permit the court to consolidate otherwise identical actions into a single efficient unit.'" *Bynum v. Dist. Of Columbia,* 217 F.R.D. 43, 49 (D.D.C. 2003) (citations omitted); *see also Wells v. Allstate Ins. Co.,* 210 F.R.D. 1, 12 (D.D.C. 2002).

A class action is not only the most desirable, efficient, and convenient mechanism to resolve Class Members' claims, but it is almost certainly the ***only*** fair and efficient means

[4] The remaining elements of Rule 23(b)(3), however, continue to apply in settlement-only certification situations. *Id.* at 619.

available to adjudicate such claims. *See, e.g., Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 809 (1985) ("[c]lass actions . . . permit the plaintiffs to pool claims which would be uneconomical to litigate individually . . . [in such a case,] most of the plaintiffs would have no realistic day in court if a class action were not available"). Individual Class Members likely would be unable or unwilling to shoulder the great expense of litigating the claims at issue against Defendant given the complexity of ERISA and the comparatively small size of each individual Class Member's claims. Thus, it is desirable to adjudicate this matter as a class action.

In light of the foregoing, all of the requirements of Fed. R. Civ. P. 23(a) and (b)(3) are satisfied, and, thus, the Court should certify the Settlement Class for settlement purposes.

VI. NOTICE

Fed. R. Civ. P. 23(c)(2)(B) requires that notice of a settlement be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Here, Plaintiffs propose that Rust Consulting ("Rust"), a leading national Claims Administration firm (*see* Narwold Decl. at Ex. 4), be appointed to act as Settlement Administrator and perform all duties of Settlement Administration as set forth in the Settlement Agreement.

With regard to the written Notice, and pursuant to the notice plan in the Settlement Agreement, Cigna will provide Rust with the last-known address of all Class Members. Settlement Agreement (Ex. 1) at 5.2. Rust will send detailed notice, in substantially the form attached as Exhibit B to the Settlement Agreement upon approval of the Court, to all Class Members, and will use customary search protocols to verify addresses and to obtain current addresses for Class Members whose notices are returned to sender. *Id*.

The Notice includes a summary of Plaintiffs' and Defendant's respective litigation positions; the general terms of the settlement as set forth in the Settlement Agreement; instructions for how to opt-out of or object to the settlement; and the date, time, and place of the Final Fairness Hearing. Settlement Agreement (Ex. 1) at Exhibit B. The Notice also will include contact information for Plaintiff's Counsel, so that Class Members may inquire directly of Plaintiff's Counsel concerning any questions they have. *See id.* Plaintiff respectfully submits that such Notice is more than sufficient because it "fairly apprise[s] the ... members of the class of the terms of the proposed settlement and of the options that are open to them in connection with [the] proceedings." *See Maywalt v. Parker and Parsley Petroleum Co.*, 67 F.3d 1072, 1079 (2nd Cir. 1995) (internal quotations omitted).[5]

VII. PROPOSED SCHEDULE

As set forth in the Proposed Order submitted with Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, should this Court grant preliminary approval of the Settlement, Plaintiff respectfully proposes the following schedule for sending notice to the Class and scheduling a final approval hearing:

EVENT	**SCHEDULED DATE**
Notice mailing deadline	42 days after entry of Preliminary Approval Order (Settlement Agreement at ¶¶ 5.2, 5.3)
Briefs in support of (i) Final Approval and of (ii) Attorneys' Fees and Costs	75 days after entry of Preliminary Approval Order

[5] In addition to the formal mailed Notice, Rust will also establish an informational website that will contain documents and other information regarding the Settlement, including the full notice (*Id.* at ¶5.2), and will also establish a telephone support line.

Last day for Class Members to opt-out of Settlement	91 days after entry of Preliminary Approval Order (Settlement Agreement at ¶ 8.1)
Last day for objections to the Settlement to be filed with the Court	91 days after entry of Preliminary Approval Order (Settlement Agreement at ¶ 8.2)
Parties file responses to any filed objections	105 days after entry of Preliminary Approval Order
Final Approval Hearing	At the convenience of the Court, not less than 120 days after entry of Preliminary Approval Order (Settlement Agreement at ¶ 5.3)

VIII. CONCLUSION

WHEREFORE, based on foregoing, Plaintiff respectfully requests that the Court enter an Order:

(1) Preliminarily approving the Settlement as set forth in the Settlement Agreement;

(2) Preliminarily certifying the Settlement Class;

(3) Preliminarily appointing Plaintiff Aubrey Srednicki as the Settlement Class Representative;

(4) Preliminarily appointing William H. Narwold, Meghan S.B. Oliver, and Charlotte Loper of Motley Rice LLC; and Robert A. Izard, Craig A. Raabe, Seth R. Klein, and Christopher M. Barrett, of Izard Kindall & Raabe LLP; as Plaintiff's Counsel;

(5) Approving the proposed Settlement Notice;

(6) Appointing Rust Consulting as Settlement Administrator;

(7) Scheduling a Final Approval Hearing; and

(8) Staying all other proceedings in this *Srednicki* action except those related to the Final Approval Hearing.

Dated: February 24, 2023

Respectfully submitted,

/s/ Robert A. Izard

Robert A. Izard (ct01601)
Craig A. Raabe (ct04116)
Christopher M. Barrett (ct30151)
Seth R. Klein (ct18121)
IZARD, KINDALL & RAABE, LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
Telephone: 860-493-6292
Facsimile:860-493-6290
rizard@ikrlaw.com
craabe@ikrlaw.com
cbarrett@ikrlaw.com
sklein@ikrlaw.com

William H. Narwold (ct00133)
MOTLEY RICE LLC
One Corporate Center
20 Church Street, 17th Floor
Hartford, CT 06103
Telephone: 860-882-1681
Facsimile: 860-882-1682
bnarwold@motleyrice.com
mjasinski@motleyrice.com

Meghan S. B. Oliver
Charlotte Loper
MOTLEY RICE LLC
28 Bridgeside Blvd.
Mt. Pleasant, SC 29464
Telephone: 843-216-9000
moliver@motleyrice.com
cloper@motleyrice.com