SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF WESTCHESTER

RICHARD MCCALL and ABRAHAM LIBMAN, individually and on behalf of all others similarly situated, Plaintiff., v. HERCULES CORP., Defendant.	Index No. 66810/2021 Motion Seq. No. 003

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL CERTIFICATION OF THE SETTLEMENT CLASS AND FINAL APPROVAL OF THE CLASS ACTION SETTLEMENT

Dated: June 24, 2022

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INTRODUCTION

Plaintiffs Richard McCall and Abraham Libman ("Plaintiffs"), submit this Memorandum of Law in support of their Motion for Final Approval of the Class Action Settlement. The proposed settlement (the "Settlement" or "Agreement") provides up to $2,362,500 and meaningful injunctive relief which Class Counsel values at $3,787,500 to resolve Plaintiffs' contentions that Defendant Hercules Corp. ("Hercules" or "Defendant") violated New York General Business Law ("GBL") § 349 by misrepresenting the value of its reloadable cash cards designed for use with laundry machines that are provided by and serviced by Defendant ("Laundry Cards"). The Settlement is the result of extensive negotiations, including a full day mediation with The Honorable Wayne R. Andersen (Ret.) of JAMS Chicago, an experienced and well-regarded class action mediator. Pursuant to the Settlement, each Settlement Class Member is entitled to submit a claim that will, if valid, entitle him or her to a cash payment. The Agreement also provides meaningful prospective relief as, on July 13, 2021, Defendant eliminated the $5 processing and handling fee to collect unused Laundry Card balances, and, as part of the Settlement, has agreed not to reinstate any fee for the recovery of unused funds on a Laundry Card. The Settlement represents a total victory for the members of the Class ("Class Members"), who are now guaranteed that the shipping and handling fee that is the subject of this litigation no longer exists and will not be reinstated.

On March 9, 2022, the Court preliminarily approved the settlement memorialized in the Class Action Settlement Agreement (NYSCEF Doc. No. 5)—attached for the Court's convenience as Exhibit 1 to the Affirmation of Philip L. Fraietta ("Fraietta Aff."). As part of the approval process, the Court preliminarily certified the Settlement Class, directed that notice be given to Class Members, and scheduled the final approval hearing for July 12, 2022, at 11:00 a.m. Fraietta Aff., Ex. 2 ("Preliminary Approval Order"). Notice has been provided to Class

Members in accordance with the Preliminary Approval Order. Class Members were advised of the Settlement's terms, the method by which their recovery will be determined, their right to object to and/or to opt out, and the date and time of the Fairness Hearing. As of June 24, 2022, the Settlement Administrator, JND Legal Administration ("JND") has mailed 4,932 notices to class members, 22,981 potential class members have visited the settlement website, and there have been an impressive 69,157,488 impressions on the social media campaign for the settlement. Additionally, Class Counsel have spent $25,000 that is not being reimbursed by Defendant to pay for additional notice to Class Members. Zero Class Members objected to the Settlement, and zero Class Members requested for exclusion. Pursuant to the Settlement, the claim period deadline is August 26, 2022, and JND will continue to accept and process new, timely Claim Forms as they are received.

Plaintiffs respectfully submit that the Settlement should be granted final approval. As described herein and in the accompanying Affirmation of Philip L. Fraietta, the Settlement is the product of strenuous arm's length negotiations, and its terms are fair, reasonable, and adequate. Indeed, the Settlement represents an outstanding result for this litigation. Moreover, the Settlement's terms were reached after vigorous litigation as well as discovery which involved Plaintiffs' counsel's exhaustive analysis of Defendant's practices and procedures. Accordingly, under the governing law, which strongly favors class action settlements, the Court should grant final class certification, and approve the Settlement as fair and reasonable and direct the payments referenced therein.

The Settlement closely follows a class action settlement that was finally approved by then Westchester County Supreme Court Justice Alan D. Scheinkman in a similar matter. *See Lonner v. Simon Property Group, Inc.*, Index No. 002246/2004 (Sup. Ct., Westchester Cnty., Nov. 3, 2010) (Scheinkman, J.). The *Lonner* settlement provided class members with the ability to file a

claim for a refund of all dormancy fees they paid in connection with their Simon gift cards. By contrast, this Settlement allows Group A Settlement Class Members to file a claim for ***triple*** the amount of processing and handling fees they paid, and allows Group B Settlement Class Members to recover money even though they did not pay any processing and handling fees. The Settlement also ends the allegedly unlawful processing and handling fees that were at issue.

The Court should have no hesitation finding that the Settlement falls within the range of possible approval. Accordingly, Plaintiffs respectfully submit this memorandum of law in support of their motion, under Article 9 of the CPLR, for: (i) final approval of the Settlement; and (ii) final certification of the Settlement Class.[1] The requested relief is embodied in the [Proposed] Order Granting Final Approval of Class Action Settlement ("Final Approval Order"), filed herewith.

FACTUAL AND PROCEDURAL BACKGROUND

On January 29, 2021, Plaintiff Libman filed a putative class action in the United States District Court for the Southern District of New York. Fraietta Aff. ¶ 4. The material allegations of the complaint were that Defendant allegedly misrepresented the value of its reloadable cash cards designed for use with laundry machines that are provided by and serviced by Defendant ("Laundry Cards") by setting the reload amounts and laundry machine prices such that the Laundry Cards were guaranteed to have a remainder balance, and then charging consumers a $5 processing and handling fee to collect the unused balance, without clearly and conspicuously disclosing that fee. *Id.*

On April 13, 2021, after Plaintiff Libman amended his federal complaint twice, Defendant filed a letter seeking a pre-motion conference regarding its anticipated motion to

[1] Unless noted, capitalized terms are defined in the Settlement Agreement, dated December 27, 2021 ("Settlement" or "Agreement"), which is attached to the Fraietta Affirmation as Exhibit 1.

dismiss. *Id.* ¶ 5. On May 27, 2021, the federal court conducted a pre-motion conference and dissuaded Defendant from making a motion to dismiss. *Id.* ¶ 6.

On August 16, 2021, Defendant filed an Answer to the operative Second Amended Complaint in the federal court, wherein it asserted 12 affirmative defenses, including that Plaintiff Libman and the putative class lacked Article III standing. *Id.* ¶ 7. During that time, the Parties also exchanged written and document discovery, including on issues such as the size and scope of the putative class, which allowed them to competently assess their relative negotiating positions. This information was sufficient to assess the strengths and weaknesses of the claims and defenses. *Id.* ¶ 8.

From the outset of the case, the Parties engaged in settlement discussions and, to that end, agreed to participate in a private mediation. *Id.* ¶ 9. In advance of this mediation, the Parties exchanged lengthy, detailed mediation statements, airing their respective legal arguments and theories on potential damages. *Id.* ¶ 10. Class Counsel also consulted with a potential damages expert to assist in that analysis. *Id.* On November 16, 2021, the Parties conducted a full-day mediation before Judge Andersen. *Id.* ¶ 11. At the conclusion of the mediation, the Parties reached an agreement on all material terms of a class action settlement and executed a term sheet. *Id.* ¶ 12.

On November 16, 2021, Plaintiff Libman and Hercules stipulated to voluntarily dismiss the federal action without prejudice, and on November 23, 2021, Plaintiff Libman re-filed his case in the Supreme Court of the State of New York, County of Westchester, adding Richard McCall as a Plaintiff. *Id.* ¶ 13.[2] Thereafter, Defendant produced confirmatory discovery

[2] The Parties concluded it was appropriate to proceed with their class action settlement in the Supreme Court of the State of New York, County of Westchester due to potential issues concerning the federal court's subject-matter jurisdiction over the Action. In particular, the federal court may have lacked Article III standing, particularly with respect to class members

regarding the size and scope of the putative class, and the Parties ultimately drafted and executed the Settlement Agreement, which is annexed to the Fraietta Affirmation as Exhibit 1. *Id.* ¶¶ 14-15. The Court preliminary approved the Settlement on March 9, 2022. *Id.* ¶ 16, Ex. 2.

TERMS OF THE SETTLEMENT

The key terms of the Class Action Settlement Agreement ("Settlement"), attached to the Fraietta Affirmation as Exhibit 1, are briefly summarized as follows:

A. Class Definition

The "Settlement Class" or "Settlement Class Members" is defined as:

> All persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card.
>
> The Settlement Class will be divided into two groups: (A) Group A, which consists of all class members who (i) were charged processing and handling fees in connection with recovering unused funds on a Hercules Laundry Card; or (ii) sent in their Hercules Laundry Card for a recovery of unused funds, but had those cards returned by Hercules because the cards had less than a $5 balance; and (B) Group B, which consists of all other persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card.[3]

Settlement ¶ 1.31.

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who did not pay the processing and handling fee. *See TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021). Moreover, this Action may be subject to the local controversy exception to the Class Action Fairness Act because more than two-thirds of all proposed plaintiff classes in the aggregate are likely citizens of New York, and Defendant is incorporated in New York and maintains its principal place of business in New York. *See* 28 U.S.C. § 1332(d)(4).

[3] Excluded from the Settlement Class are (1) any Judge presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded persons.

B. Monetary Relief

Defendant has agreed to make up to $2,362,500 available to pay approved class member claims (the "Settlement Sum"), and to separately pay notice and administration costs, incentive awards of the Plaintiffs, and attorneys' fees, costs, and expenses to Class Counsel. Settlement ¶¶ 1.33, 1.34.

Each Settlement Class Member is entitled to submit a claim that will, if valid, entitle him or her to a cash payment. Group A Settlement Class Members, which consists of all class members who (i) were charged processing and handling fees in connection with recovering unused funds on a Hercules Laundry Card; or (ii) sent in their Hercules Laundry Card for a recovery of unused funds, but had those cards returned by Hercules because the cards had less than a $5 balance, may submit a claim for $15. Group B Settlement Class Members, which consists of all other persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card, may submit a claim for $3. Settlement ¶ 2.3.

C. Prospective Relief

On July 13, 2021, Defendant eliminated the $5 processing and handling fee to collect unused Laundry Card balances, and, as part of the Settlement, has agreed not to reinstate any fee for the recovery of unused funds on a Laundry Card. Settlement ¶ 2.8. Class Counsel values this prospective relief at $3,787,500 and counting. Fraietta Aff. ¶ 18.

D. Release

In exchange for the relief described above, Defendant and each of its related and affiliated entities as well as all "Released Parties" as defined in ¶ 1.26 of the Settlement will receive a full release of any and all claims, demands, actions, causes of action, lawsuits, arbitrations, damages, costs, attorney fees or liabilities whether legal, equitable, or otherwise,

relating in any way to the claims asserted or the factual allegations made in the complaint in this Action, including all claims that were brought or could have been brought in the Action. *See* Settlement ¶¶ 1.25-1.27, 6.1 for full release language.

E. Notice And Administration Expenses

Defendant will pay the Notice and Other Administrative Costs, which includes sending the Notice set forth in the Agreement and any other notice as required by the Court, as well as all costs of administering the Settlement. Settlement ¶¶ 1.17, 2.1, 2.2(a).

F. Enhancement Awards, Attorneys' Fees, Costs, And Expenses

In recognition for their efforts on behalf of the Settlement Class, Plaintiffs may receive, subject to Court approval, an enhancement award of $5,000 each, as appropriate compensation for their time and effort serving as Class Representatives and as parties to the Action. Such awards will be paid by Defendant, separate and apart from the Settlement Sum, within twenty-one (21) days after the Final Settlement Approval Date. Settlement ¶ 3.3. Additionally, Class Counsel may receive, subject to Court approval, attorneys' fees, costs, and expenses not to exceed one-third of the Settlement Sum. Settlement ¶ 3.1.

Class Counsel petitioned the Court for these awards on May 13, 2022. NYSCEF Doc. Nos. 12-29. That motion was published to the Settlement Website that same day. Affidavit of the Claims Administrator Jennifer M. Keough dated June 23, 2022 ("Keough Affidavit") ¶ 16. That motion is unopposed.

ARGUMENT

I. FINAL APPROVAL OF THE SETTLEMENT IS APPROPRIATE

New York has a well-established public policy favoring settlement, especially in the class action context. *Brad H. v. City of New York*, 2003 WL 22721558, at *1 (Sup. Ct., N.Y. Cnty. Nov. 12, 2003). Although the CPLR does not define the specific mechanism for approval of

class action settlements, New York courts look to federal case law for guidance. *See, e.g.*, *Colt Indus. Shareholder Litig. v. Colt Indus. Inc.*, 77 N.Y.2d 185, 194 (1991) ("New York's class action statute has much in common with Federal Rule 23.") Federal courts use a two-step class settlement approval process which has routinely been followed by New York state courts. *See, e.g.*, *Saska v. Metropolitan Museum of Art*, 2016 WL 6682271, at *9-10 (Sup. Ct., N.Y. Cnty. Nov. 10, 2016) (setting forth procedure). This is the second step of the two-step process.

In ruling on final approval motions, New York Courts looks to: (1) the likelihood of success on the merits; (2) the extent of support from the parties; (3) the judgment of counsel; (4) the presence of good faith bargaining; and (5) the nature of the issues of law and fact. *Milton v. Bells Nurses Registry & Employment Agency, Inc.*, 2015 WL 9271692, at *1-2 (Sup. Ct. Kings Cnty. Dec. 21, 2015).

A review of the key factors for final approval supports approval here. Here, as set forth below, each factor weights in favor of final approval.

A. The Value Of The Settlement Outweighs The Likelihood Of Plaintiffs' Success On The Merits

The first factor in determining fairness, adequacy, and reasonableness of a proposed settlement is to "balance[e] the value of th[e] settlement against the present value of the anticipated recovery following a trial on the merits, discounted for the inherent risks of litigation." *In re Colt Indus. S'holder Litig.*, 155 A.D.2d 154, 160 (1st Dep't 1990). Litigation inherently involves risks, and the settlement benefits the class by ensuring some measure of relief and eliminating the "risk that an outcome unfavorable to plaintiffs will emerge from a trial." *Velez v. Majik Cleaning Serv., Inc.*, 2007 WL 7232783, at *6 (S.D.N.Y. June 25, 2007). Thus, "there is no reason, at least in theory, why a satisfactory settlement could not amount to a hundredth or even a thousandth part of a single percent of the potential recovery." *City of*

Detroit v. Grinnell Corp., 495 F.2d 448, 455 n.2 (2d Cir. 1974).

Here, the Settlement provides a substantial benefit to Settlement Class Members. Each Settlement Class Member will be entitled to submit a claim that will, if valid, entitle him or her to a cash payment. Group A Settlement Class Members may submit a claim for $15, while Group B Settlement Class Members may submit a claim for $3. Settlement ¶ 2.3(a). This recovery is exceptional given that the allegedly deceptive processing and handling fee at issue was only $5. Moreover, on July 13, 2021, Defendant eliminated the $5 processing and handling fee, and, as part of the Settlement, has agreed not to reinstate any fee for the recovery of unused funds on a Laundry Card, thus providing a monetary benefit of approximately $3,787,500 and counting. Settlement ¶ 2.8.

The Settlement reflects Plaintiffs' belief that while their claims are meritorious and class treatment is warranted, their ultimate success would require favorable outcomes at all steps of the litigation, including contested class certification and summary judgment, as well as at trial and on appeal, all of which are inherently uncertain and lengthy. Fraietta Aff. ¶¶ 21-22. Class Counsel is also cognizant of the potential problems of proof and defenses to the claims raised in this action. *Id.* Indeed, Class Counsel has been unable to locate any similar cases that have advanced to contested judgment. *Id.* In sum, Class Counsel is experienced and realistic, and understands that the resolution of class certification, liability issues, the outcome of the trial, and the inevitable appeals, all pose meaningful risks in terms of outcome and duration. *Id.*

Moreover, Defendant is represented by experienced and capable counsel who made clear that, absent the Settlement, they were prepared to vigorously defend this case and oppose certification of a litigated class. *Id.* The proposed Settlement alleviates these risks and provides a substantial benefit to the Settlement Class in a timely fashion. This factor favors final approval.

B. The Class Members and Parties Unanimously Support The Settlement

Under New York law, support for a proposed Settlement from the opposing parties and Settlement Class Members demonstrates its fairness and reasonableness. *See, e.g.*, *Hibbs v. Marvel Enters.*, 19 A.D.3d 232, 233 (1st Dep't 2005).

As of June 24, 2022, JND has mailed 4,932 notices to class members, 22,981 potential class members have visited the settlement website, and there have been an impressive 69,157,488 impressions on the social media campaign for the settlement. Keough Aff. ¶¶ 6, 8, 17. Additionally, Class Counsel has spent $25,000 that is not being reimbursed by Defendant to pay for additional notice to Class Members. Fraietta Aff. ¶ 26. Zero Class Members objected to the Settlement, and zero Class Members requested for exclusion. Keough Aff. ¶¶ 21, 23.

Additionally, Plaintiffs and Class Counsel have reviewed and analyzed the extensive disclosures and documents provided by Defendant and those obtained via their own investigation, consulted with an expert, considered and researched Defendant's defenses, and examined the benefits made available by the Settlement. Fraietta Aff. ¶¶ 3, 8, 10, 18, 23. Plaintiffs and Class Counsel believe that the Settlement is fair, adequate, reasonable, and in the best interests of the Settlement Class. *Id.* ¶¶ 18, 23.

Defendant likewise believes that the Settlement is appropriate. Settlement, Recitals ¶ I. Defendant denies each and every one of the allegations of wrongdoing or liability and has asserted numerous defenses. *Id.* Defendant has also engaged well-qualified counsel with extensive complex class action experience and recognizes the risks and uncertainties inherent in litigation, the significant expense associated with defending the action, the costs of any appeals, and the disruption to its business operations arising out of burdensome and protracted litigation. *Id.* This factor favors final approval.

C. Class Counsel And Defendant's Counsel Are Experienced Class Action Litigators, And They Support The Settlement

New York courts grant significant weight to the judgment of experienced counsel in determining the fairness of a class action settlement. *See Fiala v. Metro. Life Ins. Co.*, 899 N.Y.S.2d 531, 538 (Sup. Ct., N.Y. Cnty. 2010) (finding that the settlement is supported by the "judgment of counsel" weights in favor of approval). The Settlement is the product of intense and protracted negotiations involving highly experienced law firms. As set forth more fully in the Fraietta Affirmation, Class Counsel has years of experience litigating and settling consumer class actions, and in their view, the Settlement represents a fair value and commendable result. Counsel for Defendant also has significant experience defending class actions, are well regarded within the class action bar, and support the Settlement as well. *See Williams v. Reckitt Benckiser LLC*, 2022 WL 1176959 (S.D. Fla. Mar. 17, 2022) ("The quality of Class Counsel and their achievement in this case is equally shown by the strength of their opponents, Perkins Coie LLP …, who are excellent defense firms."). This factor favors final approval.

D. The Settlement Is The Result Of Arm's-Length Negotiations Between The Parties After A Mediation With An Experienced Class Action Mediator

"[N]egotiations are presumed to have been conducted at arm's length and in good faith where there is no evidence to the contrary[.]" *Gordon v. Verizon Commc'ns, Inc.*, 148 A.D.3d 146, 157 (1st Dep't 2017). As detailed above, this Settlement is the result of informed, arm's-length negotiations, which included a full-day mediation and extensive discussions involving experienced counsel for the Parties under the direction of Judge Andersen. Additionally, the fact that the Settlement was reached with the assistance of a highly-regarded class action mediator, following a full-day mediation and subsequent negotiations in the following weeks, further supports final approval. *See, e.g.*, *Fiala v. Metropolitan Life Ins. Co.*, 899 N.Y.S.2d 531, 539 (Sup. Ct., N.Y. Cnty. 2010) (finding that settlement occurred "with the help of an accomplished

and scrupulous mediator" weights in favor of approval). This factor favors final approval.

E. The Nature Of The Legal And Factual Issues Is Complex

Finally, courts consider the complexity of the case and whether continued litigation would be "expensive and protracted" in determining whether to approve a settlement. *Lowenschuss v. Bluhdorn*, 613 F.2d 18, 19 (2d Cir. 1980) (affirming approval of a settlement where further litigation would have been "expensive and protracted" with no guarantee of any relief to the class). "Most class actions are inherently complex and settlement avoids the costs, delays and multitude of other problems associated with them." *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000); *see also Fiala*, 899 N.Y.S.2d at 540 (noting that "the complexity of the litigation, its expenses and its duration favored settlement for both the plaintiffs and defendant").

Here, the legal and factual issues support approval of the Settlement. While Plaintiffs believe that their claims are strong, they are not without risk. For example, because Defendant stopped charging the processing and handling fee on July 13, 2021, it could have argued that all Group B class members suffered no injury at all, thereby essentially gutting the majority of the case and depriving those class members of any recovery whatsoever. Fraietta Aff. ¶ 22. Moreover, any allegation that Defendant engaged in deceptive conduct is vigorously disputed. *Id.* While Plaintiffs believe that they would ultimately prevail at trial, the Settlement eliminates these risks and will provide substantial recovery for the Settlement Class without the risk and delay of continued litigation.

In sum, the Settlement readily meets all the factors weighted by courts in determining whether it is fair, reasonable, adequate, and in the best interests of the Settlement Class, and therefore should be finally approved.

II. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS APPROPRIATE

By its Preliminary Approval Order, the Court appointed Plaintiffs as Class Representatives and Plaintiffs' counsel as Class Counsel and certified the following Class for settlement purposes pursuant to CPLR 901:

> All persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card.
>
> The Settlement Class will be divided into two groups: (A) Group A, which consists of all class members who (i) were charged processing and handling fees in connection with recovering unused funds on a Hercules Laundry Card; or (ii) sent in their Hercules Laundry Card for a recovery of unused funds, but had those cards returned by Hercules because the cards had less than a $5 balance; and (B) Group B, which consists of all other persons who possessed and used a Hercules Laundry Card after January 1, 2017 and stopped using their Hercules Laundry Card prior to July 13, 2021 and no longer possess their Hercules Laundry Card.[4]

Preliminary Approval Order, ¶ 9 (NYSCEF Doc. No. 11)

Having already notified Class Members of the Settlement and having received no objection that would call into question the Court's findings in its Preliminary Approval Order, final certification of the Class is appropriate and warranted.[5] Fraietta Aff. ¶ 27. The Settlement's benefits can be realized only through final certification of the Class and entry of a Final Order.

[4] Excluded from the Settlement Class are (1) any Judge presiding over this Action and members of their families; (2) the Defendant, Defendant's subsidiaries, parent companies, successors, predecessors, and any entity in which the Defendant or its parents have a controlling interest and their current or former officers, directors, agents, attorneys, and employees; (3) persons who properly execute and file a timely request for exclusion from the class; and (4) the legal representatives, successors, or assigns of any such excluded persons.

[5] Those findings were based on Plaintiffs' Memorandum of Law in Support of Unopposed Motion For Preliminary Approval of Class Action Settlement, filed January 5, 2022 (NYSCEF No. 7), which Plaintiffs incorporate by reference herein.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that the Court grant their Motion for Final Approval of the Settlement. A Proposed Order granting final approval is submitted herewith.

Dated: June 24, 2022

Respectfully submitted,

By: */s/ Philip L. Fraietta*
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PRINTING SPECIFICATION STATEMENT

1. Pursuant to 22 N.Y.C.R.R. §202.8-b, the undersigned counsel certifies that the foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

Name of Typeface: Times New Roman
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2. The total number of words in the brief, inclusive of point headings and footnotes and exclusive of the caption, table of contents, table of authorities, signature block, and this Certification, is 4,263 words. By operation of Microsoft Word's word count function, this number includes legal citations and certain forms of punctuation.

Dated: June 24, 2022

Respectfully submitted,

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