UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ALABAMA MIDDLE DIVISION

CYNTHIA PERRY, *individually and on behalf of all others similarly situated,*	)	
Plaintiff,	)	Case No. 4:25-cv-00521-CLM
v.	)	
ALATRADE FOODS, INC.,	)	
Defendant.	)	

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL AND PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, GENERAL RELEASE PAYMENT TO PLAINTIFF, AND LITIGATION COSTS

In advance of the conference scheduled for October 20, 2026, Plaintiff respectfully submits this memorandum of law discussing three issues raised by the Court: (1) whether any error in the timing of the fee motion was harmless under *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244, 1252–53 (11th Cir. 2020), because there is no reason to believe it will affect the outcome of the fee decision; (2) whether the general release payment to Plaintiff is permissible under *Johnson* because it does not reduce class member payments and will be in exchange for a separate, broader release than class members give; and (3) whether the settlement provisions regarding reversion and *cy pres* affect the fairness of the settlement where any reversion is limited to recouping Defendant's mediation costs and any *cy pres* payment occurs

only after the amount of unclaimed funds is likely to be so low as to make further class distribution not economically feasible. As discussed below, Plaintiff respectfully submits that none of these issues undermines the fairness of the proposed settlement or the reasonableness of the requested fees.

I. The notice apprised class members of the amount of the fee request and allowed them to object, and any error in the timing of the fee motion was harmless under *Johnson v. NPAS Solutions, LLC*.

Admittedly, under Rule 23(h), the fee motion in this case should have been filed before the class members' deadline to object passed. *Johnson*, 975 F.3d at 1252–53. However, that error was harmless and does not provide a basis to reject the settlement or fee motion.

In *Johnson*, the Eleventh Circuit held that the failure to file a fee motion before the deadline to object may be harmless error. *Id.* at 1254. In that case, the deadline for class members to object to the settlement expired before class counsel filed their fee motion. *Id.* at 1252–53. The Eleventh Circuit held that, although the timing of the fee motion violated Rule 23(h), it was harmless error. *Id.* at 1263–64. In particular, the Eleventh Circuit noted that: (1) the notice sent to class members advised them that counsel would request a certain percentage fee from the common fund; (2) class members were permitted an opportunity to object to that fee; and (3) the fee motion was filed before the final approval hearing. *Id.* Thus, although class members did not have the full benefit of the fee motion prior to the objection deadline, there was

no reason to believe that error "affected the outcome of the proceeding" or rendered the fee request unreasonable. *Id.* at 1255 (quotation omitted). The Eleventh Circuit, therefore, affirmed the award to class counsel of the requested percentage fee. *Id.* at 1263–64.

Here, as in *Johnson*, any error in the timing of the fee motion was harmless. As in *Johnson*: (1) the notice sent to class members advised them that, as part of the settlement, counsel would request a certain percentage fee from the common fund; (2) class members were permitted an opportunity to object to that fee or any other part of the settlement; and (3) the fee motion was filed before the final approval hearing. ECF Nos. 22, 22-1, & 24-1 at 8–9. In addition, the requested fee is the standard one-third contingent fee that courts routinely hold to be reasonable. *See, e.g.*, *Guippone v. BH S & B Holdings, LLC*, No. 09 Civ. 1029 (CM), 2011 WL 5148650, at *9 (S.D.N.Y. Oct. 28, 2011) ("[I]n more than 30 WARN actions class counsel was awarded a one-third fee."). There is no reason to believe that the timing of the fee motion here has "affected the outcome of the proceeding" or undermined the reasonableness of the fee request. *See Johnson*, 975 F.3d at 1255. Therefore, the Court should approve the requested fees, to which no class member objected.

II. The general release payment to Plaintiff is permissible under *Johnson* and does not reduce the payment amounts to Class Members.

The Court should also approve the general release payment to Plaintiff. In *Johnson*, the Eleventh Circuit held that incentive award payments to class action

plaintiffs are impermissible. 975 F.3d at 1264. However, post-*Johnson*, courts have approved general release payments that are not awarded for the named representative's service to the class but are instead: (a) made in exchange for a general release from the named plaintiff that is broader than the limited class release; and (b) that does not reduce the payments to the class members. *See, e.g.*, *Larkin v. UAB Med. Enter.*, No. 2:23-cv-00142, ECF No. 87, at 11–12 (N.D. Ala. June 17, 2025) (approving $1,500 payments for general releases supported by consideration separate from that exchanged for the underlying claims); *Stevens v. 3 Squares Diner, LLC*, No. 7:24-cv-00027, ECF No. 47, at 7–9 (M.D. Ga. Dec. 19, 2025) (approving $5,000 payment for a general release); *Cornelius v. Deere Credit Servs., Inc.*, No. 4:24-cv-25-RSB-CLR, 2025 WL 502089, at *3 (S.D. Ga. Feb. 13, 2025) (approving $5,000 payment for a general release as fair and reasonable in light of the additional rights relinquished by the named plaintiff); *Sinkfield v. Persolve Recoveries, LLC*, No. 9:23-cv-80338, 2023 WL 511195, at *3 n.2 (S.D. Fla. Jan. 26, 2023) (approving $1,500 payment in exchange for a broader release than that provided by other class members).

Both factors support approval of the general release payment here. First, and critically, the general release payment will *not* reduce payments to class members. ECF No. 18-6 at 15, ¶ 65. Rather, Plaintiff will receive the general release payment only from funds that Class Members do *not* collect, i.e., from checks that go

uncashed. *Id.* (plaintiff "will sign a general release in exchange for $1,500 . . . if there are sufficient unclaimed funds available *after payment of the Class Members*.").[1] And, in exchange for that general release payment, Plaintiff will be giving up something that class members are not giving up. Plaintiff will release all claims against Defendant, not just the layoff-related claims released by Class Members. *Contrast id.* ("general release" by Plaintiff) *with* ECF No. 18-6 at 6–7 ¶ 13 (class release of claims "arising out of the layoffs that occurred at the Facility between February and August of 2025"). Because the general release payment does not reduce Class Member payments and is in exchange for a general release that is broader than that provided by Class Members, it is permissible. *See Larkin*, No. 2:23-cv-00142, ECF No. 87, at 11–12; *Stevens*, No. 7:24-cv-00027, ECF No. 47, at 7–9; *Cornelius*, 2025 WL 502089, at *3; *Sinkfield*, 2023 WL 511195, at *3 n.2.

[1] The Disbursement Declaration from the Settlement Administrator incorrectly deducted payment prior to calculating distributions to class members. ECF No. 24-1 at 3–4, ¶ 12. As discussed below, the Allocation Plan will be applied to the Net Settlement Fund of $500,000 less fees, expenses, and administration costs, not deducting for the general release payment, which under the Settlement is only paid "if there are *sufficient unclaimed funds available after payment of the Class Members*." ECF No. 18-6 at 15, ¶ 65.

III. The limited reimbursement and *cy pres* terms do not undermine the fairness of the settlement, and under the Allocation Plan only uncashed checks will be available for *cy pres*, which is likely to be an amount that could not be redistributed to the class members in an economically feasible manner.

The reimbursement of mediation costs from uncollected funds and the *cy pres* terms also do not undermine the fairness of the settlement. Defendant will be reimbursed only from unclaimed funds and only up to the amount of its mediation costs. ECF No. 18-6 at 15, ¶ 65. Courts have discretion to allow unclaimed funds to revert, escheat, or be paid on a *cy pres* basis. 4 *Newberg and Rubenstein on Class Actions* § 12:29 (6th ed.). As *Newberg* explains, "in some situations, the settlement's funds (even a judgment) may be conceptualized as the defendant's property until the class claims it. As such, a reversion approach respects these property rights." *Id.* In addition, "perhaps most importantly, a defendant is more likely to settle if the unclaimed funds revert to it." *Id.* Here, the reversion from unclaimed funds was a hotly negotiated topic, with Defendant originally demanding a complete uncapped reversion. In the end, Plaintiff was able to limit the potential reversion to be limited to mediation costs, with any excess going to *cy pres*, not to benefit Defendant.

With respect to *cy pres*, Plaintiff proposes the Allocation Plan be revised to reallocate those proceeds among the claimants with the goal of exhausting the Net Settlement Fund except for amounts attributable to uncashed checks. That is likely to be a *de minimis* amount that could not reasonably be distributed to Class Members

because the costs of another round of distributions would exceed the small amount of funds remaining from uncashed checks. *See In re Checking Acct. Overdraft Litig.*, 830 F. Supp. 2d 1330, 1355 (S.D. Fla. 2011) ("The American Law Institute recommends *cy pres* distributions 'only when direct distributions to class members are not feasible—either because class members cannot be reasonably identified or because distribution would involve such small amounts that, because of the administrative costs involved, such distribution would not be economically viable.'") (quoting American Law Institute, *Principles of the Law: Aggregate Litigation* § 3.07, cmt. b (2010)).

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant final approval and approve the requested fees and general release payment.

Dated: October 16, 2026

Respectfully submitted,

/s/Hirlye R Lutz

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