UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CamCara, Inc. d/b/a AST Manufacturing, individually, and on behalf of all others similarly situated, Plaintiff, v. Air Products and Chemicals, Inc., Defendant.	)	Civil Action No. 21-cv-02264

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS-ACTION SETTLEMENT

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Under Federal Rule of Civil Procedure 23(e), Plaintiff CamCara, Inc. d/b/a AST Manufacturing ("AST" or "Plaintiff"), respectfully moves this Court for preliminary approval of the proposed class action settlement ("Settlement") set forth in the Class Action Settlement Agreement dated August 28, 2025 ("Settlement Agreement" or "SA").[1]

As detailed herein, AST seeks entry of an order: (1) preliminarily approving the Settlement on behalf of the Settlement Class pursuant to Rule 23(e); (2) provisionally certifying the Settlement Class for settlement purposes only under Rules 23(a) and 23(b)(3); (3) preliminarily appointing AST as Class Representative; (4) preliminarily appointing William H. Narwold, Mathew P. Jasinski, Jessica C. Colombo, and Michael J. Quirk of Motley Rice LLC as Class Counsel; (5) preliminarily approving the proposed Plan of Allocation set forth in Exhibit C to the Settlement Agreement; (6) approving Plaintiff's selection of RG/2 Claims Administration LLC as Settlement Administrator; (7) approving the Parties' proposed settlement procedures, including the notice plan and proposed Class Notice, establishing deadlines for exclusions and objections, and scheduling a Final Approval Hearing; (8) entering the [Proposed] Order Granting Preliminary Approval of Class Action Settlement; and (9) granting such other and further relief as may be just and appropriate.

I. INTRODUCTION

Plaintiff, on behalf of itself and a proposed class of current and former customers of Defendant Air Products & Chemicals, Inc. ("Air Products" or "Defendant"), has agreed to settle all claims against Air Products relating to product surcharges that were assessed to certain customers in the United States during the period from June 1, 2018, through August 31, 2020 (the "Class Period"). Specifically, Plaintiff has agreed to settle claims on behalf of customers with ship-

[1] Unless otherwise indicated, all enumerated exhibits referenced in this motion are attached to the Declaration of Mathew P. Jasinski ("Jasinski Decl.") filed contemporaneously herewith.

to locations in the United States who were assessed two or more increases to the product-surcharge rate during the Class Period.

Plaintiff alleged that Air Products violated its duty of good faith under the Uniform Commercial Code by assessing product surcharges on its customers without regard to its increases in production and delivery costs and charging customers for services unconnected to the removal of storage equipment used on customers' property. Air Products denies all liability and maintains that product surcharges were assessed to recover increases in its delivery costs as permitted by the terms of its contacts with customers, which Air Products asserts are individually negotiated agreements between sophisticated parties. As set forth in the Settlement Agreement, all eligible customers who do not opt-out of the Settlement will receive payment under the Settlement in consideration for the release of their claims against Air Products. All eligible customers will receive an automatic distribution of the Net Settlement Amount, which will be allocated *pro rata* to each Settlement Class Member based on their proportional amount of "qualifying surcharges" incurred during the Class Period.

The proposed Settlement is the product of fully informed, arm's-length settlement negotiations, including a mediation session with Hon. Thomas J. Rueter (Ret.) of JAMS. As shown below, the proposed settlement is fair, reasonable, and in the best interest of Plaintiff and the Class. As such, the Settlement meets Rule 23(e)'s requirements for the issuance of notice. Plaintiff therefore respectfully requests that the Court preliminarily approve the Settlement and enter the proposed Preliminary Approval Order.

II. BACKGROUND

A. Summary of the Claims in the Lawsuit

On September 22, 2020, AST commenced a putative class action against Air Products in the United States District Court for the District of Delaware. ECF 1. On May 4, 2021, the Court

transferred the Lawsuit to the Eastern District of Pennsylvania. ECF 22. In the operative First Amended Complaint (ECF 59), AST alleged that Air Products violated its duty of good faith under the Uniform Commercial Code by (1) assessing product surcharges on its customers without regard to its increases in production and delivery costs and (2) charging customers for services unconnected to the removal of storage equipment used on customers' property. On February 24, 2022, Air Products answered the FAC (denying all liability), asserted affirmative defenses, and filed a counterclaim against AST for breach of contract and unjust enrichment related to AST's failure to pay an invoice concerning the removal of storage equipment from AST's property at the termination of its agreement with Air Products. ECF 63.

B. Nature and Stage of the Proceeding

On October 27, 2020, Air Products moved to dismiss AST's initial complaint. ECF 8, 9. The Court denied that motion. ECF 34. Following its ruling, the Court limited discovery to the AST's individual claims, ECF 38, rather than permit AST to pursue class-wide discovery. After that initial period of discovery, on May 25, 2022, Air Products moved for summary judgment as to the FAC and Air Products' counterclaim. ECF 85. On March 23, 2023, the Court granted summary judgment in favor of Air Products as to AST's claim concerning the payment of installation and removal costs and the counterclaim, but the Court denied Air Products' motion for summary judgment with respect to AST's product-surcharge claim. *See* Mot. Summ. J. Op., ECF 109. The parties then proceeded to full merits and classwide discovery, which culminated in AST's December 6, 2024, motion for class certification. ECF 147. That motion is fully briefed, *see* ECF 157, 159 (opposition), ECF 165, 167 (reply), and remains pending.

The Parties have engaged in considerable discovery in the Lawsuit, including written interrogatories and requests for admission, voluminous document productions, numerous depositions of party and non-party witnesses, and expert discovery. Through its counsel, AST

propounded twenty-two interrogatories, forty-four requests for production and forty-three requests for admission. Jasinski Decl. ¶ 4. AST deposed eleven fact witnesses, three Rule 30(b)(6) witnesses, and two expert witnesses. *Id.* ¶ 5. Further, Air Products produced (and counsel for AST reviewed) over 175,000 pages of documents. *Id.* ¶ 6. In addition, Air Products produced (and AST engaged an expert to analyze) five spreadsheets containing over 75,000 rows of data. *Id.* ¶ 7. In addition, AST produced over 1,700 pages of documents and its Rule 30(b)(6) designee sat for a deposition. *Id.* ¶ 8. Moreover, the litigation has been hard fought, as reflected in orders resolving various discovery disputes. *See, e.g.*, ECF 70; ECF 79; ECF 131.

C. The Settlement Agreement

On July 29, 2025, AST and Air Products engaged in a full-day mediation with retired United States Magistrate Judge Thomas J. Rueter, which resulted in the execution of a binding term sheet setting forth the material terms and obligations for settlement of the Lawsuit. The key components of the Settlement are set forth below, and a complete description of its terms and conditions is contained in the Settlement Agreement.

1. Class Definition

Through the Settlement Agreement, the Parties stipulate to the following Settlement Class definition:

> All current and former Air Products' customers with Ship-To Locations in the United States who, between June 1, 2018 and August 31, 2020, inclusive, incurred two or more increases to the Product-Surcharge Rate imposed by Air Products at any given Ship-To Location.[2]

[2] "'Ship-To Location' means each distinct physical address or facility identified in Air Products' records as a delivery destination that Air Products treated as a separate and distinct location for purposes of imposing increases to Product-Surcharge Rates during the Class Period." Ex. 1, SA ¶ 2.47.

Ex. 1, SA ¶ 2.51. There are approximately 900 current and former customers of Air Products that fall within this definition. Jasinski Decl. ¶ 14.

2. The Proposed Class Notice

The Settlement Agreement provides for dissemination of a Settlement Notice. Ex. 1, SA ¶ 2.43. The proposed Settlement Notice is attached hereto as Exhibit B to the Settlement Agreement (Ex. 1).

The Settlement Notice will provide Settlement Class Members with pertinent information regarding the Settlement as well as direct them to the Settlement Website and the contact information for Class Counsel. Within fourteen (14) days after the entry of the Preliminary Approval Order (or another date ordered by the Court), Air Products shall provide the Settlement Administrator[3] and Class Counsel with a spreadsheet containing each Class Member's name and billing address(es) and each Class Member's Ship-To Location(s) that incurred two or more product-surcharge rate increases during the Class Period, as well as the dollar amounts of product surcharges attributable to each such increase (the "Class Member List"). Ex. 1, SA ¶ 2.8, ¶ 3.3.2.

The Settlement Administrator will mail the Settlement Notice to each Class Member's billing address(es) listed on the Class Member List, unless the Settlement Administrator finds a more current address clearly identifiable to that Class Member through the National Change of Address Service and/or alternative services utilized by the Settlement Administrator. Ex. 1, SA ¶ 3.3.3. The Settlement Administrator will also establish a Settlement Website, which will include the Settlement Notice and provide links to relevant Court documents, including the Settlement Agreement. Ex. 1, SA ¶ 3.3.4. The Settlement Administrator will mail the Settlement

[3] Pursuant to § 3.8.1 of the Settlement Agreement, Class Counsel seeks approval of RG/2 Claims Administration LLC ("RG/2 Claims") to serve as Settlement Administrator for this matter. RG/2 Claims, a full-service class-action settlement administrator is well qualified to serve as Settlement Administrator. *See* Jasinski Decl. ¶¶ 16-18.

Notice and make the website accessible to the public on the same date, which will occur within thirty (30) days after the Preliminary Approval Date. Ex. 1, SA ¶ 3.3.7.

3. Monetary Terms

The proposed Gross Settlement Amount is a non-reversionary cash payment of Two Million Dollars ($2,000,000.00). Ex. 1, SA ¶ 2.19. In accordance with the Settlement Agreement, the Settlement Administrator shall make deductions from the Gross Settlement Amount for court-approved attorneys' fees and reasonable litigation costs, fees and expenses for the Settlement Administrator, and any court-approved Service Award to the Class Representative, in recognition of the risks and benefits of its participation and substantial services it performed. Ex. 1, SA ¶ 2.23.

After all applicable fees, expenses, and awards are deducted, the Net Settlement Amount will be allocated to Class Members based upon a Plan of Allocation, Ex. 1, SA ¶ 2.28, which shall "allocate the Net Settlement Amount to Class Members" based upon the data provided by Air Products, *id*. ¶ 3.4.1. According to the Plan of Allocation Proposed by AST (which is attached as Exhibit C to the Settlement Agreement), each Class Member will receive its *pro rata* share of the total dollar amount of Qualifying Surcharges,[4] as reflected in the data provided by Air Products. Specifically, each Settlement Class Member's Individual Payment will be calculated using the following formula:

> Individual Payment = (Settlement Class Member's Total Qualifying Surcharges ÷ Aggregate Qualifying Surcharges of All Settlement Class Members) × Net Settlement Amount.

[4] "'Qualifying Surcharges' means, for each Settlement Class Member, the dollar amounts of product surcharges attributable to each increase in the Product-Surcharge Rate beyond the first increase at each of that Class Member's Ship-To Locations during the Class Period, as specified in the Class Member List provided by Air Products pursuant to Section 3.3.2 of the Settlement Agreement." Ex. 1, SA Ex. C (Plan of Allocation), ¶ 2.

Ex. 1, SA Ex. C (Plan of Allocation), ¶ 4. No Individual Payment shall be less than ten dollars ($10.00). Any Settlement Class Member whose calculated Individual Payment would be less than $10.00 shall receive $10.00, provided their Total Qualifying Surcharges exceed zero. *Id.* ¶ 5.

Should the Court grant preliminary approval of the Settlement, Air Products shall pay the entire $2,000,000 into the Qualified Settlement Fund within ten (10) days of the later of: (1) entry of the Preliminary Approval Order; or (2) receipt by Defense Counsel of complete payment instructions. Ex. 1, SA ¶ 3.1.1. Within thirty days after the Final Settlement Date,[5] the Settlement Administrator will issue and mail checks to each Class Member in the amount of that Class Member's Individual Payment. See Ex. 1, SA ¶ 3.5.2.

Settlement Class Members shall have one hundred and twenty (120) days from the date of distribution to cash their Settlement Check. After 90 days, the Settlement Administrator will attempt to contact any Class Member whose Settlement Check has not been cashed to remind them of the expiration date. All funds for uncashed Settlement Checks shall, subject to Court approval, be provided as a *cy pres* award to the National Consumer Law Center. Ex. 1, SA ¶ 3.5.3.

4. Dismissal and Release of Claims

Settlement Class Members who do not opt out will be deemed to have released all claims against Air Products and related parties arising from or related to the allegations in the lawsuit, Air Products' imposition of product surcharges during the Class Period, and the Plan of Allocation or calculation of Individual Payments. Ex. 1, SA § 3.6.1. The release covers both claims actually

[5] The "Final Settlement Date" marks when the settlement becomes legally effective and binding on all parties. Ex. 1, SA ¶ 2.18. The settlement will not take effect until either (1) the appeal period expires without any appeal being filed, (2) all appeals and related proceedings are resolved in favor of affirming the material provisions of the Final Approval Order, or (3) the parties mutually agree in writing to an alternative date. *Id.* ¶¶ 2.18.1-2.18.3.

asserted in the lawsuit and claims that could have been asserted based on the same factual allegations, whether known or unknown, regardless of legal theory. *Id*.

5. Proposed Schedule Following Preliminary Approval

The Settlement Agreement establishes a comprehensive timeline for notice, objections, and final approval, as set forth below:

EVENT	TIMING
Production of Class Member List	Within fourteen (14) days after entry of Preliminary Approval Order, Air Products shall provide the Settlement Administrator with the Class Member List (Ex. 1, SA ¶ 3.3.2).
Mailing of Settlement Notice	Within thirty (30) days after the Preliminary Approval Date, the Settlement Administrator will mail the Settlement Notice to Class Members at their billing addresses listed on the Class Member List (Ex. 1, SA ¶ 3.3.7).
Settlement Website Launch	The Settlement Administrator will make the Settlement Website accessible to the public on the same date as mailing the Settlement Notice, within thirty (30) days after the Preliminary Approval Date (Ex. 1, SA ¶ 3.3.7).
Deadline for Filing Objections to the Settlement	No later than the Objection/Exclusion Deadline, which is ninety (90) days after the Preliminary Approval Date (Ex. 1, SA ¶ 2.24).
Deadline for Submitting Requests for Exclusion from the Settlement	No later than the Objection/Exclusion Deadline, which is ninety (90) days after the Preliminary Approval Date (Ex. 1, SA ¶ 2.24).
Motion for Attorneys' Fees and Expenses	Class Counsel will file their application for Attorneys' Fees and Plaintiffs' Expenses not later than thirty (30) days before the Objection/Exclusion Deadline (Ex. 1, SA ¶ 3.9.1).
Final Approval Hearing	No sooner than one hundred and twenty (120) days after the Preliminary Approval Date (Ex. 1, SA ¶ 3.2.3).

III. ARGUMENT

Under Civil Rule 23(e), any proposed settlement or compromise in a certified class action lawsuit must be approved by the Court, and the Class Members must receive notice of the settlement that satisfies due process. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 113 (2d Cir. 2005); *Tenuto v. Transworld Sys., Inc.*, No. CIV. A. 99-4228, 2002 WL 188569, at *2 (E.D. Pa. Jan. 31, 2002). As amended in 2018, Rule 23(e) "explicitly discusses the requirements for class settlements." *Hall v. Accolade, Inc.*, No. 2:17-cv-03423, 2019 WL 3996621, at *2 (E.D. Pa. Aug. 23, 2019). "The parties must provide the court with information sufficient to enable it to determine whether to give notice of the proposal to the class." Fed. R. Civ. P. 23(e)(1)(A). Specifically, the parties must show "that the court will likely be able to (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B). If the Court determines that it will "likely be able to" approve the Settlement and certify the Settlement Class, it should direct notice in a "reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B).

In conducting their preliminary review, courts are cognizant that there is a "strong public policy . . . which is particularly muscular in class action suits, favoring settlement of disputes, finality of judgments and the termination of litigation." *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 593 (3d Cir. 2010); *accord In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 535 (3d Cir. 2004) ("[T]here is an overriding public interest in settling class action litigation, and it should therefore be encouraged."). At this "preliminary approval" stage, a district court may provisionally certify a class, "leaving the final certification decision for the subsequent fairness hearing." *Hall*, 2019 WL 3996621, at *2; *see also Myers v. Jani-King of Phila., Inc.*, No. 09-cv-1738, 2019 WL 2077719, at *2 (E.D. Pa. May 10, 2019) (stating that preliminary approval "establishes an initial

presumption of fairness"). Plaintiff respectfully submits that the proposed Settlement satisfies the requirements for preliminary approval.

A. The Settlement is "fair, reasonable, and adequate" and satisfies the Rule 23(e)(2) factors for preliminary approval.

Rule 23(e)(2) sets forth the factors a court must consider in determining the fairness of a class action settlement. The factors include whether: "(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, 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).

In determining whether preliminary approval is warranted, the Court should consider whether the "proposed settlement discloses grounds to doubt its fairness or other obvious deficiencies such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation of attorneys, and whether it appears to fall within the range of possible approval." *Mehling v. New York Life Ins. Co.*, 246 F.R.D. 467, 472 (E.D. Pa. 2007).

1. The Class Representative and Class Counsel have adequately represented the class.

AST and Class Counsel have demonstrated their adequacy through sustained, successful advocacy across multiple phases of complex litigation. AST survived two separate dispositive motions, first defeating Air Products' motion to dismiss the initial complaint, ECF No. 34, and later achieving a partial victory on summary judgment, where the Court denied Air Products' motion as to AST's core product-surcharge claims while granting it on other theories. ECF 109.

After surviving summary judgment on the product-surcharge theory, Class Counsel successfully advocated for full merits and class-wide discovery, ultimately presenting a comprehensive motion for class certification.

The extensive discovery record—encompassing over 175,000 documents, nineteen depositions, and expert analysis of complex data, *see* Jasinski Decl. ¶¶ 4-8—provided Class Counsel with the detailed information necessary to evaluate settlement terms knowledgeably. The vigorous advocacy throughout multiple discovery disputes, *see* ECF 70, 79, 131, demonstrates Class Counsel's commitment to obtaining the information necessary to protect the Settlement Class's interests.

2. The Settlement Agreement was negotiated at arm's length.

Whether a settlement arises from arm's-length negotiations is a key factor in assessing preliminary approval. *See, e.g., In re Nat'l Football League Players' Concussion Injury Litig.*, 301 F.R.D. 191, 198 (E.D. Pa. 2014) (finding a presumption of fairness where the parties negotiated at arm's length and were assisted by a retired federal judge as a mediator); *Gates v. Rohm & Haas Co.*, 248 F.R.D. 434, 439, 444 (E.D. Pa. 2000) (emphasizing the importance of arm's length negotiations and that negotiations include mediation). The Settlement in this case resulted from arm's-length negotiations between experienced counsel with an understanding of the strengths and weaknesses of their respective positions, assisted by a neutral and highly experienced mediator.

Specifically, the parties participated in settlement discussions mediated by the Hon. Thomas J. Rueter (Ret.) during a full-day mediation on July 29, 2025. Jasinski Decl. ¶ 9. Class Counsel who negotiated the Settlement are knowledgeable and respected class action litigators with significant experience in complex cases. *See infra* Part III.B.4. After reaching an agreement in principle during the mediation, which resulted in the execution of a binding term sheet, the Parties spent significant time drafting and revising the full Settlement Agreement and supporting

exhibits. Jasinski Decl. ¶ 11. At all times, these negotiations were at arm's length, and were courteous, professional, and hard-fought on all sides. *Id.* ¶ 12.

3. The relief provided for the Settlement Class is adequate.

This case and the proposed Settlement are the product of significant investigation of Plaintiff's and Class Members' claims. The parties engaged in considerable discovery, as detailed above. *See supra* § II.B. Moreover, Class Counsel conducted extensive research into the issues presented in this matter and analyzed the applicable legal precedents. Jasinski Decl. ¶ 1. Based on this extensive discovery and investigation, Class Counsel determined that the Settlement is fair, reasonable, adequate, and in the best interest of the Settlement Class. *Id.* ¶ 2.

The $2,000,000 Gross Settlement Amount represents a substantial recovery for the Settlement Class. The Settlement Class is comprised of Air Products customers with ship-to locations in the United States that incurred two or more product-surcharge rate increases during the Class Period, which reflects AST's core allegation that Air Products repeatedly assessed surcharges against customers, such as AST, in violation of the UCC's requirement that open price terms be set in good faith. *See, e.g.*, ECF 59, FAC, ¶ 51 ("Air Products' program of assessing and continuously increasing Surcharges was part of a corporate strategy of relentlessly focusing on the company's bottom line without regard for its customers or the Surcharges language in the Product Supply Agreements."); *see also* Pl.'s Opp'n to Mot. Summ. J.,[6] at 6 (chart reflecting repeated surcharge increases imposed on AST).

Based on data analysis conducted during the litigation, the total damages attributable to product surcharges beyond the first surcharge increase for all Settlement Class Members during the Class Period was approximately $1.8 million, including prejudgment interest through the date

[6] ECF 89 (public); ECF 92 (sealed).

of the parties' successful mediation on July 29, 2025.[7] Jasinski Decl. ¶ 15. The $2 million settlement thus represents approximately 111% of damages incurred by Settlement Class Members for repeated surcharge increases during the Class Period. *See id.* And it represents nearly half (48%) of potential damages to the Settlement Class stemming from all product-surcharge increases during the Class Period. *See supra* note 7. The Settlement's focus on customers with multiple surcharge increases ensures that the relief is directed to those class members who suffered the greatest alleged harm from Air Products' conduct, maximizing the per-member recovery while providing certainty of payment without the substantial risks of trial.

a. The Settlement accounts for the costs, risks, and delay of trial and appeal.

To determine whether a settlement provides adequate relief to the Class, the Court must evaluate "the costs, risks, and delay of trial and appeal," Fed. R. Civ. P. 23(e)(2)(C)(i), which involves considering the "complexity, expense, and likely duration of the litigation," were this case to proceed to trial, in relation to the Plaintiff's "likelihood of success" on the merits. *Edwards v. Horizon Blue Cross Blue Shield of N.J.*, No. 08-cv-6160 (KM), 2018 WL 10133574, at *3 (D.N.J. June 29, 2018).

The immediate benefits that the Settlement provides stand in contrast to the risks, uncertainties, and delays of continued litigation. If litigation continues, Plaintiff and Class Members would need to overcome a number of issues, including obtaining class certification, briefing evidentiary motions, defending expert opinions, and proceeding through trial and any related appeals. *See In re CertainTeed Fiber Cement Siding Litig.*, 303 F.R.D. 199, 216 (E.D. Pa. 2014) (approving a class settlement when "further proceedings would be complex, expensive and

[7] The total damages attributable to *all* product-surcharge increases assessed on Settlement Class Members during the Class Period (including prejudgment interest through the same date) was approximately $4.2 million. Jasinski Decl. ¶ 15.

lengthy, with contested issues of law and fact"). In other words, "a settlement that would eliminate delay and expenses and provide immediate benefit to the class militates in favor of approval." *In re Janney Montgomery Scott LLC Fin. Consultant Litig.*, No. 06-3202, 2009 WL 2137224, at *8 (E.D. Pa. July 16, 2009).

Although Class Counsel believes in the strength of AST's claims, several risks could pose obstacles to achieving a favorable outcome for Plaintiff and the Settlement Class.

First, the case involves complex commercial law issues under the Uniform Commercial Code, requiring extensive expert testimony on industry practices, cost structures, and damages calculations. The Court's summary judgment ruling established that surcharge provisions are "open price terms" requiring good faith assessment, but the Court did not decide whether a plaintiff must prove both subjective and objective bad faith. *See* Mot. Summ. J. Op., ECF 109, at 18 n.22 ("Courts are split as to whether subjective intent on behalf of the price-setting party is necessary for determining whether there was a breach of the duty of good faith under the uniform commercial code."). Thus, AST may need to satisfy both standards to prevail.

For subjective bad faith, plaintiffs must demonstrate that the defendant acted with dishonesty and exercised discretion "arbitrarily, unreasonably, or capriciously, with the objective of preventing the other party from receiving its reasonably expected fruits under the contract." *Id.* at 19. For objective bad faith, plaintiffs must show "that the price was not fixed in a commercially reasonable manner and, moreover, that the pricing was commercially unjustifiable." *Id.* The Court emphasized that meeting the objective standard requires more than showing "high prices or profit margins"—plaintiffs must produce "evidence of improper motive, discriminatory pricing, or the pricing practices of other franchisees." *Id.* at 30 (internal quotation marks omitted). Yet, Air Products' accounting expert opines that surcharges recovered only a fraction of actual increased

distribution costs. *See* Class Cert. Opp'n,[8] at 25-26. The voluntary payment doctrine presents an additional hurdle, as the Court found genuine disputes about whether continued payments after notice could bar recovery entirely. Mot. Summ. J. Op., ECF 109, at 23-25.

Second, the motion for class certification remains pending and contested, creating uncertainty about whether the case could proceed as a class action at all. The Court's summary judgment ruling established that Air Products retained discretion when assessing surcharges, *id.* at 17-18, which Air Products has argued would require class-defeating inquiries into whether each individual surcharge decision was made in subjective and objective good faith, *see, e.g.*, Class Cert. Opp'n, ECF 157, 159, at 6 (arguing that "the question of whether Air Products acted in good faith in assessing surcharges to customers necessarily requires an individualized inquiry for each surcharge to each customer"). Indeed, in denying Air Products' motion for summary judgment in connection with AST's product-surcharge claim, the Court relied heavily on individualized evidence about AST, including internal emails about AST's account, Mot. Summ. J. Op., ECF 109, at 8, 20-21, raising uncertainty about whether comparable evidence of bad faith is needed for other class members across different regions, contracts, and business relationships. In addition, Air Products has identified variations in surcharge provisions across customer contracts, which it contends must be addressed on a customer-by-customer basis. *See* Class Cert. Opp'n, ECF 157, 159, at 12.

Against this backdrop of complex legal and factual disputes with uncertain outcomes, the proposed Settlement provides immediate and certain monetary relief to the Class while avoiding the substantial risks, costs, and delays inherent in class-action litigation, thereby serving the interests of judicial economy and providing finality for all parties.

[8] ECF 157 (public); ECF 159 (sealed).

b. The Settlement provides for an effective method of distributing relief to the Settlement Class.

The Settlement creates a straightforward and automatic distribution procedure for Class Members to receive benefits. The Settlement Administrator will use the Class Member List provided by Air Products to calculate Individual Payments according to the Plan of Allocation and will mail Settlement Checks directly to Class Members. *See* Ex. 1, SA §§ 3.4-3.5. The Settlement provides for effective notice to Class Members using direct mail to billing addresses in Air Products' records, with address updating services to ensure current delivery information. Ex. 1, SA ¶ 3.3.3. A Settlement Website will also provide additional information about the Settlement and Class Members' rights. *Id*. ¶ 3.3.4. For these reasons, Class Members are likely to gain familiarity with the terms of the Settlement and the relief afforded.

c. The proposed attorneys' fee award is reasonable.

Class Counsel will apply to the Court for an award of Attorneys' Fees in an amount not to exceed 33⅓ percent of the Gross Settlement Amount, which Defendants will not oppose. Ex. 1, SA ¶ 3.9.1. This maximum amount that Class Counsel will request is presumptively reasonable. "[C]ourts within this Circuit have typically awarded attorneys' fees of 30% to 35% of the recovery, plus expenses." *In re Ravisent Techs., Inc. Sec. Litig.*, No. 00-CV-1014, 2005 WL 906361, at *11 (E.D. Pa. Apr. 18, 2005) (collecting cases).[9] Class Counsel will also apply for an award of Plaintiffs' Expenses[10] in an amount not to exceed $410,000, which Defendants will not oppose. *See* Ex. 1, SA § 3.9.1. Class Counsel has devoted significant time and financial resources to this

[9] More recent cases are in accord. *See, e.g.*, *Fuentes v. Jiffy Lube Int'l, Inc.*, No. 2:18-CV-5174, 2024 WL 2723840, at *19 (E.D. Pa. May 28, 2024); *Rossini v. PNC Fin. Servs. Grp., Inc.*, No. 2:18-CV-1370, 2020 WL 3481458, at *19 (W.D. Pa. June 26, 2020); *Kapolka v. Anchor Drilling Fluids USA, LLC*, No. 2:18-CV-01007-NR, 2019 WL 5394751, at *9 (W.D. Pa. Oct. 22, 2019).

[10] "'Plaintiffs' Expenses' means all of those reasonable costs and expenses of litigation incurred by Class Representative and Class Counsel." Ex. 1, SA ¶ 2.27.

litigation despite the uncertainty of prevailing at class certification and on the merits, and of establishing damages. The maximum amount that Class Counsel will request is presumptively reasonable and within the range typically awarded by courts in this Circuit.

d. There are no side agreements to report.

Rules 23(e)(2)(C)(iv) and 23(e)(3) require courts to consider any agreement among the parties outside of the Settlement Agreement. Other than the Settlement Agreement itself, there are no additional agreements involving the parties related to this Settlement. Jasinski Decl. ¶ 13.

4. The Settlement treats Class Members equitably relative to each other.

"A district court's 'principal obligation' in approving a plan of allocation 'is simply to ensure that the fund distribution is fair and reasonable as to all participants in the fund.'" *Sullivan v. DB Invs., Inc.*, 667 F.3d 273, 326 (3d Cir. 2011). The Settlement treats all Class Members equitably and provides all Class Members with the same convenient means to recover under the Settlement by distributing the funds in a manner that considers each Settlement Class Member's individual share of the potential damages suffered by the class. The proposed Plan of Allocation distributes the Net Settlement Amount *pro rata* based on each Class Member's proportional share of Qualifying Surcharges, Ex. 1, SA Ex. C (Plan of Allocation) ¶ 4, which reasonably reflects the economic harm suffered by Settlement Class Members in proportion to one another. The distribution clearly satisfies the fair-and-equitable-treatment requirement.

5. The remaining *Girsh* factors also support approval of the Settlement.

In addition to the Rule 23(e)(2) considerations addressed above, the Third Circuit has long instructed district courts to evaluate the fairness of a proposed settlement under the multi-factor test articulated in *Girsh v. Jepson*, 521 F.2d 153 (3d Cir. 1975).[11] Although Rule 23(e)(2)

[11] "[T]here is an open question within this Circuit concerning the continued relevance of the factors outlined in *Girsh v. Jepson*, 521 F.2d 153, 157 (3d Cir. 1975), following the 2018

substantially overlaps with several of the *Girsh* factors, the Third Circuit's framework identifies additional considerations. Specifically, *Girsh* directs courts to examine "the reaction of the class to the settlement" and "the stage of the proceedings and the amount of discovery completed" as indicia of the settlement's fairness, 521 F.2d at 157, as well as "the ability of the defendants to withstand a greater judgment," *id*. at 157, which bears on the adequacy of the relief obtained. These additional factors further support preliminary approval here.

Given the present posture of the Action, it is too early to evaluate the reaction of the proposed Settlement Class. If the Court grants preliminary approval of this Settlement, Class Notice will be issued to Settlement Class Members, advising them of their opportunities to voice their reaction to the Settlement. Notably, AST, whose interests are aligned with the Settlement Class, supports the Settlement and has been closely involved in its negotiation.

As discussed above, the Parties have completed substantial discovery sufficient to provide them with a "clear view of the strengths and weaknesses of their cases." *In re Ravisent Techs.*, 2005 WL 906361, at *8 (internal citations omitted). The considerable discovery undertaken, including document production, depositions, and expert discovery, combined with the pending motion for class certification, provided the Parties with sufficient information to assess the merits of the case and negotiate an informed settlement. *Cf. Tumpa v. IOC-PA, LLC*, No. 3:18-cv-112, 2021 WL 62144, at *8 (W.D. Pa. Jan. 7, 2021) (approving a settlement where the "limited discovery" was sufficient to provide the parties "with an appreciation of the merits of the case").

amendments to Rule 23(e)(2). Because the *Girsh* factors and the Rule 23(e)(2) criteria largely overlap, litigants often provide duplicative analyses, resulting in unnecessary briefing—particularly in cases involving relatively modest settlements." *Matthews v. Philadelphia Corp. for Aging*, No. CV 22-4632, 2025 WL 992198, at *4 (E.D. Pa. Apr. 1, 2025). Accordingly, this brief focuses on Rule 23(e)(2) rather than repeating the entire analysis under *Girsh*. *See id.*

The Settlement should also be approved under the final *Girsh* factor because it is reasonable "in light of the best possible recovery" and "in light of all the attendant risks of litigation." *Girsh*, 521 F.2d at 157. The reasonableness inquiry compares "the present value of the damages plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing" with "the amount of the proposed settlement." *In re CertainTeed Corp. Roofing Shingle Prod. Liab. Litig.*, 269 F.R.D. 468, 489 (E.D. Pa. 2010). Here, taking into account all product-surcharge increases, the present value of the damages of the Settlement Class is approximately $4.2 million (including prejudgment interest through the mediation date, July 29, 2025). *See supra* § III.A.3. The $2 million proposed settlement thus represents approximately 48% of the total possible recovery. More importantly, however, the strongest aspect of the Settlement Class's claims involves Air Products' repeated assessment of product surcharge increases—specifically, the second and subsequent increases at each Ship-To Location that form the basis of the Settlement Class definition. *See* Ex. 1, SA § 2.41. The damages attributable to these increases total approximately $1.8 million. Measured against this amount, the $2 million settlement represents over 110% the potential recovery. Given the substantial risks and costs of continued litigation, the settlement amount here is more than reasonable.

B. The Proposed Settlement Class satisfies the criteria of Rule 23.

Courts may certify settlement classes that satisfy the requirements of Rule 23(a) and at least one provision of Rule 23(b). *See Amchem Prods. v. Windsor*, 521 U.S. 591, 620-22 (1997). The proposed Settlement Class satisfies all requirements of Rule 23(a) and Rule 23(b)(3).

1. Rule 23(a)(1): Numerosity

The proposed Class is sufficiently numerous. Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Here, the Class includes all individuals or entities in the United States who incurred qualifying product surcharge increases during the Class

Period. There are approximately 900 current and former customers of Air Products that fall within this definition. Jasinski Decl. ¶ 14. The numerosity requirement is satisfied.

2. Rule 23(a)(2): Commonality

The proposed Class satisfies the commonality requirement. Rule 23(a)(2) requires that there be "questions of law or fact common to the class," and that the class members "have suffered the same injury." "The commonality threshold is relatively low because the named plaintiffs need only 'share at least one question of fact or law with the grievances of the prospective class.'" *Callahan v. Sunoco, Inc.*, No. Civ.A.03–4461, 2004 WL 1119936, at *2 (E.D. Pa. May 19, 2004) (quoting *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994)). "'[T]he focus of the commonality inquiry is not on the strength of each class member's claims but instead 'on whether the defendant's conduct was common as to all of the class members.'" *In re Cmty. Bank of N. Va. Mortg. Lending Pracs. Litig.*, 795 F.3d 380, 397 (3d Cir. 2015) (quoting *Sullivan*, 667 F.3d at 298).

Commonality exists because the Class Members' claims share common questions of law or fact, including whether Air Products failed to act in a commercially reasonable manner by imposing product surcharge increases multiple times during the Class Period and whether Air Products assessed product surcharges that were not reasonably related to "increases in its production and delivery costs." *See* Pl.'s Mem. of L. in Supp. of Mot. for Class Cert., ECF 147-1 at 17. The Class raises common questions of law and fact, which arise from a common nucleus of operative facts, with respect to their claims against Air Products.

3. Rule 23(a)(3): Typicality

Rule 23(a)(3) requires that a named plaintiff's claims be "typical" of those of other class members. The typicality inquiry is purpose-driven, "serv[ing] to ensure that class representatives do not have 'unique interests that might motivate them to litigate against or settle with the defendants in a way that prejudices the absentees.'" *Huber v. Simon's Agency, Inc.*, 84 F.4th 132,

156 (3d Cir. 2023) (quoting *Baby Neal*, 43 F.3d at 63). However, typicality "does not require the class representatives' claims be coterminous with those of the class." *Boley v. Universal Health Servs., Inc.*, 36 F.4th 124, 134 (3d Cir. 2022).

AST's experiences were typical of all other Class Members. AST and each member of the Settlement Class were customers of Air Products who were assessed multiple product-surcharge increases during the Class Period based on the same allegedly unlawful practices. Moreover, the members of the proposed Class have no individual interests in controlling the litigation because their claims share a common set of facts. As such, AST's claims are typical of the claims of members of the proposed class. *See* Pl.'s Mem. of L. in Supp. of Mot. for Class Cert., ECF 147-1 at 18.

4. Rule 23(a)(4): Adequacy

The final requirement of Rule 23(a) requires that "the representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). Here, adequacy is readily met. First, AST has no adverse or "antagonistic" interests towards absent Class Members. AST seeks to hold Air Products accountable for allegedly violating its duty of good faith under the Uniform Commercial Code by repeatedly assessing product surcharge rates during the Class Period. AST's interests are well aligned with the interests of the absent Class Members. Pl.'s Mem. of L. in Supp. of Mot. for Class Cert., ECF 147-1 at 19-20.

Second, Class Counsel is qualified, experienced, and competent in complex litigation, and has an established, successful track record in class litigation. "When examining settlement classes," the Third Circuit has "emphasized the special need to assure that class counsel: (1) possessed adequate experience; (2) vigorously prosecuted the action; and (3) acted at arm's length from the defendant." *In re Nat'l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 429 (3d Cir. 2016), as amended (May 2, 2016) (internal quotation marks omitted). "Rule

23(g) also sets out a non-exhaustive list of factors for courts to consider when appointing class counsel." *Id*. They include: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the class." Fed. R. Civ. P. 23(g)(1)(A).

Here, proposed Class Counsel, Motley Rice, LLC, satisfies each of the Third Circuit's requirements and the Rule 23(g) factors. First, Motley Rice possesses substantial experience as one of the nation's leading class-action law firms with a successful history of litigating complex class actions. Ex. 2, Firm Resume. Second, Motley Rice has vigorously prosecuted this action by preparing a detailed Complaint, ECF 1 and First Amended Complaint, ECF 59, successfully opposing Air Products' motion to dismiss, ECF 34, and portions of Air Products' summary judgment motion, ECF 110, vigorously pursuing fact and expert discovery, and fully briefing AST's motion for class certification, ECF 147. Third, Motley Rice negotiated an arm's length, mediated resolution that exceeds what the Settlement Class could obtain at trial. *See supra* §§ III.A.1 and III.A.3.

The Rule 23(g) factors further support this appointment. Motley Rice has done substantial work identifying and investigating claims through its comprehensive pleadings and discovery efforts. It possesses extensive experience handling class actions and complex litigation, coupled with knowledge of the applicable law demonstrated through its successful motion practice. Finally, Motley Rice has committed significant resources to representing the class throughout this litigation and will continue to diligently represent the Settlement Class through final approval.

5. Rule 23(b)(3): Predominance and Superiority

Under Rule 23(b)(3), a class may be certified if "the court finds that the questions of law or fact common to class members predominate over any questions affecting only individual

members, and that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). The Settlement Class readily meets these requirements.

"The predominance inquiry focuses on whether the defendants' conduct was common to all class members and whether that conduct harmed everyone in the class." *Sorace v. Wells Fargo Bank, N.A.*, No. 20–4318, 2024 WL 643229, at *3 (E.D. Pa. Feb. 15, 2024). Here, Air Products assessed every member of the Settlement Class at least two product-surcharge rate increases during the Class Period, conduct that AST claims violated Air Products' duty of good faith under the Uniform Commercial Code. Thus, every member of the Settlement Class was harmed by Air Products' allegedly wrongful conduct.

"The superiority requirement asks a district court 'to balance, in terms of fairness and efficiency, the merits of a class action against those of "alternative available methods" of adjudication.'" *In re Cmty. Bank of N. Va.*, 418 F.3d 277, 309 (3d Cir. 2005) (quoting *Georgine v. Amchem Prods., Inc.*, 83 F.3d 610, 632 (3d Cir. 1996), *aff'd*, 521 U.S. 591 (1997)). Courts consider "(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." Fed. R. Civ. P. 23(b)(3)(A)–(D). Each factor is satisfied here.

First, because the damages at issue for individual Class Members are relatively modest compared to the expense of litigating complex claims, few, if any, Class Members would have the incentive or resources to bring their own action. Second, aside from this case, proposed Class Counsel is not aware of any overlapping actions brought by putative class members asserting the

same claims. Jasinski Decl. ¶ 3. Third, concentrating the litigation in this forum is desirable. This Court has already devoted substantial time to the case, is familiar with the facts and law, and provides an efficient and centralized forum for resolving the claims. Litigating in a single forum also avoids the inefficiency and risk of inconsistent rulings that would accompany scattered individual actions. Fourth, because the parties have reached a settlement, "the concern for manageability that is a central tenet in the certification of a litigation class is removed from the equation." *Sullivan*, 667 F.3d at 302. Administration of the Settlement will be straightforward, with claims processing and distribution overseen by an experienced Settlement Administrator.

C. The Court should approve the proposed Settlement Notice.

Rule 23(e) requires the Court to "direct notice in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P. 23(e)(1)(B). In addition, for any Rule 23(b)(3) class, "the court must direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). The notice must be written in "plain, easily understood language" and must clearly describe the nature of the action, the definition of the class, the claims and defenses at issue, that class members may enter an appearance through counsel, that they may request exclusion, and the binding effect of a judgment. *Id.*

The proposed Settlement Notice (Exhibit B to the Settlement Agreement) satisfies each of these requirements. The Notice is modeled on the Federal Judicial Center's illustrative class action notices.[12] It plainly and concisely describes the nature of the action, the definition of the Settlement Class, and the material terms and effect of the Settlement Agreement. Ex. 1, SA Ex. B. It advises Class Members of the time and place of the Final Approval Hearing and explains the nature and

[12] Fed. Judicial Ctr., Illustrative Forms of Class-Action Notices (last visited Sept. 5, 2025), https://www.fjc.gov/content/301253/illustrative-forms-class-action-notices-introduction.

extent of the release of claims. *Id*. at 3. It further sets forth the options available to Class Members, including their rights to participate in the Settlement, to exclude themselves (opt out), to object in accordance with specified procedures and deadlines, and to appear through counsel. *Id*. at 1. Finally, the Notice apprises Class Members of the binding effect of the Settlement. *Id*. at 3-4.

The Parties' proposed notice plan includes direct mail to Class Members' billing addresses as maintained in Air Products' records, with address updating services to locate current addresses where possible. Ex. 1, SA ¶ 3.3.3. A Settlement Website will also be established to provide additional information about the Settlement. *Id*. ¶ 3.3.4. This comprehensive notice plan is intended to fully inform Settlement Class Members of the proposed Settlement and the information they require to make informed decisions about their rights. Accordingly, this Court should approve the proposed form and method of notice, as they satisfy the due process requirements of Federal Rule of Civil Procedure 23.

D. The Court should appoint Motley Rice LLC as Class Counsel.

Rule 23(g) requires the Court to examine the capabilities and resources of counsel to determine whether they will provide adequate representation to the class. Fed. R. Civ. P. 23(g)(1). As discussed above, Motley Rice LLC satisfies each criterion. *See supra* § III.B.4. Accordingly, this Court should appoint Motley Rice LLC as Class Counsel.

E. The Court should schedule the Final Settlement Hearing.

Under Civil Rule 23(e), a certified class action may not be settled, compromised, or voluntarily dismissed without the approval of the Court. Fed. R. Civ. P. 23(e). To that end, the Parties request that the Court hold a Final Settlement Hearing, at which time the Judgment will be entered and the claims against Air Products will be dismissed with prejudice. At the Final Settlement Hearing, the Court will also rule upon matters outlined in the Agreement, including but not limited to: (1) whether the proposed Settlement is fair, reasonable, and adequate and

should be approved by the Court; and (2) whether Class Counsel's application for an award of attorneys' fees and reimbursement of expenses should be approved by the Court. The Parties request that the Court schedule the Final Settlement Hearing 120 days after the date of entry of the Court's order granting preliminary approval of the Settlement, or as soon thereafter as the Court's calendar permits.

IV. CONCLUSION

The proposed Settlement is fair, reasonable, and adequate. Thus, for all the reasons set forth above, preliminary approval should be granted and the Preliminary Approval Order entered to permit the Parties to effectuate notice to the Settlement Class Members.

DATED: September 12, 2025

Respectfully Submitted,

MOTLEY RICE LLC

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CERTIFICATE OF SERVICE

I hereby certify that on September 12, 2025, a copy of the foregoing Plaintiff's Memorandum of Law in Support of Plaintiff's Motion for Preliminary Approval of Class-Action Settlement was filed electronically. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system (CM/ECF). Parties may access this filing through the Court's CM/ECF system.

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