

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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EMANUELE CAROLEO, et al.,

Plaintiffs,

-against-

ESTEE LAUDER, INC., et al.,

Defendants.

20-CV-4770 (JLR) (BCM)

**ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION  
SETTLEMENT, PRELIMINARILY CERTIFYING A CLASS FOR SETTLEMENT  
PURPOSES, APPROVING FORM AND MANNER OF SETTLEMENT NOTICE,  
PRELIMINARILY APPROVING PLAN OF ALLOCATION AND SCHEDULING A  
DATE FOR A FAIRNESS HEARING**

**BARBARA MOSES, United States Magistrate Judge.**

Plaintiffs filed this action on June 22, 2020, alleging claims for violations of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* with respect to the Estee Lauder Companies 401(k) Savings Plan (the Plan). The remaining plaintiffs (Named Plaintiffs) are Kathy Gandy and Emanuele Caroleo. The defendants are Estee Lauder, Inc., the Board of Directors of Estee Lauder Inc., the Estee Lauder Inc. Employee Benefits Committee, and the Estee Lauder Inc. Fiduciary Investment Committee. *See* Amend. Compl. (Dkt. 119). A class was certified on August 24, 2022, at which time Capozzi Adler, P.C. (Capozzi Adler) was appointed Class Counsel and Edelson Lechtzin LLP (Edelson Lechtzin) was appointed Class Counsel Executive Committee Member. (Dkt. 106.)

Now before me, on consent of the parties (*see* Dkt. 156), is Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Approval of Form and Manner of Class Notice[,] and Scheduling of Fairness Hearing (the Motion) (Dkt. 151), supported by the Declaration of Mark K Gyandoh (Gyandoh Decl.) (Dkt. 153) and a memorandum of law (Dkt. 152). The Named Plaintiffs, acting by and through Capozzi Adler and Edelson Lechtzin, seek an order: (i)

certifying a modified class for purposes of settlement (the Settlement Class) pursuant to Fed. R. Civ. P. 23(a) and (b)(1); (ii) appointing the Named Plaintiffs as Class Representatives, and reappointing Capozzi Adler as Class Counsel and Edelson Lechtzin as Class Counsel Executive Member for Settlement Class, in accordance with Fed. R. Civ. P. 23(g); (ii) preliminarily approving the parties' Class Action Settlement Agreement, Gyandoh Decl. Ex. 1 (Dkt. 153-1) (the Settlement Agreement),<sup>1</sup> as fair, reasonable and adequate in accordance with Fed. R. Civ. P. 23(e); (iv) establishing a Qualified Settlement Fund in accordance with § 468B of the Internal Revenue Code and Treasury Regulation § 1.468-1 promulgated thereunder; (v) scheduling a final fairness hearing (the Fairness Hearing) concerning the Settlement Agreement; (vi) approving the parties' proposed Notice of Class Action Settlement (Settlement Notice) attached as Exhibit A to the Settlement Agreement; (vii) approving the appointment of Analytics, LLC (Analytics) as Settlement Administrator and directing it to carry out certain responsibilities in advance of the Fairness Hearing; (viii) setting a schedule for any petition by Class Counsel for fees and related payments; (ix) setting a schedule for briefs to be filed in advance of the Fairness Hearing; (x) setting a schedule for objections to the Settlement Agreement; (xi) setting a schedule for additional briefs by the parties in response to objections; (xii) setting a deadline for objectors, if any, to notify the parties and the Court of their intent to appear at the Fairness Hearing; (xiii) directing that expenses of printing, mailing, and publishing the Settlement Notice be paid exclusively from the Qualified Settlement Fund; (xiv) enjoining the Named Plaintiffs, members of the Settlement Class, and the Plan from asserting any Released Claims against Released Parties (as those terms are used in the Settlement Agreement) pending final determination of whether the Settlement Agreement

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<sup>1</sup> Any capitalized terms used herein and not otherwise defined shall have the same meaning as ascribed to them in the Settlement Agreement.

should be approved; and (xv) reserving the right to continue the Fairness Hearing. *See* Prop. Order Granting Preliminary Approval of Class Action Settlement (Dkt. 154) at 2-10.

The Court has carefully reviewed the Motion and its supporting papers, including the Settlement Agreement, to determine, among other things, whether the proposed settlement (the Settlement) is sufficient to warrant the issuance of notice to members of the proposed Settlement Class. Based on that review, it is hereby Ordered that the Motion is GRANTED. It is further ORDERED:

1. **Certification of the Settlement Class.** For purposes of the Settlement, the Court modifies the previously certified class definition as follows. The Settlement Class shall be:

All persons, except Defendants and their immediate family members, who were participants in or beneficiaries of the Plan at any time from September 22, 2014 through the date of this Order (the Class Period).

The Court is satisfied that the Settlement Class satisfies the criteria set out in Rule 23(a) and (b)(1).

2. **Appointment of Class Representatives and Class Counsel.** The Court appoints Named Plaintiffs Caroleo and Gandy as Class Representatives for the Settlement Class; Capozzi Adler as Lead Class Counsel for the Settlement Class; and Edelson Lechtzin as Class Counsel Executive Committee Member for the Settlement Class.

3. **Preliminary Approval of Proposed Settlement Agreement.** The Settlement Agreement is hereby preliminarily approved as fair, reasonable, and adequate. The Court preliminarily finds that:

- a) The Settlement was negotiated vigorously and at arms' length by Defense Counsel, on the one hand, and the Named Plaintiffs and Class Counsel on behalf of the Settlement Class, on the other hand;

- b) Named Plaintiffs and Class Counsel had sufficient information to evaluate the settlement value of the Action and have concluded that the Settlement is fair, reasonable and adequate;
- c) If the Settlement had not been achieved, Named Plaintiffs and the Settlement Class faced the expense, risk, and uncertainty of protracted litigation;
- d) The amount of the Settlement, which is nine hundred seventy-five thousand dollars (\$975,000.00), "falls within the range of possible approval," *Escort v. Princeton Info. Ltd.*, 2017 WL 1194684, at \*2 (S.D.N.Y. Mar. 30, 2017) (quoting *Silver v. 31 Great Jones Rest.*, 2013 WL 208918, at \*1 (S.D.N.Y. Jan. 4, 2013)), as fair, reasonable, and adequate, taking into account the costs, risks, and delay of litigation, trial, and appeal. The method of distributing the Class Settlement Amount is efficient, relying on Defendants' records and requiring no filing of claims. The Settlement terms related to attorneys' fees do not raise any initial questions concerning the fairness of the Settlement, and there are no agreements, apart from the Settlement, required to be considered under Fed. R. Civ. P. 23(e)(2)(C)(iv).
- e) The Named Plaintiffs and Class Counsel have acted independently of the Defendants and in the interest of the Settlement Class; and
- f) The proposed Plan of Allocation is fair, reasonable, and adequate.

4. **Establishment of Qualified Settlement Fund.** A common fund is agreed to by the Settling Parties in the Settlement Agreement and is hereby established and shall be known as the Settlement Fund. The Settlement Fund shall be a "qualified settlement fund" within the meaning of Treasury Regulation § 1.468-1(a) promulgated under § 468B of the Internal Revenue

Code. The Settlement Fund shall be funded and administered in accordance with the terms of the Settlement Agreement. Defendants shall have no withholding, reporting or tax reporting responsibilities with regard to the Settlement Fund or its distribution. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be paid; and (2) their agreement to cooperate in providing information that is necessary for settlement administration as set forth in the Settlement Agreement. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges and excises of any kind, including income taxes, and any interest, penalties or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Settlement Fund. Given that there will be tax payments, withholding and reporting requirements in connection with the administration of the Settlement Fund, the Settlement Administrator shall, in accordance with the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing authorities any taxes due with respect to any distribution from the Settlement Fund and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of

taxes. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effect the terms of the Settlement Agreement, including the payment of all distributions. Such powers include investing, allocating and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Settlement Fund. All accounts, books and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person; the nature and status of any payment from the Settlement Fund and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may find it necessary to issue.

5. **Fairness Hearing.** A hearing is scheduled before the Honorable Jennifer L. Rochon, United States District Judge, on **May 23, 2024, at 10:00 a.m.**, in Courtroom 20B of the Daniel Patrick Moynihan United States Courthouse, to make a final determination, concerning among other things:

- Any objections from Class Members to the Settlement or any aspects of it.
- Whether the Settlement merits final approval as fair, reasonable, and adequate;
- Whether the Action should be dismissed with prejudice pursuant to the terms of the Settlement;
- Whether Class Counsel adequately represented the Settlement Class for purposes of entering into and implementing the Settlement;
- Whether the proposed Plan of Allocation should be granted final approval; and
- Whether Class Counsel's application(s) for Attorneys' Fees and Costs and Case Contribution Awards to the Named Plaintiffs are fair and reasonable, and should be approved.

6. **Settlement Notice.** The Court approves the form of Settlement Notice attached as Exhibit A to the Settlement Agreement. The Court finds that such form of notice fairly and adequately: (a) describes the terms and effects of the Settlement Agreement, the Settlement, and the Plan of Allocation; (b) notifies the Settlement Class that Class Counsel will seek attorneys' fees and litigation costs from the Settlement Fund, payment of the costs of administering the Settlement out of the Settlement Fund, and for a Case Contribution Award for the Named Plaintiffs for their service in such capacity; (c) gives notice to the Settlement Class of the time and place of the Fairness Hearing; and (d) describes how the recipients of the Settlement Notice may object to any of the relief requested.

7. **Settlement Administrator.** The Court hereby approves the appointment of Analytics as the Settlement Administrator for the Settlement. The Court directs that the Settlement Administrator shall:

- By no later than **February 26, 2024**, cause the Settlement Notice, with such non-substantive modifications thereto as may be agreed upon by the Parties, to be sent by first-class mail, postage prepaid, to the last known address of each member of the Settlement Class who can be identified through reasonable effort. Prior to mailing the Settlement Notice, Analytics shall conduct an advanced address research (via skip-trace databases) to identify current mailing address information for the members of the Settlement Class (Class Members). Additionally, Analytics shall update the Settlement Class member address information using data from the National Change of Address (NCOA) database. After mailing the Settlement Notice, Analytics shall use commercially reasonable efforts to locate any Class Member whose Settlement Notice is returned and re-send such documents one additional time.
- By no later than **February 26, 2024**, cause the Settlement Notice to be sent by email to any email addresses on file for the Settlement Class members as of the date of this Preliminary Approval Order.
- By no later than **February 12, 2024**, cause the Settlement Notice to be published on the website identified in the Settlement Notice, [www.EsteeLauderERISASettlement.com](http://www.EsteeLauderERISASettlement.com), which will also host and make available copies of all Settlement-related documents, including the Settlement Agreement.
- The Court finds that the contents of the Settlement Notice and the process described herein and in the Settlement Agreement are the best notice practicable under the circumstances, and satisfy the requirements of Rule 23(c) and Due Process.



8. **Petition for Attorneys' Fees, Litigation Costs and Case Contribution Awards.**

Any motion or petition by Class Counsel for attorneys' fees, litigation costs and Case Contribution Awards to the Named Plaintiffs, and all briefs in support thereof, shall be filed no later than **April 9, 2024**.

9. **Motion in Support of Final Approval of the Settlement.** Plaintiffs' motion for final approval of the Settlement, together with their memorandum of law and other supporting documents, shall be filed no later than **April 9, 2024**. The motion for final approval of the Settlement shall disclose all of the Administrative Expenses paid or anticipated to be paid from the Qualified Settlement Fund before the Net Settlement Amount is distributed pursuant to the Plan of Allocation, including payments for Settlement Notice Expenses (*see* Sett. Ag. § 5.1.1), taxes and expenses (*see id.* § 5.1.2), fees and expenses of the Independent Fiduciary (*see id.* § 5.1.3), costs and expenses of the Settlement Administrator (*see id.* §§ 5.1.4, 5.2.3), and costs and expenses of the Recordkeeper (*see id.* §§ 5.1.5, 5.2.4). Additionally, the motion shall disclose the number of Class Members, estimate the Net Settlement Amount (assuming that the Court approves the requested attorneys' fees, litigation costs, and Case Contribution Awards), and calculate the estimated mean and median payments to Class Members.

10. **Objections to Settlement.** Any member of the Settlement Class or authorized recipient of any CAFA Notice may file an objection to the fairness, reasonableness, or adequacy of the Settlement, to any term of the Settlement Agreement, to the Plan of Allocation, to the proposed award of attorneys' fees and litigation costs, to the payment of costs of administering the Settlement out of the Settlement Fund, or to the request for a Case Contribution Award for the Named Plaintiffs. An objector must file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support and/or

evidence that the objector wishes to bring to the Court's attention or introduce in support of the objection(s). The address for filing objections with the Court is as follows:

Clerk of the Court  
500 Pearl St.  
New York, NY 10007-1312

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The objector or his, her, or its counsel (if any) must file the objection(s) and supporting materials with the Court no later than **May 9, 2024** days before the date of the Fairness Hearing specified in this Order). If an objector hires an attorney to represent him, her, or it for the purposes of making an objection pursuant to this paragraph, the attorney must also file a notice of appearance with the Court no later than **May 9, 2024** days before the date of the Fairness Hearing specified in this Order). Any member of the Settlement Class or other Person who does not timely file a written objection complying with the terms of this paragraph shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred. Any responses to objections shall be filed with the Court no later than **May 16, 2024**. There shall be no reply briefs.

11. **Additional Briefs.** Any additional briefs the Parties may wish to file in support of the Settlement shall be filed no later than **May 16, 2024**.

12. **Appearance at Final Approval Hearing.** Any objector who files a timely, written objection in accordance with paragraph 11 above may also appear at the Fairness Hearing either in person or through qualified counsel retained at the objector's expense. Objectors or their attorneys intending to appear at the Fairness Hearing must file a notice of intention to appear (and, if applicable, the name, address, and telephone number of the objector's attorney) with the Court by no later than **May 16, 2024**. Any objectors, or their counsel, who does not timely file a notice

of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing, except for good cause shown.

13. **Notice Expenses.** The expenses of printing, mailing, and publishing the Settlement Notice required herein shall be paid exclusively from the Qualified Settlement Fund.

14. **Parallel Proceedings.** Pending final determination of whether the Settlement Agreement should be approved, the Named Plaintiffs, every Class Member, and the Plan are prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties, including Defendants.

15. **Continuance of Final Approval Hearing.** The Court reserves the right to continue the Fairness Hearing without further written notice to the Class Members and also may schedule the hearing to be conducted by telephone or video conference.

The Clerk of Court is respectfully directed to close the motion at Dkt. 151.

**SO ORDERED** this 11th day of January, 2024.



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**HON. BARBARA MOSES**  
**United States Magistrate Judge**