UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOREN L. CASSELL, et al., Plaintiffs, v. VANDERBILT UNIVERSITY, et al., Defendants.	Civil Action No. 3:16-cv-02086 Chief Judge Crenshaw Magistrate Judge Brown

PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Plaintiffs Loren L. Cassell, Pamela M. Steele, John E. Rice, Penelope A. Adgent, Dawn E. Crago, and Lynda Payne, and on behalf of all others similarly situated ("Plaintiffs"), by and through their counsel, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, hereby move for preliminary approval of the class action settlement. Defendants do not oppose this Motion. In support, Plaintiffs state the following:

1. Plaintiffs brought this action alleging that Defendants breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by, among other things, causing the Vanderbilt University Retirement Plan and Vanderbilt University New Faculty Plan (the "Plan") to pay unreasonable administrative and investment management fees; maintaining underperforming, imprudent investment options; and by failing to protect confidential participant information from being used by one of the Plan's record-keepers, TIAA, to market TIAA's financial products to Plan participants. Defendants dispute these allegations and deny liability for any alleged fiduciary breaches or ERISA violations.

2. After extensive litigation, lengthy discovery, and protracted arm's-length negotiations, with the assistance of a national mediator, the Settling Parties reached a Settlement that provides meaningful monetary and significant non-monetary relief to Class Members.[1]

3. The Settlement Class includes all current and former participants and beneficiaries who participated in the Plan between August 10, 2010 and March 31, 2019, except certain individual defendants identified in the Settlement Agreement.

4. The Settlement is fundamentally fair, adequate, and reasonable in light of the circumstances of the litigation. *See* Schlichter Decl. ¶2. Preliminary approval of the Settlement is in the best interests of the Class Members. In return for a release of the Class Representatives' and Class Members' claims, the Vanderbilt Defendants have agreed to pay a sum of $14,500,000 into a Settlement Fund. The Settling Parties have further agreed to certain additional relief, as specified in Article 10 of the Settlement Agreement.

5. The first step in approving any proposed settlement in a class action is preliminary approval. Manual for Complex Litigation, Fourth, §21.632, at 320–21 (Fed. Jud. Ctr. 2004). At this stage, the Court reviews the proposed settlement to determine whether it is sufficient to warrant class notice and a hearing. *Id*.

6. The Settlement reached between the Settling Parties more than satisfies this standard and is clearly sufficient to warrant being preliminarily approved by the Court. Preliminary approval will not foreclose interested persons from objecting to the Settlement and thereby presenting dissenting viewpoints to the Court.

[1] The fully executed settlement agreement dated April 22, 2019 ("Settlement") is attached hereto as Exhibit A. Capitalized terms herein are defined in the Settlement.

7. Separately, Plaintiffs submit to the Court a Memorandum in Support of this Motion for Preliminary Approval, as well the Declaration of Class Counsel (Jerome J. Schlichter).

8. In accordance with this Motion, Plaintiffs request the following:

- That the Court enter an Order granting preliminary approval of the Settlement Agreement;
- That the Court order any interested party to file any objections to the Settlement within the time limit set by the Court, with supporting documentation, that such objections, if any, be served on counsel as set forth in the proposed Preliminary Approval Order and Class Notice, and permit the Settling Parties the right to limited discovery from any objector as provided for in the proposed Preliminary Approval Order;
- That the Court schedule a Fairness Hearing for the purpose of receiving evidence, argument, and any objections relating to the Settlement Agreement. However, given the processing and mailing of Settlement Notices, the objection deadline to the Settlement, the review and approval period of the Independent Fiduciary, among other interim milestones and deadlines, Plaintiffs request that a Fairness Hearing **not be scheduled before September 20, 2019**; and
- That following the Fairness Hearing, the Court enter an Order granting final approval of the Settlement and dismissing the Second Amended Complaint (Doc. No. 102) with prejudice.

Dated: April 22, 2019

Respectfully Submitted,

SCHLICHTER, BOGARD & DENTON, LLP

/s/ Jerome J. Schlichter

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 22, 2019, the foregoing document was filed electronically through the Court's electronic filing system (ECF). Notice of this filing will be sent by e-mail to all parties and counsel of record, by operation of the Court's ECF system.

/s/ Jerome J. Schlichter

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOREN L. CASSELL, et al., Plaintiffs, v. VANDERBILT UNIVERSITY, et al., Defendants.	Civil Action No. 3:16-cv-02086 Chief Judge Crenshaw Magistrate Judge Brown

PLAINTIFFS' MEMORANDUM IN SUPPORT OF MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Plaintiffs brought this action alleging that Defendants Vanderbilt University, the Vanderbilt University Retirement Plan Oversight Committee, and other individually named defendants (collectively, "Defendants") breached their duties under the Employee Retirement Income Security Act of 1974 (ERISA) by causing the Vanderbilt University Retirement Plan and the Vanderbilt University New Faculty Plan (the "Plan") to pay unreasonable administrative and investment management fees; maintaining underperforming investment options; and failing to protect confidential participant information from being used by one of the Plan's recordkeepers, TIAA, to market a variety of TIAA's financial products to the Plan's participants.

After extensive litigation, lengthy discovery, and protracted arm's-length negotiations with the assistance of a national mediator, the parties have reached a proposed Settlement[1] that provides meaningful monetary and significant non-monetary relief to each Class Member. In light of the litigation risks further prosecution of the actions would inevitably entail, Plaintiffs

[1] The fully executed settlement agreement dated April 22, 2019 ("Settlement") is attached to the Parties' Joint Motion for Preliminary Approval as Exhibit A. (Doc. 145). Capitalized terms herein are defined in the Settlement.

respectfully request that the Court: (1) preliminarily approve the proposed Settlement; (2) approve the proposed form and method of notice to the Settlement Class; and (3) schedule a hearing at which the Court will consider final approval of the Settlement.

BACKGROUND

I. Plaintiffs' Claims

Plaintiffs filed their original complaint in *Cassell et al. v. Vanderbilt University et al.,* No. 3:16-02086, on August 10, 2016. On October 11, 2016, Defendants filed a motion to dismiss Plaintiffs' complaint in its entirety. Doc. 30. On January 5, 2018, after full briefing and several notices filed by Plaintiffs and Defendants regarding supplemental authority, the Court granted in part and denied in part Defendants' motion to dismiss. Doc. 66.

On June 6, 2018, Plaintiffs filed their second amended complaint (Doc. 102), which is the currently operative complaint and set forth the surviving claims and alleged two additional claims. Therein, Plaintiffs alleged that Defendants (1) breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(A) and (B) by retaining or failing to remove the CREF Stock Account (Count I); (2) breached their duty of prudence under 29 U.S.C. §1104(a)(1)(A) and (B) by allowing the Plan's vendors to charge excessive recordkeeping and administrative fees and failing to monitor those fees, allowing the vendors to place their expensive proprietary investments into the Plan, and failing to account for the value of the vendors' access to Plan participants and their data for marketing purposes (Count III); (3) breached their duty of prudence under 29 U.S.C.§ 1104(a)(1)(A) and (B) by allowing Plan participants to be charged unreasonable investment management fees and unnecessary 12b-1 and mortality and expense risk fees, selecting and retaining among the Plan's investment options poorly performing and expensive mutual funds and variable annuities, and failing to engage in a prudent process for

monitoring Plan investments and removing imprudent investments within a reasonable period (Count V); (4) breached their duties of loyalty and prudence under 29 U.S.C.§1104(a)(1)(A) and (B) by allowing TIAA to use its position as the Plan's recordkeeper to obtain access to participants and their private information, and to profit from that access (Count VIII); and (5) engaged in transactions prohibited under 29 U.S.C. §1106(a)(1) by allowing TIAA to use its position as the Plan's recordkeeper to obtain access to participants and their private information, and to profit from that access (Count IX). Doc. 102.

II. The Status of the Litigation

Since the filing of this case, the parties have engaged in over two years of hard-fought litigation that included the production of over 135,000 pages of documents and the designation and depositions of eight witnesses. As set forth above, after lengthy briefing, on January 15, 2018, the Court denied in part and granted in part Defendants' motion to dismiss. Doc. 66. On June 6, 2018 Plaintiffs filed their second amended complaint. Doc 102. The Court granted class certification on October 23, 2018. Doc. 127. On April 25, 2018, Defendants filed a motion to strike Plaintiffs' jury demand. Doc.76. On October 22, 2018, Judge Brown issued a report and recommendation that Defendants' motion to strike be granted. Doc. 124. Plaintiffs filed objections to this report and recommendation on November 5, 2018. Doc. 128. Discovery was scheduled to close on December 20, 2018, however, the parties jointly moved (Doc. 137), and the Court ordered, that all discovery deadlines be vacated and the case be stayed in order to conduct the mediation. Doc. 138. On March 14, 2019, the Court denied as moot the pending motion to strike jury demand. Doc. 144. While all discovery deadlines, including expert discovery, are currently vacated while the case is stayed, it remains set for trial beginning on November 5, 2019. Doc.73.

III. The Terms of the Proposed Settlement

In exchange for releases and for the dismissal of the actions and for entry of a judgment as provided for in the proposed Settlement, Defendants will make available to Class Members the benefits described below.

A. Monetary Relief

The Vanderbilt Defendants will deposit $14,500,000 ("Gross Settlement Amount") in an interest-bearing settlement account (the "Settlement Fund"). The Settlement Fund will be used to pay the recoveries to Class Members, as well as Class Counsel's attorneys' fees and expenses, Administrative Expenses of the Settlement, and the Class Representatives' Compensation as described in the Settlement. All amounts deposited in the Settlement Fund will be distributed in accordance the terms of the proposed Settlement. No residual monies remaining in the Settlement Fund will revert back to Vanderbilt University or any Defendant.

The majority of Class Members will automatically receive distributions directly into their tax-deferred retirement accounts. Those who already left the Plan and no longer have an active account will be given the option to receive their distributions in the form of a check made out to them individually or as a roll-over into another tax-deferred account. As a result, most Class Members will receive their distributions tax-deferred, further enhancing the significant monetary recovery.

B. Additional Terms

In addition to the monetary component of the proposed Settlement, the Settling Parties have agreed to certain non-monetary terms that provide additional value to the Plan and Class

Members above and beyond the monetary recovery.

These additional terms include: (1) Within thirty (30) calendar days after the end of the first and second years of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, the Vanderbilt Defendants will provide Class Counsel a list of the Plan's investment options and the fees for those investment options, as well as a copy of the Investment Policy Statement for the Plan; (2) no later than January 31, 2020, Vanderbilt University will communicate by email with currently employed Plan participants identifying current investment options in the Plan, providing a link to a disclosure of the fees and performance of the frozen annuity accounts and the current investment options, and providing contact information for the individual or entity that can facilitate a fund transfer; the form of this communication shall be approved by Class Counsel; (3) on or before April 1, 2022, the Plan's fiduciaries shall conduct a request for proposals ("RFP") for recordkeeping and administrative services for the Plan to at least three qualified service providers; the RFP shall request that any proposal for basic recordkeeping services express fees on a per-participant basis; (4) after conducting the RFP, the Plan fiduciaries may decide to retain the current recordkeeper or retain a new recordkeeper; the Plan's fiduciaries shall contractually prohibit the recordkeeper from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan to Plan participants unless a request for such products or services is initiated by a Plan participant; (5) within thirty (30) days of the decision to retain or select a new recordkeeper, Vanderbilt University shall provide to Class Counsel the best and final bid amounts that were submitted in response to the RFP and a copy of the agreed-upon contract for recordkeeping services; (6) throughout the Settlement Period, the Plan's fiduciaries shall, when evaluating Plan investment options, consider the cost of different share classes available for the

Plan's current investment options, among other factors; (7) Vanderbilt University shall inform Fidelity, the Plan's current recordkeeper, that when communicating with current Plan participants, Fidelity must refrain from using information about Plan participants acquired in the course of providing recordkeeping services to the Plan to market or sell products or services unrelated to the Plan unless a request for such products or services is initiated by a Plan participant; (8) During the Settlement Period, Vanderbilt shall continue its engagement with AonHewitt to provide ongoing investment monitoring services for the Plan, or shall engage another investment consultant to provide a comparable or greater level of information and services; in considering Plan investment options, the Plan's fiduciaries shall consider information provided by investment consultant(s).

C. Notice and Class Representatives' Compensation

The costs to administer the proposed Settlement, including those associated with providing notice to Class Members, will be paid from the Settlement Fund. Incentive payments in an amount approved by the Court also will be paid from the Settlement Fund.

For the costs associated with the Independent Fiduciary and the Settlement Administrator, Plaintiffs received proposals from candidates to provide these services. After consideration of the proposed fees and the quality of the services to be provided by each candidate, Newport Group was selected as the Independent Fiduciary at a cost of $25,000, and Analytics LLC was selected as the Settlement Administrator at an estimated cost of $85,608 to provide notices electronically for those Class Members for whom a current email address is available.[2]

[2] The proposed fees for the Settlement Administrator to provide notice to Class Members and other related services to facilitate the settlement is estimated based on information presently available to the parties and is subject to change once the number of Class Members and those with available email addresses is determined.

Plaintiffs will seek incentive awards in the amount of $25,000 for each Class Representative: Cassell, Steele, Rice, Adgent, Crago and Payne. This amount is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery and the risk of alienation from their employers and peers. *E.g., Enter. Energy Corp. v. Columbia Gas Transmission Corp*., 137 F.R.D. 240, 250 (S.D. Ohio 1991)*; Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016); *Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 SRN/JSM, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015); *Beesley v. Int'l Paper Co.*, No. 3:06-CV-703-DRH-CJP, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014). The total award requested for the Class Representatives represents a small fraction of Settlement Fund.

D. Attorneys' Fees and Costs

"[I]n a common fund case such as this, a reasonable fee is normally a percentage of the Class recovery." *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *1 (M.D.N.C. Jan. 10, 2007); *see also Boeing Co. v. VanGemert*, 444 U.S. 472, 478 (1980). In this case, Class Counsel will request attorneys' fees to be paid out of the Settlement Fund in an amount not more than one-third of the Settlement Fund, or $4,833,333, as well as reimbursement for costs incurred of no more than $225,000. The Sixth Circuit has permitted fee awards ranging up to 50 percent. *Walls v. JPMorgan Chase Bank, N.A*., No. 3:11-CV-673-DJH, 2016 WL 6078297, at *5 (W.D. Ky. Oct. 14, 2016). "[F]ee awards in class actions average around one-third of recovery." *In re Se. Milk Antitrust Litig.*, No. 2:07-CV 208, 2013 WL 2155387, at *3 (E.D. Tenn. May 17, 2013)(collecting cases, citations omitted). In addition, a one-third fee to

Class Counsel also is provided for in the contract with the Class Representatives. Declaration of Jerome J. Schlichter (Schlichter Decl.) ¶4.

Although Class Counsel will not request a fee greater than one-third of the monetary recovery, the additional terms of the proposed Settlement provide meaningful value in addition to the monetary amount. This results in the requested fee being lower than a one-third award. In addition, Class Counsel will not seek attorneys' fees (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with communicating with Class Members or Defendants during the Settlement Period; and (3) for work required to enforce the proposed Settlement, if necessary. Class Counsel will submit a formal application for attorneys' fees and costs and for the Class Representatives' incentive awards at least 30 days prior to the deadline for Class Members to file objections to the proposed Settlement.

ARGUMENT

The first step in approving any proposed settlement in a class action is preliminary approval. Manual for Complex Litigation, Fourth, §21.632, at 320–21 (Fed. Jud. Ctr. 2004). At this stage, the Court reviews the proposed settlement to determine whether it is sufficient to warrant public notice and a hearing. *Id*., §13.14, at 172–73. If so, the final decision on approval is made after a "fairness" hearing. *Id*. The Court is not required at this preliminary stage to make any final determinations:

> The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

Id. §21.632, at 321. The initial assessment can be made on the basis of information already known to the Court and then supplemented by briefs, motions and an informal presentation from the settling parties. *Id*. at 320.

The Court should preliminarily approve the proposed Settlement because (a) the proposed Settlement was the product of extensive arm's-length negotiations; (b) the proposed Settlement was executed only after Class Counsel conducted extensive discovery and engaged in extensive negotiations; (c) Class Counsel concluded that the proposed Settlement is fair, reasonable, and adequate; and (d) the proposed Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the proposed Settlement to Class Members. *Gascho v. Glob. Fitness Holdings, LLC*, 822 F.3d 269, 277 (6th Cir. 2016); *Brotherton v. Cleveland*, 141 F. Supp. 2d 894, 904 (S.D. Ohio 2001).

I. The Settlement Is the Product of Extensive Arm's-Length Negotiations

There is a strong initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. *Brotherton*, 141 F. Supp. 2d at 904; *see also Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992). As described above, the Settlement is the result of lengthy and complex arm's-length negotiations between the parties. These negotiations extended over an extended period and included the involvement of an independent mediator. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. It is recognized that the opinion of experienced and informed counsel supporting the settlement is entitled to considerable weight. *Williams v. Vukovich*, 720 F.2d 909, 923 (6th Cir. 1983); *Flinn v. FMC Corp*., 528 F.2d 1169, 1173 (4th Cir. 1975).

II. The Settlement was reached only after significant investigation and extensive litigation.

Class Counsel conducted substantial investigation and analysis of well over a hundred thousand pages of documents that occurred over a period of almost three years. As part of their normal discovery practice in preparing the case for depositions and summary judgment, the

majority of these documents were electronically indexed and sorted, and thereafter individually examined, analyzed and cataloged by an attorney. Class Counsel also thoroughly reviewed and analyzed voluminous materials provided by the Class Representatives and third party service providers. Accordingly, Class Counsel extensively developed the facts supporting Plaintiffs' claims. *Whitlock v. FSL Mgmt., LLC*, 843 F.3d 1084, 1093 (6th Cir. 2016).

III. Class Counsel believes the Settlement is fair, reasonable, and adequate.

Class Counsel is very experienced in class action litigation generally and, in particular, class litigation arising from breaches of fiduciary duty under ERISA. Class Counsel pioneered this area of litigation in both 401(k) and 403(b) retirement plans, and is intimately familiar with this unique and complex area of law. *See Kruger*, 2016 WL 6769066, at *5 (noting "endorsements from the AARP and the Pension Rights Center" for Class Counsel's efforts in retirement plan litigation); *Ramsey v. Philips N. Am. LLC*, No. 18-1099, Doc. 27 at 7 (S.D. Ill. Oct. 15, 2018)("Schlichter Bogard & Denton has left an indelible mark on the 401(k) industry by bringing comprehensive changes to fiduciary practices in order to ensure that employees and retirees have the opportunity to save for retirement through prudently administered retirement programs."); *Tussey v. ABB, Inc.*, No. 06-04305-CV-C-NKL, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012) ("Plaintiffs' attorneys are clearly experts in ERISA litigation"); *Beesley*, 2014 WL 375432, at *1 (S.D. Ill. Jan. 31, 2014) ("The Court remains impressed with Class Counsel's navigation of the challenging legal issues involved in this trailblazing litigation and Class Counsel's commitment and perseverance in bringing this case to this resolution."). It is Class Counsel's opinion that the Settlement is fair and reasonable. Schlichter Decl. ¶2.

As set forth above, the Settlement provides a substantial monetary relief component in the amount of $14,500,000. In addition, the Settlement provides substantial and comprehensive non-

monetary and additional relief. Finally, independent of Class Counsel's opinion as to the reasonableness of the Settlement, the Settling Parties will submit the Settlement to an Independent Fiduciary, which will provide an opinion on the Settlement's fairness before the final fairness hearing.

IV. The Settlement is fair, reasonable, and adequate to warrant sending notice to the Settlement Class.

Due process and Federal Rule of Civil Procedure 23(e) do not require that each Class Member receive notice, but do require that the class notice be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co*., 339 U.S. 306, 314 (1950). "Individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974).

The proposed form and method of notice of the proposed Settlement satisfy all due process considerations and meet the requirements under Rule 23(e)(1). Plaintiffs' proposed forms of settlement notices are attached to the Settlement Agreement. The proposed settlement notices will fully apprise Class Members of the existence of the lawsuits, the Settlement, and the information they need to make informed decisions about their rights, including: (i) the terms of the Settlement; (ii) the nature and extent of the Release; (iii) the maximum attorneys' fees and expenses that will be sought by Class Counsel; (iv) the procedure and timing for objecting to the Settlement and the right of the Settling Parties to seek limited discovery from objectors; (v) the date and place of the final fairness hearing; and (vi) the website on which the full settlement documents, and any modifications to those documents, will be posted.

The notice plan consists of multiple components designed to reach Class Members. First, the Settlement Notice will be sent by electronic email to all Class Members who have a current email address known to Vanderbilt University and/or the Plan's recordkeeper(s) and by first-class mail to the current or last known address of all Class Members for whom there is no current email address shortly after entry of the Preliminary Approval Order. Addresses of the Class Members are maintained by the Plan's recordkeeper and/or Vanderbilt University personnel, who use this information for, *inter alia*, mailing plan notices and other plan-related information. Class Members include both current and former employees of Vanderbilt University. In addition to the Settlement Notice, Class Counsel will develop a dedicated website solely for the Settlement, and a link to that website will appear on Class Counsel's website (www.uselaws.com). The notice plan also includes a follow-up requirement for the Settlement Administrator to take additional action to reach those Class Members whose notice letters are returned as undeliverable. Thus, the form of notice and proposed procedures for notice satisfy the requirements of due process and the Court should approve the notice plan as adequate.

CONCLUSION

The Motion for Preliminary Approval of Class Settlement should be granted.

April 22, 2019

Respectfully submitted,

/s/ Jerome J. Schlichter

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CERTIFICATE OF SERVICE

I certify that on April 22, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will automatically send notification of filing to all counsel of record.

/s/ Jerome J. Schlichter

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

LOREN L. CASSELL, et al., Plaintiffs, v. VANDERBILT UNIVERSITY, et al., Defendants.	Civil Action No. 3:16-cv-02086 Chief Judge Crenshaw Magistrate Judge Brown

DECLARATION OF JEROME J. SCHLICHTER

1. I am the founding partner of the law firm Schlichter, Bogard & Denton LLP, counsel for the Plaintiffs in the above-referenced matters. This declaration is submitted in support of Plaintiffs' Memorandum in Support of the Motion for Preliminary Approval of Class Settlement. I am familiar with the facts set forth below and able to testify to them.

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle these class actions. As illustrated in Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Settlement, all settlement negotiations in this case were conducted at arm's length by adverse, represented parties. The negotiations were extensive and adversarial, and the parties engaged a highly experienced mediator with whom the parties met in person and via telephonic mediation sessions, as well as conducting calls between the parties to negotiate a settlement. Apart from the monetary amount, these discussions also involved extensive negotiations for non-monetary relief regarding the Plan's provisions, oversight, and administration going forward resulting in substantial non-monetary relief. In particular, some changes in the Plan alleged in the complaint to be imprudent

were made after this lawsuit was filed. It is my opinion that the proposed settlement is not only "within the range of reasonableness," but also is fair, reasonable, adequate, and in the best interests of the Plan and its participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue.

3. Attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement is Exhibit A, which is a true and accurate copy of the Settlement Agreement between Plaintiffs and Defendants.

4. Each of the six named plaintiffs in this litigation have a contract with this firm agreeing to a one-third fee to Schlichter Bogard & Denton LLP in the event of any recovery.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on April 22, 2019, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter