

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

DAVID TURNER, *et al.*,

Plaintiffs,

v.

SCHNEIDER ELECTRIC HOLDINGS, INC.,
et al.,

Defendants.

No. 1:20-cv-11006-NMG

CLASS ACTION

**PLAINTIFFS' UNOPPOSED MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND CLASS REPRESENTATIVE AWARDS**

Under Federal Rules of Civil Procedure 23(h) and 54(d)(2), Plaintiffs move that the Court approve an attorneys' fee award to Class Counsel of \$66,667.00 (33.3% of the monetary recovery), reimburse Class Counsel's reasonable litigation expenses of \$14,670.00, and grant incentive awards of \$500.00 each for Class Representatives David Turner, Bickey Dhakal, Lisa Duda, Terry Schiazza, Jason Hensel, Angela Blackwell, Antonia Freeman, Robert Jensen, and Joseph Malone.

Class Counsel bore tremendous risk in seeking to provide benefits to the Class. Although the litigation resulted in the Court entering judgment in favor of Defendants on the vast majority of Plaintiffs' claims, Class Counsel leveraged their experience to obtain a monetary amount on the remaining claims in favor of the Class, thereby avoiding further delay and substantial risk of non-recovery for the Class. The attorney's fee requested here, one-third of the monetary recovery, is typically granted in complex ERISA class actions such as this, and a lodestar cross-check confirms the reasonableness of the same. Based on all of the relevant factors, and for the

reasons stated in Plaintiffs' supporting memorandum, Plaintiffs respectfully request that the Court grant their motion.

July 19, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on July 19, 2023.

/s/ Troy A. Doles
Troy A. Doles

LOCAL RULE 7.1 CERTIFICATION

Plaintiffs' counsel conferred with Defendants' counsel related to the issues raised in this motion. Defendants stated that they do not oppose Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Awards.

/s/ Troy A. Doles
Troy A. Doles

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR UNOPPOSED MOTION
FOR ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS
REPRESENTATIVE AWARDS**

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INTRODUCTION

After almost three years of hard-fought litigation, Plaintiffs and all Defendants reached a settlement to resolve all remaining claims for \$200,000.00. Doc. 208 at 2. Under the common fund doctrine, Class Counsel seeks an attorney fee award of one-third of the Gross Settlement Amount, or \$66,667.00, and reimbursement of reasonable out-of-pocket expenses of \$14,670.00 that Class Counsel incurred in prosecuting the Settled Claims on behalf of employees and retirees in the Plan. In ERISA class actions such as this, courts have routinely approved a one-third fee award of the common fund. A lodestar analysis confirms the reasonableness of the fee requested here. Class Counsel further and respectfully states the Court should grant incentive awards of \$500.00 each for Class Representatives who remained highly engaged throughout the litigation. For these reasons and those set forth below, Class Counsel's requests are appropriate and reasonable.

BACKGROUND¹

On May 26, 2020, Plaintiffs David Turner, Bickey Dhakal, Lisa Duda, Terry Schiazza, Jason Hensel, Angela Blackwell, and Antonia Freeman filed their complaint against Defendants Schneider Electric Holdings, Inc., the Schneider Electric Holdings, Inc. Benefits Committee, and the Schneider Electric Holdings, Inc. Investment Committee (collectively the "Schneider Defendants") and Defendant Aon Hewitt Investment Consulting, Inc. ("Defendant Aon"), Doc. 1, and later filed an unredacted version on September 17, 2020. Doc. 45. Plaintiffs alleged that Defendants breached their fiduciary duties and committed prohibited transactions relating to the management, operation, and administration of the Plan. Plaintiffs sought to recover all alleged

¹ "Doc." references are to the docket, unless otherwise indicated. Capitalized terms not otherwise defined have the meanings ascribed to them in the Settlement Agreement. Doc. 208-01.

losses to the Plan resulting from each breach of duty under 29 U.S.C. § 1109(a) and for other equitable and remedial relief.

After the Court granted in part and denied in part Defendants' motions to dismiss (Doc. 57), Class Counsel completed significant fact and expert discovery, analyzed and reviewed thousands of produced documents, defended the depositions of the Class Representatives, deposed four Schneider witnesses and two Aon witnesses, and completed eight expert depositions. On August 27, 2021, Plaintiffs and Defendants stipulated to the certification of the following class:

All participants and beneficiaries of the Schneider Electric 401(k) Plan from May 26, 2014, through the date of judgment, excluding the Defendants.

Doc. 72.

On September 12, 2022, the Schneider Defendants moved for partial summary judgment, and Defendant Aon moved for summary judgment. Doc. 126; Doc. 133. On January 24, 2023, this Court granted Defendants' respective summary judgment motions, leaving as the only claim in the case part of Count II, alleging that the Schneider Defendants breached their duty of prudence by providing participants with higher-cost share classes and unreasonable investment management fees relative to the Vanguard Developed Markets Index, the Vanguard Total Bond Market Index, and the Vanguard Extended Market Index. Doc. 200 at 14.

After the entry of this Court's summary judgment order, Plaintiffs and Defendants engaged in settlement discussions. On January 31, 2023, Plaintiffs and Defendants reached a tentative settlement to resolve all remaining claims in the case, as identified above, relative to the Vanguard funds (herein the "Settled Claims") and an agreement that extinguishes all parties' rights to appeal this Court's summary judgment order. On March 17, 2023, the parties reached a final agreement on all terms of the Settlement.

ARGUMENT

I. An award of attorneys' fees from the Settlement's common fund is appropriate.

This settlement involves a common fund recovery for the Settlement class. In such common fund settlements, the First Circuit has noted that a percentage of the common fund is the preferred method of calculating attorneys' fees. *In re Thirteen Appeals Arising out of the San Juan Dupont Plaza Hotel Fire Litig.*, 56 F.3d 295, 307 (1st Cir. 1995) (emphasis added). Indeed, in *Thirteen Appeals*, the Court recognized that the percentage-of-fund ("POF") method is the "prevailing praxis" and acknowledged the "distinct advantages that the POF method can bring to bear in such cases." *Id.* at 307; *see also Heien v. Archstone*, 837 F.3d 97, 100 (1st Cir. 2016). As noted by the First Circuit, the POF approach offers distinctive advantages including: (1) it is less burdensome to administer; (2) it reduces the possibility of collateral disputes; (3) it enhances the efficiency throughout the litigation; (4) it is less taxing on judicial resources; and (5) it better approximates the workings of the marketplace. *In re Thirteen Appeals*, 56 F.3d at 307. The preference is particularly strong in this case because Class Counsel represents clients *entirely* on a contingency basis and does not charge an hourly fee. Schlichter Decl. ¶¶15-17. Indeed, in an analogous case before this Court, it awarded Class Counsel's request for attorneys' fees based on a percentage "from a common fund created from the class action settlement." *Tracey et al. v. Massachusetts Institute of Technology, et al.*, No. 16-11620-NMG, Doc. 317 at 1 (D. Mass. May 29, 2020).

For these reasons, further supported by those additional and relevant factors set forth below, Class Counsel's request for a one-third POF award for attorneys' fees in the amount of \$66,667.00 is reasonable.

II. A lodestar check confirms the reasonableness of Class Counsel's request.

Although the POF method is preferred and offers distinct advantages, this Court may also calculate fees by fashioning a lodestar. *In re Thirteen Appeals*, 56 F.3d at 307. A lodestar analysis may be performed as a check to ensure that the POF award is fair and reasonable. *In re Volkswagen & Audi Warranty Extension Litig.*, 89 F. Supp. 3d 155, 163 (D. Mass. 2015). The lodestar approach multiplies the reasonable hours spent in litigating the case by the reasonable hourly rates of the attorneys who worked on the case. *Id.* at 305. The rates must be in line with attorneys with commensurate skill and experience. *In re Prudential Ins. Co. of Am. SGLI/VGLI Contract Litig.*, No. 11-02208, 2014 WL 6968424, at *6 (D. Mass. Dec. 9, 2014). Class Counsel's lodestar in this matter is \$76,900.00, based on a reasonable approximation of the number of hours expended on the Settled Claims subject to this Settlement and Class Counsel's recently approved hourly rates. For these reasons and those explained below, the requested (*and lower*) fee based on a POF of \$66,667.00 is reasonable.

A. The estimated hours expended on the Settled Claims are reasonable.

To determine an approximate number of hours to use for a lodestar amount, Class Counsel included only *a fraction* of the total hours expended in this case (a total of over 7,700 hours) that was related to the Settled Claims. Doles Decl. ¶¶4-7. To determine an approximate number of hours Class Counsel expended on the Settled Claims, Class Counsel identified those discrete items that included work related to the Settled Claims. Doles Decl. ¶5. Those items included hours devoted to the preparation of the Complaint, responding to Defendants' motions to dismiss, and work related to those experts who offered opinions and loss calculations related to the Settled Claims. The total number of hours for these tasks equals 596.50 hours. Doles Decl. ¶6. From that total time, Class Counsel reasonably estimated that approximately 15% of that total time was devoted to the Settled Claims. Doles Decl. ¶7. This percentage is an incredibly

small fraction of the total hours expended in this case and of those related to the Settled Claims. However, Class Counsel believes it is a reasonable and appropriate proxy for the hours devoted to the Settled Claims.

B. Class Counsel’s recently court-approved hourly rates are reasonable.

ERISA litigation, such as this, involves a national market because the number of plaintiffs’ and defense firms who have the expertise and the resources to litigate these complex claims is small. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *3 (S.D. Ill. Jul. 17, 2015); Schlichter Decl. ¶¶12, 20-21. Therefore, the relevant hourly rate is the “nationwide market rate.” *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *4 (M.D.N.C. Sep. 29, 2016); *Clark v. Duke Univ.*, No. 16-1044, Doc. 165 at 5, 8 (M.D. N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-1705, 2019 WL 1993519, *2 (M.D.N.C. May 6, 2019); *Ramsey v. Phillips N. Am. LLC*, No. 18-1099, Doc. 27 at 8 (N.D. Ill. Oct. 15, 2018); *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 WL 375432, at *3 (S.D. Ill. Jan 31, 2014); *Abbott*, 2015 WL 4398475, at *2; *Tussey v. ABB, Inc.*, 2015 WL 8485265, *7 (W.D. Mo. Dec. 9, 2015).

As recently as March of 2023, Class Counsel’s national rate for litigating complex ERISA fiduciary breach cases was approved. See *Ford v. Takeda Pharm. U.S.A., Inc.*, No. 21-10090-WGY, 2023 U.S. Dist. LEXIS 93286, at *6–7 (D. Mass. Mar. 31, 2023). Those approved rates were the following: \$1,370 for attorneys with at least 25 years of experience; \$1,165 for attorneys with 15–24 years of experience; \$840 for attorneys with 5–14 years of experience; \$635 for attorneys with 0–4 years of experience; and \$425 for paralegals and law clerks. In *Ford*, Sanford Jay Rosen, a founding partner of Rosen, Bien & Galvin, LLP, a 27-lawyer litigation firm in San Francisco and a recognized national expert on prevailing rates for complex class action attorneys, opined that the above rates were reasonable based on the current legal market, Schlichter Bogard’s extensive experience in ERISA class actions, and the fees charged by

national attorneys of equivalent experience, skill, and expertise in complex class actions. *Ford v. Takeda Pharm. U.S.A., Inc.*, No. 21-10090, Doc. 109 at 2, 21–25 (D. Mass Jan. 20, 2023). The court agreed and approved the above rates. *Ford*, 2023 U.S. Dist. LEXIS 93286, at *6–7.

To calculate the lodestar related to the Settled Claims, the above hourly rates by relevant and applicable attorneys and staff were applied to those estimated hours devoted to the Settled Claims, yielding a total amount of \$512,672.00. Doles Decl. ¶6. Applying a conservative estimate of 15% to that total yields a lodestar of \$76,900.00. Doles Decl. ¶7. This lodestar cross-check confirms that the requested POF award is reasonable and appropriate. *New Eng. Carpenters Health Benefits Fund v. First Databank*, No. 05-11148-PBS, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009).

III. Class Counsel’s fee award request is reasonable when additional relevant factors are considered.

In determining the reasonableness of Class Counsel’s fee award, the Court may also consider the following additional factors: (1) the time and labor required, (2) the novelty or complexity of the issues, (3) the skill required, (4) a customary fee, (5) the preclusion of other employment by the attorneys, (6) the fixed or contingent nature of the fee, (7) the time limitations imposed by the client or circumstances, (8) the damages involved and results obtained, (9) attorney experience, reputation, and ability, (10) desirability of the case, (11) the nature and length of the client relationship, and (12) the size of awards in similar cases. *Momenta Pharm., Inc. v. Amphastar Pharm., Inc.*, No. 11-11681-NMG, 2016 WL 2642997, at *3 (D. Mass. May 9, 2016); *see also Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016) (listing common fund considerations); *In re Relafen Antitrust Litig.*, 231 F.R.D. 52, 85–89 (D. Mass 2005). As noted below, these factors support Class Counsel’s requested POF amount and also support the estimated lodestar amount.

A. The amount of attorney time required.

As explained above, Class Counsel’s requested fee is amply justified by their work in this case and those estimated hours devoted to the Settled Claims.

B. The novelty and complexity of the issues.

ERISA class action litigation, such as this case, is inherently complex. *Kruger*, 2016 WL 6769066, at *2–3. This “rapidly evolving” area of law places demands on counsel that are “complex and require the devotion of significant resources.” *In re Wachovia Corp. ERISA Litig.*, No. 09-262, 2011 WL 5037183, at *4 (W.D. N.C. Oct. 24, 2011). Excessive fee litigation “entails complicated ERISA claims” and “novel questions of law.” *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 3210448, at *2 (C.D. Ill. Aug. 12, 2010); *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012), *vacated and remanded*, 746 F.3d 327 (8th Cir. 2014). Few firms “are capable of handling this type of national litigation” that requires a deep, specialized knowledge of 401(k) industry practices. *Abbott*, 2015 WL 4398475, at *3; see also Schlichter Decl. ¶¶ 6, 8, 11, 21.

C. The skill required, reputation, and ability of the attorneys (factors 3 and 9).

Class Counsel is not only highly experienced in handling ERISA class actions involving retirement plans, but “pioneer[ed] . . . the field of retirement plan litigation.” *Abbott*, 2015 WL 4398475, at *1. Class Counsel is the “preeminent firm” in excessive fee litigation having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *3–4 (C.D. Ill Oct. 15, 2013). Courts across the country have recognized the reputation, skill, and determination of Class Counsel in pursuing relief on behalf of retirement plan participants. Schlichter Decl. ¶¶4-8, 12-13.

D. Class Counsel's customary fee.

As described above, Class Counsel represents clients entirely on a contingency basis and does not charge an hourly fee. Schlichter Decl. ¶¶15-17. Nevertheless, and as described above, Class Counsel's hourly rates through lodestar cross-checks have been recently approved in other ERISA settlements.

E. The preclusion of other employment by the attorneys and desirability of the case (factors 5 and 10).

The decision to pursue this case, advance substantial costs, and commit substantial resources and thousands of attorney hours to obtain a successful recovery materially impacted Class Counsel's ability to handle "other simpler and less risky matters." *Krakauer v. Dish Network, LLC*, No. 14-333, 2018 WL 6305785, at *4 (M.D.N.C. Dec. 3, 2018); Schlichter Decl. ¶20. The commitment for this type of litigation when taking it on is done with the knowledge that it may require 20,000 or more hours over 12 years with a trial, multiple appeals, and multiple remandments. *See Tussey v. ABB, Inc.*, No. 06-4305, 2015 WL 8485265 (W.D. Mo. Dec. 9, 2015), *vacated and remanded*, 850 F. 3d 951 (8th Cir. 2017) (over 12 years of litigation and 24,000 hours). This demonstrates the fact that it is undesirable to bring these types of cases for most firms. *See* Schlichter Decl. ¶20.

F. The contingent nature of the fee.

Class Counsel litigated this matter on a contingent basis with no guarantee of recovery. Class Counsel entered into contingency fee agreements with each of the Class Representatives for one-third of any monetary recovery plus reimbursement of expenses. Schlichter Decl. ¶17. Unquestionably, the Class Representatives would not have been able to pursue this litigation other than on a contingency fee basis. *Id* at ¶15.

G. The damages involved and the results obtained.

Despite being unsuccessful on the vast majority of the claims, Class Counsel was able to obtain \$200,000.00 in monetary compensation for the Class. While Class Counsel acknowledges that this settlement amount is far below other settlements they have been able to secure, obtaining any settlement amount for the Class is a significant achievement given the procedural posture of the case.

H. The nature and length of the client relationship.

Class Counsel did not have a professional relationship with any of the Class Representatives prior to this litigation, which supports the requested fee award. Schlichter Decl. ¶18; *Smith v. Krispy Kreme*, No. 05-187, 2007 WL 119157, at *3 (M.D.N.C. Jan. 10, 2007).

I. The size of the award in similar cases.

In complex ERISA class actions involving a common fund settlement, a contingency one-third POF award is routinely granted. *See e.g., Kelly v. Johns Hopkins University*, 2020 WL 434473, *4 (D. Md. Jan. 28, 2020); *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22, 2019) (33.33%); *Tussey v. ABB, Inc.*, No. 06-04305, 2019 WL 3859763 (W.D.Mo. August 16, 2019) (same); *Gordan*, 2016 WL 11272044 (same); Schlichter Decl. ¶21.

J. Public policy considerations.

Public policy also supports Class Counsel's fee. Class Counsel has provided "significant, national contribution" helping to "clarify[y] ERISA standards" and "educate[] plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations." *Tussey*, 2015 WL 8485265 at *2 (. "The public benefits when capable and seasoned counsel undertake private action to enforce [federal] laws." *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009). Class Counsel's efforts have contributed to

over \$2 billion in fee savings for plan participants throughout the whole industry. *Nolte*, 2013 WL 12242015, at *2.

IV. Class Counsel's submitted litigation expenses are reasonable.

Class Counsel respectfully states that their requested reimbursement of litigation expenses in the amount of \$14,670.00 is reasonable. Fed. R. Civ. P. 23(h). Generally, reimbursable expenses include expert fees, travel, conference telephone, postage, delivery services, and legal research. *Alba Conte*, 1 Attorney Fee Awards §2:19 (3d ed. 2004). Class Counsel brought this case without guarantee of reimbursement or recovery. Indeed, as with any case taken on a contingency fee basis, there was a strong incentive to limit costs. Here, the amount of requested reimbursement is a mere 12% of the fees paid to those experts that offered opinions related to the Settled Claims. *See* Doles Decl. ¶25. This request is reasonable and below the estimated expenses Class Counsel initially identified of \$15,000.00. Doc. 209 at 5.

V. The requested case contribution awards for the Class Representatives are reasonable.

In their discretion, Courts typically award special compensation to the class representatives in recognition of their time and effort. *In re Relafen Antitrust Litig.*, 231 F.R.D. at 82. In this case, the Class Representatives provided invaluable assistance to Class Counsel. *See* Doles Decl. ¶¶12, 16. They risked their reputation and alienation “in bringing an action against a prominent [university] in their community.” *Kruger*, 2016 WL 6769066, at *6; *see also* Doles Decl. ¶12. Here, a modest case contribution award of \$500.00 each for the nine Class Representatives is reasonable and appropriate given the contributions of the Class Representatives to the case.

CONCLUSION

This Court should grant Plaintiffs' Motion.

July 19, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on July 19, 2023.

/s/ Troy A. Doles
Troy A. Doles

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DAVID TURNER, *et al.*,

Plaintiffs,

v.

SCHNEIDER ELECTRIC HOLDINGS, INC.,
et al.,

Defendants.

No. 1:20-cv-11006-NMG

CLASS ACTION

DECLARATION OF JEROME J. SCHLICHTER

I, Jerome J. Schlichter, declare as follows:

1. I am the founding partner of the law firm of Schlichter Bogard LLP (formerly named Schlichter Bogard & Denton LLP), Class Counsel for Plaintiffs in the above-referenced matter. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representatives' Awards. I am familiar with the facts set forth below and able to testify to them.

2. I received my Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors, and was a James Scholar. I received my Juris Doctorate from the University of California at Los Angeles (UCLA) Law School in 1972, where I was an Associate Editor of UCLA Law Review. I am licensed to practice law in the states of Illinois, Missouri, and California and am admitted to practice before the Supreme Court of the United States, the Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth Circuit Courts of Appeals and numerous U.S. District Courts. I have also been an Adjunct Professor teaching trial practice at Washington

University School of Law and have been repeatedly selected by my peers for the list of The Best Lawyers in America.

3. Through over 45 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury cases, civil rights class actions, mass torts claims, and fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA). In 2014, I was ranked number 4 in a list of the 100 most influential people nationally in the 401(k) industry in the industry publication 401(k) Wire. Examples of class action cases I have successfully handled include: *Brown v. Terminal Railroad Association*, a race discrimination case in the Southern District of Illinois on behalf of all African-American and Hispanic employees at a railroad; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought on behalf of hundreds of African-American applicants from East St. Louis, Illinois at a major railroad which was tried to conclusion, successfully appealed to the Seventh Circuit Court of Appeals, and finally concluded with more than \$10 million for the class after 12-and-a-half years of litigation; *Wilfong v. Rent-A-Center*, No. 00-680, 2002 U.S. Dist. LEXIS 28016 (S.D. Ill. 2002), a nationwide gender discrimination in employment case on behalf of women, which was successfully settled for \$47 million and substantial affirmative relief to the class of thousands, after I defeated the defendant's attempt to conduct a reverse auction.

4. In addition to this case, my firm has been named Class Counsel in numerous cases involving claims of fiduciary breaches in large retirement plans. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, Doc. 101 (D. Mass. Nov. 21, 2022); *Wachala v. Astellas US LLC*, No. 20-3882, 2022 U.S. Dist. LEXIS 24052 (N.D. Ill. Feb. 10, 2022); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2022 U.S. Dist. LEXIS 95857 (C.D. Cal. Feb. 16, 2022); *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 121336 (E.D. Pa. June 28, 2021); *Pledger v.*

Reliance Trust Co., No. 15-04444, 2020 U.S. Dist. LEXIS 25548, at *4 (reaffirming appointment); *Munro v. Univ. of S. Cal.*, No. 16-6191, 2019 U.S. Dist. LEXIS 226682 (C.D. Cal. Dec. 20, 2019); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. 2019); *Kelly v. The Johns Hopkins Univ.*, No. 16-2835, Doc. 87 (D. Md. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 U.S. Dist. LEXIS 11369 (S.D. Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 U.S. Dist. LEXIS 10357 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2018 U.S. Dist. LEXIS 181850 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trs. of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D. N.Y. Nov. 15, 2018); *Henderson v. Emory Univ.*, No. 16-2920, 2018 U.S. Dist. LEXIS 180349 (N.D. Ga. Sept. 13, 2018); *Tracey v. MIT*, No. 16-11620, 2018 U.S. Dist. LEXIS 179945 (D. Mass. Oct. 19, 2018); *Ramsey v. Philips N. Am.*, No. 18-1099, Doc. 19 (S.D. Ill. June 12, 2018); *Sacerdote v. N.Y. Univ.*, No. 16-6284, 2018 U.S. Dist. LEXIS 23540 (S.D. N.Y. Feb. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 U.S. Dist. LEXIS 62532 (M.D. N.C. Apr. 13, 2018); *Ramos v. BannerHealth*, 325 F.R.D. 382 (D. Colo. 2018); *Troudt v. Oracle Corp.*, 325 F.R.D. 373 (D. Colo. 2018); *Pledger v. Reliance Tr. Co.*, 325 F.R.D. 373 (N.D. Ga. 2017); *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2017 U.S. Dist. LEXIS 222531 (C.D. Cal. Nov. 2, 2017); *Sims v. BB&T Corp.*, No. 15-732, 2017 U.S. Dist. LEXIS 137738 (M.D. N.C. Aug. 28, 2017); *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, Doc. 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Doc. 53 (M.D. N.C. May 17, 2016); *Kreuger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 574 (D. Minn. 2014); *Abbott v. Lockheed Martin*, No. 06-701, Doc. 403 (S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Doc. 542 (S.D. Ill. Oct. 10, 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 101165, at *6–7 (C.D. Ill. July 3, 2013); *Will v. Gen. Dynamics*, No. 06-698, 2010 U.S. Dist. LEXIS 95630, at *5–6 (S.D. Ill. Aug. 9,

2010); *Martin v. Caterpillar Inc.*, No. 07-1009, Doc. 173 (C.D. Ill. April 21, 2010); *George v. Kraft Foods Global Inc.*, 251 F.R.D. 338 (N.D. Ill. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008 U.S. Dist. LEXIS 43655 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-4305, 2007 U.S. Dist. LEXIS 88668 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 U.S. Dist. LEXIS 46893 (N.D. Ill. June 26, 2007).

5. Turning specifically to my work on retirement accounts, federal judges have noted my and my firm's pioneering in this space, our tenacity, the results we have obtained both for clients and in changing the retirement fund industry, and the resulting savings experienced by workers and retirees. In approving fees of one-third of the monetary recovery in a similar case, United States District Judge André Birotte Jr. of this District praised the firm:

Schlichter, Bogard & Denton is exceptionally skilled having achieved unparalleled success in actually pioneering complex ERISA 401(k) excessive fee litigation, such as this case and *Grabek*. The Court agrees with other district courts that Schlichter, Bogard & Denton are attorneys of the highest caliber. This Court agrees that, in creating the field of 401(k) excessive fee litigation, when neither the Department of Labor or any private law firm had ever filed such a case, Schlichter Bogard & Denton functioned as a private attorney general. The firm handled the first ever trial of such [a] case. It also successfully petitioned the United States Supreme Court to hear its first ERISA fiduciary breach case regarding excessive fees in 401(k) plans, and obtained a unanimous 9-0 decision holding that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones.

Marshall v. Northrop Grumman Corp., No. 16-6794, 2020 U.S. Dist. LEXIS 177056, at *11–12 (C.D. Cal. Sep. 18, 2020)

6. In *Ford v. Takeda Pharms. U.S.A., Inc.*, U.S. District Court Judge William G. Young acknowledged that Schlichter Bogard “is a recognized leader in ERISA excessive fee litigation, having pioneered the field.” No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at *4 (D. Mass. Mar. 31, 2023). Further, in *Cates v. Trs. of Columbia University*, U.S. District Judge

George B. Daniels recognized and repeated several accolades my firm had received from other judges:

Class Counsel is not only highly experienced in handling ERISA class actions involving 401(k) and 403(b) plans, but “pioneer[ed] . . . the field of retirement plan litigation.” Class Counsel is the “preeminent firm” in excessive fee litigation, having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” Class Counsel are “experts in ERISA litigation,” and “highly experienced.” The firm also obtained a significant victory in the Supreme Court, which in 2015 unanimously held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones. Courts across the country have recognized the reputation, skill, and determination of Class Counsel in pursuing relief on behalf of retirement plan participants. Recently, Judge Blackburn of the District of Colorado wrote that Class Counsel “have shown their ability by achieving the excellent result obtained for the class” and “admirably served as private attorneys general in this instance, fulfilling one of the purposes of ERISA.”

Cates v. Trs. of Columbia Univ., No. 16-06524, 2021 U.S. Dist. LEXIS 200890, at *13–14 (S.D. N.Y. Oct. 18, 2021) (internal citations omitted).

7. In *Sweda v. University of Pennsylvania*, No. 16-4329, 2021 U.S. Dist. LEXIS 121336, at *10 (E.D. Pa. June 28, 2021), U.S. District Judge Gene E.K. Pratter, appointing the firm class counsel, wrote that the firm’s work “has been acknowledged as leading to fee reductions in the industry that total almost \$2.8 billion in annual savings for American workers and retirees.” *Id.* Numerous other cases have noted this impact as well. See, e.g., *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *12 (D. Md. Jan. 28, 2020); *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *9 (S.D. Ill. Mar. 31, 2016); *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *10 (S.D. Ill. Jan. 31, 2014) (noting savings approaching “\$2.8 billion in annual savings for American workers and retirees”).

8. U.S. District Judge Michael Ponsor, from this district, has also commended this firm’s “extraordinary resourcefulness, skill, efficiency, and determination,” crediting the

“exceptional result in th[e] case” to “Class Counsel’s unique expertise and outstanding effort.”
Gordan, 2016 U.S. Dist. LEXIS 195935, at *7–8.

9. I have also spoken on ERISA litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars.

10. In the decades of my private practice, I have never been reprimanded, sanctioned or otherwise disciplined with respect to any aspect of the practice of law.

11. Since 2005, my firm and I have been investigating, preparing, and handling, on behalf of plan participants, numerous cases against fiduciaries of large 401(k) plans alleging fiduciary breaches including excessive fees, conflicts of interests and prohibited transactions under ERISA. My firm has filed these cases in numerous judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits.

12. Our firm pioneered 401(k) excessive fee cases. Before we filed the first cases in 2006, no law firm in the United States had ever filed such a case, and the Department of Labor, which regulates 401(k) plans, had never brought an excessive fee case. The firm handled the first full trial of such a case, resulting in a judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 45240 (W.D. Mo. Mar. 31, 2012), *aff'd in part, rev'd in part*, 746 F.3d 327 (8th Cir. 2014). As Judge Laughrey noted in that case, “[i]t is well established that complex ERISA litigation involves a national standard and special expertise. Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at *9–10 (W.D. Mo. Nov. 2, 2012), *rev'd on other grounds*, 746 F.3d 327 (8th Cir. 2014) (citations omitted).

13. In the second 401(k) excessive fee trial, *Tibble v. Edison Int'l*, which originated in the Central District of California, the United States Supreme Court granted our petition for writ of certiorari in the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. In a 9-0 unanimous decision, the Supreme Court vacated the Ninth Circuit's affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of when they were added. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015). This was a landmark decision in ERISA litigation. Sitting en banc, ten judges of the Ninth Circuit on remand then unanimously vacated a Ninth Circuit panel decision and remanded to the district court to determine whether the defendants violated their continuing duty to monitor the 401(k) plan's investments, stating that "cost-conscious management is fundamental to prudence in the investment function." *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197–98 (9th Cir. 2016) (citation omitted). Following remand, in August 2017, the plaintiffs obtained a judgment of \$13.4 million in plan losses and investment opportunity. *Tibble*, No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D. Cal. Aug. 16, 2017); *Tibble*, ECF Nos. 570, 572.

14. Several of the 401(k) cases my office filed were dismissed and the dismissals upheld by Courts of Appeals. *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). Others, such as this case, had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 F. App'x 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F. Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F. Supp. 2d 1074 (C.D.

Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 575 U.S. 523, (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016).

15. As a practical matter, litigants such as Class Representatives David Turner, Bickey Dhakal, Lisa Duda, Terry Schiazza, Jason Hensel, Angela Blackwell, Antonia Freeman, Robert Jensen, and Joseph Malone could not afford to pursue litigation against well-funded fiduciaries of a multi-billion-dollar 401(k) plan sponsored by a large employer such as Schneider Electric in federal court on any basis other than a contingent fee. I know of no law firm in the United States, of the very few firms which would even consider handling such a case as this or that would handle any ERISA class action, with an expectation of anything but a percentage of the common fund created.

16. Moreover, I know of no law firm that would agree to handle such a case on a contingent hourly rate basis. Defendants' attorneys in these cases are paid according to their hourly rate without delay, without taking risk of loss, and without advancing and risking expenses.

17. The contingency fee agreements entered into between my firm and each of the Class Representatives David Turner, Bickey Dhakal, Lisa Duda, Terry Schiazza, Jason Hensel, Angela Blackwell, Antonia Freeman, Robert Jensen, and Joseph Malone in this case provide for our fee to be one-third of any recovery plus expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my firm have also signed similar agreements calling for a one-third contingency fee plus expenses. I know of no firm in the country that accepts such cases for less than a one-third contingency fee.

18. Prior to this lawsuit, my firm did not have a professional relationship with any of the Class Representatives.

19. These kinds of cases involve tremendous risk, require finding and obtaining opinions from expensive and unconflicted consulting and testifying experts in finance, investment management, fiduciary practices, recordkeeping, and related fields, and are extremely hard fought and well-defended.

20. A law firm that brings a putative class action such as this must be prepared to finance the case through trial and appeals, all at substantial expense. These cases are defended by sophisticated national firms with ERISA experience and vast resources. This has been my experience in handling these types of cases. For example, in *Tussey v. ABB*, seven experts testified at trial, and the two defendant groups therein had a total 15 or more lawyers present in the courtroom throughout the month-long trial. In addition, all parties, including plaintiffs, had a technology team present throughout. Our firm expended over \$2,000,000 in expenses by the conclusion of the trial therein and carried them until recovery 12 years after litigation began, and after over 27,000 attorney hours spent.

21. Based on my experience, the market for experienced and competent lawyers willing to pursue 401(k) ERISA Fee Litigation is a national market, and the rate of 33 1/3% of any recovery, plus expenses, is necessary to bring such cases. This is the rate that a qualified and experienced attorney would negotiate at the beginning of the litigation and the rate found reasonable in similar 401(k) and 403(b) ERISA fee cases in numerous federal district courts, including:

Case	Fee %
<i>Marshall v. Northrop Grumman Corp.</i> , No. 16-6794, 2020 U.S. Dist. LEXIS 177056, at *25 (C.D. Cal. Sep. 18, 2020)	33.33%
<i>In re Northrop Grumman Corp. ERISA Litig.</i> , No. 06-6213, 2017 U.S. Dist. LEXIS 223293 (C.D. Cal. Oct. 24, 2017)	33.33%
<i>Sweda v. Univ. of Pa.</i> , No. 16-4329, 2021 U.S. Dist. LEXIS	33.33%

Case	Fee %
239990 (E.D. Pa. Dec. 14, 2021)	
<i>Cates v. Trs. of Columbia Univ.</i> , No. 16-6524, 2021 U.S. Dist. LEXIS 200890, at *19 (S.D.N.Y Oct. 18, 2021)	33.33%
<i>Pledger v. Reliance Tr. Co.</i> , No. 15-4444, 2021 U.S. Dist. LEXIS 105868 (N.D. Ga. Mar. 8, 2021)	33.33%
<i>Henderson, et al. v. Emory University, et al.</i> , No. 16-2920, 2020 U.S. Dist. LEXIS 218676 (N.D. Ga. Nov. 4, 2020)	33.33%
<i>Troudt v. Oracle Corp.</i> , No. 16-00175, ECF No. 236 (D. Col. July 10, 2020)	33.33%
<i>Kelly v. Johns Hopkins Univ.</i> , No. 16-2835, 2020 U.S. Dist. LEXIS 14772 (D. Md. Jan. 28, 2020)	33.33%
<i>Cassell v. Vanderbilt Univ.</i> , No. 16-2086, 2019 U.S. Dist. LEXIS 242062 (M.D. Tenn. Oct. 22, 2019)	33.33%
<i>Tussey v. ABB, Inc.</i> , No. 06-4305, 2019 U.S. Dist. LEXIS 138880 (W.D. Mo. August 16, 2019)	33.33%
<i>Sims v. BB&T Corp.</i> , No. 15-1705, 2019 U.S. Dist. LEXIS 75839 (M.D.N.C. May 6, 2019)	33.33%
<i>Clark v. Duke</i> , No. 16-1044, 2019 U.S. Dist. LEXIS 105696 (M.D.N.C. June 24, 2019)	33.33%
<i>Ramsey v. Phillips N.A.</i> , No. 18-1099, 2018 U.S. Dist. LEXIS 226672 (S.D. Ill. Oct. 15, 2018)	33.33%
<i>Gordan v. Mass. Mut. Life Ins. Co.</i> , No. 13-30184, 2016 U.S. Dist. LEXIS 195935 (D. Mass. Nov. 3, 2016)	33.33%
<i>Kruger v. Novant Health, Inc.</i> , No. 14-208, 2016 U.S. Dist. LEXIS 193107 (M.D.N.C. Sept. 29, 2016)	33.33%
<i>Spano v. Boeing Co.</i> , No. 06-743, 2016 U.S. Dist. LEXIS 161078 (S.D. Ill. Mar. 31, 2016)	33.33%
<i>Abbott v Lockheed Martin Corp.</i> , No. 06-701, 2015 U.S. Dist. LEXIS 93206 (S.D. Ill. July 17, 2015)	33.33%
<i>Krueger v. Ameriprise Fin., Inc.</i> , No. 11-2781, 2015 U.S. Dist. LEXIS 91385 (D. Minn. July 13, 2015)	33.33%
<i>Beesley v. Int'l Paper Co.</i> , No. 06-703, 2014 U.S. Dist. LEXIS 12037 (S.D. Ill. Jan. 31, 2014)	33.33%
<i>Nolte v. Cigna Corp.</i> , No. 07-2046, 2013 U.S. Dist. LEXIS 184622 (C.D. Ill. Oct. 15, 2013)	33.33%
<i>Will v. Gen. Dynamics Corp.</i> , No. 06-698, 2010 U.S. Dist. LEXIS 123349 (S.D. Ill. Nov. 22, 2010)	33.33%
<i>Martin v. Caterpillar Inc.</i> , No. 07-1009, 2010 U.S. Dist. LEXIS 145111 (C.D. Ill. Sept. 10, 2010)	33.33%

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 this 19th day of July, 2023, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

DAVID TURNER, *et al.*,

Plaintiffs,

v.

SCHNEIDER ELECTRIC HOLDINGS, INC.,
et al.,

Defendants.

No. 1:20-cv-11006-NMG

CLASS ACTION

DECLARATION OF TROY A. DOLES

I, Troy A. Doles, declare as follows:

1. I am an attorney and partner at the law firm of Schlichter Bogard LLP, and I am one of the attorneys of record representing the Plaintiffs in this matter. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representative Awards.

2. I have been deeply involved in this litigation. I am familiar with the facts set forth below and am able to testify to them based on my personal knowledge or review of the records and files maintained by this firm in the regular course of its representation of Plaintiffs in this case.

3. I am licensed to practice in the States of Missouri and Illinois. I am admitted to practice in the United States Supreme Court and numerous courts of appeals and district courts across the country.

4. The number of hours spent by Class Counsel was actually greater than the number listed in Plaintiffs' fee petition because Class Counsel engaged in a culling process to determine

the final number of hours estimated to be reasonably expended in this related to the Settled Claims. Before this culling process, the total number of hours expended by Class Counsel in this matter was over 7,700 hours.

5. To arrive at the total number of hours that are the subject of this fee petition, Class Counsel identified those discrete items that included work related to the Settled Claims. Those items included hours devoted to the preparation of the Complaint, responding to Defendants' motions to dismiss, and work related to those experts who offered opinions and loss calculations related to the Settled Claims. As noted below, this resulted in a total estimated number 596.50 hours.

6. To calculate the lodestar, Schlichter Bogard applied its previously approved national rates to the number of hours reasonably estimated that were incurred relative to the Settled Claims. This calculation is shown in the following table:

Experience	Hours	Rate	Total
25 Years +	24.90	\$1,370.00	\$34,113.00
15–24 Years	50.50	\$1,165.00	\$58,832.50
5–14 Years	445.60	\$840.00	\$374,304.00
0–4 Years and Staff Attorneys	63.50	\$635.00	\$40,322.50
Attorney Total	584.50	-	\$507,572.00
Paralegals Total	12.00	\$425.00	\$5,100.00
Total of All Hours	596.50	-	\$512,672.00

7. From that total time and amount, Class Counsel conservatively estimated that approximately 15% of that total time was specifically devoted to the Settled Claims totaling an amount of \$76,900.00. This percentage is an incredibly small fraction of the total hours expended in this case and of those related to the Settled Claims. Based on my familiarity and

experience with this litigation, I believe this culling process is a reasonable and appropriate proxy of the hours devoted to the Settled Claims.

8. Starting in 2020, Schlichter Bogard began their investigation of the claims at issue in this lawsuit. The attorneys conducted in-depth investigative analysis and research of publicly available documents, including summary plan descriptions, participant statements, prospectuses, and the Schneider Electric 401(k) Plan Forms 5500 filed with the Department of Labor, among other sources. Class Counsel requested documents from the Plan administrator on behalf of a current participant under 29 U.S.C. §1024(b), which included the production of the plan document, fee disclosures, custodial account agreements, recordkeeping services agreements, and other related documents.

12. Class Counsel's investigation included meetings with the Class Representatives, which occurred both in-person and on the phone. The in-person meetings required attorneys to travel to multiple locations across the country. These meetings provided valuable insight and additional understanding of the operation and administration of the Plan, the Plan's investment structure, as well as fee and performance disclosures concerning the Plan's investments and expenses. Each Class Representative provided Class Counsel with critical documents prior to preparing the Complaint. It has also been the firm's experience that employees are hesitant to bring suit against their employer for fear of alienation. Each Class Representative also stayed apprised of the proceedings at each stage of the case, including the mediation process, and each submitted declarations in support of class certification.

13. Following the Court's decision on Defendants' motions to dismiss, Plaintiffs proceeded with discovery. Plaintiffs served their initial requests for production and interrogatories directed to Defendants.

14. Throughout the course of discovery, Class Counsel diligently reviewed and analyzed approximately 322,670 pages of documents that were produced. A detailed review and analysis of the document production was crucial for Plaintiffs to prove their claims.

15. Throughout all stages of the case, including discovery, the attorneys at Schlichter Bogard met internally, both in large and small groups, to thoroughly discuss the legal theories at issue, the development of the case, and other issues that arose during the litigation. Those internal meetings were critical to obtaining a successful recovery on behalf of the Class.

16. The parties took 22 depositions including 4 Schneider personnel, 3 Aon personnel, 7 Class Representatives, and 8 expert witnesses. These depositions involved highly complex issues and required many hours of preparation, including extensive document review.

17. On April 19, 2022, the parties simultaneously exchanged expert reports. Relevant here, Plaintiffs' experts Dr. Edward O'Neal and Marek Pfeil provided expert opinion and analysis relative to, among other things, the Settled Claims. Dr. O'Neal prepared a 10-page report calculating investment damages, including a valuation of the Settled Claims. Mr. Pfeil prepared a 70-page report, analyzing Defendants' selection of the Aon Funds for use in the Plan and offering opinions relative to the Settled Claims.

18. On January 24, 2023, the Court granted Defendants' motions for summary judgment. Docs. 199. Aon was dismissed from the action and the only remaining Count against the Schneider Defendants was Count II, relating to Schneider's duty of prudence in handling the three Vanguard funds (i.e. the Settled Claims). *Id.*

19. After further discussions, the parties reached agreement. Class Counsel will not receive any portion from the interest earned on the common fund while it is deposited in an interest-bearing account; class members will receive the entire benefit of the interest.

20. More time will be spent handling responses from participants who receive notice, preparing for the final approval hearing, and traveling (if necessary) to the final approval hearing in September. In addition, there will be substantial attorney time spent after the settlement effective date responding to participants.

21. Pursuant to the settlement agreement, Defendants, with the agreement of Class Counsel, may retain an independent fiduciary to determine whether the settlement should be approved. Among other things, the independent fiduciary will review Class Counsel's fee request to determine if it is fair to the Class. Class Counsel will respond to the independent fiduciary's inquiries all at no cost to the Class.

22. The description of the time and effort that Class Counsel expended during this litigation illustrates the determination that these attorneys displayed through all aspects of this case. The attorney and non-attorney hours were reasonably and efficiently expended to obtain a any recovery on behalf of the Class.

23. The firm in this case fronted all of the litigation costs and expenses. I have examined the records and the firm has incurred case expenses totaling \$615,993.76 as of June 30, 2023.

24. The expenses incurred in this action are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records, and other source material and are an accurate record of the expenses.

25. The total costs and expenses paid by the firm to experts Dr. O'Neal and Mr. Pfeil alone total \$122,252.50. Based on my experience and familiarity with this litigation, a conservative estimate of the time they devoted to the Settled Claims of 12% results in total expenses of \$14,670.00.

26. To be clear, there are hundreds of thousands of additional dollars in expenses for filing fees, depositions, copies, research, and additional expert fees that are not included as part of this fee petitions. Nevertheless, Class Counsel continues to retain receipts for litigation expenses. All such material is available for submission to, or inspection by, the Court upon Request.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on July 19, 2023 in St. Louis, Missouri.

/s/ Troy A. Doles
Troy A. Doles