IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASEY CUNNINGHAM, et al., Plaintiffs, v. CORNELL UNIVERSITY, et al. Defendants.	No. 1:16-CV-06525-PKC **NOTICE OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION AWARD FOR CLASS REPRESENTATIVE**

Please take notice that, upon the accompanying Memorandum of Law, dated October 23, 2020, Plaintiffs Casey Cunningham, Charles E. Lance, Stanley T. Marcus, Lydia Pettis, and Joy Veronneau will move this Court before the Honorable P. Kevin Castel, at the Daniel Patrick Moynihan United States Courthouse for the Southern District of New York, 500 Pearl Street, Courtroom 11D, New York, New York 10007, on December 22, 2020 at 2:00 p.m., for an order granting attorneys' fees and expenses and case contribution award for class representative.

Please take notice that opposing papers, if any, shall be served no later than November 6, 2020 and Plaintiffs shall serve reply papers, if any, no later than November 13, 2020.

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October 23, 2020

Respectfully Submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Jerome J. Schlichter
Counsel for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASEY CUNNINGHAM, et al.,

Plaintiffs,

v.

CORNELL UNIVERSITY, et al.,

Defendants.

No. 1:16-CV-06525-PKC

PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION AWARD FOR CLASS REPRESENTATIVE

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Class Counsel worked diligently in litigating this matter on behalf of the Class and achieved an outstanding result on the settled claim, nearly eighty percent of the damages calculated by Plaintiffs' expert.[1] Similar cases against universities have been dismissed and upheld on appeal. Specifically, this Court has dismissed the majority of the non-settled claims on summary judgment. The only trial in an excessive fee case that involved a university's retirement plan resulted in a judgment for the defendant, New York University. Given this, Class Counsel took on a considerable risk of non-payment.

This case and the other university cases filed about the same time by Class Counsel were the first-ever cases filed against universities for fiduciary breaches because of excessive fees and imprudent investments. Class Counsel's retained the same level of commitment in each excessive fee case—to take the case as far as needed, appeal if necessary, invest whatever expenses were required, and carry those expenses for potentially a decade or more.

Further, the $225,000 settlement recovers nearly eighty percent of the maximum damages regarding the settled claim, while preserving the Class's right to appeal the dismissed claims. In achieving this result, Class Counsel leveraged their considerable experience in excessive fee litigation to achieve an efficient resolution of this matter, thereby avoiding the expense of a lengthy jury trial and substantial risk of non-recovery.

Under the common fund doctrine, the Court should award Class Counsel a fee of $75,000 (one-third of the monetary recovery). In ERISA class actions such as this, a one-third contingency fee is the market rate. A lodestar cross-check analysis further confirms the reasonableness of the fee request. Such an award is both appropriate and reasonable considering

[1] The "settled claim" is "the portion of Count V of the Corrected Amended Complaint (Doc. 81) related to the alleged failure to adopt a lower cost share class of the TIAACREF Lifecycle Funds upon which summary judgment was denied in an order dated September 27, 2019 (Doc. 352)." *See* Doc. 421-1, Sept. 18, 2020 Settlement Agreement ¶ 2.33 (defining the claims released by the settlement)

the risk and results in this case, the standards established by the Second Circuit, and is consistent with the fee awards of other courts in similar cases. The Court should also reimburse Class Counsel's reasonable litigation expenses of $15,349.17 and grant an incentive award of $1,000 for Class Representative Casey Cunningham.[2]

BACKGROUND

On August 17, 2016, Plaintiff Casey Cunningham filed his complaint against Cornell University. Doc. 1. On December 8, 2016, Casey Cunningham, Charles E. Lance, Stanley T. Marcus, Lydia Pettis, and Joy Veronneau ("Plaintiffs"), filed an amended complaint alleging claims against Cornell University, the Retirement Plan Oversight Committee, Mary G. Opperman (collectively, the "Cornell Defendants"), and CAPTRUST Financial Advisors. Doc. 38. Plaintiffs filed a corrected amended complaint on February 24, 2017 to change the name of CAPTRUST Financial Advisors to CapFinancial Partners, LLC d/b/a CAPTRUST Financial Advisors ("CAPTRUST"). Doc. 81.[3] Prior to August 2016, no case had ever been brought by a private law firm, the Department of Labor, or any other party or entity asserting claims of fiduciary breach for excessive fees and imprudent investments on behalf of a university's 403(b) plan. Schlichter Decl. ¶¶ 22–27.

The Court granted class certification on January 22, 2019. Doc. 219. On February 14, 2018, Defendants filed a motion to strike Plaintiffs' jury demand, which the Court granted in part and denied in part on September 6, 2018. Docs. 137, 198.

Following the dismissal order, the parties engaged in extensive discovery, including the

[2] Cunningham is the only named plaintiff who invested in any TIAA-CREF Lifecycle Fund between August 17, 2010 and April 17, 2012, so he is the only named plaintiff who is a member of the settlement sub-class.

[3] Capitalized terms not otherwise defined have the meanings ascribed to them in the Settlement Agreement. Doc. 421-1. A detailed discussion of the procedural history of this case is set forth in Plaintiffs' Memorandum in Support of Unopposed Motion for Preliminary Approval of Class Settlement (Doc. 420 at 1–3) and the Declaration of Joel Rohlf submitted herewith.

exchange, review, and analysis of over 150,000 pages of documents and the depositions of 19 fact witnesses and seven expert witnesses. Rohlf Decl. ¶¶ 19–21, 24.

On January 25, 2019, both the Cornell Defendants and CAPTRUST filed motions for summary judgment. Docs. 221, 231. Their briefing totaled over 105 pages, and they filed 124 total exhibits in support of their motions. *See* Docs. 221, 222, 223, 224, 224-1-224-13, 231, 233, 234, 234-1-242-16. In less than one month, Plaintiffs filed nearly 600 pages of briefing and 177 exhibits in opposition to summary judgment. Docs. 286, 287, 288, 289, 290-1-293-26. The Court also gave leave to Defendants to file an additional supplement summary judgment brief to which Plaintiffs had to respond. *See* Docs. 330, 337, 338. As part of their motions for summary judgment, Defendants filed two separate motions to exclude all of Plaintiffs' experts in January 2019, which further required extensive briefing. *E.g.*, Docs. 225, 228.

On September 27, 2019, the Court granted in part and denied in part Defendants' motion for summary judgment. Doc. 352. The court denied Defendants' motion insofar as Plaintiffs alleged that Defendants breached their duty of prudence by failing to adopt the institutional share classes of the TIAA-CREF Lifecycle Funds. *Id.* at 38. The Court granted the motion in all other respects.

Plaintiffs continued litigating the remaining claim after summary judgment, preparing all pretrial exchanges, and fully preparing for trial. *See* Doc. 391. Because of this Court's precedent-setting decision granting a jury trial, this case required extensive trial preparation time. Rohlf Decl. ¶ 26. Counsel for Plaintiffs prepared extensive jury instructions, including many novel instructions regarding ERISA, and responded to a number of novel additional or alternative instructions offered by Defendants. *Id.* In addition, Plaintiffs provided an extensive exhibit list, witness list, and deposition designations for trial. *See* Doc. 370-3. Plaintiffs also reviewed nearly

150 exhibits on Defendants' exhibit list and made objections regarding the proposed exhibits. Doc. 370-4. The parties also filed two additional motions to exclude experts that required extensive briefing and were argued before the Court. Docs 359 363, 397. Class Counsel also had to prepare for a multiple-day trial against competent counsel.

After delays related to the COVID-19 pandemic, the matter was set for jury trial starting on September 29, 2020. Doc. 413.

Plaintiffs and the Cornell Defendants engaged in settlement discussions regarding the remaining claim in October 2019, May 2020, and August 2020. On September 18, 2020, the parties reached an agreement on all terms.

ARGUMENT

I. Class Counsel's Attorneys' Fee Request is Appropriate and Reasonable

Class Counsel is entitled to a reasonable fee award from the common fund. Fed. R. Civ. P. 23(h); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 47 (2d Cir. 2000). In the Second Circuit, "both the lodestar and the percentage of the fund methods are available to district judges in calculating attorneys' fees in common fund cases." *Id.* at 50. The "trend in the Circuit is towards the percentage method" because it "directly aligns the interests of the class and its counsel and provides a powerful incentive for the efficient prosecution and early resolution of litigation." *Wal-Mart Stores, Inc. v Visa U.S.A., Inc.*, 396 F.3d 96 (2d Cir. 2005) (internal citations omitted); *see also Strougo ex rel. Brazilian Equity Fund, Inc. v. Bassini*, 258 F.Supp.2d 254, 261 (S.D.N.Y. 2003) (finding the percentage method preferable as it avoids the "dubious merits of the lodestar approach."); *In re Telik, Inc. Sec. Litig.*, 576 F.Supp.2d 570, 586 (S.D.N.Y. 2008) (noting that the percentage method absolves district courts from taking on the cumbersome task of computing a lodestar). Further, "[t]he percentage method also 'mimics the compensation system actually used by individual clients to

compensate their attorneys.'" *Kirby v FIC Restaurants, Inc.*, No. 19-1306, 2020 WL 5791582, at *5 (N.D.N.Y. Sept. 28, 2020) (internal citations omitted).

District courts in the Second Circuit analyze six factors to determine the reasonableness of a fee award in a common fund case:

> (1) the time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of the litigation . . .; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

Goldberger, 209 F.3d at 50. (internal quotations omitted). Each of the *Goldberger* factors supports Class Counsel's requested fee.

A. Class Counsel Was Required to Devote Significant Time and Labor to the Settled Claim (Factor 1)

Prosecuting and settling the claim in this action demanded considerable time and labor, making this fee request reasonable. As set forth in the declaration of Joel Rohlf, Class Counsel dedicated a significant amount of time and labor to its successful pursuit of this claim with no guarantee of payment.

Goldberger notes that "the lodestar remains useful as a baseline even if the percentage method is eventually chosen." *Sines v. Service Corporation International*, No. 03-5465-PKC, 2006 WL 1148725 (S.D.N.Y. May 1, 2006) (internal citations omitted). *See also Tiro* v. *Pub. House Investments, LLC*, No. 11-7679-CM, 2013 WL 4830949 (S.D.N.Y. Sept. 10, 2013)("[T]he trend in the Second Circuit has been to apply the percentage method and loosely use the lodestar method as a baseline or cross check.") "Of course, where used as a mere cross-check, the hours documented by counsel need not be exhaustively scrutinized by the district court . . . Instead, the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case (as well as encouraged by the strictures of Rule 11)." *Silberblatt v. Morgan Stanley,* 524 F.Supp.2d 425, 434 (S.D.N.Y. Nov. 19, 2007) (internal citations omitted). Class Counsel need only submit

documentation appropriate to meet the burden establishing an entitlement to an award, not to satisfy "green-eyeshade accountants." *Fox v. Vice,* 563 U.S. 826, 838 (2011).

ERISA litigation involves a national market because the number of plaintiff's firms which have the necessary expertise and are willing take the risk and devote the resources to litigate complex claims is small. *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015); Schlichter Decl. ¶¶ 23, 27. Class Counsel has brought ERISA actions across the country which have been defended by national firms with ERISA expertise, such as opposing counsel in this case. Schlichter Decl. ¶ 35. Thus, 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. Sept. 29, 2016); *Clark v. Duke Univ.,* No. 16-1044, 2019 WL 2579201, at *2 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019); *Ramsey v. Phillips N. Am. LLC*, No. 18-1099, Doc. 27 at 8 (S.D. Ill. Oct. 15, 2018); *Tussey v. ABB, Inc.,* No. 06-4305, 2015 WL 8485265, at *7 (W.D. Mo. Decl. 9, 2015); *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.

Class Counsel has spent 1,216.30 hours of attorney time and 272.40 hours of non-attorney time on this matter following summary judgment. Schlichter Decl. ¶ 39; Rohlf Decl. ¶ 6. Class Counsel reviewed thousands of pages of documents; filed, responded to, and reviewed multiple complex motions; attended several court hearings, and took or defended 26 depositions which occurred throughout the country. *See* Rohlf Decl. ¶¶ 10–25. Counsel also prepared the first-ever jury instructions in an ERISA excessive fee case, reviewed thousands of documents and hundreds of pages of depositions to prepare pretrial filings and for trial. *See* Rohlf Decl. ¶ 26. The 1,488.70 hours spent on this case do not include time spent preparing this motion and

thousands of hours spent on the case prior to summary judgment. In addition, Class Counsel has committed to the following work without any additional fee: (1) preparation for, travel to, and attendance at the final approval hearing; (2) managing the process of handling many calls from participants regarding the notice, the timing, and the details of the settlement; and (3) interacting and working with the Settlement Administrator. Class Counsel has also undertaken the risk of paying costs if the settlement is not approved.

As recently as a few months ago, Class Counsel's reasonable hourly rates have been approved in a similar ERISA class action litigation. *Troudt v. Oracle Corp*, No. 16-175, Doc. 236 (D. Col. July 10, 2020); *see also, e.g.*, *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *6–7 (D. Md. Jan. 28, 2020); *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22, 2019). The approved hourly rates are as follows: for attorneys with at least 25 years of experience, $1,060 per hour; for attorneys with 15–24 years of experience, $900 per hour; for attorneys with 5–14 years of experience, $650 per hour; for attorneys with 2–4 years of experience, $490 per hour;[4] and, for paralegals and law clerks, $330 per hour. *Id*. at 7 n.5. These reasonable hourly rates were independently verified this year by a recognized expert who opined that Class Counsel's requested rates were reasonable based on rates charged by national attorneys of equivalent experience, skill, and expertise in complex class action litigation. Declaration of Sanford Rosen, *Tracey v. MIT*, No. 18-1099, Doc. 302-6 at 18 (D. Mass. Mar. 27. 2020). Those rates were based on rates that were previously approved, including by the Southern District of Illinois in *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31, 2016). Considering the close similarities between the above fiduciary breach claims and this

[4] All time for staff attorneys is billed at 0–4 years regardless of individual experience.

one, Class Counsel being the same, and the recency of the decisions, the same rates are appropriate. *See Kruger,* 2016 WL 6769066, at *4.

Using these rates, the lodestar would be $803,908, creating a negative multiplier (0.09). Rohlf Decl. ¶ 6. Moreover, this lodestar is conservative because it assumes that all work prior to summary judgment does not relate to the settled claim. This is well within the range of multipliers approved by district courts in the Second Circuit and in ERISA cases. *See, e.g., In re Colgate-Palmolive Co. ERISA Litig.*, 36 F.Supp.3d 344, 353 (S.D.N.Y. 2014) (approving a fee award with a multiplier of five and finding in a review of 96 ERISA cases that "the implied multiplier ranged from less than one to eight times the lodestar").

The time and labor expended easily demonstrates the reasonableness of the requested fee award.

B. This Litigation Was Complex and Demanding (Factors 2)

As this courts in this district have previously noted, ERISA claims are "complex." *In re Flag Telecom Holdings, Ltd. Sec. Litig*., No. 02-3400-CM-PED, 2010 WL 4537550, at *23 (S.D.N.Y. Nov. 8, 2010). As the Supreme Court has recognized, "ERISA is a comprehensive and reticulated statute . . . and is enormously complex and detailed . . ." *Hughes Aircraft Co. v. Jacobson*, 525 U.S. 432, 447 (1999) (internal quotations and citations omitted). 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." *Abbott,* 2015 WL 4398475, at *3; Schlichter Decl. ¶¶ 13, 27, 32.

Litigating an ERISA 403(b) breach of fiduciary duty claim requires deep, specialized knowledge of 403(b) industry practices, as demonstrated by the fact that Class Counsel spent

over a year investigating the industry before filing any claim. Schlichter Decl. ¶ 22. The novelty and difficulty of this case is further demonstrated by the fact that Defendants retained a global law firm that utilized attorneys from multiple offices throughout the nation. The subject matter is highly technical, including facts about prudent investment practices, industry best practices, fiduciary practices, and complex financial matters, requiring use of multiple experts for all parties. Rohlf Decl. ¶ 23.

In addition to the novel questions of law, Plaintiffs also faced recent, adverse precedent. *See, e.g., Divane v. Northwestern Univ.,* No. 16-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018) (granting motion to dismiss) (affirmed, 953 F.3d 980 (7th Cir. Mar. 25, 2020)); *Wilcox v. Georgetown Univ.,* No. 18-422, 2019 WL 132281 (D.D.C. Jan. 8, 2019) (same); *Sacerdote v. New York Univ.*, 328 F.Supp.3d 273 (S.D.N.Y. 2018) (trial judgment in favor of the defendant). As this Court has recognized, similar claims to the settled claim were dismissed on the pleadings by other courts in this district. *Cunningham v. Cornell Univ.*, No. 16-6525-PKC, 2017 WL 4358769, at *6 (S.D.N.Y. Sept. 29, 2017) (citing *Sacerdote v. New York Univ.*, No. 16-6284-KBF, 2017 WL 3701482, at *11 (S.D.N.Y. Aug. 25, 2017)).

In sum, the difficulty of ERISA litigation justifies the requested fee award.

C. Class Counsel Overcame Substantial Risk of Non-Recovery (Factor 3)

"The Second Circuit [in *Goldberger*] has identified the risk of success as perhaps the foremost factor to be considered in determining a reasonable award of attorneys' fees." *In re Global Crossing Litig*., 225 F.R.D. 436, 467 (S.D.N.Y. 2004) (internal quotations omitted). Because of the risks undertaken in a contingent fee case:

> No one expects a lawyer whose compensation is contingent upon his success to charge, when successful, as little as he would charge a client who in advance had agreed to pay for his services, regardless of success. Nor, particularly in complicated cases producing large recoveries, is it just to make a fee depend solely on the reasonable amount of time expended.

City of Detroit v. Grinnell Corp., 495 F.2d 448, 470 (2d Cir. 1974) (citation omitted). "Little about litigation is risk-free, and class actions confront even more substantial risks than other forms of litigation." *In re Comverse Tech., Inc. Sec. Litig.*, No. 06-1825-NGG, 2010 WL 2653354, at *5 (E.D.N.Y. June 24, 2010) (citation omitted); see *also In re Am. Bank Note Holographics, Inc. Sec. Litig*., 127 F.Supp.2d 418, 433 (S.D.N.Y. 2001) (it is "appropriate to take this [contingent-fee] risk into account in determining the appropriate fee to award").

Class Counsel's assumption of this risk strongly supports the reasonableness of the requested fee. *See Flag Telecom*, 2010 WL 4537550, at *27 ("Courts in the Second Circuit have recognized that the risk associated with a case undertaken on a contingent fee basis is an important factor in determining an appropriate fee award."); *In re Marsh ERISA Litig*., 265 F.R.D. 128, 148 (S.D.N.Y. 2010) ("There was significant risk of non-payment in this case, and Plaintiffs' Counsel should be rewarded for having borne and successfully overcome that risk."). As discussed above, Class Counsel faced a significant body of adverse precedent with multiple similar cases being dismissed or resulting in adverse judgments at trial and faced a substantial risk of non-recovery. *See supra* at 9.

D. Class Counsel Provided Experienced and Sophisticated Representation (Factor 4)

Class Counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) 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 *2–4 (C.D. Ill Oct. 15, 2013). Class Counsel are "experts in ERISA litigation," *Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13, 2015) (citation omitted), and "highly experienced," *In re Northrop Grumman Corp. ERISA Litig*., No. 06-6213, 2017 WL 9614818, at *4 (C.D. Cal. Oct.

24, 2017). 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. *Tibble v. Edison Int'l*, 575 U.S. 523, 135 S.Ct. 1823, 1828–29 (2015). 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." *Troudt*, Doc. 236 (D. Col. July 10, 2020). In addressing the efforts of Class Counsel, Chief Judge Osteen of the Middle District of North Carolina noted as follows:

> Class Counsel's efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings in the coming four years.

Kruger, 2016 WL 6769066, at *3. On June 24, 2019, U.S. District Judge Eagles "recognized the experience, reputation, and ability" of Plaintiffs' counsel and found that the firm "demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Clark*, 2019 WL 2579201, at *3. In another ERISA class action, Judge Eagles recognized the "skill and determination" of Class Counsel and noted that "[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery." *Sims,* 2019 WL 1993519, at *3.

Judge McDade of the Central District of Illinois, speaking of Class Counsel, observed that achieving a favorable result in this type of case required extraordinary efforts because the "litigation entails complicated ERISA claims." *Caterpillar*, 2010 WL 3210448, at *2. Judge

Baker from the same district also found:

> The law firm Schlichter, Bogard & Denton is the leader in 401(k) fee litigation . . . [T]he fee reduction attributed to Schlichter, Bogard & Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees.

Nolte, 2013 WL 12242015, at *2 (internal citations omitted).

Numerous other judges have commended the work of Class Counsel in ERISA matters.

U.S. District Judge Murphy stated:

> Schlichter, Bogard & Denton's work throughout this litigation illustrates an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees . . . Litigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.

Will v. Gen. Dynamics Corp., No. 06-698, 2010 WL 4818174, at *2 (S.D. Ill. Nov. 22, 2010).

U.S. District Judge Herndon similarly stated as follows:

> Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general.

Beesley, 2014 WL 375432, at *2. After recognizing "their persistence and skill of [Class Counsel's] attorneys," U.S. District Judge Rosenstengel similarly noted:

> Class Counsel has been committed to the interests of the participants and beneficiaries of Boeing's 401(k) plan in pursuing this case and several other 401(k) fee cases of first impression. The law firm Schlichter, Bogard & Denton has significantly improved 401(k) plans across the country by bringing cases such as this one[.]

Spano, 2016 WL 3791123, at *3.

In awarding attorneys' fees to Class Counsel after the first trial of an ERISA 401(k) excessive class action, the district court concluded that "Plaintiffs' attorneys are clearly experts

in ERISA litigation." *Tussey*, 2012 WL 5386033, at *3. The Court later emphasized the significant contributions Class Counsel have made to the field of ERISA litigation, including by educating the Department of Labor and federal courts about the importance of monitoring fees in retirement plans.

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated 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. Class Counsel's experience and resources expended in those matters contributed to efficiently litigating and resolving this case. *See Ramsey*, Doc. 27 at 6–7 ("This Court believes that the early settlement in this case was reached due to Schlichter Bogard & Denton's established reputation"). In *Ramsey*, the court cited support by a nationally recognized expert in pension rights who opined that Class Counsel's record of success and perseverance enabled the class to obtain an early favorable settlement, and that no other private law firm could have obtained the early relief in the case. *Id*. at 6 (citing Declaration of Karen Ferguson, Director of non-profit Pension Rights Center, *Ramsey*, No. 18-1099, Doc. 21-4 ¶¶ 20-22, 24). The same is true here.

E. The Requested Fee is Reasonable in Relation to the Settlement (Factor 5)

Courts have interpreted this factor as requiring the review of the fee request in terms of the percentage it represents of the total recovery. *Wal-Mart Stores*, 396 F.3d at 122 ("the percentage used in calculating any given fee award must follow a sliding-scale and must bear an inverse relationship to the amount of the settlement."). "In similar ERISA excessive fee cases, and in particular those brought by Class Counsel, district courts have consistently recognized that a one-third fee is the market rate." *E.g., Kelly*, 2020 WL 434473, at *3 (collecting cases awarding a one-third fee); Rohlf Decl. ¶ 30.

Courts in this District routinely approve fee awards of one-third of the common fund or more including: *Carver vs. Bank of New York Mellon*, *et al.*, No. 17-10231-JPO, Doc. 11 (S.D.N.Y. May 23, 2019) (Court awarded attorneys' fees of 33.33% of the settlement fund in an ERISA breach of fiduciary duty case); *Leber v. The Citigroup 401(k) Pension Plan Investment Committee, et al*., No. 07-9329-SHS, Doc. 294 (S.D.N.Y. Jan. 3, 2019) (awarding attorneys' fees of one-third of the monetary fund in ERISA breach of fiduciary duty case); and *Osberg v. Foot Locker, Inc.*, No. 07-1358-KBF, Doc. 426 (S.D.N.Y. June 6, 2018) (in ERISA breach of fiduciary duty case, awarding attorneys' fees 33.33% of the settlement fund). Therefore, the fee requested by Class Counsel is well within the range of fees that Courts in the Second Circuit have awarded in comparable cases.

F. Public Policy Encourages Private Actions Under ERISA (Factor 6)

When "awarding attorneys' fees in common fund cases 'the Second Circuit and courts in this district . . . also have taken into account the social and economic value of class actions, and the need to encourage experienced and able counsel to undertake such litigation.'" *In re J.P. Morgan Stable Value Fund ERISA Litig.*, No. 12-2548-VSB, 2019 WL 4734396, at *3 (S.D.N.Y. Sept. 23, 2019) (internal citation omitted). As stated by courts in this district, a strong public policy concern exists for rewarding firms for bringing successful ERISA suits because "Congress passed ERISA to promote the important goals of protecting and preserving the retirement savings of American workers. The ERISA statute itself specifically encourages private enforcement." *Marsh*, 265 FRD at 149-50. Awards of reasonable attorneys' fees, such as those requested here, encourage "private attorneys to prosecute class actions on a contingent basis . . . on behalf of those who otherwise could not afford to prosecute." *Maley v. Del Global Techs. Corp*., 186 F.Supp.2d 358, 373 (S.D.N.Y. 2002); *see also Spann v. AOL Time Warner*, No. 02-8328-DLC, 2005 WL 1330937, at *3-4 (S.D.N.Y. June 7, 2005) (awarding 33-1/3% fee in an

ERISA fiduciary breach case, noting that lawsuits such as this create incentives for fiduciaries to comply with ERISA).

The public interest has been promoted in this case as without the actions of Class Counsel in prosecuting this case, the rights of these aggrieved class members would not have been vindicated. Accordingly, public policy favors granting Class Counsel's fee and expense application here.

II. The Court Should Approve A Case Contribution Award for the Named Plaintiff

An incentive award for the Named Plaintiff is intended to "'compensate the named plaintiff for any personal risk incurred by the individual or any additional effort expended by the individual for the benefit of the lawsuit." *Dornberger v. Metro. Life Ins. Co.*, 203 F.R.D. 118, 124 (S.D.N.Y. 2001). Such an award is meant to reimburse the Named Plaintiff who takes "on a variety of risks and tasks when they commence representative actions, such as complying with discovery requests and often must appear as witnesses in the action." *Marsh*, 265 F.R.D. at 150; *see also Roberts v. Texaco,* 979 F.Supp. 185, 187–88 (S.D.N.Y. 1997) (approving incentive awards for a class plaintiff who "provided valuable assistance to counsel in prosecuting the litigation").

In this case, Named Plaintiff Casey Cunningham provided invaluable assistance to Class Counsel. *See* Rohlf Decl. ¶ 11. The Named Plaintiff risked his reputation and alienation from employers "in bringing an action against a prominent [university] in their community." *Kruger,* 2016 WL 6769066, at *6; *see also* Rohlf Decl. ¶ 11. The named plaintiff also expended hours collecting documents to respond to requests for production, responding to multiple interrogatories, preparing for his deposition, and sitting for his deposition. *Id.* ¶¶ 11, 17.

A case contribution award of $1,000 for Class Representative Cunningham represents less than 0.5 percent of the Settlement Fund and is reasonable and appropriate given the

contributions of the Class Representatives to the case. This amount is significantly smaller than awards in similar excessive fee settlements. *See Kruger,* 2016 WL 6769066, at *6; *Abbott*, 2015 WL 4398475, at *4; *Krueger*, 2015 WL 4246879, at *4; *Beesley*, 2014 WL 375432, at *4; *Will*, 2010 WL 4818174, at *4 (all awarding $25,000 to each named plaintiff). This award is also below the range of incentive awards generally granted in this district. *E.g.*, *Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (approving incentive awards of $50,000 and noting that incentive awards "have generally ranged from $2,500 to $85,000"); *Dornberger*, 203 F.R.D. at 125.

CONCLUSION

For the foregoing reasons, Class Counsel respectfully requests that the Court should grant its motion and award Class Counsel attorneys' fees in the amount of $75,000.00, costs in the amount of $15,349.17, and an incentive award of $1,000 for Class Representative Casey Cunningham.

October 23, 2020

Respectfully Submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2020, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Jerome J. Schlichter
Counsel for Plaintiffs

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASEY CUNNINGHAM, et al., Plaintiffs, v. CORNELL UNIVERSITY, et al. Defendants.	No. 1:16-CV-06525-PKC **DECLARATION OF JEROME J. SCHLICHTER IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION FOR NAMED PLAINTIFF**

1. I am the founding and managing partner of the law firm of Schlichter Bogard & Denton, LLP, Class Counsel for Plaintiffs in the above-referenced matter. This declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees and Expenses, and Case Contribution Awards for Named Plaintiff. 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 repeatedly selected by my peers for the list of The Best Lawyers in America.

3. Through over 40 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury, civil rights class actions, mass torts and class action fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA), on behalf of participants in large 401(k) and 403(b) plans. 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 and successfully appealed to the Seventh Circuit Court of Appeals and finally concluded with more than $10 million for the class over twelve years of litigation; *Wilfong v. Rent-A-Center*, No. 00-680-DRH (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 defeating the defendant's attempt to conduct a reverse auction.

4. My firm has been named class counsel in many cases involving claims of fiduciary breaches in large 401(k) and 403(b) plans. *See Vellali v. Yale Univ.,* 333 F.R.D. 10 (D. Conn. 2019); *Munro v. Univ. of S. California*, No. 16-06191-VAP, 2019 WL 7842551 (C.D. Cal. Dec. 20, 2019); *Bell v. Pension Cmte. of ATH Holding Co.*, No. 15-2062, 2018 WL 4385025 (S.D. Ind. Sept. 14, 2018); *Cunningham v. Cornell Univ.*, No. 16-6525, Doc. 219 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086-WDC, 2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D.N.Y. Nov. 8, 2018); *Clark v. Duke Univ.*, No. 16-1044-CCE, 2018 WL 1801946 (M.D.N.C. Apr. 13, 2018);

Sacerdote v. N.Y. Univ., No. 16-6284-KBF, 2018 WL 840364 (S.D.N.Y. Feb. 13, 2018); *Ramos v. Banner Health*, 325 F.R.D. 382 (D. Colo. 2018); *Troudt v. Oracle Corp*., 325 F.R.D. 373 (D. Colo. 2018), *amended*, No. 16-00175-REB-SKC, 2019 WL 1006019 (D. Colo. Mar. 1, 2019); *Pledger v. Reliance Trust*, No. 15-4444, Doc. 101 (N.D. Ga. Nov. 7, 2017); *Marshall v. Northrop Grumman Corp*., No. 16-06794-AB-JCX, 2017 WL 6888281 (C.D. Cal. Nov. 2, 2017); *Sims v. BB & T Corp.*, No. 15-732, 2017 WL 3730552 (M.D.N.C. Aug. 28, 2017*)*; *Gordan v. Massachusetts Mutual Life Insurance Co*., No. 13-30184, Doc. 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health, Inc*., No. 14-208, 2016 WL 6769054 (M.D.N.C. May 18, 2016); *Krueger v. Ameriprise Financial*, Inc., 304. F.R.D. 559 (D. Minn. 2014); *Abbott v. Lockheed Martin Corp*., 286 F.R.D. 388 (S.D.Ill. 2012), and *Abbott*, No. 06-701, Doc. 403 (S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co*., No. 06-703, Doc. 240 (S.D. Ill. Sept. 30, 2008), and Doc. 543 (S.D. Ill. Oct. 10, 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 3586645 (C.D. Ill. July 3, 2013); *Spano v. Boeing Co*., 294 F.R.D. 114 (S.D. Ill. 2013); *George v. Kraft Foods Global Inc*., No. 08-3799, 2012 U.S.Dist.LEXIS 26536 (N.D. Ill. Feb. 29, 2012) (*George II*); *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-06213-MMM-JCX, 2011 WL 3505264 (C.D. Cal. Mar. 29, 2011*)*; *Will v. Gen. Dynamics Corp*., No. 06-698-GPM, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010); *Martin v. Caterpillar Inc*., No. 07-1009, Doc. 173 (C.D. Ill. April 21, 2010); *Tibble v. Edison Int'l*, No. 07-5359-SVW-AGRX, 2009 WL 6764541 (C.D. Cal. June 30, 2009); *George v. Kraft Foods Global Inc*., 251 F.R.D. 338 (N.D. Ill. 2008) (*George I*); *Taylor v. United Techs. Corp.*, No. 06-1494-WWE, 2008 WL 2333120 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp*., 254 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-04305-CV-NKL, 2007 WL 4289694 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 WL

2060799 (N.D. Ill. June 26, 2007). A brief biography of my firm, including summaries of our professional experience, is attached as Exhibit A.

5. Federal judges across the country have noted my and my firm's work in plaintiffs' class action cases. U.S. District Judge James Foreman, in the *Mister* case, *supra*, speaking of my efforts, stated:

> This Court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finance.

Order on Attorney's Fees, *Mister v. Illinois Central Gulf R.R.*, No. 81-3006 (S.D. Ill. 1993).

6. U.S. District Judge David R. Herndon wrote, regarding my and the firm's handling of the *Wilfong* class action, *supra*:

> Class counsel has appeared in this court and has been known to this Court for approximately 20 years. This Court finds that Mr. Schlichter's experience, reputation and ability are of the highest caliber. Mr. Schlichter is known well to the District Court Judge and this Court agrees with Judge Foreman's review of Mr. Schlichter's experience, reputation and ability.

Order on Attorney's Fees, *Wilfong v. Rent-A-Center*, No. 0068-DRH (S.D. Ill. 2002). Judge Herndon also noted in *Wilfong* that I "performed the role of a 'private attorney general' contemplated under the common fund doctrine, a role viewed with great favor in this Court" and described my action as "an example of advocacy at its highest and noblest purpose." *Id.*

7. In *Beesley v. International Paper*, a 401(k) ERISA excessive fee case that resulted in a settlement of $30 million plus substantial affirmative relief following seven years of litigation, Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a

private attorney general." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at 2 (S.D.Ill. Jan. 31, 2014). Similarly, in *Abbot v. Lockheed Martin*, a 401(k) excessive fee case that took over nine years, Honorable Chief Judge Reagan observed that "[t]he law firm Schlichter, Bogard & Denton has had a humongous impact over the entire 401(k) industry, which has benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices." *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at 3 (S.D. Ill. July 17, 2015).

8. In *Will v. General Dynamics*, another ERISA excessive fee case, U.S. District Judge Patrick Murphy found that litigating the case and achieving a successful result for the class "required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will v. General Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at 2 (S.D. Ill. Nov. 22, 2010).

9. U.S. District Judge Baker, in *Nolte v. Cigna*, commented that Schlichter Bogard & Denton is the "preeminent firm in 401(k) fee litigation" and has "persevered in the face of the enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at 2 (C.D. Ill. Oct. 15, 2013). Judge McDade of the Central District of Illinois, again speaking of the firm, observed that achieving a favorable result in this type of case required extraordinary efforts because the "litigation entails complicated ERISA claims." *Martin v. Caterpillar, Inc*., No. 07-1009, 2010 WL 3210448, at *2 (C.D.Ill. Aug. 12, 2010).

10. In approving a settlement including $32 million plus significant affirmative relief, in a 403(b) excessive fee case, Chief Judge William Osteen in *Kruger v. Novant Health, Inc.*, No. 14-208, Doc. 61 at 7–8 (M.D.N.C. Sept. 29, 2016) found that "Class Counsel's efforts have not only

resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings[.]"

11. In awarding attorney's fees after the first 401(k) excessive fee trial in the history of the United States, Judge Nanette Laughrey concluded that "Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc*., No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012). Following remand, the district court again awarded Plaintiffs' attorney's fees, emphasizing the significant contribution Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and federal courts about the importance of monitoring fees in retirement plans:

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated 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 v. ABB, Inc., No. 06-4305, 2015 WL 8485265, at *2 (W.D. Mo. Dec. 9, 2015).

12. After recognizing "their persistence and skill of their attorneys", Judge Nancy Rosenstengel similarly noted:

> Class Counsel has been committed to the interests of the participants and beneficiaries of Boeing's 401(k) plan in pursuing this case and several other 401(k) fee cases of first impression. The law firm Schlichter, Bogard & Denton has significantly improved 401(k) plans across the country by bringing cases such as this one[.]

Spano, 2016 WL 3791123, at *3.

13. Recently, Judge Catherine Eagles noted that "these [ERISA] cases require a high level of skill on behalf of plaintiffs to achieve any recovery." *Clark v. Duke*, No. 16-01044, Doc. 165 at 6 (M.D.N.C. June 24, 2019). In approving attorneys' fees, Judge Eagles concluded that "Class

Counsel has demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Id.* at 7.

14. Earlier this year, Judge George L. Russell, III, in approving a fee of one third of a $14 million settlement in a similar case, noted that "Schlichter Bogard & Denton's work on behalf of participants in large 401(k) and 403(b) plans has significantly improved these plans, brought to light fiduciary misconduct that has detrimentally impacted the retirement savings of American workers, and dramatically brought down fees in defined contribution plans." *Kelly v. Johns Hopkins Univ.*, No. 16-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020). Judge Russell continued, "[w]ithout the unique and unparalleled foresight for this novel area of litigation by Schlichter, Bogard & Denton, the class would not have obtained any recovery for the alleged fiduciary breaches that affected the Johns Hopkins University 403(b) plan for years prior." *Id.* at *4.

15. Judge Blackburn of the District of Colorado wrote in July 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." *Troudt*, No. 16-00175-REB-SKC (D. Col. July 10, 2020), Doc. No. 236.

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

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

18. 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.

19. My firm filed the first ERISA breach of fiduciary duty cases for excessive fees in the history of ERISA in 2006.

20. My firm has filed ERISA fiduciary breach class actions in numerous judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits.

21. After close to a decade of handling excessive 401(k) fee cases, my firm and I began investigating similar claims for excessive fees and imprudent investments involving large 403(b) plans sponsored by private universities. This investigation was extensive, lasting well over one year prior to the filing of a 403(b) university plan lawsuit. My firm and I thoroughly researched legal and factual issues concerning 403(b) plans in general, as well as conducted specific analyses pertaining to each 403(b) plan under investigation. We also were assisted by experienced industry professionals knowledgeable about prudent fiduciary practices governing 403(b) plans, the market rate for 403(b) plan services, and other issues pertaining to the administration of 403(b) plans.

22. Beginning in August 2016, after more than one year of diligently investigating potential fiduciary breach claims involving 403(b) plans, my firm expanded its national ERISA practice by filing excessive 403(b) fee cases against private universities. These lawsuits were similar to the 401(k) excessive fee cases previously handled by my firm. This lawsuit was one of a number of lawsuits that were filed in 2016 alleging breaches of fiduciary duty and prohibited transactions concerning excessive fees charged to 403(b) plan participants and imprudent investments included in their plans.

23. No law firm had ever brought an excessive 401(k) or 403(b) case before my firm did, and no other law firm has brought the number of cases our firm has brought, including:

- the first two trials of excessive 401(k) fee cases;
- the first and only 401(k) case in the United States Supreme Court; and
- the first and only trial of a 403(b) excessive fee case.

24. The first full trial of such a 401(k) case resulted in a judgment for the plaintiffs, affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 1113291 (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 WL 5386033, at 3 (W.D.Mo. Nov. 2, 2012)(citations omitted). That case involved two appeals, lasted twelve and a half years, and was only recently settled.

25. In the other 401(k) excessive fee trial, *Tibble v. Edison Int'l,* 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*, 135 S.Ct. 1823 (2015). This was a watershed and landmark decision in ERISA litigation. Sitting *en banc*, ten judges of the Ninth Circuit on remand 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, 1197–1198 (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 WL 3523737 (C.D.Cal. Aug. 16, 2017); *Tibble,* Docs. 570, 572.

26. My firm also handled the first excessive fee 403(b) case in history to go to trial. *Sacerdote v. New York Univ*., 328 F.Supp.3d 273 (S.D.N.Y. 2018). That trial occurred in April 2018, and judgment was entered on July 31, 2018, finding in favor of New York University and against the plaintiffs. The appeal is pending before the Second Circuit.

27. Before my firm brought ERISA 401(k) or 403(b) excessive fee cases, virtually no firm was willing to bring such a case, and I know of no other firm that has made anything close to the financial and attorney commitment to such cases to this date. Given that no other private law firm or the Department of Labor brought these cases before my firm entered this space, the ERISA fiduciary breach actions brought by my firm were novel and certainly groundbreaking.

28. Several of the 401(k) cases my office filed were dismissed, including most of the claims in this case, and the dismissals upheld by the Courts of Appeals. *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011). Others 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. 06-3194, 2009 WL 535779 (D. Conn. Mar. 3, 2009), *aff'd*, 354 Fed. Appx. 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*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016).

29. One of the 403(b) cases handled by my office also was dismissed, and the dismissal upheld on appeal. *Divane v. Northwestern Univ.*, No. 16-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018), *affirmed* No. 18-2569, Doc. 55 (7th Cir. Mar. 25, 2020).

30. Prior to the filing the *Cunningham* lawsuit in August 2016, my firm began researching the Cornell Plans, investigating claims, and consulting with experts in the field of 403(b) administration and investment management. The investigation began with obtaining and reviewing each of the Plans' Annual Reports since 2009 (Forms 5500), which are publicly available documents filed with the United States Department of Labor in which the Plan discloses its investment holdings and financial statements. Using this data, we conducted an extensive analysis of the Plans' administrative fees and investment performance based on our knowledge of industry practices.

31. Prior to filing suit, my firm also analyzed documents obtained from the named plaintiffs and other material obtained from publicly available sources related to the administration of the Plans.

32. As a practical matter, litigants such as named Plaintiff Casey Cunningham could not afford to pursue litigation against well-funded fiduciaries of a multi-billion dollar 403(b) plans sponsored by a large employer such as Cornell 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.

33. The contingency fee agreements entered into between my firm and each of the named Plaintiffs Casey Cunningham, Charles E. Lance, Stanley T. Marcus, Lydia Pettis, and Joy Veronneau 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.

34. Prior to this lawsuit, my firm did not have a professional relationship with any of the Named Plaintiffs.

35. These kinds of excessive fee cases involve tremendous risk, require review and analysis of thousands of documents, finding and obtaining opinions from expensive, unconflicted, consulting and testifying national experts in finance, investment management, fiduciary practices, and related fields, and are extremely hard fought and well-defended by national firms with ERISA expertise.

36. A law firm that brings a putative class action such as this must be prepared to finance the case for years through a trial and appeals, all at substantial expense. This has been my experience in handling these types of cases. For example, in *Tussey v. ABB*, *supra,* seven experts testified at trial, and the two defendant groups therein had 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. In addition, our firm expended over $2,000,000 in out-of-pocket expenses by the conclusion of the trial therein and carried the expense without reimbursement for more than twelve years. That case continued after being tried almost ten years ago, followed by two appeals to the Eighth Circuit, and multiple remandments to the district court. *Tibble v. Edison Int'l*, *supra*, was also still pending until an appeal was decided earlier last year, nearly 14 years after it was filed.

37. Based on my experience, the market for experienced and competent lawyers willing to pursue ERISA excessive fee litigation is a national market, and the rate of 33 1/3% of any

recovery, plus costs, 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 ERISA fee cases in numerous federal district courts.

- *Troudt v. Oracle Corp*, No. 16-00175-REB-SKC, Doc. 236 (D. Col. July 10, 2020)
- *Kelly v. Johns Hopkins Univ.*, No. 16-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020)
- *Tussey v. ABB, Inc.,* No. 06-04305-NKL, Doc. 869 (W.D. Mo. August 16, 2019);
- *Sims v. BB&T Corp.,* No. 15-1705, 2019 WL 1993519 (M.D.N.C. May 6, 2019);
- *Clark v. Duke*, No. 16-01044, Doc. 166 (M.D.N.C. June 24, 2019);
- *Cassell v. Vanderbilt Univ.*, No. 16-02086, Doc. 174 (M.D. Tenn. Oct. 22, 2019);
- *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-02062, Doc. 380 (S.D. Ind. Sept. 4, 2019);
- *Ramsey v. Philips,* No. 18-1099, Doc. 27 (S.D. Ill. Oct. 15, 2018);
- *In re Northrop Grumman Corp. ERISA Litig.,* No. 06-6213, 2017 WL 9614818 (C.D.Cal. Oct. 24, 2017);
- *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016);
- *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016);
- *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016);
- *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475 (S.D. Ill. July 17, 2015);
- *Krueger v. Ameriprise Financial Inc.*, No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015);
- *Beesley v. Int'l Paper Co.,* No. 06-703, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014);
- *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015 (C.D. Ill Oct. 15, 2013);

- *George v. Kraft Foods Global*, No. 07-1713, 2012 WL 13089487 (N.D. Ill. June 26, 2012);
- *Will v. General Dynamics*, No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010); and
- *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 11614985 (C.D. Ill. Sept. 10, 2010).

38. Long-term commitment of time and resources is needed if plan participants are to receive full compensation for their losses in such cases. Because my firm has committed to doing this in each case we pursue, it is my opinion that defendants take into account this firm's long-term commitment to these cases in assessing their costs and the likelihood of success.

39. Since the Court's summary judgment decision, my firm has devoted over 1,216 hours of attorney and 272 hours of non-attorney time to date to prosecute the settled claim on behalf of the Cornell participants and beneficiaries.[1] If we attributed a portion of our hours prior to summary judgment to this claim, our time invested in this claim would be much more. Because my firm works solely on a contingency fee basis, and there is a limited number of active cases it can handle at any given point, the decision to pursue this class action and commit significant resources to obtain a successful recovery on behalf of the class through potentially years of litigation impacted the firm's ability to handle other class actions or pursue other less risky matters.

40. By my firm obtaining this settlement for the Class without further delay, the Class members will benefit by not only avoiding risk but also avoiding what would have been substantial costs and delay for trial and potential appeals. In addition, they will benefit by being able to invest their recoveries and benefit from the earnings much earlier than if there had been years of delay.

[1] This excludes time spent on Plaintiffs' Motion for Reconsideration (Doc. 386).

41. Schlichter Bogard & Denton does not bill clients on an hourly basis. In July 2020, based on the national market for complex ERISA fiduciary breach litigation, the following hourly rates for my firm were approved: $1,060/hour for attorneys with at least 25 years of experience, $900/hour for attorneys with 15–24 years of experience, $650/hour for attorneys with 5–14 years of experience, $490/hour for attorneys with 2–4 years of experience, and $330/hour for Paralegals and Law Clerks. *Troudt*, No. 16-00175-REB-SKC, Doc. 236 (D. Col. July 10, 2020).

42. These rates for our firm have been approved by numerous courts across the country in the last year and a half. *See id.*; *Kelly*, 2020 WL 434473, at *3; *Tussey v. ABB, Inc.*, No. 06-CV-04305-NKL, Doc. 869 (W.D. Mo. August 16, 2019); *Sims*, 2019 WL 1993519, at *3; *Clark v. Duke*, No. 16-01044, Doc. 166 (M.D.N.C. June 24, 2019); *Cassell*, No. 16-02086, Doc. 174 (M.D. Tenn. Oct. 22, 2019); *Bell v. Pension Comm. Of ATH Holding Co.*, LLC, No. 15-02062, Doc. 380 (S.D. Ind. Sept. 4, 2019).

43. These rates were brought up to date based on 2016 hourly rates for Schlichter Bogard & Denton that were previously approved. *Kruger*, 2016 WL 6769066 at 4. The 2016 hourly rates were previously approved by the Southern District of Illinois in *Spano,* 2016 WL 3791123 at 3. Those rates were: $998/hour for attorneys with at least 25 years of experience, $850/hour for attorneys with 15–24 years of experience, $612/hour for attorneys with 5–14 years of experience, $460/hour for attorneys with 2–4 years of experience, $309/hour for Paralegals and Law Clerks, and $190/hour for Legal Assistants.

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 October 23, 2020, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

SCHLICHTER BOGARD & DENTON

SELECTED ATTORNEYS BIOGRAPHY

Schlichter Bogard & Denton is a plaintiffs' law firm which represents individuals in personal injury actions, class actions and complex litigation involving pension claims, breaches of fiduciary duties, product liability, and pharmaceutical products. The following is biographical information on selected attorneys in the firm.

JEROME J. SCHLICHTER

Jerome J. Schlichter received his Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors and was a James Scholar. Mr. Schlichter received his Juris Doctorate from the University of California at Los Angeles Law School in 1972, where he was an Associate Editor of UCLA Law Review. Mr. Schlichter is a member of the bar of California, Illinois, and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts. He has also been an Adjunct Professor teaching a trial class at Washington University Law School.

During his career, Mr. Schlichter has handled on behalf of plaintiffs many substantial personal injury cases, consumer cases, toxic tort cases, and numerous complex, multi-plaintiff cases including mass tort cases and numerous ERISA breach of fiduciary national class actions. He has also held offices in national plaintiffs' lawyer groups. For each year since 2007, he has been listed among the 100 most influential persons nationally in the 401(k) industry in the industry publication 401(k) Wire; he was listed as 3rd most influential in 2007, and 4th most influential in 2015.

Mr. Schlichter is lead attorney on numerous national class action cases involving claims on behalf of employees and retirees of excessive fees and fiduciary breaches in large 401(k) plans. He and the firm are widely acknowledged to have pioneered the area of 401(k) excessive fee litigation and have obtained settlements in ten of those cases. In the case of *Martin v. Caterpillar* a settlement was obtained for the sum of $16,500,000 plus significant changes in the 401(k) plan. In *Will v. General Dynamics*, a settlement has been reached in the sum of $15.15 million plus additional non-monetary relief. In *Kanawi v. Bechtel*, the settlement obtained included $18.5 million as well as additional affirmative relief. In *Beesley v. International Paper*, a settlement was reached for the sum of $30 Million, as well as significant affirmative relief. In *George v. Kraft Foods*, a settlement was reached for $9.5 Million plus non-monetary relief. In *Nolte v. Cigna*, a settlement was reached for $35 Million plus significant changes in the plan to benefit participants. In

Krueger v. Ameriprise, a settlement was reached for $27.5 Million, and substantial additional changes to the plan. *Abbott v. Lockheed Martin* produced a settlement of $62 million, the largest sum recovered in a 401k excessive fee case in history, plus significant non-monetary relief. *Spano v. Boeing Co.*, resulted in a $57 million settlement on behalf of participants in Boeing's 401(k) plan, including significant non-monetary relief. *Kruger v. Novant Health, Inc.*, a $32 million settlement was reached on behalf of 401(k) plan participants, together with substantial affirmative non-monetary relief. *Gordan v. Mass Mutual Life Inss., Co.*, a settlement was reached for $30.9 Million with plus additional non-monetary relief.

Mr. Schlichter was the lead attorney for plaintiffs in *Tussey v. ABB, Inc.*, the first full trial for excessive fees in a 401(k) plan, which resulted in a multi-million dollar judgment for participants in ABB's 401(k) Plan, plus substantial reform to the 401k plan.

Mr. Schlichter is also lead attorney in *Tibble v. Edison*, in which he and his firm represent participants in the 401(k) plan of Edison International. In that case, the U.S. Solicitor General, AARP and other organizations supported his firm's position that the case was one of critical importance to all 401(k) participants. In May of 2015, the Supreme Court ruled, unanimously, in favor of the participants in the plan.

Examples of other class cases handled by Mr. Schlichter include: *Brown v. Terminal Railroad Association*, a discrimination case on behalf of African American and Hispanic workers, which was certified as a class, and concluded with a multi-million dollar settlement after more than 5 years of litigation; *Mister v. Illinois Central Gulf Railroad,* 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire suit brought on behalf of hundreds of African-Americans applicants, which was certified, tried and successfully appealed to conclusion and finally settled for more than $10 million after 12 ½ years of litigation, and *Wilfong v. Rent-A-Center,* No. 00-680-DRH (S.D. Ill. 2002), a nationwide gender discrimination case on behalf of women employees and applicants, which was successfully settled for $47 million and other relief to the class, after defeating the defendant's attempt to conduct a reverse auction.

Mr. Schlichter has been praised by numerous Federal Judges, retirement plan groups and national experts for his firm's work.

- The AARP Foundation commented that Mr. Schlichter's work in the Bechtel 401(k) fee case was "… truly extraordinary."
- In *Beesley v. International Paper*, an ERISA excessive fee case, U.S. District Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance,

while risking vast amounts of time and money, reflect the finest attributes of a private attorney general." *Beesley v. Int'l Paper Co.*, No. 06-703-DRH, 2014 U.S. Dist. LEXIS 12037, 8 (S.D. Ill. Jan. 31, 2014).

- In *Will v. General Dynamics*, another ERISA excessive fee case, U.S. District Judge Patrick Murphy found that litigating the case and achieving a successful result for the class "required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will v. General Dynamics Corp.*, No. 06-698-GPM, 2010 U.S. Dist. LEXIS 123349, 9 (S.D. Ill. Nov. 22, 2010).
- U.S. District Judge Harold Baker, in *Nolte v. Cigna*, stated that Schlichter, Bogard & Denton is the "preeminent firm in 401(k) fee litigation" and has "persevered in the face of the enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.,* Case No. 07-2046, Doc. 413 at 5 (C.D.Ill. Oct. 15, 2013).
- Chief U.S. District Judge Michael J. Reagan observed that "Mr. Schlichter and the firm of Schlichter, Bogard & Denton have demonstrated its well-earned reputation as a pioneer and the leader in the field" of 401(k) plan excessive fee litigation. He added: "Schlichter, Bogard & Denton's work embodies the finest attributes of a private attorney general, risking significant resources for the good of those saving for their retirement." *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at 4–5 (S.D. Ill. July 17, 2015). Similar remarks were given by U S. District Judge Nancy J. Rosenstengel in *Spano v. Boeing Co.* noting that for over nine years, Jerome Schlichter and Schlichter, Bogard & Denton have "zealously represented American workers and retirees seeking to improve their retirement plan". *Spano v. Boeing Co.,* Case No. 06-743, Doc. 587 at 2 (S.D.Ill. Mar. 31, 2015).
- In *Tussey v. ABB, Inc.*, U.S. District Judge Nanette K. Laughrey emphasized he significant contribution Schlichter, Bogard & Denton has made to ERISA litigation, including educating the Department of Labor and courts about the importance of monitoring fees in 401(k) plans.

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated 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 v. ABB, Inc., 2015 U.S.Dist.LEXIS 164818 at 7–8 (W.D.Mo. Dec. 9, 2015).

- In *Gordan v. Mass Mutual Life Ins., Co.,* U.S. District Judge Michael Ponsor found that by securing a $30.9 million settlement, Schlichter, Bogard & Denton had achieved an "outstanding result for the class," and "demonstrated

> extraordinary resourcefulness, skill, efficiency and determination." *Gordan v. Mass Mutual Life Ins., Co.*, No. 14-30184, Doc. 144 at 5 (D. Mass. November 3, 2016).

Widely cited ERISA experts have expressed their opinions that the 401(k) fee cases brought by Mr. Schlichter directly contributed to the development of the U.S. Department of Labor's regulatory initiatives to improve fee transparency. In total, Schlichter and his firm have been named Class Counsel in fifteen national class actions alleging fiduciary breaches and prohibited transactions involving the 401(k) plans of large companies.

Mr. Schlichter has also spoken on Employee Retirement Income Security Act ("ERISA") litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars. Mr. Schlichter has been widely featured and quoted in articles concerning 401(k) fees, appearing in such national publications as the New York Times, Wall Street Journal, USA Today, Bloomberg, Business Week, Reuters, Forbes, Consumer Reports, and the Los Angeles Times.

Mr. Schlichter has been called a "pioneer" in litigation involving excessive fee claims under ERISA by the New York Times (October 16, 2014); "A Lone Ranger of the 401(k)'s" by the New York Times (March 29, 2104); "Public Enemy No. 1 for 401(k) Profiteers" by Investment News (January 26, 2014); "Who Needs Fee Disclosure When You Have Jerry Schlichter" in Fiduciary News (April 7, 2015); "His Impact has been humongous" in reducing 401(k) fees in Reuters (November 5, 2013).

ROGER C. DENTON

Roger C. Denton earned his Bachelor of Art degree from Culver Stockton College in 1978, and his Juris Doctorate from Saint Louis University School of Law in 1982, where he graduated *summa cum laude* and Order of Woolsack. He is a member of the bar of Illinois, Missouri and Wisconsin, and is admitted to practice before the United States Supreme Court. Mr. Denton is also admitted to the United States District Courts for the Southern, Central and Northern Districts of Illinois, the Eastern and Western Districts of Wisconsin, and the Eastern and Western Districts of Missouri.

Mr. Denton has spent his career representing seriously injured individuals and in mass tort claims for work related injuries, and injuries resulting from the use of dangerous products and defective pharmaceutical drugs. He has litigated cases in more than a dozen states, both in state and federal courts, and has a national reputation in the field of FELA litigation with substantial verdicts in multiple jurisdictions. In addition to handling his individual cases and medical monitoring class actions, Mr. Denton is currently serves as co-lead counsel in multiple national multi district litigation cases, including *In re: Pradaxa Products Liability Litigation*,

Liaison Counsel in *In re Yasmin® and Yaz ® (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, lead counsel in *In re NuvaRing® Products Liability Litigation*. In addition, he has served on national steering committees in *In re Gadolinium-Based Contrast Agents Product Liability Litigation* and *In re E.I. Du Pont De Nemours and Company C-8 Personal Injury Litigation*. Mr. Denton has spoken at national seminars and published articles on mass torts and complex litigation.

NELSON G. WOLFF

Mr. Wolff is a partner in the firm and received his Bachelor of Arts degree in Biology from Emory University in 1988 and his Juris Doctorate from the University of Missouri in 1992. He was a member of the Missouri Law Review and a two-time winner of the National Moot Court Prize for Appellate Advocacy.

He is a member of the bar of Missouri, Illinois, and Arkansas. Mr. Wolff is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Fifth, Seventh, Eighth, and Tenth Circuits, in the United States District Courts for the Central, Southern, and Northern Districts of Illinois, Eastern District of Missouri, Western District of Kentucky, and the Eastern and Western Districts of Arkansas.

Mr. Wolff currently serves on the Board of Governors of the Missouri Association of Trial Attorneys. He has been selected as a Missouri and Kansas "Super Lawyer" each year since 2005 and has been repeatedly selected for inclusion in The Best Lawyers in America. Mr. Wolff has also had articles published in numerous legal and scientific journals on personal injury subjects and has presented at numerous legal seminars.

In addition, Mr. Wolff has been involved in multiple national class action ERISA cases involving challenges to 401(k) plan fees and expenses and breaches of fiduciary duty. He conducted the trial of *Tibble v. Edison*, a 401k excessive fee case in the Central District of California, a case in which the firm of Schlichter, Bogard & Denton obtained a writ of certiorari in the U.S. Supreme Court, and, in 2015, a unanimous favorable ruling in the U.S. Supreme Court.

KRISTINE K. KRAFT

Kristine K. Kraft is a partner of the firm. She received her Juris Doctorate from the University of Missouri-Kansas City in 1990, graduating with distinction and the honor of the Order of the Bench and Robe. She graduated *cum laude* from Avila College in 1983 with a Bachelor of Arts degree. She specializes in litigating highly complex pharmaceutical cases, mass tort, and complex litigation cases.

She has represented clients throughout the United States, and is a member of the bar of Missouri, Kansas, and Illinois, as well as in numerous Federal courts.

She serves on the Board of Governors for the Missouri Association of Trial Attorneys, and has also been selected for inclusion in the "Honors Edition" of the Cambridge "Who's Who Among Executive and Professional Women".

Additionally, Ms. Kraft has been appointed to serve as co-lead counsel and liaison counsel of *In Re NuvaRing® Products Liability Litigation*, a Multi-District Litigation which resulted in a substantial settlement in the U. S. District Court for the Eastern District of Missouri. She also serves on the Science and Discovery Committees for the Multi-District Litigation matters: *In re Yasmin® and Yaz® (Drospirenone) Marketing, Sales Practices and Products Liability Litigation, In re Ortho Evra® Products Liability Litigation* and *In re Gadolinium-Based Contrast Agents Product Liability Litigation*.

Ms. Kraft is and has been involved in complex litigation, mass torts, and multi-district litigation.

MICHAEL A. WOLFF

Michael A Wolff is a partner of the firm. He received his Juris Doctor *cum laude* from the University Of Missouri-Columbia in 1990, where he was initiated into the Order of the Coif. He received his Bachelor of Arts *magna cum laude* from Colgate University in 1987, where he was initiated into Phi Beta Kappa. He has extensive experience in Federal and State appellate and trial practice, as well as fiduciary litigation, complex commercial litigation, and 401k excessive fee cases.

Mr. Wolff is a member of the bar of Missouri (1990) and Illinois (1991) and is admitted to practice before the Supreme Court of the United States and many federal courts. Mr. Wolff has successfully briefed and argued numerous dispositive motions and federal appeals in 401k excessive fee litigation.

Mr. Wolff is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

TROY A. DOLES

Troy Doles is a partner of the firm, and received his Bachelor's degree from Indiana University in 1992 and his Juris Doctorate from St. Louis University School of Law in 1996. He is a member of the bar of Missouri and Illinois and is admitted to

practice before the Supreme Court of the United States and numerous federal courts.

Mr. Doles has extensive experience in complex class action cases and complex commercial litigation, including Federal Court and Multi-District Litigation cases. He has been deeply involved in numerous class actions on behalf of retirement plan participants, consumers, and health care providers. Mr. Doles has lectured frequently to a variety of associations and conferences including fiduciary groups, national and state medical associations, and bar associations.

Mr. Doles was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Mr. Doles is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

HEATHER LEA

Heather Lea is a partner of the firm. She graduated with a Bachelor of Arts degree from Rhodes College in 1994 and with a Juris Doctorate degree from Washington University School of Law in 2000, where she was Order of the Coif, and the Editor-in-Chief of the Washington University Journal of Law and Policy. Ms. Lea is a member of the bar of Illinois and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts.

Ms. Lea was a judicial law clerk to the Honorable Jeanne E. Scott, United States District Court for the Central District of Illinois and has specialized in ERISA and pension plan litigation for her entire career. She is currently involved in litigating class actions under ERISA for claims of fiduciary breaches involving plans of large employers.

Ms. Lea was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Ms. Lea is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

ANDREW D. SCHLICHTER

Andrew Schlichter is a partner of the firm. He graduated with a Bachelor of Arts Degree from Georgetown University cum laude in 2002 and from the University of Michigan Law School cum laude in 2005, where he was Executive Editor of the Michigan Law Review and received the Jason H. Honigman award. He is a member of the bars of New York and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts. From 2005 to 2006, he served as a law clerk to U.S. District Judge David R. Herndon in East St. Louis, Illinois. Prior to joining Schlichter, Bogard & Denton, LLP, Mr. Schlichter worked for a large New York City law firm where he practiced complex commercial litigation.

Mr. Schlichter has extensive experience in high-stakes litigation. He has represented numerous clients in federal and state securities actions, and has obtained successful results in a broad range of complex matters, including dismissal with prejudice of a $147 million action asserted in connection with a debt refinancing and dismissal of several significant claims related to a corporate merger. He has also represented clients in regulatory matters and investigations, including investigations related to the collapse of an investment bank's sponsored hedge funds, off-label promotion at a major pharmaceutical company, and a utility's response to Hurricane Sandy.

In his pro bono practice, he has served as Counsel to the New York Chief Judge's Special Commission on the Future of the New York State Courts and in 2013 received a Pro Bono Publico Award from the Legal Aid Society.

Mr. Schlichter represents clients in complex litigation and personal injury litigation. He is involved in complex national ERISA class actions involving 401k plans of large employers, which have resulted in multi-million dollar settlements and substantial non-monetary improvements to the 401(k) plans.

SEAN E. SOYARS

Mr. Soyars is a partner of the firm. He received his Bachelor of Arts from St. Mary's College in 2000. He received his Juris Doctorate in 2004 from Washington University School of Law. He is a member of the bar of Missouri and is admitted to practice before numerous federal courts.

He has extensive experience in appellate advocacy in representing participants in large 401(k) plans, as well as extensive experience working on all aspects of complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401(k) plans.

KURT C. STRUCKHOFF

Kurt Struckhoff is Counsel in the firm. He graduated with a Bachelor of Science degree in finance and accounting from Saint Louis University in 2006, *summa cum laude*. He received his Juris Doctorate from Saint Louis University School of Law in 2009. He is a member of the bar of Missouri and Illinois and is admitted to practice before the Supreme Court of the United States and numerous federal courts.

Mr. Struckhoff has been with the firm since 2009.

Mr. Struckhoff was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Mr. Struckhoff is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

He has worked extensively in complex litigation in areas including ERISA, pension issues, securities fraud and fiduciary liability.

JOEL ROHLF

Joel Rohlf is Counsel in the firm. He graduated with a Bachelor of Arts degree from the University of Iowa with honors and highest distinction. He received his Juris Doctorate from the University of Iowa, College of Law in 2008 with high distinction and order of the coif. He is a member of the bars of Missouri, Illinois, and the District of Columbia and is admitted to practice before several federal courts.

Joel has extensive experience representing clients in high stakes financial litigation. He has successfully represented numerous clients in a broad range of cases, including ERISA, securities, civil RICO, False Claims Act, consumer protection and pharmaceutical matters.

He has also represented pro bono criminal defendants who cannot afford counsel, and has handled cases for the American Civil Liberties Union and handled a case for the National Association of Criminal Defense Lawyers before the United States Supreme Court in *Vermont v. Brillion*, 556 U.S. 81 (2009).

ALEX BRAITBERG

Alex earned his B.A. from Cornell University, and his Juris Doctorate from Saint Louis University, magna cum laude.

Alex has served on the Board of Governors of the Bar Association of Metropolitan St. Louis since 2017, and is currently the Chair of the Continuing Legal Education Committee.

Alex represents clients in complex high-stakes cases in courts around the country, focusing his practice on Employee Retirement Income Security Act (ERISA) and pension plan litigation. He has extensive experience in class actions, including fiduciary breach, toxic exposure, product liability and consumer protection cases, and has obtained substantial results for his clients in a broad range of matters.

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CASEY CUNNINGHAM, et al., Plaintiffs, v. CORNELL UNIVERSITY, et al. Defendants.	No. 1:16-CV-06525-PKC **DECLARATION OF JOEL D. ROHLF IN SUPPORT OF MOTION FOR ATTORNEYS' FEES AND EXPENSES AND CASE CONTRIBUTION AWARD FOR NAMED PLAINTIFF**

1. I am an attorney at the law firm of Schlichter Bogard & Denton, LLP. I am one of the attorneys representing Plaintiffs in this matter. This declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees and Expenses and Case Contribution Award for Named Plaintiff.

2. I have been involved in all aspects of 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 State of Missouri, the State of Illinois, the District of Columbia, and numerous federal courts.

4. I received my Bachelor of Science with highest distinction from the University of Iowa in 2005 and my Juris Doctor with high distinction from the University of Iowa College of Law in 2008. I am employed as Counsel at Schlichter Bogard & Denton, LLP, which is Class Counsel in this matter. I have been actively engaged in national complex class action, financial

and mass tort litigation throughout my career. Since December 2017, I have focused my practice primarily on ERISA fiduciary breach class actions concerning 401(k) and 403(b) plans.

5. As set forth in the Memorandum in Support of Plaintiffs' Motion and the Declaration of Jerome Schlichter, the District of Colorado recently approved hourly rates for Schlichter Bogard & Denton when approving attorneys' fees of one-third of the settlement proceeds in an ERISA excessive fee class action. *Troudt v. Oracle Corp*, No. 16-00175-REB-SKC (D. Col. July 10, 2020), Doc. No. 236. These hourly rates are as follows: for attorneys with at least 25 years of experience, $1,060 per hour; for attorneys with 15–24 years of experience, $900 per hour; for attorneys with 5–14 years of experience, $650 per hour; for attorneys with 2–4 years of experience, $490 per hour; and, for paralegals and law clerks, $330 per hour.

6. To calculate the lodestar, Schlichter Bogard & Denton applied these rates to the number of hours incurred by attorneys and non-attorneys during the above-captioned action after the Court's summary judgment order. We did not include hours related to the motion to reconsider the summary judgment order. Therefore, the hours are limited only to those that are clearly related to the remaining claim that was settled. If we had included hours from earlier in the litigation, there would have been thousands of additional hours related to the settled claim. Therefore, our lodestar is extremely conservative. This calculation is shown in the following table:

Post 10/1/2019 Hours			
	Hours	Rate	Total
25 Years +	48.20	$1,060.00	$ 51,092.00
15-24 Years	8.30	$ 900.00	$ 7,470.00
5-14 Years	544.70	$ 650.00	$ 354,055.00
0-4 Years	615.10	$ 490.00	$ 301,399.00
	1,216.30		$ 714,016.00
Law Clerk	2.00	$ 330.00	$ 660.00
Paralegal	270.40	$ 330.00	$ 89,232.00
Staff	272.40		$ 89,892.00
Total	1,488.70		$ 803,908.00

[1]

7. I have examined the records, and we have incurred case expenses relating to the settled claim totaling $15,349.17. Class Counsel only seeks reimbursement of expenses after the Court's summary judgment decision, five percent of the costs from Plaintiffs' expert Wendy Dominguez, who offered opinions relevant to the settled claim, prior to summary judgment and filing and service costs for the complaint.

8. Below is a list of expenses according to their categories:

Postage and Copies	$	872.89
Travel	$	4,726.08
Research (Jury Instr. Research)	$	634.84
Expert	$	-
ESI	$	5,035.47
Hearing Transcripts	$	44.28
Post-Summary Judgment Total	$	11,313.56

Filing Fees and Service of Summons	$	1,179.55
Dominguez Depo 5%	$	128.56
Dominguez Expert 5%	$	2,727.50
Total	$	15,349.17

[2]

[1] Fees for staff attorneys were calculated at 0–4 years' experience regardless of their actual experience.
[2] The expenses include estimated travel expenses for the Final Approval Hearing. If that hearing is held remotely, Class Counsel will not seek reimbursement of those estimated costs.

9. The expenses listed above are those for which Schlichter Bogard & Denton, LLP is seeking reimbursement. The firm has incurred other expenses in litigating this case for which it does not seek reimbursement, such as expenses associated with meals.

10. Investigation and Preparation of Complaint: Starting in 2015, Schlichter Bogard & Denton 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 Cornell University Retirement Plan for the Employees of the Endowed Colleges at Ithaca and the Cornell University Tax Deferred Annuity Plan.

11. Involvement of Named Plaintiffs: Class Counsel's investigation included meetings with Plan participants, which occurred both in-person and on the phone. The in-person meetings required attorneys to travel to multiple locations across the country where the participants reside. These meetings provided valuable insight and additional understanding of the operation and administration of the Plan, as well as fee and performance disclosures concerning the Plan's investments and expenses. Each Named Plaintiff provided Class Counsel with critical documents prior to preparing the complaint. It has also been my experience that employees are hesitant to bring these large, complex suits against their employer for fear of alienation. Each Named Plaintiff also stayed apprised of the proceedings at each stage of the case, including preparations for trial, sitting for depositions, and submitting declarations in support of class certification.

12. Complaints: On August 17, 2016, Plaintiffs filed their complaint in the above-captioned matter. Doc. 1. After Defendants filed their premotion letter for a motion to dismiss, Class Counsel reviewed and analyzed Defendants' briefing and evaluated whether to amend their

complaint. After additional investigation and research was conducted related to their claims, Plaintiffs amended their complaint as of right under Federal Rule of Civil Procedure 15(a) on December 7, 2016. Doc. 37. The amended complaint provided additional details regarding Plaintiffs' claims and added Mary Opperman and CAPTRUST Financial Advisors as defendants. *Id.* Plaintiffs filed a corrected amended complaint on February 24, 2017 to change the name of CAPTRUST Financial Advisors to CapFinancial Partners, LLC d/b/a CAPTRUST Financial Advisors. Doc. 81. Plaintiffs also filed a motion for leave to amend to file a second amended complaint to add individual defendants who were employees of Cornell. Doc. 132. The motion for leave was withdrawn when Cornell agreed to stipulate to vicarious liability for the proposed individual defendants. Doc. 192.

13. Motion to Dismiss: Defendants filed their motions to dismiss the amended complaint on February 17, 2017. Docs. 71, 75. The Cornell Defendants also filed a request for judicial notice in support of their motions to dismiss requesting that the Court take judicial notice of 19 exhibits. Doc. 74. The two 25-page memoranda in support of these motions were extensive and raised complex legal arguments. Doc. 72, 76. Class Counsel spent extensive time responding to these arguments, which included conducting research and analysis of relevant legal authority. Plaintiffs filed their oppositions on March 31, 2017 and April 14, 2017. Docs. 87, 91. The Court granted in part and denied in part Defendants' motions to dismiss on September 29, 2017. Doc. 107.

14. Motion for Class Certification: Plaintiffs filed their motion for class certification on May 2, 2018. Doc. 151. The briefing, accompanied by declarations of the Named Plaintiffs and deposition testimony, was extensive and took significant time to prepare. Docs. 152, 152-1–5, Doc 153. *See also* Doc. 165 (CAPTRUST's Memorandum in Opposition to Motion for Class

Certification); Doc. 168 (The Cornell Defendants' Response to Plaintiffs' Motion for Class Certification); Doc 189 (Plaintiffs' Reply in Support of Motion to Certify Class); Doc. 205 (Plaintiffs' Notice of Supplemental Authority In Support of Class Certification); Doc. 213 (Plaintiffs' Second Notice of Supplemental Authority in Further Support of Class Certification); and Docs. 217, 218 (additional supplemental briefing). The Court granted class certification on January 22, 2019. Doc. 219. The Cornell Defendants also filed a Rule 23(f) petition regarding the Court's class certification order to which Plaintiffs responded and which the Second Circuit denied.

15. Discovery: On November 27, 2017, the parties filed a joint preliminary report. Doc. 115. The parties presented a case management scheduling order to the Court that was entered with modifications on December 4, 2017. Docs. 116. Apart from efforts involved in drafting these joint documents, their preparation required multiple meet-and-confer discussions with Defendants' attorneys. Plaintiffs prepared and served their initial requests for production and interrogatories directed to Defendants on January 5, 2018. Counsel for the parties engaged in extensive discussions regarding electronically stored information (ESI) and search terms throughout discovery, starting in March 2018.

16. In March of 2018, Plaintiffs prepared and served document subpoenas on two non-party entities: Fidelity and TIAA. In July of 2018, Plaintiffs prepared and served document subpoenas on Morningstar and Cammack LaRhette. Schlichter Bogard & Denton met and conferred extensively with counsel for these entities regarding their document productions.

17. In January 2018, Defendants issued two sets of document requests and two sets of interrogatories to each of the Named Plaintiffs. Schlichter Bogard & Denton engaged in extensive discussions with their clients regarding these requests. The attorneys reviewed and

analyzed all materials provided by their clients and prepared responsive documents for production. Over the course of the litigation, Plaintiffs made three separate document productions totaling over 3,000 pages.

18. Given the complex nature of the litigation and volume of documents produced, the parties then filed several discovery-related motions, including motions to compel, that required extensive briefing and multiple discovery conferences. Docs. 171, 175, 177, 178, 191, 278, 282, 283, 307, 309, 323.

19. Throughout the course of discovery, Class Counsel diligently reviewed and analyzed over 150,000 pages of documents. The Defendants alone made 18 separate productions. A detailed review and analysis of the document production was crucial for Plaintiffs to prove their claims. Without a firm understanding of the core materials to support their claims, including a significant email production with attachments, Plaintiffs would have been unable to successfully prosecute this action.

20. To support those efforts, Schlichter Bogard & Denton developed a document review and analysis protocol for systematically and methodically evaluating the document production. It was incumbent on Class Counsel to review each and every document produced in this litigation. The ongoing review and analysis of the document production was aided by numerous internal discussions and meetings to ensure a proper and efficient evaluation process, as well as to inform their litigation strategy.

21. Apart from the ongoing tasks related to the document production, Class Counsel defended five depositions of the Named Plaintiffs and took 14 lengthy depositions of fact witnesses, including Defendants, their employees, and third parties. Each of the fact witness

depositions required extensive preparation and ongoing coordination among the litigation team to ensure an effective examination.

22. Throughout all stages of the case, including discovery, the attorneys at Schlichter Bogard & Denton 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.

23. Expert Witnesses: ERISA litigation is highly technical, including facts about prudent investment practices, industry best practices, fiduciary practices, and complex financial matters, requiring the use of multiple experts for all parties. Plaintiffs disclosed four expert witnesses who provided extensive written reports on August 28, 2018. Defendants disclosed three expert witnesses and served their reports on September 14, 2018. Plaintiffs' experts provided detailed rebuttal reports on September 26, 2018.

24. All seven disclosed experts were deposed in October 2018. Defendants filed two separate motions to exclude all of Plaintiffs' experts in January 2019, which required extensive briefing. *E.g.*, Docs. 225, 228. Defendants filed an additional motion to exclude Wendy Dominguez on November 6, 2019. Doc. 359. Plaintiffs filed a motion to exclude Defendants' expert Glenn Poehler on November 6, 2019. Doc. 362.

25. Summary Judgment: On January 25, 2019, the Defendants filed motions for summary judgment. Their briefing totaled over 105 pages, and they filed 124 total exhibits in support of their motions. *See* Docs. 221, 222, 223, 224, 224-1-224-13, 231, 233, 234, 234-1-242-16. In one month, Schlichter Bogard & Denton had to sift through Defendants' thousands of pages of briefing and exhibits and respond to complex summary judgment pleadings. Plaintiffs filed nearly 600 pages of briefing and 177 exhibits in opposition to summary judgment. Docs.

286, 287, 288, 289, 290-1-293-26. The Court also gave leave to Defendants to file an additional supplemental summary judgment brief to which Plaintiffs had to respond. *See* Doc. 330, 337, 338.

26. Trial Preparation: This case was the first ERISA excessive fee case ever set for a trial before a jury to the knowledge of Schlichter Bogard & Denton. Because of this, the case required extensive trial preparation time, even after the Court's summary judgment order limited the case to one claim. Class Counsel prepared extensive jury instructions, many of which were created from scratch because there were no model instructions. Class Counsel also was required to respond to numerous additional instructions or alternative instructions proposed by the Defendants. The joint proposed jury instructions totaled nearly 80 pages. Doc. 371. Class Counsel also drafted voir dire and a verdict form, again from scratch because this was the first jury trial of its kind. *See* Docs. 372, 373. Furthermore, Class Counsel reviewed thousands of documents and hundreds of pages of deposition transcripts to produce an exhibit list of over 400 documents, an eight-person witness list, and one set of deposition designations. *See* Doc. 370-3. Counsel also had to review and make objections to nearly 150 exhibits offered by Defendants. Counsel attended a pre-trial conference with the Court and argued motions in limine. Doc. 397. Additionally, Class Counsel spent extensive time preparing for a multiple-day trial against sophisticated opposing counsel.

27. Settlement: On September 1, 2020, the parties notified the Court that they reached a settlement agreement in principle on the remaining claim to be tried. After continued discussions, the parties reached an agreement on all terms on September 18, 2020. Doc. 421-1.

28. Prior to seeking preliminary approval of the class action settlement, Class Counsel was engaged in the preparation of numerous supporting settlement documents, including the

class action notices, claim forms, their motion and memorandum in support of preliminary approval, their motion and memorandum in support of class certification, and related proposed orders.

29. 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 litigation. The attorney and non-attorney hours were reasonably and efficiently expended to obtain a successful recovery on behalf of the Class. Without committing the necessary resources to diligently pursue Plaintiffs' claims and utilizing the national expertise Class Counsel have developed in creating this area of litigation, a favorable recovery that benefits thousands of Class members would not have been possible.

30. In complex ERISA class actions such as this, a one-third contingency fee is routinely awarded in cases handled by Class Counsel. Below is a table of cases handled by Class Counsel in which a one-third fee was awarded.

Case	Fee %
Troudt v. Oracle Corp, No. 16-00175-REB-SKC (D. Col. July 10, 2020), Doc. No. 236	33.33%
Kelly v. Johns Hopkins Univ., No. 16-2835, 2020 WL 434473 (D.Md. Jan. 20, 2020)	33.33%
Cassell v. Vanderbilt Univ., No. 16-2086, Doc. 174 (M.D.Tenn. Oct. 22, 2019)	33.33%
Tussey v. ABB, Inc., No. 06-4305, 2019 WL 3859763 (W.D.Mo. August 16, 2019)	33.33%
Sims v. BB&T Corp., No. 15-1705, 2019 WL 1993519 (M.D.N.C. May 6, 2019)	33.33%
Clark v. Duke, No. 16-1044, 2019 WL 2579201 (M.D.N.C. June 24, 2019)	33.33%
Ramsey v. Phillips N.A., No. 18-1099, Doc. 27 (S.D.Ill. Oct. 15, 2018)	33.33%
In re Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 WL 9614818 (C.D.Cal. Oct. 24, 2017)	33.33%
Gordan v. Mass. Mut. Life Ins. Co., No. 13-30184, 2016 WL 11272044 (D.Mass. Nov. 3, 2016)	33.33%

Case	Fee %
Kruger v. Novant Health, *Inc.*, No. 14-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016)	33.33%
Spano v. Boeing Co., No. 06-743, 2016 WL 3791123 (S.D.Ill. Mar. 31, 2016)	33.33%
Abbott v. Lockheed Martin Corp., No. 06-701, 2015 WL 4398475 (S.D.Ill. July 17, 2015)	33.33%
Krueger v. Ameriprise Fin., Inc., No. 11-2781, 2015 WL 4246879 (D.Minn. July 13, 2015)	33.33%
Beesley v. Int'l Paper Co., No. 06-703, 2014 WL 375432 (S.D.Ill. Jan. 31, 2014)	33.33%
Nolte v. Cigna Corp., No. 07-2046, 2013 WL 12242015 (C.D.Ill. Oct. 15, 2013)	33.33%
Will v. Gen. Dynamics Corp., No. 06-698, 2010 WL 4818174 (S.D.Ill. Nov. 22, 2010)	33.33%
Martin v. Caterpillar Inc., No. 07-1009, 2010 WL 11614985 (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 on October 23, 2020, in St. Louis, Missouri.

/s/ Joel D. Rohlf
Joel D. Rohlf