IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

MARGARET E. KELLY, et al., *Plaintiffs,* v. THE JOHNS HOPKINS UNIVERSITY, *Defendant.*	No. 1:16-cv-2835-GLR

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

Plaintiffs allege that Defendant The Johns Hopkins University breached its fiduciary duties and committed prohibited transactions under the Employee Retirement Income Security Act of 1974 by causing The Johns Hopkins University 403(b) Plan to pay unreasonable recordkeeping and administrative fees and maintaining high-cost and underperforming investment options. Docs. 1, 27. Defendant disputes these allegations and denies liability for any alleged fiduciary breach. After extensive arm's length negotiations with assistance of two independent mediators, the parties reached a settlement that provides meaningful monetary and non-monetary relief to class members. This settlement, which represents the second largest settlement amount in any ERISA 403(b) excessive fee case involving a private university retirement plan, comes at a time when the Fourth Circuit had accepted an interlocutory appeal of the denial of Defendant's motion to dismiss.[1] Doc. 82. In light of the litigation risks further prosecution of this action would inevitably entail, Plaintiffs respectfully request that this Court: (1) preliminarily approve the proposed settlement; (2) approve the proposed form and method of notice to the Settlement

[1] *See Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 147-1 (M.D.Tenn.)($14.5 million); *Clark v. Duke Univ.*, No. 16-1044, Doc. 149-2 (M.D.N.C.)($10.65 million); *Daugherty v. Univ. of Chi.*, No. 17-3736, Doc. 57-1, 77 (N.D. Ill.)($6.5 million); *Short v. Brown Univ.*, No. 17-318 (D.R.I.)($3.5 million).

Class; and (3) schedule a hearing at which the Court will consider final approval of the settlement.

BACKGROUND

I. The claims in this action.

Plaintiffs filed their complaint on August 11, 2016. Doc. 1. They amended their complaint as of right under Rule 15(a)(2) on December 2, 2016. Doc. 27. To avoid having to name as defendants in this action any current or former Johns Hopkins board members, boards, trustees, officers, committees, or employees, the parties jointly stipulated that Defendant shall assume and be responsible for any fiduciary breach or prohibited transaction committed by these persons or entities. Doc. 74.

Plaintiffs assert seven counts against Defendant. In Counts I and II, Plaintiffs allege Defendant breached its duty of loyalty and prudence under 29 U.S.C. § 1104(a)(1)(A)–(B) and committed prohibited transactions under §1106(a)(1) by locking the Plan into providing the CREF Stock Account, regardless of its performance or fees, and locking the Plan into TIAA's recordkeeping services. In Counts III and IV, Plaintiffs allege that Defendant breached its duties of loyalty and prudence under 29 U.S.C. §1104(a)(1)(A)–(B) and committed prohibited transactions under §1106(a)(1) by using five vendors instead of a single recordkeeper, allowing those recordkeepers to receive unreasonable compensation, failing to prudently monitor and control recordkeeping expenses, and failing to solicit bids from other recordkeepers. Under Counts V and VI, Plaintiffs assert that Defendant breached its duties of loyalty and prudence under 29 U.S.C. §1104(a)(1)(A)–(B) and committed prohibited transactions under §1106(a)(1) by failing to prudently monitor Plan investment options, resulting in the use of high-cost and underperforming funds compared to alternatives available to the Plan. Under Count VII, to the extent Defendant delegated any of its fiduciary duties, Plaintiffs allege that Defendant failed to

prudently monitor the actions of those individuals.[2]

On January 6, 2017, Defendant moved to dismiss the amended complaint. Doc. 29. On September 29, 2017, the Court granted in part and denied in part Defendant's motion to dismiss Plaintiffs' amended complaint. Doc. 45.The motion was granted to the extent Plaintiffs allege under Counts I, III, and V that "Johns Hopkins acted imprudently by offering too many investment options or higher-cost share classes in the Plan", and for Counts II, IV, and VI, to the extent that Plaintiffs allege that maintaining "mutual funds or that revenue sharing from a mutual fund is a prohibited transaction." *Id.* at 3. The motion was denied in all other respects.

Following the Court's order, Plaintiffs asserted that two of the district court decisions upon which the Court relied erred by conflating institutional non-mutual fund vehicles with institutional mutual fund share classes, and overlooked the Supreme Court's instruction to apply trust law when evaluating the scope of a fiduciary's duty regarding mutual fund shares. Doc. 51. As a result, Plaintiffs moved for partial reconsideration of the dismissal order on October 12, 2017. Doc. 51. Plaintiffs' motion was later denied on August 14, 2018. Doc. 80.

The parties proceeded to discovery after Defendant's motion to dismiss was decided. The parties negotiated a stipulated confidentiality and seal order (Doc. 65) and a stipulation for discovery of hard copy documents and electronically stored information (or "ESI") (Doc. 67). Plaintiffs delivered their first requests for production of documents (consisting of four requests) on November 16, 2017. Doc. 76-1 ¶1. Plaintiffs issued a second request for production of documents (consisting of 36 requests) on May 18, 2018. *Id.* ¶2. In response to those requests, Defendant delivered 1,194 pages of documents on May 22, 2018. *Id.* ¶4. At the time the parties reached a settlement, Defendant had completed its production of all minutes and meeting

[2] Count VII labeled as Count VIII in the amended complaint.

materials of the Plan's fiduciaries, fee and performance disclosures, and other materials requested by Plaintiffs. Ex. A, §1.3.

Apart from the initial production of fiduciary-related materials, the parties were actively negotiating the scope of Defendant's ESI production. Doc. 76-1 ¶5. Subject to further discussions, Defendant planned to begin producing ESI on a rolling basis beginning on July 18, 2018. *Id.* ¶5. Defendant also issued interrogatories (consisting of 18 interrogatories) and requests for production (consisting of 17 requests) to each of the eight named plaintiffs on November 28, 2017.

The documents produced during initial merits discovery supplemented Defendant's pre-filing production. Before Plaintiffs filed their complaint, Plaintiffs' counsel requested information from the Plan administrator under 29 U.S.C. §1024(b) on behalf of a Plan participant. *See* Ex. A, §1.3. In response, Defendant produced approximately 500 pages of documents, consisting of plan documents, custodial account agreements, recordkeeping services agreements, the summary plan description, and fee disclosures. And to ensure meaningful settlement discussions, Plaintiffs requested additional disclosures. In response, Defendant made a supplemental production of over 400 pages of documents, which consisted of fee and investment disclosures, investment reviews, and service provider agreements. In total, Defendant produced approximately 10,000 pages of documents.

On June 11, 2018, Plaintiffs moved for leave to file their second amended complaint. Doc. 76. Plaintiffs sought to add allegations to enhance the particulars by which Defendant breached its fiduciary duties based on information discovered from Defendant's document production to date. *Id.* at 3; Doc. 76-3 (redlined amendment). They also added allegations that Defendant improperly allowed the Plan's recordkeepers to sell non-Plan products and services to Plan

participants and took no action to prevent it or ensure that the Plan obtained a benefit either through reduced recordkeeping fees or direct payments to the Plan. *E.g.,* Doc. 76-3 ¶¶81, 249. Defendant opposed Plaintiffs' motion, Doc. 79, which remained pending at the time of the settlement.

Defendant moved to certify the Court's dismissal order for an immediate interlocutory appeal under 28 U.S.C. § 1292(b) on November 10, 2017. Doc. 56. The Court granted Defendant's motion on August 15, 2018 and stayed the case pending appeal. Doc. 81. The Fourth Circuit subsequently granted Defendant's petition for interlocutory appeal. Doc. 82. To allow settlement discussions to proceed, the briefing schedule for the appeal was extended multiple times. As a result, Defendant has not filed its opening brief and appendix with the Fourth Circuit.

While the appeal was pending, the parties engaged in settlement discussions. In accordance with the Fourth Circuit's Local Rule 33, a mediation conference was scheduled with a Fourth Circuit mediator. Ex. A, §1.5. Through this process, preliminary settlement discussions began in December 2018 and lasted for several weeks, during which multiple discussions with the court mediator were held. *Id.* Although the parties did not reach an agreement, they agreed to continue discussions with the assistance of a private mediator. *Id.,* §1.6. On April 11, 2019, the parties participated in an in-person all-day mediation session, which resulted in an agreement on the monetary portion of the settlement. *Id.* However, Plaintiffs also required non-monetary relief in the form of changes to the Plan going forward. Over more than two months, the parties negotiated non-monetary terms involving actions to be taken by Defendant and changes to the Plan. *Id.* Only on July 17, 2019, did the parties finally reach an agreement on all terms. *Id.*

II. The terms of the proposed settlement.

Plaintiffs are requesting that the Court certify a Settlement Class consisting of "all persons

who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period." Ex. A, §2.41.[3] In exchange for the dismissal of this action and for entry of the Judgment as provided for in the Settlement Agreement, Defendant will make available to Settlement Class members the benefits described below. The non-monetary terms of the settlement are also outlined herein.

A. Monetary Relief.

Defendant will deposit $14,000,000 (the "Gross Settlement Amount") in an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, and Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Compensation if awarded by the Court.

B. Non-Monetary Terms.

In addition to the monetary component of the settlement, Defendant agreed to substantial non-monetary terms in accordance with Article 10 of the Settlement Agreement. These terms include:

1. Defendant agreed to comply with the non-monetary terms for a three-year Settlement Period, during which time Plaintiffs' counsel will stay involved to monitor compliance with the settlement terms and bring an enforcement action if needed;
2. Within 30 days after the end of each year of the Settlement Period, Defendant will provide Plaintiffs' counsel a list of the Plan's investment options, fees charged by

[3] The Class Period is August 11, 2010 through June 30, 2019. Ex. A, §2.12. Defendant does not oppose Plaintiffs' motion to certify a settlement only class.

those investments, and a copy of the Investment Policy Statement (if any);

3. If the Plan's fiduciaries have not done so, within 90 days of the Settlement Effective Date, the Plan's fiduciaries shall retain an independent consultant with expertise in designing investment structures for large defined contribution plans who will thereafter assist the fiduciaries in reviewing the Plan's existing investment structure, including the investment options offered within the "vendor windows" and those that are frozen to new participant contributions, and to develop a recommendation for the Plan's investment structure. This review shall include a recommendation regarding the removal of any investment options included in the Plan that are not monitored by the Plan's fiduciaries, a mapping strategy (if applicable) for any funds recommended to be removed from the Plan, and treatment of any assets that are frozen to new participant contributions. If the fiduciaries do not follow the consultant's recommendation, they will document the reasons for that decision and provide those reasons in writing to Plaintiffs' counsel along with the consultant's written report(s), if any, and other documentation reflecting the consultant's recommendation and basis for such recommendation;

4. With the assistance of the independent consultant (described above), the Plan's fiduciaries (or a delegate thereof) shall issue requests for proposals for recordkeeping and administrative services. The requests for proposal shall request that any proposal provided by a service provider for basic recordkeeping services to the Plan include an agreement that the service provider will not solicit current Plan participants for the purpose of cross-selling proprietary non-Plan products and services, including, but not limited to, Individual Retirement Accounts (IRAs), non-Plan managed account

services, life or disability insurance, investment products, and wealth management services, unless a request is initiated by a Plan participant. After conducting the request for proposal for recordkeeping services, the independent consultant shall provide a recommendation to the Plan's fiduciaries regarding whether the Plan should use a single recordkeeper or more than one recordkeeper. To the extent the Plan's fiduciaries decide not to follow a recommendation, the Plan's fiduciaries shall document the reasons for that decision and provide those reasons in writing to Plaintiffs' counsel along with the consultant's written report(s), if any, or other documentation reflecting the consultant's recommendation and basis for such recommendation;

5. Within 30 days of selecting the recordkeeper(s), the Plan's fiduciaries shall provide to Plaintiffs' counsel the final bid amounts that were submitted in response to the request for proposals and shall identify the selected recordkeeper(s), which shall be accompanied by the final agreed upon contract(s). The final agreed-upon contract(s) for recordkeeping services shall contractually prohibit the Plan's recordkeeper(s) from soliciting current Plan participants for the purpose of cross-selling proprietary non-Plan products and services, including, but not limited to, Individual Retirement Accounts (IRAs), non-Plan managed account services, life or disability insurance, investment products, and wealth management services, unless a request is initiated by a Plan participant;

6. To the extent that the Plan's fiduciaries do not follow a recommendation from the independent investment consultant engaged to provide services (identified in paragraphs 3 and 4), and Plaintiffs' counsel determines that the Plan's fiduciaries

failed to comply with the terms set forth in Article 10 when deviating from the consultant's recommendation(s), Plaintiffs' counsel may seek enforcement of those terms in accordance with Article 13 under the Settlement Agreement;

7. Within 18 months of the Settlement Effective Date, Johns Hopkins shall communicate, in writing, with current Plan participants and inform them of the recordkeeping and investment structure for the Plan resulting from the process described above. Plan participants shall be informed of the investment options available in the approved fund lineup, including any frozen annuity options. Participants shall be provided with a link to a webpage containing the fees and the 1-, 5-, and 10-year historical performance of the frozen accounts and the investment options that are in the Plan's approved investment structure and the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen annuity accounts to another fund in the Plan; and

8. During the Settlement Period, in considering Plan investment options, the Plan's fiduciaries shall consider, among any other factors the Plan's fiduciaries deem reasonable and appropriate under the circumstances, including the following: (1) the cost of different share classes available for any particular mutual fund considered for inclusion in the Plan as well as other criteria applicable to different share classes; and (2) the availability of revenue sharing rebates on any share class available for any investment option considered for inclusion in the Plan.

The non-monetary terms are substantial and materially add to the total value of the settlement. These provisions ensure that current and future participants in the Plan are offered a

prudently administered retirement program for which to invest their retirement savings going forward into the future.

C. Notice and Class Representatives' Compensation.

The costs to administer the settlement, including those associated with providing notice to the Settlement Class, will be paid from the Gross Settlement Amount. Incentive payments in an amount approved by the Court also will be paid from the Gross Settlement Amount. For the costs associated with the Independent Fiduciary and the Settlement Administrator, Plaintiffs received proposals from candidates to provide these services. After consideration of the proposed fees and the quality of the services to be provided by each candidate, Newport Trust Company was selected as the Independent Fiduciary at a cost of $25,000, and RG/2 Claims Administration LLC was selected as the Settlement Administrator at an estimated cost of $89,072 to provide notices electronically for those class members for whom a current e-mail address is available and by first-class mail to the current or last known address of all class members for whom there is no current email address.[4]

Plaintiffs will seek $20,000 for each of the named plaintiffs. This amount is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested complex litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery and the risk of alienation from their employers and peers. *Clark v. Duke Univ.*, No. 16-1044, Doc. 165 at 11 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, 2019 WL 1993519, at *4 (M.D.N.C. May 6, 2019); *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066,

[4] The proposed fee for the Settlement Administrator to provide notice to class members and other related services to facilitate the settlement is estimated based on information presently available to the parties and is subject to change once the number of class members and those with available e-mail addresses are determined.

at *6 (M.D.N.C. Sept. 29, 2016); *Savani v. URS Prof'l Solutions LLC,* 121 F.Supp.3d 564, 576 (D.S.C. 2015).

D. Attorneys' Fees and Costs.

Plaintiffs' counsel will request attorneys' fees to be paid out of the Gross Settlement Fund in an amount not more than one-third of the Gross Settlement Amount, or $4,666,667, as well as reimbursement for costs incurred of no more than $75,000. Plaintiffs' counsel "pioneer[ed]" 401(k) excessive fee litigation as recognized by multiple federal judge, *e.g., Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *1 (S.D.Ill. July 17, 2015), and handled successfully the only ERISA excessive fee case taken by the Supreme Court, *Tibble v. Edison, Int'l*, 135 S.Ct. 1823 (2015). Plaintiffs' counsel also filed the first 403(b) excessive fee cases in history, of which this case was one. Before Plaintiffs' counsel filed both the 401(k) cases and the 403(b) cases, no one had ever brought a case alleging excessive 401(k) or 403(b) fees. *See infra* Argument §II. A contingent one-third fee is the market rate for complex ERISA excessive fee cases. *Kruger*, 2016 WL 6769066, at *2 (collecting cases); *Sims*, 2019 WL 1993519, at *2; *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *2 (S.D.Ill. Mar. 31, 2016); *see also Decohen v. Abbasi, LLC,* 299 F.R.D. 469, 482 (D.Md. 2014)(Quarles, J.)(complex consumer action). It is also the rate contractually agreed to by the named plaintiffs. Decl. of Jerome J. Schlichter, ¶6.

Although Plaintiffs' counsel will not request a fee greater than one-third of the monetary recovery, the additional terms of the settlement provide meaningful value in addition to the monetary amount. This results in the requested fee being significantly lower than a one-third award. In addition, Plaintiffs' counsel will not seek attorneys' fees: (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with communicating with class

members or Defendant during the Settlement Period; and (3) for work required in future years to enforce the settlement, if necessary. Plaintiffs' counsel will submit a formal application for attorneys' fees and costs and for the Class Representatives' incentive awards at least 30 days prior to the deadline for class members to file objections to the settlement.

ARGUMENT

At the preliminary approval stage, the Court is required to assess whether there is "'probable cause' to submit the proposal to members of the class and to hold a full-scale hearing on its fairness." *In re Am. Capital S'holder Derivative Litig*., No. 11-2424-PJM, 2013 WL 3322294, at *3 (D.Md. June 28, 2013)(*quoting In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F.Supp. 1379, 1385 (D.Md.1983)). There must be a "basic showing" that the proposed settlement "is sufficiently within the range of reasonableness[.]" *Id.* The court is not required make any final determinations. Rather, the court makes "a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms" and "direct[s] the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing." *Id.* (*quoting* Manual for Complex Litigation (Fourth), §21.632 (2004)).

During the preliminary fairness review, the following factors are considered: "whether the proposed settlement is the product of good faith bargaining at arm's length; the posture of the case at settlement; the extent and sufficiency of discovery conducted; counsel's experience with similar litigation and their relevant qualifications; and any pertinent circumstances surrounding the negotiations." *In re Am. Capital S'holder Derivative Litig*., 2013 WL 3322294, at *3*; In re Titanium Dioxide Antitrust Litig*., No. 10-318-RDB, 2013 WL 5182093, at *3 (D.Md. Sept. 12, 2013)(same). Each of those factors is satisfied.

I. The settlement is the product of arm's length negotiations.

There is a strong initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F.Supp. 825, 830 (E.D.N.C. 1994); *In re MicroStrategy, Inc. Sec. Litig.*, 148 F.Supp.2d 654, 663 (E.D.Va. 2001); *see also Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992). The settlement is the result of lengthy and complex arm's-length negotiations between the parties. *See* Schlichter Decl., ¶2. These negotiations extended over an extended period and included the involvement of two independent mediators, one a Fourth Circuit mediator, and the other, a national mediator highly experienced in complex class actions. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. It is recognized that the opinion of experienced and informed counsel supporting the settlement is entitled to considerable weight. *Flinn v. FMC Corp*., 528 F.2d 1169, 1173 (4th Cir. 1975); *In re MicroStrategy, Inc. Sec. Litig*., 148 F.Supp.2d at 665.

II. The settlement was reached after extended litigation and significant investigation of the claims asserted by Plaintiffs.

At the time the settlement was reached, the parties had been engaged in years of litigation. Plaintiffs' counsel extensively developed the facts and legal theories supporting their claims. They conducted a substantial investigation of their claims prior to the filing of the complaint. Thereafter, they obtained extensive fact discovery, including obtaining from Defendant approximately 10,000 pages of documents. They also sought to enhance their allegations in the amended complaint by seeking leave to file their second amended complaint. Plaintiffs' counsel continued their investigation during the mediation process by requesting and obtaining additional discovery bearing on their claims from Defendant. The case was vigorously litigated during the preliminary stages of litigation. Defendant moved to dismiss Plaintiffs' amended complaint,

which was denied in part. Plaintiffs sought partial reconsideration of the dismissal order. Defendant sought an immediate appeal of the Court's ruling, which was granted by the Fourth Circuit. Only after hard-fought litigation and months of arm's length negotiations were the parties able to reach an agreement to resolve the claims asserted in this lawsuit.

III. Plaintiffs' counsel has extensive experience in ERISA class action litigation.

Plaintiffs' 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. Schlichter, Bogard and Denton is the "preeminent firm" in excessive fee litigation having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks". *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *3–4 (C.D.Ill Oct. 15, 2013). They 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 the only victory of an ERISA 401(k) excessive fee Supreme Court case, which held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones. *Tibble,*135 S.Ct. at 1828–29.

District courts across the country have recognized the reputation and extraordinary skill and determination of Plaintiffs' counsel. Chief Judge Osteen from the Middle District of North Carolina, speaking of the efforts of Schlichter, Bogard and Denton, noted:

> 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. Recently, on June 24, 2019, Judge Eagles from the same District "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,* Doc. 165 at 7. In another ERISA class action, Judge Eagles also recognized the "skill and determination" of the firm 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, 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). 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).

Several judges from the Southern District of Illinois have commended the work of Schlichter, Bogard and Denton. 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 *3 (S.D.Ill. Nov. 22, 2010). Judge Herndon echoed those thoughts:

> 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). After recognizing "their persistence and skill of their attorneys", 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.

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

Due process and Federal Rule of Civil Procedure 23(e) do not require that each class member receives notice, but do require that "a serious effort" be made to inform interested parties of the settlement terms. *Snider Intern v. Town of Forest Heights, Md.*, 739 F.3d 140, 146 (4th Cir. 2014)(citation omitted). The notice must be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co*., 339 U.S. 306, 314 (1950). "Individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974).

The proposed form and method of notice satisfy all due process considerations and meet the requirements of Rule 23(e)(1) because it is reasonably calculated to effect actual notice to the Settlement Class. The parties' proposed notice to current and former participants are attached as Exhibits 3 and 4 to the Settlement Agreement. The notice will fully apprise class members of the existence of the lawsuit, the proposed settlement, and the information they need to make

informed decisions about their rights, including: (i) the terms and operation of the settlement; (ii) the nature and extent of the release; (iii) the maximum attorneys' fees and costs that will be sought; (iv) the procedure and timing for objecting to the settlement and the right of parties to seek limited discovery from objectors; (v) the date and place of the fairness hearing; and (vi) the website on which the full settlement documents and any modifications thereto will be posted.

The notice plan consists of multiple components designed to reach class members. First, the notice will be sent by electronic email to all class members who have a current email address known to Johns Hopkins University and/or the Plan's recordkeeper(s) and by first-class mail to the current or last known address of all class members for whom there is no current email address shortly after entry of the order preliminarily approving the settlement. In addition to the notice, Plaintiffs' counsel will develop a dedicated website solely for the settlement, and a link to that website will appear on Plaintiffs' counsel's website [www.uselaws.com]. The notice plan also includes a follow-up requirement for the Settlement Administrator to take additional action to reach those class members whose notice letters are returned as undeliverable. Thus, the form of notice and proposed procedures for notice satisfy the requirements of due process and the Court should approve the notice plan as adequate.

CONCLUSION

Plaintiffs respectfully request that the Court grant preliminary approval of the settlement.

August 6, 2019

Respectfully submitted,

/s/

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CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2019, 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/