IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00175-REB-CBS

DEBORAH TROUDT, *et al.,*

Plaintiffs,

v.

ORACLE CORPORATION, *et al.*,

Defendants.

PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS

After nearly four years of hard-fought litigation, the parties reached a settlement to resolve all claims for $12 million. Under the common fund doctrine, Class Counsel seeks an attorney fee award of one-third of the settlement fund (or $4,000,000) and reimbursement of reasonable out-of-pocket expenses of $410,501.60 that Class Counsel incurred in prosecuting this action on behalf of Oracle Corporation employees and retirees. A one-third fee is consistent with fee awards in settlements involving similar complex ERISA fiduciary breach claims and other class actions in this District.

In addition to the risk of nonpayment in this contingency representation, the fee award will compensate Class Counsel for the over 6,300 hours of attorney and staff time in a case vigorously defended by a global law firm up to the very brink of trial. Only on the morning of trial did the parties finally reach a settlement in principle. Given the exceptional effort that Class Counsel displayed throughout this action up to trial, a one-third fee of the common fund is fair and reasonable. Such a fee would not even provide the lodestar amount that the attorneys who handled this case would have generated on

an hourly rate charge, and would provide no compensation or multiplier to Class Counsel for the substantial risk of nonpayment they undertook.

Finally, the Class representatives each should receive $25,000 as an incentive award for the work they provided in representing the Class. This amount will compensate the Named Plaintiffs for the risk they undertook, the work they provided, and is an amount that other courts have awarded in similar cases.

ARGUMENT

I. Class Counsel should be awarded their requested attorneys' fees.

A. Class Counsel's requested attorneys' fees are reasonable as a percentage of the common fund.

"In class action cases, counsel who obtain a common fund settlement are entitled to recover reasonable attorneys' fees paid from the fund." *Shaw v. Interthinx, Inc.*, 13-01229-REB, 2015 WL 1867861, at *5 (D.Colo. Apr. 21, 2015) (*citing Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994)); Fed. R. Civ. P. 23(h). "Courts generally award attorney fees in common fund cases based on a percentage of the common fund obtained for the benefit of the class, thus, proportionately spreading payment of attorney fees among the class members." *Shaw*, 2015 WL 1867861, at *5 (internal quotations omitted). "The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis, as in this case." *Id*. (internal quotations omitted). In complex ERISA class actions, such as this, a one-third contingency fee from the common fund is the market rate. *See*, *e.g., Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *3 (D.Md. Jan. 20,

2020) (*citing* 14 ERISA cases awarding 33.33% of the common fund); Declaration of Kurt Struckhoff ("Struckhoff Decl.") ¶8.

"In assessing the reasonableness of the percentage of the common fund awarded to class counsel for attorneys' fees, courts within the Tenth Circuit weigh the twelve factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." *Shaw*, 2015 WL 1867861, at *5 (*citing Gottlieb*, 43 F.3d at 483). The factors include: "(1) the time and labor required; (2) the novelty and difficulty of the case; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee for similar work; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Id*. (*citing Johnson*, 488 F.2d at 717–19). "A court may assign different relative weights to the factors—that is, none of the factors is inherently equiponderant, preponderant, or dispositive." *Id*. (internal quotations omitted). Each factor supports Class Counsel's requested fee.

1. The Time and Labor Required.

Class Counsel dedicated very substantial time and effort prosecuting Plaintiffs' claims for nearly four years. Class Counsel expended 5,631.10 hours of attorney time to date and 696.5 hours of non-attorney time. Struckhoff at ¶¶6–7; Schlichter Decl. ¶38, Ex. B. Class Counsel reviewed thousands of pages of documents, filed, responded to, and reviewed multiple complex motions, attended several court hearings, took 22

depositions, the vast majority of which occurred throughout the country, and fully prepared for trial, reaching settlement only on the morning of trial. Struckhoff Decl. at ¶¶9–23. The 6,327.6 hours spent on this case does not include time spent preparing this motion. In addition, Class Counsel has committed to the following work without any additional fee: (1) time for preparation, travel and attending the final approval hearing; (2) time for managing the process of handling many calls from participants that will come regarding the notice, the timing, and the details of the settlement; (3) time for interacting with the Settlement Administrator and the Independent Fiduciary; and (4) Class Counsel has undertaken the risk of paying costs if the Settlement is not approved. *Id*. at ¶¶24–25; [#219-1] at 27, ¶11.4. Based on its experience in other cases, Class Counsel anticipates spending an additional 50–100 hours administering the settlement over the upcoming years. Struckhoff Decl. ¶24. The time and labor expended easily supports the award. *Shaw*, 2015 WL 1867861, *5.

2. The Novelty and Difficulty of the Case.

ERISA is "an enormously complex and detailed statute." *Teets v. Great-W. Life & Annuity Ins. Co.*, 315 F.R.D. 362, 370 (D.Colo. 2016) (*citing Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993)). "Very few lawyers … understand ERISA." *Id*; *see also Ramos v. Banner Health*, 325 F.R.D. 382, 396 (D.Colo. 2018) ("Plaintiffs' [ERISA] claims makes it highly unlikely they could be discovered without the investigation of experienced counsel."). ERISA litigation "entails complicated ERISA claims that are not only dependent on the statute but also on various regulations that implement ERISA." *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 3210448, at *2 (C.D.Ill. Aug. 12, 2010).

"ERISA 401(k) fiduciary breach class actions involve complex questions of law and have not been widely litigated to this point." *Waldbuesser v. Northrop Grumman Corp.*, No. 06-6213, 2017 WL 9614818, at *4 (C.D.Cal. Oct. 24, 2017) (citation omitted). This "rapidly evolving" area of law places demands on counsel and the Court that are "complex and require the devotion of significant resources". *In re Wachovia Corp. ERISA Litig*., No. 09-262, 2011 WL 5037183, at *4 (W.D.N.C. Oct. 24, 2011); Declaration of James C. Sturdevant ("Sturdevant Decl.") ¶¶10–12. Successfully obtaining a judgment in these actions requires counsel to risk very significant amounts of time and money "in the face of vigorous resistance by employers" who "devote massive resources and spend substantial sums for defense costs and expert witnesses". *Ramsey v. Philips N.A.,* No. 18-1099, Doc. 27 at 2 (S.D.Ill. Oct. 15, 2018); Schlichter Decl. ¶¶33–34, 37; Sturdevant Decl. ¶11.

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 v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D.Ill. July 17, 2015). Such litigation did not even exist until 2006, when "Schlichter, Bogard & Denton began holding employers responsible for alleged fiduciary breaches." *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *3 (S.D.Ill. Mar. 31, 2016). Accordingly, few firms "are capable of handling this type of national litigation." *Abbott*, 2015 WL 4398475, *3; Schlichter Decl. ¶¶26, 33–34; Sturdevant Decl. ¶10.

3. The Skill Requisite to Perform the Legal Services Properly.

It is "well established that complex ERISA litigation", such as this, requires "special expertise", *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D.Mo. Nov.

2, 2012), and class counsel of the "the highest caliber". *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *3 (C.D.Ill Oct. 15, 2013); *see also Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2 (D.Minn. July 13, 2015) (ERISA litigation requires "extraordinary skill and determination"); Sturdevant Dec. ¶10. With an opponent that is a "sophisticated corporation with sophisticated counsel", such as here with Oracle Corporation and Morgan Lewis, additional skill is necessary. *Nolte,* 2013 WL 12242015, at *3; Sturdevant Decl. ¶11.

Given the expertise required and the vigorous defense, few law firms are capable of successfully prosecuting these lawsuits. *Abbott*, 2015 WL 4398475, at *3; Schlichter Decl. ¶¶33–34, 37; Sturdevant Decl. ¶14. "Schlichter, Bogard & Denton has been virtually alone in its willingness to fully pursue ERISA fiduciary breach claims against large employers for excessive fees, imprudent investment options, and the types of breaches at issue in this case." *George v. Kraft Foods Glob.,* Inc., No. 07-1713, 2012 WL 13089487, at *4 (N.D.Ill. June 26, 2012).

4. The Preclusion of Other Employment by the Attorneys Due to Acceptance of the Case.

As a plaintiffs' law firm that works solely on a contingency basis, the decision to pursue this class action and commit significant resources and potentially thousands of attorney hours to obtain a successful recovery impacts Class Counsel's ability to handle other actions. Schlichter Decl. ¶39. "There is an inherent preclusion of other work in litigating a complex case such as this on a contingency fee basis." *Shaw*, 2015 WL 1867861, at *6. Class Counsel were "precluded by the ticking of the clock from taking certain other cases given that they [had] decided to take a chance on a possible recovery in a contingency fee rather than strictly working on paid hourly wages." *Id*.

(*quoting Whittington v. Taco Bell of Am., Inc.*, No. 10-01884-KMT, 2013 WL 6022972, at *6 (D.Colo. Nov 13, 2013)). There was "the possibility in a case of this kind that [Class Counsel], having given up other cases in order to actively pursue this case, will actually recover no payment for [their] time and efforts." *Id.*

5. The Customary Fee for Similar Work.

"The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class." *Shaw*, 2015 WL 1867861, at *6. In complex ERISA class actions, such as this, district courts throughout the country routinely award a one-third contingency fee of the monetary sum. *See, e.g., Kelly*, 2020 WL 434473, at *3 (collecting cases); Struckhoff Decl. ¶8. The leading treatise on class action litigation has put the average fee at one third of the common fund. *See* Alba Conte & Herbert Newberg, Newberg on Class Actions (4th ed. 2002), §14:6 at 551 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

6. Whether the Fee is Fixed or Contingent.

Class Counsel litigated this matter on a contingent basis with no guarantee of recovery. Class Counsel entered into contingency fee agreements with each of the Named Plaintiffs for one third of any monetary recovery plus reimbursement of expenses. Schlichter Decl. ¶31; Sturdevant Decl. ¶14. The Named Plaintiffs would not have been unable to pursue this litigation other than on a contingency fee basis and no competent plaintiffs' lawyer or law firm would take on such risky representation for less

than one-third of any monetary recovery. Schlichter Decl. ¶¶30, 33–34; Sturdevant Decl. ¶13.

"Courts have recognized the importance of such arrangements, noting that many workers cannot retain counsel at fixed hourly rates … yet they are willing to pay a portion of any recovery they may receive in return for successful representation." *Shaw*, 2015 WL 1867861, at *7 (quotations omitted). Contingent fee arrangements "transfer a significant portion of the risk of loss to the attorneys taking the case … and [a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk." *Id*. This factor thus weighs in favor of the requested fees because Class Counsel assumed "significant risk of nonpayment when they agreed to represent Named Plaintiffs on a contingency fee basis." *Id*.

7. Any Time Limitations Imposed by the Client or the Circumstances.

This case was set for trial on December 3, 2019. [# 211]. The parties settled the case that morning. *Id*. Class Counsel fully prepared for trial, appearing in the courtroom with Named Plaintiffs Susan Cutsforth, Miriam Wagner, Michael Foy and Brad Stauf who were prepared to testify. *Id*; Struckhoff Decl. ¶¶10, 22. After a full trial, this Court may have found in favor of Defendants. Even if Plaintiffs prevailed at trial the aggressive defense presented the possibility that Class Members would have to wait over a decade to receive any compensation pending multiple appeals. *Tussey v. ABB, Inc.* required over twelve years of litigation following multiple appeals before the parties reached a settlement on March 28, 2019. *Tussey v. ABB, Inc.*, No. 06-4305, Doc. 859 (W.D.Mo. Mar. 28, 2019). *Tibble v. Edison* also took over 12 years and had multiple appeals. No. 07-5359, 2017 WL 3523737 (C.D.Cal. Aug. 16, 2017).

8. The Amount Involved and the Results Obtained.

Here, Class Counsel obtained $12 million in monetary compensation for the Class. The Settlement occurred after the Court partially granted Defendants' motion summary judgment. [#179]. Any recovery at all on the remaining investment claims was uncertain based on the fact-intensive nature of the remaining imprudent investment claims. [#179], at 26 n. 19. This uncertainty is particularly shown by the adverse findings in *Sacerdote v. New York Univ.*, 328 F.Supp.3d 273 (S.D.N.Y. 2018) on similar imprudent investment claims, including the court's rejection of Plaintiffs' expert, who was the same expert here. The damages from the two funds at issue, the TCM Small-Mid Cap Growth Mutual Fund and Artisan Small Cap Value Fund were potentially $96.4 million. [#204], at ¶¶74, 99. Defendants argued that Plaintiffs could not show any loss, [#207], at ¶¶ 204–225, and this Court indicated that if it found that Defendants engaged in a prudent process by relying on the advice of Mercer, the recovery would be zero. [# 179] at 26 n. 19.

Rather than "having to wait as long as a decade as other classes in similar 401(k) cases have to do," Class members will receive compensation and be able to invest their proceeds immediately in a tax-deferred vehicle, which adds more value. *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *5 (M.D.N.C. Sep. 29, 2016). The Investment Company Institute estimates that the benefit of the present value of tax deferral for 20 years is an additional 18.6%,[1] so the actual value to the Class of the

[1] Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral,* Investment Company Institute, Sept. 17, 2013, available at http://www.ici.org/viewpoints/view_13_marginal_tax_and_deferral; *Abbott v. Lockheed Martin Corp.*, No. 06-701, Doc. 497 at 37 (ECF 47) (S.D.Ill. Apr. 14, 2015) (Report of the special master)(citing ICI report).

monetary portion of the settlement is $14,232,000. Taking into account the benefit of tax deferral the requested fee is 28% of the settlement's full value.

9. The Experience, Reputation, and Ability of the Attorneys.

This Court already found that Class Counsel has "extensive experience" and is "amply qualified". [#119]. 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. 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). Judges throughout the nation have provided similar exceptional reviews of Class Counsel's ability and reputation. Schlichter Decl. ¶¶3–14, 23.

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*, 2013 WL 12242015, at *3–4. Counsel have shown their ability by achieving the excellent result obtained for the Class in this case, supporting the requested fee award.

10. The Undesirability of the Case.

Class Counsel pioneered ERISA excessive fee litigation involving 401(k) plans, which no law firm or the Department of Labor had ever brought. Indeed, at the time that Class Counsel first filed an excessive fee lawsuit, "no other firm was willing to accept such a daunting challenge on this case at *any* rate[.]" *Nolte,* 2013 WL 12242015, *3; *Ramsey,* Doc. 27 at 3; *see also* Schlichter Decl. ¶¶17–22, 26; Sturdevant Decl. ¶¶7–8. Even now, few law firms have the necessary expertise and are willing take the risk and devote the substantial resources necessary, all at risk of nonpayment, to litigate these complex ERISA claims. *Abbott*, 2015 WL 4398475, at *3; Schlichter Decl. ¶¶27, 33–34, 37; Sturdevant Decl. ¶¶8–10. The commitment for this type of litigation when taking it on is done with the knowledge that it may require 20,000 or more hours over 12 years with a trial, multiple appeals, and multiple remandments to obtain a recovery. *Tussey v. ABB, Inc.,* No. 06-4305, 2015 WL 8485265, at *3 (W.D. Mo. Mar. 9, 2017). This demonstrates the fact that it is undesirable to bring these types of cases for most firms. *See* Schlichter Decl. ¶¶33–34.

11. The Nature and Length of the Professional Relationship with the Client.

A lawyer "may vary his or her fee for similar work in light of the professional relationship of the client … [.]" *Johnson*, 488 F.2d at 719. Class Counsel did not have a professional relationship with any of the Named Plaintiffs prior to this class action litigation and Class Counsel only represents clients on a contingent fee basis. Schlichter Decl. ¶32. Thus, this factor weighs in favor of the requested fee award because "[u]nlike corporate clients, who may need future legal services from their counsel, the likelihood that many class members will be seeking additional representation from Class Counsel

is slim." *Shaw*, 2015 WL 1867861, at *7. Moreover, the complex ERISA claims asserted in this case "do not lend themselves to continuous, long-term attorney-client relationships" *Id*.

12. Awards in Similar Cases.

"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); Struckhoff Decl. ¶8.

B. A Lodestar crosscheck fully supports Class Counsel's requested attorneys' fees.

Courts may use a lodestar crosscheck to confirm the reasonableness of the requested fee. *See Shaw*, 2015 WL 1867861, at *8. The "'lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.'" *In re Crocs. Secs. Litig.*, No. 07-2351-PAB, 2014 WL 4670886, at *4 n. 4 (D.Colo. Sep. 18, 2014) (*quoting In re Rite Aid*, 369 F.3d 294, 306–307 (3d Cir. 2005)). Therefore, the Court does not need to undertake an exhaustive analysis because the lodestar method is only for comparison purposes. *Id*.

To date, Class Counsel have spent at least 6,327.60 hours litigating this matter for a combined lodestar of $4,316,867.00. *See* Struckhoff Decl. ¶¶5-7.[2] The requested $4 million fee award represents a lodestar multiplier of less than one—0.92, which is not only significantly lower than lodestar multipliers that Colorado federal courts and other

[2] As recently as January 2020, Class Counsel's hourly rates used to calculate the lodestar in this matter were approved in similar class action litigation. *Kelly*, 2020 WL 434473, at *6–7; Struckhoff Dec. ¶5.

courts consistently have approved in other ERISA class action cases; it has no multiplier whatsoever. *See, e.g., Miniscribe Corp. v. Harris Trust Co. of California*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming fee award based on a lodestar multiplier of 2.57); *Shaw*, 2015 WL 1867861, at *8 (collecting cases approving multipliers ranging from 1.87 to 4.6). Class Counsel has not received any payment for its work in this case over a four-year period. In comparison, firms that defend such cases are paid and reimbursed expenses by monthly invoice, taking no risk, and at rates higher than those requested by Class Counsel. *See U.S. Bank Nat'l Assoc. v. Dexia Real Estate Capital Mkts.*, No. 12-9412, 2016 WL 6996176, at *8 (S.D.N.Y. Nov. 30, 2016) (observing in 2016 that Morgan Lewis and another large firm billed at rates ranging from $250 per hour to $1,055 per hour to a client). This provides defense counsel the advantage of obtaining fees to reinvest in greater resources while Class Counsel bears the risk of nonpayment. The lodestar in this case—0.92—fully supports the requested fee award.

II. Class Counsel should be reimbursed for their litigation expenses.

"As with attorney fees, the common fund doctrine allows for an award of costs so that the beneficiaries of the fund share the cost of creating the fund." *In re Qwest Comms. Intern., Inc. Secs. Litig.*, 625 F.Supp.2d 1143,1154 (D.Colo. 2009). As set out in the attached declarations, Class Counsel have incurred $410,501.60 in litigation expenses. *See* Declaration of Sheri O'Gorman at 1–2. The vast majority of these fees were incurred for necessary experts and to conduct critical depositions. *Id*. Each expense was reasonably incurred by Class Counsel in the prosecution of this litigation. *Id*. Class Counsel therefore request the Court approve their request for $410,501.60 in litigation expenses.

III. The requested incentive awards for the Named Plaintiffs are reasonable.

As this Court has recognized, "incentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of the class." *Shaw*, 2015 WL 1867861, at *8 (quotations omitted). The $25,000 award is in line with incentive awards in other ERISA cases and other class actions in this district. *See id*. at *9 (collecting cases including a case awarding $25,000 for named plaintiff where settlement was valued at $13 million); *see also, e.g., Kelly,* 2020 WL 434473, at *8; *Kruger,* 2016 WL 6769066, at *6.

Each Named Plaintiff provided Class Counsel with critical documents and other information prior to preparing the Complaint, responded to written discovery, produced documents, sat for deposition, submitted declarations in support of motions and a number of the Named Plaintiffs prepared for and attended trial. Struckhoff Decl. ¶¶9–11, 17–18, 22. The Class would not have received any recovery without the participation of the Named Plaintiffs. *Id*. The requested incentive awards are reasonable and should be approved.

CONCLUSION

Plaintiffs respectfully request that the Court grant their motion.

Dated: May 8, 2020

Respectfully Submitted,

/s/ Jerome J. Schlichter
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CERTIFICATE OF CONFERRAL

Class Counsel has conferred with counsel for Defendants concerning the relief requested in this Motion. Defendants do not oppose the requested attorneys' fees, costs and incentive awards.

CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2020, a copy of the foregoing was filed electronically using the Court's CM/ECF system, which will provide notice of the filing to all counsel of record.

/s/ Jerome J. Schlichter

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DECLARATION OF JEROME J. SCHLICHTER

I, Jerome J. Schlichter, declare as follows:

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' Unopposed Motion for Approval of Attorneys' Fees, Expenses, and Incentive Awards. I am familiar with the facts set forth below and able to testify to them.

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

an Adjunct Professor teaching trial practice at Washington University School of Law, and 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. No. 16-CV-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-CV-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); *Henderson v. Emory Univ.*, No. 16-2920, Doc. 167 (N.D. Ga. Sept. 13, 2018); *Henderson v. Emory Univ.*, No. 16-CV-2920 (CAP), 2018 WL 6332343 (N.D. Ga. Sept. 13, 2018); *Clark v. Duke Univ.*, No. 16-CV-1044 (CCE), 2018 WL 1801946 (M.D.N.C. Apr. 13, 2018); *Sacerdote v. N.Y. Univ.*, No. 16-CV-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-CV-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. CV 16-06794-AB (JCX), 2017 WL 6888281 (C.D. Cal. Nov. 2, 2017); *Sims v. BB & T Corp.*, No. 1:15-CV-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. 1:14CV208, 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. CV 06-06213 MMM

JCX, 2011 WL 3505264 (C.D. Cal. Mar. 29, 2011*)*; *Will v. Gen. Dynamics Corp*., No. CIV. 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. CV 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. 3:06CV1494(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. 06C4900, 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. Honorable 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. Honorable 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, Honorable 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. Honorable 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) (emphasis added).

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 (emphasis added).

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. 1:16-CV-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. A few months ago, Judge George L. Russell, III, in approving a fee of one third of a $14 million settlement in another complex ERISA 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. 1:16-CV-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. I have also spoken on ERISA litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars.

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

17. 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.

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

19. 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.

20. 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 plans sponsored by private universities. This investigation was extensive, lasting well over one year prior to the filing of a university plan lawsuit. My

firm and I thoroughly researched legal and factual issues concerning university plans in general, as well as conducted specific analyses pertaining to each plan under investigation. We also were assisted by experienced industry professionals knowledgeable about prudent fiduciary practices governing university plans, the market rate for plan services, and other issues pertaining to the administration of plans.

21. Beginning in August 2016, after more than one year of diligently investigating potential fiduciary breach claims involving private university plans, my firm expanded its national ERISA practice by filing ERISA fiduciary breach cases against private universities. These lawsuits were similar to the corporate ERISA cases previously handled by my firm.

22. 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.

23. 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 appeal, lasted twelve and a half years, and was only recently settled.

24. 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, 1199 (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.

25. My firm also handled the first excessive 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 parties are currently briefing an appeal of that decision before the Second Circuit.

26. 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.

27. Several of the 401(k) and 403(b) cases my office filed were dismissed 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); *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). 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 U.S.Dist.LEXIS 19059 (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); *Cunningham v. Cornell Univ.*, 16-6525, 2019 WL 4735876 (S.D.N.Y. Sep. 27, 2019).

28. Prior to the filing the *Troudt* lawsuit in January 2016, my firm began researching the Oracle Corporation 401(k) Savings and Investment Plan, investigating claims, and consulting with experts in the field of 401(k) administration and investment management. The investigation began with obtaining and reviewing each of the Plan's

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 Plan's administrative fees and investment performance based on our knowledge of industry practices.

29. On behalf of one of the named plaintiffs in this lawsuit, my firm also requested from the Plan administrator under 29 U.S.C. §1024(b) documents and other information related to the administration of the Plan, which included plan documents, custodial account agreements, recordkeeping services agreements, the summary plan description, and fee disclosures, among other documents. We also analyzed documents obtained from the named plaintiffs and other material obtained from publicly available sources related to the administration of the Plan.

30. As a practical matter, litigants such as named Plaintiffs Deborah Troudt, Brad Stauf, Susan Cutsforth, Wayne Seltzer, Michael Harkin, Miriam Wagner and Michael Foy could not afford to pursue litigation against well-funded fiduciaries of a multi-billion dollar 401(k) plan sponsored by a large employer such as the Oracle Corporation 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. Defendants' attorneys in these cases are paid on their hourly rate without delay, without taking risk of loss, and without advancing and risking expenses.

31. The contingency fee agreements entered into between my firm and each of the named Plaintiffs Deborah Troudt, Brad Stauf, Susan Cutsforth, Wayne Seltzer, Michael Harkin, Miriam Wagner and Michael Foy 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.

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

33. These kinds of ERISA fiduciary breach 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.

34. 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 over 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 this year, nearly 14 years after it was filed.

35. Based on my experience, the market for experienced and competent lawyers willing to pursue ERISA fiduciary breach 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.

- *Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020);
- *Tussey v. ABB, Inc.,* No. 06-CV-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. 1:16-CV-01044, Doc. 166 (M.D.N.C. June 24, 2019);
- *Cassell v. Vanderbilt Univ.*, No. 3:16-CV-02086, Doc. 174 (M.D. Tenn. Oct. 22, 2019);
- *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 1:15-CV-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).

36. Our firm has been class counsel in over 30 ERISA breach of fiduciary duty cases.

37. The kind of long-term expensive 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.

38. My firm devoted 5,631.1 hours of attorney and 696.5 hours of non-attorney time to date to prosecute the ERISA claims on behalf of Oracle participants and beneficiaries. The summary of time expended attached hereto as **Exhibit B** is a summary indicating the amount of time, by work category, spent by each attorney and paralegal who was involved in this litigation. More time will be spent handling responses from participants who receive notice, preparing for the final approval hearing, and

traveling to the final approval hearing in July. In addition, there will be substantial attorney time spent after the settlement effective date.

39. 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. My firm will also handle any enforcement actions if necessary, respond to calls from class members, and bear half the expense if the settlement is not approved.

41. Because of this monitoring, my firm will likely spend significant future time and additional expenses without additional compensation both before and after final approval. For instance, with over 115,000 current and former participants who will be sent notices, in my experience, the firm will receive a high volume of calls from Class members to address questions related to the settlement. The firm also will work with the settlement administrator to facilitate the settlement during the settlement period.

42. 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.

43. Schlichter, Bogard & Denton does not bill clients on an hourly basis. In January 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. *Kelly*, 2020 WL 434473, at *6.

44. These rates for our firm have been approved by numerous courts across the country in the last year. *See Id*.; *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. 1:16-CV-01044, Doc. 166 (M.D.N.C. June 24, 2019); *Cassell v. Vanderbil*t Univ., No. 3:16-CV-02086, Doc. 174 (M.D. Tenn. Oct. 22, 2019); *Bell v. Pension Comm. Of ATH Holding Co.*, LLC, No. 1:15-CV-02062, Doc. 380 (S.D. Ind. Sept. 4, 2019).

45. These rates were brought up to date based on 2016 hourly rates for Schlichter, Bogard & Denton that were previously approved by the Southern District of Illinois in *Spano,* 2016 WL 3791123 at *3. The 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 this 8th day of May, 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).

SCOTT APKING

Scott earned his B.A. from The Ohio State University, and an MBA from Webster University. Scott graduated with honors from the University of Missouri School of Law. During law school, Scott co-founded the school's Veterans Clinic, which represents low-income veterans in VA proceedings at all levels, including before the U.S. Court of Appeals for Veterans' Claims and Court of Appeals for Federal Claims. Scott also served as Senior Associate Editor of the Missouri Law Review.

Prior to joining Schlichter, Bogard & Denton, LLP, Scott worked as a litigator for a large law firm in St. Louis. Scott is a veteran of Operation Iraqi Freedom and continues to serve in the United States Army Reserves as a Career Counselor responsible for over 4,000 Soldiers.

Scott represents clients in complex litigation in federal and state courts throughout the country. Scott has a broad range of experience representing clients in high stakes financial litigation, FINRA, consumer protection, and environmental matters.

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.

	Discovery	Depositions	Experts	Trial	Investigation	Complaint	Motion Practice	Hearing	Mediation and Settlement	Hearings	Total Time
Attorneys											
Ethan Hatch	3	0.9	1.9	0	4.7	0.3	50.8	0	0	0	61.6
Heather Lea	61.1	0.6	0.6	1.3	88.5	110.6	0	6.9	0.2	0	269.8
Jay Redd	94	1.1	1.2	0	0	0	23.7	1.1	7.5	0	128.6
Jerry Schlichter	40.4	3.6	10.8	4.2	11	18.6	10.1	0	1.5	0	100.2
Kurt Struckhoff	302.7	351.6	352.5	205.4	26.5	0.2	182	6.7	18.9	7.7	1454.2
Mark Boyko	14.9	0	0	0	54.8	0.1	0	0	0	0	69.8
Mary Edwards	385.2	0	0.3	3	0	0	0.4	0	0.5	0	389.4
Michael Wolff	111.3	219.2	181.3	180.5	0.4	2.7	150.3	20.7	10.5	5	881.9
Scott Apking	2.3	14.1	39.7	16.9	0	0	3.5	0	13.1	0	89.6
Sean Soyars	6.3	6.2	2.6	1.8	0.9	0.4	68.7	0	0.3	0	87.2
Stephen Hoeplinger	27.6	81.6	6.2	0	0	0	60.7	0	0	0	176.1
Tara Rocque	2.1	0	0.9	0	0	0	158.7	0	0	0	161.7
Adam Schaffer	38.9	7.3	0	0	0	0	0	0	0	0	46.2
Brian Bush	0	59.6	8.5	0	0	0	0	0	0	0	68.1
Charles Clark	103.8	0	0	0	0	0	0	0	0	0	103.8
David Schroeder	0	75	0	9	0	0	0	0	0	0	84
Eric Disney	0	0	41.5	0	0	0	0	0	0	0	41.5
Gary Drag	16	0	6.6	0	20.3	1.8	0	0	0	0	44.7
Matthew Siegler	366.9	378.2	103.4	0	0	0	0	0	0	0	848.5
Michael Sokolik	0	48.2	0	0	0	0	0	0	0	0	48.2
Phil Abbott	0	105.4	0	0	0	0	15.8	0	0	0	121.2
Robert Maurer	107.6	0	0	0	0	0	0	0	0	0	107.6
Scott Bumb	117	84	0	33.7	0	0	0	0	12.5	0	247.2
Total Hours Attorneys	**1801.1**	**1436.6**	**758**	**455.8**	**207.1**	**134.7**	**724.7**	**35.4**	**65**	**12.7**	**5631.1**
Paralegals											
Rebekah Freisinger	120	82.2	62.4	209.7	0.6	3	35.9	0	12.4	21	547.2
Shannell Graham	39.6	14.5	0	5.5	0	0	1.4	0	0.5	0	61.5
Wendy Ballard	26.1	0	0	0	48.4	12.3	1	0	0	0	87.8
Total	**185.7**	**96.7**	**62.4**	**215.2**	**49**	**15.3**	**38.3**	**0**	**12.9**	**21**	**696.5**

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00175-REB-CBS

DEBORAH TROUDT, *et al.,*

Plaintiffs,

v.

ORACLE CORPORATION, *et al.*,

Defendants.

DECLARATION OF KURT C. STRUCKHOFF

I, Kurt C. Struckhoff, declare as follows:

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

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

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

4. I received my Bachelor of Science in Finance and Accounting from Saint Louis University in 2006 and my Juris Doctorate from Saint Louis University in 2009. Since that time, I have been employed as an attorney at Schlichter Bogard & Denton, LLP, Class Counsel in this matter. I have been actively engaged in complex class actions since I began my career. During that time, I have been exclusively dedicated to ERISA fiduciary breach class actions concerning 401(k) and 403(b) plans.

5. As set forth in Plaintiffs' Unopposed Motion for Reimbursement of Attorneys' Fees, Expenses, and Incentive Awards and the Declaration of Jerome Schlichter, the District of Maryland recently approved hourly rates for Schlichter Bogard & Denton when the court approved a one-third attorney fee of the common fund in an ERISA excessive fee class action settlement. *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, *6 (D.Md. Jan. 20, 2020). 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; and for Paralegals and Law Clerks, $330 per hour. These rates also have been approved for the firm by multiple other district courts. *See, e.g., Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 at 3 (M.D.Tenn. Oct. 22, 2019); *Clark v. Duke Univ.*, No. 16-1044, Doc. 165 at 8 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, Doc. 450 at 7–8 (M.D.N.C. May 6, 2019); *Bell v. ATH Holding Co.*, No. 15-2062, Doc. 380 at 10 (S.D.Ind. Sept. 4, 2019); *Ramsey v. Philips N. Am. LLC,* No. 18-1099, Doc. 27 at 8 (S.D.Ill. Oct. 15, 2018).

6. To calculate the lodestar, Schlichter Bogard & Denton applied these rates to the number of hours incurred by attorneys and non-attorneys during the *Troudt* action. This calculation is shown in the following table:

Experience	Hours	Rate	Total
25 Years +	1,371.5	$1,060	$1,453,790.00
15–24 Years	426.80	$900	$384,120.00
5–14 Years	2,319.00	$650	$1,507,350.00
2–4 Years	1,513.80	$490	$741,762.00
Attorney Total	**5,631.10**		$4,087,022.00
Paralegals Total	**696.50**	$330	$229,845.00
Total of All Hours	**6,327.60**		$4,316,867.00

7. As set forth in the above table, based on the firm's billing records, Schlichter Bogard & Denton expended to date 5,631.10 hours of attorney time and 696.50 hours of paralegal time.

8. Apart from the lodestar, Class Counsel's requested one-third of the common fund is routinely awarded in similar cases:

Case	Fee %
Kelly v. Johns Hopkins Univ., No. 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%

Case	Fee %
Gordan v. Mass. Mut. Life Ins. Co., No. 13-30184, 2016 WL 11272044 (D.Mass. Nov. 3, 2016)	33.33%
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%

9. 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 Oracle Corporation 401(k) Savings and Investment Plan Forms 5500 filed with the Department of Labor, among other sources. Class Counsel requested documents from the Plan administrator on behalf of a current participant under 29 U.S.C. §1024(b), which included the production of the plan document, fee disclosures, custodial account agreements, recordkeeping services agreements, and other related documents.

10. Involvement of Named Plaintiffs: Class Counsel's investigation included meetings with the Named Plaintiffs, which occurred both in-person and on the phone.

The in-person meetings required attorneys to travel to various locations in Colorado, Wisconsin, California and Illinois where the Named Plaintiffs reside. These meetings provided valuable insight and additional understanding of the operation and administration of the Plan, the Plan's investment structure, as well as fee and performance disclosures concerning the Plan's investments. 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.

11. On May 22, 2017, Defendants issued 17 interrogatories and 16 requests for production to each Named Plaintiff. Schlichter Bogard & Denton then engaged in extensive discussions with each client. The attorneys reviewed and analyzed all materials provided by each clients and prepared responsive documents for production. In total, the Named Plaintiffs collected over 1,000 pages of documents for production, which included Plan disclosures, Plan-related communications, email communications, and account statements.

12. On January 22, 2016, Plaintiffs filed their complaint in *Troudt v. Oracle Corporation*, No. 16-175 (D.Colo.). [#1].

13. Motion to Dismiss: Defendants filed their motion to dismiss the complaint on March 29, 2016. [#36]. Defendant's 24-page memorandum was extensive and raised complex legal arguments that addressed Counts I, III, and IV of the Complaint. *Id*. Over the next month, Plaintiffs' attorneys spent extensive time responding to Defendants'

arguments, which included conducting research and analysis of relevant authority. Plaintiffs filed their opposition on April 27, 2016. [#49]. On February 16, 2017, Magistrate Judge Shaffer issued his report and recommendation to deny Defendants' motion. [#63]. On March 2, 2017, Defendants filed their objections to the report and recommendation. [#65]. On March 15, 2017, Plaintiffs filed their response. [#66]. On March 22, 2017, this Court adopted the report and denied Defendants' motion. [#67].

14. Discovery: Plaintiffs prepared their initial requests for production and interrogatories directed to Defendants on June 20, 2016. They issued a second set of requests for production on April 26, 2017. Plaintiffs also subpoenaed third parties for documents. Throughout the course of discovery, Class Counsel diligently reviewed and analyzed over 10,000 documents, which comprised many thousands of pages. A detailed review and analysis of the document production was crucial for Plaintiffs to prove their claims. 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 Plaintiffs' attorneys to efficiently 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.

15. 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.

16. Amended Complaint: After Defendants responded to discovery, Class Counsel reviewed and amended the Complaint to add individual Committee members as defendants. [#83].

17. Motion to Certify Class: Plaintiffs filed a motion to certify the class on June 30, 2017. [#104]. Each Named Plaintiff submitted a declaration in support of the motion. [#104-01] to [#104-08]. Defendants partially opposed Plaintiffs' motion to the extent it included the prudence of the Plan's investments. [#107]. Plaintiffs responded to this motion on reply and filed a 10-page memorandum in support of their position. [#111].

On January 30, 2018, the Court granted class certification in part, certifying the following classes:

> **Excessive Fee Class**: All participants and beneficiaries of the Oracle Corporation 401(k) Savings and Investment Plan from January 1, 2009, through the date of judgment, excluding defendants.
>
> **Imprudent Investment Class A (Artisan Fund)**: All Plan participants and beneficiaries, excluding defendants, who invested in the Artisan Fund between January 1, 2009, and June 22, 2015, and whose investment in the Fund underperformed relative to the Russell 2000 Index.
>
> **Imprudent Investment Class B (TCM Fund)**: All Plan participants and beneficiaries, excluding defendants, who invested in the TCM Fund between January 1, 2009, and April 8, 2013, and whose investment in the Fund underperformed the Russell 2500 Growth Index.

[#119]. The classes were later amended in accordance with the Court's order on summary judgment. [#179].

18. Depositions: The parties took 22 depositions, including 10 Oracle personnel, 2 third parties, 7 named plaintiffs, and 3 expert witnesses. These depositions

involved highly complex issues and required many hours of preparation, including extensive document review. The depositions occurred in Colorado, California, Texas, Illinois, Missouri, Wisconsin, and Washington, D.C.

19. Opposing Counsel: Four attorneys from Morgan Lewis, a global law firm familiar with complex ERISA litigation, entered appearances on behalf of Defendants from offices in Philadelphia and Chicago.

20. Experts**:** On December 15, 2017, the parties simultaneously disclosed expert witnesses. Plaintiffs disclosed two expert witnesses, Dr. Gerald Buetow, an investment management expert, and Michael Geist, a recordkeeping expert, and provided their lengthy reports and opinions to Defendants. Defendants retained two experts, Dr. Russell Wermers to opine on the prudence of the Plan's at-issue investments and Steven Gissiner to opine on the Plan's recordkeeping process and fees.

21. Summary Judgment: On April 16, 2018, Defendants filed their motion for summary judgment on all claims. [#134]. Plaintiffs filed their opposition on May 21, 2018. [#154]. On March 1, 2019, the Court granted in part and denied in part Defendants' motion for summary judgment. [#179]. Defendants filed motions to strike both of Plaintiffs' experts. [#126] and [#190].

22. Trial Preparation: The parties filed deposition designations and objections, [#197] and [#203], proposed findings of fact and conclusions of law, [#204] and [#207], and trial briefs, [#205] and [#208]. Plaintiffs spent significant time preparing for trial. Plaintiffs' counsel and several Named Plaintiffs were present in Denver preparing for trial prior to settlement. Plaintiffs were fully prepared for trial.

23. Settlement: After lengthy discussions over several weeks leading up to trial, the parties reached a Settlement the morning of trial. None of the money paid by Oracle will go back to Oracle under any circumstances. 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 in support of preliminary approval, and related proposed orders. They also prepared requests for proposals sent to settlement administrators, since a settlement administrator is a necessary party to facilitate the settlement. Class Counsel will not receive any portion from the interest earned on the common fund while it is deposited in an interest-bearing account; class members will receive the entire benefit of the interest.

24. More time will be spent handling responses from participants who receive notice, preparing for the final approval hearing, and traveling to the final approval hearing in July. In addition, there will be substantial attorney time spent after the settlement effective date responding to participants. The class contains over 115,000 current and former participants. In the firm's experience in similar cases, this will represent an additional 50–100 attorney, paralegal and staff hours, or more.

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

26. The description of the time and effort that Class Counsel expended during this litigation illustrates the determination that these attorneys displayed through all aspects of this case. The attorney and non-attorney hours were reasonably and efficiently expended to obtain a successful recovery on behalf of the Class. Without committing the necessary resources to pursue Plaintiffs' claims, a favorable recovery that benefits tens of thousands of Class members would not have been possible.

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

Executed on May 8, 2020 in St. Louis, Missouri.

/s/ Kurt C. Struckhoff
Kurt C. Struckhoff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00175-REB-CBS

DEBORAH TROUDT, *et al.*,

Plaintiffs,

v.

ORACLE CORPORATION, *et al.*,

Defendants.

DECLARATION OF SHERI O'GORMAN

I, Sheri O'Gorman, under penalty of perjury pursuant to 28 U.S.C. §1746, declare as follows:

I am the Office Administrator of Schlichter, Bogard, & Denton, LLP and the Custodian of Records, in charge of payment of expenses in this matter. I have examined the records and we have incurred case expenses totaling $410,501.60 as of May 7, 2020.

Below is a list of expenses according to their categories:

Description	Total
Depositions	$57,341.15
Experts and Consultants	$259,997.89
Filing, Transcripts, Subpoena Services and Related Costs	$1,029.55
Copies, Postage, Phone and Fax	$11,581.16
Data Development and Document Organization	$5,851.85
Research and Investigation	$7,671.98

Description	Total
Travel, Lodging, and Parking	$52,026.29
Trial Costs	$15,001.73
Total	**$410,501.60**

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.

I am also in charge of monitoring attorney and staff time billed. During the litigation in these cases the following chart shows the amount of hours spent by attorneys broken down by experience

Description	Total Hours
0-4 Years	1,513.80
5-14 Years	2,319.00
15-24 Years	426.80
25 and Above	1,371.50
Total Attorney Hours	**5,631.10**

The following chart shows the amount of hours spent by paralegals:

Description	Total Hours
Paralegal	696.50
Total Hours	**696.50**

More detailed billing records can be made available for the Court's review upon request.

On or about March 16, 2020, Schlichter, Bogard & Denton, LLP published a website, www.oracle401ksettlement.com, from which Class members could download the Settlement Agreement (with exhibits) and other documents relating to the settlement, including Plaintiffs' Motion and Memorandum in Support of Preliminary Approval, and the Court's Orders granting preliminary approval. The Class notices and claim forms will be published on the website after distribution to Class members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on May 8, 2020.

Sheri O'Gorman

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00175-REB-CBS

DEBORAH TROUDT, *et al.,*

Plaintiffs,

v.

ORACLE CORPORATION, *et al.*,

Defendants.

DECLARATION OF JAMES C. STURDEVANT

I, James C. Sturdevant, declare as follows:

1. I am an attorney admitted to the practice of law in all courts of the State of California and Connecticut. I am admitted to practice in all federal district courts in California and Connecticut, the Second, Fourth, and Ninth Circuit Courts of Appeals, and the United States Supreme Court. I am a graduate of Boston College School of Law where I received my J.D. in 1972, and of Trinity College, where I received a B.A. in 1969. A complete recitation of my experience and background is included in my current personal resume, which is attached hereto as Exhibit A.

2. I have concentrated on litigation, both at the trial and appellate levels, throughout my forty-five plus year legal career. From 1972 through May, 1978, I was employed with the Tolland-Windham Legal Assistance Program, Inc., and Connecticut Legal Services, Inc., where I concentrated on significant housing, food and unemployment compensation litigation primarily in federal courts, legislation and administrative advocacy. Beginning in October, 1978, I initiated and directed all major

litigation for the San Fernando Valley Neighborhood Legal Services, Inc. program in Southern California. In 1980, I formed my own private practice, The Sturdevant Law Firm, focusing on unfair business practices and civil rights cases. Since 1986, I have concentrated on lender liability, consumer protection class actions, complex employment discrimination cases, disability access, and unlawful/unfair business practice cases.

3. I have had extensive experience in representing consumers and low-income and other individuals in consumer class actions, employment discrimination cases, environmental litigation, disability access, unfair business practices litigation, and other public interest actions in both state and federal courts. I have handled the pre-trial, trial, and most of the appellate work for cases in my firm in which I was lead or co-counsel. A summary of examples of recent significant litigation in which I am or have been involved is described in my firm's resume, Exhibit B.

4. I have been regarded as one of the nation's most respected consumer rights and class action attorneys. I recently received the 2019 CLAY Award with my team of attorneys for securing a unanimous decision from the California Supreme Court in *De La Torre v. CashCall, Inc.*, 5 Cal. 5th 966 (2018). In that case, which has lasted more than ten years, the Court held that interest rates between 96% and 135% on $2,600 loans payable over three and one-half years may be determined unconscionable in isolation from other loan terms and circumstances. The Court also held that borrowers may seek affirmative relief from unconscionable loans under California's Unfair Competition Law. Trial Lawyers nominated me for Trial Lawyer of the Year for

Public Justice (now Public Justice) in 2004 for my work in *Miller v. Bank of America* which is described in some detail in my firm resume. The Consumer Attorneys of California named me 2004 Trial Lawyer of the Year for work in that same case; the San Francisco Trial Lawyers Association named me 2002 Trial Lawyer of the Year for my work in *Ting v. AT&T*, which is also described in my firm resume; and I have received numerous other awards for outstanding advocacy on behalf of consumers and workers.

5. I serve and have served on numerous national, state and local boards and committees concerned with civil litigation and amicus curiae work, and I and my firm have authored a significant number of briefs and amicus briefs on the issues of mandatory arbitration, federal preemption, the interpretation of consumer protection statutes and attorneys' fees, among many other subjects.

6. I am well acquainted with the reputation and practice of Jerome J. Schlichter, founding partner of Schlichter Bogard & Denton, which prosecuted this case as Class Counsel prior to the class action settlement. I have known Mr. Schlichter for many years and am familiar with the fact that he and his firm have done excellent work over the last three decades in advancing the rights of workers and individuals in a variety of class action cases in the employment discrimination field and in recent years national class actions involving fiduciary breaches and excessive fees in 401(k) and 403(b) plans.

7. Schlichter Bogard & Denton has been at the forefront of ERISA fiduciary breach class actions brought on behalf of employees in 401(k) and 403(b) plans. The firm first filed excessive fee cases involving 401(k) plans in 2006. Starting in 2016,

Schlichter Bogard & Denton expanded their national ERISA practice by filing similar excessive fee cases involving 403(b) plans sponsored by private universities.

8. To my knowledge, Schlichter, Bogard & Denton was the first in the country to bring excessive fee lawsuits involving 401(k) and 403(b) plans. Prior to Schlichter, Bogard & Denton filing these lawsuits, there were no lawyers or law firms in the country handling such cases. Consequently, no law firm has developed the expertise in these types of cases that Schlichter Bogard & Denton has over the last 14 years, and no other law firm in the country, to my knowledge, has taken an ERISA 401(k) or 403(b) excessive fee case to trial prior to Schlichter Bogard & Denton.

9. I am also aware of no other law firm that has achieved the success that Schlichter Bogard & Denton has in bringing ERISA class actions for excessive fees. The public has been well served by the actions of these attorneys. Schlichter, Bogard & Denton has indeed functioned as private attorneys general.

10. Complex class actions, such as those brought by Schlichter, Bogard & Denton, require representation of the class at a very high level throughout the matter. My firm and I have been involved in several ERISA class actions. In my experience, ERISA class actions and other complex class actions are national in scope, involve complex federal laws and regulations, and typically encompass parties, discovery, and attorneys from all over the United States. A plaintiff's ERISA practice is therefore complex, highly specialized, time-consuming, and expensive to pursue. To my knowledge, there are very few attorneys and law firms willing and capable of handling large ERISA cases representing plaintiffs on a contingent basis. For these reasons,

ERISA fiduciary breach litigation in any federal judicial district should be considered both very risky and national in scope.

11. In my personal experience and opinion, ERISA cases and other complex class actions are defended with a "blank check" for defense costs, meaning that defendants are willing to devote massive resources and spend substantial sums for defense costs and expert witnesses. In my experience, defense firms often spend multiples more in time and expenses to defend these cases, and are paid on a monthly basis, as compared to the plaintiffs' lawyers representing the participants and beneficiaries who typically work on a contingency fee basis.

12. Moreover, ERISA class actions, as recognized by courts throughout the country, have a "significant risk of nonpayment" due to "novel" legal issues and "adverse precedents." *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016); *see also Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020).

13. Because of this, I understand for complex class actions outside the Ninth Circuit, the market rate for plaintiffs' lawyers who handle these class actions is 33 1/3% of any monetary recovery. Indeed, I would not agree to accept such a complex and risky case on a contingency fee basis for less than 33 1/3%, nor am I personally aware of any prominent plaintiffs' lawyer or law firm that would take on such risky representation for less than 33 1/3% of any monetary recovery.

14. In my experience and opinion, because of the significant cost and extensive resources required to pursue ERISA class actions through judgment,

individual named plaintiffs could not afford to hire a lawyer unless it was on a contingency fee basis. I am personally not aware of any plaintiffs' lawyer or law firm that would be willing to handle an ERISA class action other than for a percentage of any monetary recovery.

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

Executed on May 5, 2020 in San Rafael, California.

/s/ James C. Sturdevant
James C. Sturdevant

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:16-cv-00175-REB-KHR

DEBORAH TROUDT, *et al.,*

Plaintiffs,

v.

ORACLE CORPORATION, *et al.*,

Defendants.

[PROPOSED] ORDER GRANTING PLAINTIFFS' UNOPPOSED MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND INCENTIVE AWARDS [#223]

Robert E. Blackburn, District Judge.

Class Counsel for plaintiffs seek an award of attorneys' fees, reimbursement of reasonable expenses incurred in prosecuting this action, and compensation for the class representatives from a common fund created from the class action settlement. The Court has reviewed Class Counsel's request and supporting evidence, as well as attorney's fees and class representative awards from similar cases. For the reasons stated herein, the Court will grant the motion.

BACKGROUND

On January 22, 2016, the plaintiffs sued the defendants alleging that they breached their fiduciary duties to the Oracle Corporation 401(k) Savings and Investment Plan. [#1]. As this Court's docket indicates, this case has been hard-fought and vigorously litigated at all stages.

On March 2, 2017, the Court denied the defendants' motion to dismiss. [#67]. Throughout discovery, the plaintiffs actively sought discovery of relevant and responsive information from the defendants. The plaintiffs' attorneys reviewed and analyzed thousands of pages of documents. They defended seven depositions of the class representatives and took 12 depositions of fact witnesses. The parties also disclosed four expert witnesses, two for the plaintiffs and two for the defendants. The plaintiffs took one expert depositions, and defended their experts in each of their two separate depositions.

The Court granted in part class certification on January 30, 2018. [#119]. The Court appointed Named Plaintiffs Deborah Troudt, Brad Stauf, Susan Cutsforth, Wayne Seltzer, Michael Harkin, Miriam Wagner, and Michael Foy as Class Representatives. *Id.* at 7. The Court appointed Schlichter Bogard & Denton as Class Counsel. *Id.*

On March 1, 2019, the Court denied in part and granted in part defendants' motion for summary judgment. [#179]. Although the plaintiffs were barred from pursuing claims for excessive recordkeeping fees and the imprudence of the PIMCO Inflation Response Multi-Asset Fund, the Court denied summary judgment concerning Plaintiffs' claims that Defendants breached their fiduciary duties by causing the Plan to retain two underperforming investments in the Plan, the Artisan Small Cap Value Fund and the TCM Small-Mid Cap Growth Fund. [#179].

The Court set the case for trial beginning on December 2, 2019. [#181]. The parties fully prepared for trial, submitting all required pretrial compliance. The morning of trial, the parties reached an agreement on monetary recovery of $12 million to reach a settlement. [#211]. The parties then filed their joint motion for preliminary approval of the

settlement and joint motion for certification of a settlement only class on February 26, 2020. [#217, 220]. The Court granted preliminary approval on March 13, 2020 and certified the following settlement only class:

> All persons who are or were participants or beneficiaries in the Oracle Corporation 401(k) Savings and Investment 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/or Alternate Payee, in the case of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Gayle Fitzpatrick, John Gawkowski, Dan Sharpley, Peter Shott, Mark Sunday and Amit Zavery.

[#221, 222].

Class Counsel for the plaintiffs filed the pending motion for attorneys' fees on May 8, 2020. Counsel requests $4,000,000 in attorneys' fees (one-third of the monetary recovery), reimbursement of $410,501.60 in litigation expenses, and incentive awards of $25,000 for each of the class representatives. The defendants have not opposed the motion.

ANALYSIS

I. Fees

In a class action, the court may award reasonable attorney's fees and nontaxable costs as authorized by law or by agreement. Fed. R. Civ. P. 23(h). In a common-fund case such as this, "a reasonable fee is based on a percentage of the fund bestowed on the class." *Blum v. Stenson*, 465 U.S. 886, 900 n.16 (1984). "The Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund is less subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class

counsel were retained on a contingent fee basis, as in this case." *Shaw v. Interthinx, Inc.*, 13-CV-01229-REB, 2015 WL 1867861, at *5 (D.Colo. Apr. 21, 2015).

"In assessing the reasonableness of the percentage of the common fund awarded to class counsel for attorneys' fees, courts within the Tenth Circuit weigh the twelve factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." *Shaw*, 2015 WL 1867861, at *5 (citing *Gottlieb v. Barry*, 43 F.3d 474, 483 (10th Cir. 1994)). The factors include: "(1) the time and labor required; (2) the novelty and difficulty of the case; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee for similar work; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Id*. (citing *Johnson*, 488 F.2d at 717-19). "A court may assign different relative weights to the factors—that is, none of the factors is inherently equiponderant, preponderant, or dispositive." *Id*. (internal quotations omitted).

In this case, the *Johnson* factors support a fee award for one-third of the common fund.

A. Analysis of the Factors

Class Counsel requests attorney's fees of one-third of the common fund, which would be $4,000,000. Class Counsel dedicated very substantial time and effort prosecuting Plaintiffs' claims for nearly four years. Class Counsel reviewed thousands

of pages of documents, filed, responded to, and reviewed multiple complex motions, attended several court hearings, traveled to 22 depositions throughout the country, and fully prepared for trial, reaching settlement only on the morning of trial. The time and labor expended easily supports the award.

This ERISA case was novel and difficult. ERISA is "an enormously complex and detailed statute." *Teets v. Great-W. Life & Annuity Ins. Co.*, 315 F.R.D. 362, 370 (D.Colo. 2016) (citing *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993)). "Very few lawyers … understand ERISA." *Id*; *see also Ramos v. Banner Health*, 325 F.R.D. 382, 396 (D.Colo. 2018) ("Plaintiffs' [ERISA] claims makes it highly unlikely they could be discovered without the investigation of experienced counsel."). ERISA litigation "entails complicated ERISA claims that are not only dependent on the statute but also on various regulations that implement ERISA." *Martin v. Caterpillar, Inc*., No. 07-1009, 2010 WL 3210448, at *2 (C.D.Ill. Aug. 12, 2010).

"ERISA 401(k) fiduciary breach class actions involve complex questions of law and have not been widely litigated to this point." *Waldbuesser v. Northrop Grumman Corp.*, No. 06-6213, 2017 WL 9614818, at *4 (C.D.Cal. Oct. 24, 2017) (citation omitted). This "rapidly evolving" area of law places demands on counsel and the Court that are "complex and require the devotion of significant resources". *In re Wachovia Corp. ERISA Litig*., No. 09-262, 2011 WL 5037183, at *4 (W.D.N.C. Oct. 24, 2011). Given the size and complexity of the issues before the Court, there is more than a sufficient basis to support a one-third contingent fee.

Given this complexity, it is "well established that complex ERISA litigation", such as this, requires "special expertise", *Tussey v. ABB, Inc.,* No. 06-4305, 2012 WL 5386033,

at *3 (W.D.Mo. Nov. 2, 2012), and class counsel of the "the highest caliber", *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *3 (C.D.Ill. Oct. 15, 2013). With an opponent that is a "sophisticated corporation with sophisticated counsel", such as here with Oracle and the Morgan Lewis, additional skill is necessary. *Id*. at 3. Indeed, this type of litigation did not even exist until 2006, when "Schlichter, Bogard & Denton began holding employers responsible for alleged fiduciary breaches." *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *3 (S.D.Ill. Mar. 31, 2016).

For Class Counsel to obtain a successful recovery in this case, the case required a willingness by counsel to risk very significant amounts of time and money in the face of a vigorous defense by the defendants, all at risk. The 6,327.60 expended by Class Counsel impacted the firm's ability to handle other actions. At the outset of this case, Class Counsel recognized that to obtain a successful recovery in a case like this, they must be committed to potentially finance the case for years through a trial and appeals, all at substantial expense and preclusion of other matter. This type of preclusion and resource allocation also demonstrates the fact that it is undesirable to bring these types of cases for most firms. This weighs in favor of a one-third award in this common fund case.

"The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class." Shaw, 2015 WL 1867861, at *6. In similar ERISA 401(k) 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. *See*, *e.g.*, *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *3 (D.Md. Jan. 20, 2020) (citing 14 similar ERISA cases awarding 1/3 of

the common fund). This great weight of authority more than demonstrates that a one-third fee is justified in this case.

The requested fee of one-third of the monetary recovery is reasonable and appropriate given "significant risk of nonpayment" in these types of cases due to "the novel nature of this case and adverse precedents". *Kruger v. Novant Health, Inc*., No. 14-208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016). In this case, Class Counsel assumed "significant risk of nonpayment when they agreed to represent Named Plaintiffs on a contingency fee basis." *Shaw*, 2015 WL 1867861, at *7. Contingent fee arrangements "transfer a significant portion of the risk of loss to the attorneys taking the case … and [a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk." *Id*. This factor thus weighs in favor of the requested fees because Class Counsel assumed "significant risk of nonpayment when they agreed to represent Named Plaintiffs on a contingency fee basis" and undertook "a significant portion of the risk of loss … [.]" *Id*.

This case was set for trial on December 3, 2019. [# 211]. The parties settled the case that morning. *Id*. After a full trial, this Court may have found in favor of Defendants. Even if Plaintiffs prevailed at trial, the aggressive defense presented the possibility that Class Members would have to wait over a decade to receive any compensation pending multiple appeals. In another case handled by Class Counsel, *Tussey v. ABB, Inc.*, the parties litigated for over twelve years, including a trial and multiple appeals before the parties reached a settlement in 2019. *Tussey v. ABB, Inc.*, No. 06-4305, Doc. 859 (W.D.Mo. Mar. 28, 2019). Rather than "having to wait as long as a decade as other classes in similar 401(k) cases have to do," Class members will receive compensation

and be able to invest their proceeds immediately in a tax-deferred vehicle, which adds more value. *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *5 (M.D.N.C. Sep. 29, 2016).

Counsel have shown their ability by achieving the excellent result obtained for the Class in this case, supporting the requested fee award. Counsel Counsel's conduct and filings in this case have been of the highest caliber. The Court agrees that Class Counsel are experts in ERISA litigation. The Settlement occurred after the Court partially granted Defendants' motion summary judgment. [#179]. Any recovery at all on the remaining investment claims was uncertain based on the fact-intensive nature of the remaining imprudent investment claims. [#179] at 26 n. 19. The damages from the two funds at issue, the TCM Small-Mid Cap Growth Mutual Fund and Artisan Small Cap Value Fund were potentially $96.4 million, [#204] at ¶¶74, 99. Defendants argued that Plaintiffs could not show any loss [#207] at ¶¶ 204-225 and this Court indicated that if it found that Defendants engaged in a prudent process, the recovery would be zero. [# 179] at 26 n. 19. Given the robust defense presented in this case, the results obtained by Class Counsel are excellent.

Class Counsel displayed extraordinary skill and determination throughout this litigation. Over the last fourteen years, Schlichter Bogard & Denton has demonstrated an unequaled commitment and ability to represent employees and retirees to recover losses they suffered through the mismanagement of their retirement plans. District courts across the country have universally recognized the well-earned reputation and ability of Schlichter Bogard & Denton. In this litigation, Schlichter Bogard & Denton has thoroughly demonstrated why it is regarded as the "pioneer and the leader in the field of

retirement plan litigation," *Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D.Ill. July 17, 2015), and "experts in ERISA litigation", *Krueger v. Ameriprise Fin. Inc.,* No. 11-2781, 2015 WL 4246879, at *2 (D.Minn. July 13, 2015) (citation omitted).

It is further undisputed that Schlichter Bogard & Denton has greatly benefitted participants and beneficiaries of defined contribution plans through their devotion to this area of complex litigation. The firm has "educated plan administrators, the Department of Labor, the courts and retirement plan participants about the importance of monitoring recordkeeping fees." *Tussey v. ABB Inc.*, No. 06-4305, 2015 WL 8485265, at *6 (W.D.Mo. Dec. 9, 2015). As one district court emphasized, "the 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). Likewise, Schlichter Bogard & Denton's focus on the details of a prudent investment management process in this case has undoubtedly educated other plan sponsors, advisors and this Court on proper investment management.

The Court is convinced that the successful recovery for the class in this case was only obtained as a result of Schlichter Bogard & Denton's record of success and risking substantial sums of money and investing thousands of hours of attorney time for the benefit of Oracle Corporation employees and retirees. Schlichter Bogard & Denton exhibited unparalleled expertise and perseverance. In this case, Class Counsel admirably served as private attorneys general, serving the purpose of that position

under ERISA. Therefore, the Court finds that Class Counsel's requested one-third fee is reasonable.

B. Lodestar Cross-Check

Courts may use a lodestar crosscheck to confirm the reasonableness of the requested fee. *See Shaw*, 2015 WL 1867861, at *8. The "'lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.'" *In re Crocs. Secs. Litig.*, No. 07-CV-2351-PAB, 2014 WL 4670886, at *4 n. 4 (D.Colo. Sep. 18, 2014) (quoting *In re Rite Aid*, 369 F.3d 294, 306-307 (3d Cir. 2005)). Therefore, the Court does not need to undertake an exhaustive analysis because the lodestar method is only for comparison purposes. *Id*.

To date, Class Counsel have spent at least 6,327.60 hours litigating this matter. As recently as January 2020, Class Counsel's reasonable hourly rates were approved by a district court in a similar ERISA class action litigation. *Kelly*, 2020 WL 434473, at *6–7 (citing three ERISA decisions approving the same hourly rates). For Schlichter Bogard & Denton, 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; and for Paralegals and Law Clerks, $330 per hour. In light of the close similarities between the fiduciary breach claims in these cases and this one, Class Counsel being the same, and the recency of the decisions, the Court finds that these hourly rates are reasonable for the services provided.

Using these approved rates and the hours expended by counsel, the lodestar is $4,316,867.00. The requested $4 million fee award represents a lodestar multiplier of less than one—0.92, which is not only significantly lower than lodestar multipliers that Colorado federal courts and other courts consistently have approved in other ERISA class action cases; it has no multiplier for risk and delayed payment whatsoever. *See, e.g., Miniscribe Corp. v. Harris Trust Co. of California*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming fee award based on a lodestar multiplier of 2.57); *Shaw*, 2015 WL 1867861, at *8 (collecting cases approving multipliers ranging from 1.87 to 4.6). It is important to note that Class Counsel has not received any payment for its work in this case over a four-year period. In comparison, firms that defend such cases are paid and reimbursed expenses by monthly invoice, taking no risk, and receiving payment at rates higher than those requested by Class Counsel. *See U.S. Bank Nat'l Assoc. v. Dexia Real Estate Capital Mkts.*, No. 12-9412, 2016 WL 6996176, at *8 (S.D.N.Y. Nov. 30, 2016) (observing in 2016 that large defense firms, similar to those defending this case, billed at rates ranging from $250 per hour to $1,055 per hour to a client). Timely and predictable payment provide defense counsel the advantage of obtaining fees to reinvest in greater firm resources while Class Counsel defers payment and the potential investment of those funds in firm resources all while bearing the risk of nonpayment. Therefore, the lodestar in this case—0.92—the risk undertaken by Plaintiffs of nonpayment, and the four-year delay in any payment fully supports the requested fee award.

II. Expenses

"As with attorney fees, the common fund doctrine allows for an award of costs so that the beneficiaries of the fund share the cost of creating the fund." *In re Qwest Comms. Intern., Inc. Secs. Litig.*, 625 F.Supp.2d 1143,1154 (D.Colo. 2009). Under Rule 23(h), a trial court may award nontaxable costs that are authorized by law or the parties' agreement. Fed. R. Civ. P. 23(h). In this case, a cost award is authorized by both the parties' settlement agreement and the common fund doctrine. Reimbursable expenses include expert fees, travel, long-distance and conference telephone, postage, delivery services, and computerized legal research. Alba Conte, 1 Attorney Fee Awards §2:19 (3d ed. 2004); *Spano*, 2016 WL 3791123, at *4. Expense limitation and efficiency is inherent in contingent fee arrangements because Class Counsel bears the risk that it will absorb all case expenses. Several cases handled by Class Counsel were dismissed and the dismissals upheld by the Courts of Appeals, meaning Class Counsel absorbed all expenses and attorney time in those matters. *See*, *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).

Here, Class Counsel requests reimbursement of expenses in the amount of $410,501.60. The expenses are all for legitimate costs associated with prosecuting the case and the amounts are reasonable. The Court finds that Class Counsel's request is fair and reasonable and will approve it.

III. Class Representatives

"[I]ncentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the efforts they make on behalf of

the class." *Shaw*, 2015 WL 1867861, *8 (quotations omitted). The $25,000 award is in line with incentive awards in other ERISA cases and other class actions in this district. *See id*. at *9 (collecting cases including a case awarding $25,000 for named plaintiff where settlement was valued at $13 million); *see also, e.g., Kelly,* 2020 WL 434473, at *8; *Kruger,* 2016 WL 6769066, at *6 (awarding $25,000 to named plaintiffs in similar ERISA cases).

Here, Class Counsel requests a case contribution award of $25,000 for each of the class representatives. The class representatives provided invaluable assistance to Class Counsel in prosecuting the case. They showed commitment to the case by providing Class Counsel with critical documents and other information prior to preparing the Complaint, responding to written discovery, producing documents, sitting for deposition, submitting declarations in support of motions and a number of the Named Plaintiffs prepared for and attended trial. They also risked their reputation and alienation from employers or peers "in bringing an action against a prominent company in their community." *Kruger,* 2016 WL 6769066 at 6.

The Court finds that a case contribution award of $25,000 for each class representative is reasonable and appropriate given their contributions to the case. This amount is consistent with awards in similar settlements. *See Kruger,* 2016 WL 6769066 at 6 (collecting cases awarding $25,000 to each named plaintiff).

It is **ORDERED** that:

1. Class Counsel's motion for attorneys' fees, reimbursement of expenses, and incentive awards for named plaintiffs is **GRANTED**.

2. The Court awards Class Counsel an attorney's fee of $4,000,000, to be paid from the settlement amount.
3. The Court awards Class Counsel expenses of $410,501.60, which are to be paid from the settlement amount.
4. The Court awards a case contribution award of $25,000 to each of the Named Plaintiffs Deborah Troudt, Brad Stauf, Susan Cutsforth, Wayne Seltzer, Michael Harkin, Miriam Wagner and Michael Foy, also to be paid from the settlement amount.

This is the _____ day of _____, 2020.

_____
UNITED STATES DISTRICT JUDGE