

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

**SHARI AHRENSEN,
BARRY CLEMENT, LISA BUSH, and
THOMAS KALLAS, on behalf of the World
Travel, Inc. Employee Stock Ownership
Plan, and on behalf of a class of all other
persons similarly situated,**

Plaintiffs,

v.

**PRUDENT FIDUCIARY SERVICES, LLC,
a California Limited Liability Company,
MIGUEL PAREDES, and
JAMES A. WELLS,**

Defendants.

Case No. 2:21-CV-02157-HB

Hon. Harvey Bartle, III

**PLAINTIFFS' MOTION AND INCORPORATED MEMORANDUM OF LAW IN
SUPPORT OF ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT,
SETTLEMENT ADMINISTRATION EXPENSES, AND SERVICE AWARDS**

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I. INTRODUCTION

Subject to the Court’s approval, the Parties have settled this Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* (“ERISA”) class action (the “Lawsuit”) for a payment of \$8,700,000 in cash—an average recovery of approximately \$14,309 per Class Member before any fees and expenses. Should the Court grant final approval, every eligible Class Member will receive their portion of the Net Proceeds according to a Plan of Allocation (“POA”).

The Court granted Plaintiffs’ motion for preliminary approval, certified a settlement class, and approved class notice on January 31, 2023 (“Preliminary Approval Order”). ECF 86. The Parties have fulfilled all of their obligations under that Order, and Plaintiffs by separate motion ask the Court to: (1) grant final approval of the Settlement; (2) grant final certification of the Settlement Class for settlement purposes only; (3) find that the notice plan satisfies the requirements of due process and Rule 23(e)(1); (4) find the Settlement to be fair, reasonable and adequate; (5) dismiss on the merits and with prejudice all claims asserted against Defendants; and (6) retain jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation, and enforcement of the Settlement Agreement (“Settlement Agreement” or “SA”).¹

In this motion, Plaintiffs respectfully request an award of attorneys’ fees to Class Counsel in the amount of \$2,900,000.00 and expenses in the amount of \$67,649.70; authorize the payment of reasonable settlement administration expenses not to exceed \$17,500 to the Settlement Administrator and \$15,000 to the Independent Fiduciary; and award \$15,000 to Named Plaintiff

¹ Any capitalized terms used in this Memorandum shall have the meaning assigned to them in the Settlement Agreement (Ex. B to Declaration of Gregory Y. Porter, ECF 85-1) unless otherwise specified herein.

Thomas Kallas² and \$10,000 each to Named Plaintiffs Shari Ahrendsen, Barry Clement, and Lisa Bush as service awards. As discussed herein, all requested amounts are reasonable in light of the excellent results obtained for the Class through the proposed Settlement. In particular, the one-third fee request is consistent with Third Circuit precedent, the agreements the Named Plaintiffs entered into with Class Counsel, and the time and effort they devoted to achieve this outstanding Settlement that provides each class member, on average, with more than \$14,000 as an individual recovery.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Nature of the Case and Motion Practice

This class action is brought on behalf of participants and beneficiaries of the World Travel, Inc. Employee Stock Ownership Plan (the “ESOP”). The operative Second Amended Complaint (“SAC”) alleges that Defendants violated ERISA in connection with the purchase of shares of World Travel, Inc. (“World Travel” or the “Company”) common stock by the ESOP on December 20, 2017 (the “ESOP Transaction”). SAC, ECF 73 ¶¶ 3, 5. In Counts I and II, Plaintiffs asserted that Defendants Prudent Fiduciary Services, LLC and Miguel Paredes (the “Trustee”) violated ERISA in connection with the ESOP Transaction by, *inter alia*, causing the ESOP to pay more than fair market value for Company stock. *Id.* at ¶¶ 81-101. In Count III, Plaintiffs alleged that agreements by the Company to indemnify the Trustee violated ERISA. *Id.* at ¶¶ 102-09. In Count IV, Plaintiffs asserted, pursuant to ERISA § 502(a)(3), 29 U.S.C. § 1132(a)(3), that Defendant James A. Wells (the “Selling Shareholder”) engaged in prohibited transactions. *Id.* at ¶¶ 110-18. In Count V, Plaintiffs asserted, pursuant to ERISA § 405(a), 29 U.S.C. § 1105(a), that the Selling

² Plaintiffs request a higher service award for Mr. Kallas due to his unique contributions to the case’s legal theories, which exposed him to reputational and future employment risks. *See infra* Section IV.E.

Shareholder is liable as co-fiduciary for the Trustee's fiduciary breaches. *Id.* at ¶¶ 119-27. Defendants deny these allegations, deny any wrongdoing or liability, and have defended themselves in this Action. Defendants do not admit wrongdoing of any kind regarding the ESOP Transaction or this Action.

Plaintiffs Shari Ahrendsen and Barry Clement filed their original Complaint on May 11, 2021. ECF 1. The Trustee filed a motion to dismiss on August 9, 2021, ECF 34, and the Selling Shareholders (then including Defendants James R. Wells and Richard G. Wells) filed a motion to dismiss on August 9, 2021, ECF 35. Plaintiffs, then including Lisa Bush, filed an Amended Complaint on August 30, 2021, ECF 36, and Defendants' motions to dismiss were therefore denied as moot on September 2, 2021, ECF 41. Defendants filed motions to dismiss the Amended Complaint on September 23, 2021, ECFs 45 and 46, and the Parties completed briefing those motions on October 25, 2021, ECFs 51, 52, 54, and 55. On February 1, 2022, the Court denied the Trustee's motion to dismiss; denied Defendant James A. Wells's motion to dismiss; and granted Defendants' James R. Wells's and Richard G. Wells's motions to dismiss. ECFs 56, 57. On July 14, 2022, the Court granted leave for Plaintiffs to file the SAC, which named Thomas Kallas as a plaintiff. ECFs 71-73.

B. Discovery and the Parties' Settlement Efforts

The Parties began discussing settlement in March 2022. Declaration of Gregory Y. Porter ("Porter Decl.") ¶ 21, attached to Plaintiffs' Unopposed Motion for Final Approval of Settlement and Certification of Settlement Class, filed simultaneously herewith; Declaration of Michelle C. Yau ("Yau Decl.") ¶ 17, attached to Plaintiffs' Unopposed Motion for Final Approval of Settlement and Certification of Settlement Class, filed simultaneously herewith. As part of those discussions, Plaintiffs reviewed documents they needed to evaluate any potential settlement. Porter

Decl. ¶ 21. In addition, Plaintiffs engaged in formal discovery, issuing requests for the production of documents to Defendants. Yau Decl. ¶ 9. Plaintiffs also issued document subpoenas to numerous individuals and entities involved in the ESOP Transaction: World Travel; the Trustee's legal and financial advisors; entities that showed interest in acquiring World Travel; and advisors to World Travel and the Selling Shareholder. *Id.* The Named Plaintiffs also responded to two (2) sets of requests for the production of documents and interrogatories. *Id.* ¶ 11; Porter Decl. ¶ 20. Throughout the discovery process, Class Counsel met and conferred with Defense counsel in an effort to resolve objections to various discovery requests without motions practice. Yau Decl. ¶ 10. The parties were indeed able to resolve all discovery issues. *Id.*

Plaintiffs obtained and reviewed substantial documents necessary to evaluate the ESOP's total damages, including: typed notes from discussions the Trustee had about the ESOP Transaction; insurance policies; the World Travel ESOP Plan Document and Trust Agreement; the executed ESOP Transaction documents; an opinion letter from the Trustee's financial advisor; memoranda from the Trustee detailing its fiduciary review process and a potential tax issue; the valuation report prepared by the Trustee's financial advisor; the valuation report prepared by the Company's valuation advisor; an agenda for a due diligence meeting with the Trustee and its advisors; document request lists from World Travel's advisors; financial projections; communications from third parties expressing interest in acquiring World Travel; information on World Travel's top customers over time; information presented to ESOP participants, including a presentation from a town hall meeting; due diligence task lists; and World Travel Board of Directors meeting minutes and resolutions. Porter Decl. ¶ 18.

Working with a valuation expert, Plaintiffs utilized the information received through discovery to obtain an estimate of damages consisting of the difference between what the ESOP

paid for World Travel shares and the fair market value of those shares (according to Plaintiffs' expert). Yau Decl. ¶¶ 13-14; Porter Decl. ¶ 17. Using that formula, Plaintiffs' valuation expert estimated potential damages of between \$8.6 and \$22.4 million. Yau Decl. ¶ 14; Porter Decl. ¶ 17. The Parties then engaged in arm's-length negotiations starting in March 2022; subsequently, the Parties negotiated over the terms of the Settlement starting on September 1, 2022, which resulted in a settlement in principle on November 2, 2022. Yau Decl. ¶ 17; Porter Decl. ¶ 21. The Parties then negotiated and agreed to the Settlement Agreement in January 2023. Yau Decl. ¶ 17.

C. Preliminary Approval of the Settlement and Notice to Class Members

On January 31, 2023, the Court granted Plaintiffs' Unopposed Motion for Preliminary Approval of Settlement and Certification of Settlement Class. ECF 86. In so ruling, the Court granted preliminary approval based on its finding that the Settlement Agreement was fair, reasonable, and adequate (subject to further consideration at the Fairness Hearing). *Id.*

Pursuant to the Settlement Agreement's terms, Class Notice was sent to Class Members by U.S. Mail on March 2, 2023 and also posted on the settlement website. Declaration of Jeff Mitchell ("Mitchell Decl.") ¶¶ 9, 13 attached as Exhibit 1 to the Porter Decl. The Class Notice fully describes Class Counsel's request for attorneys' fees and costs, settlement administration expenses, and service awards. Mitchell Decl. Ex. A, at 6. In addition, the Class Notice provided all Class Members with an email address and toll-free telephone number (staffed with live agents) to ask questions, seek additional information or express concerns with the Settlement or the requested attorneys' fees and costs, settlement administration expenses, and service awards. *See id.*

III. SUMMARY OF THE PROPOSED SETTLEMENT TERMS

A. The Settlement Class

The proposed Settlement Class consists of all persons who, at any time on or prior to January 1, 2023, were vested participants in the ESOP and the beneficiaries of such participants. SA ¶ 1.12. Excluded from the Settlement Class are the initial shareholders who sold their Company stock to the ESOP, directly or indirectly, and their immediate families; the directors of World Travel, Inc. and their immediate families; and legal representatives, successors, and assigns of any such excluded persons. *Id.* The Settlement Administrator mailed Class Notice participants who qualify as Settlement Class members according to records received from Defendants' counsel. *See* Mitchell Decl. ¶¶ 7–12.

B. Benefits to the Settlement Class

Defendants, pursuant to the terms of the Settlement Agreement, will cause \$8,700,000 (the “Settlement Amount”) to be deposited into a Settlement Fund Account established by the Settlement Administrator at a federally chartered financial institution, which shall be considered a common fund created as a result of the Action. SA ¶ 7. The Settlement Amount covers all payments to Settlement Class Members pursuant to the POA, any court-awarded attorneys' fees and expense reimbursements to Class Counsel, any court-awarded service awards to the Class Representatives, and expenses associated with the Class Notice and Settlement Administration. *Id.* ¶ 8. Under the proposed Plan of Allocation, attached as Exhibit 3 to the Settlement Agreement, Class Members will receive their *pro rata* share of the Net Proceeds. Before subtracting expenses and attorneys' fees, each of the approximately 608 Class Members will receive, on average, approximately \$14,309. Porter Decl. ¶ 24.

C. Service Awards to the Class Representatives and Attorneys' Fees and Costs

The Settlement Agreement provides that Class Counsel intended to request that this Court award attorneys' fees not to exceed one-third of the Settlement Amount, or \$2.9 million, as well as the reimbursement of litigation expenses, including the cost and expense of the consulting valuation expert retained by Class Counsel, in an amount not to exceed \$100,000. SA ¶ 9.1. The Settlement Agreement also provides that the Named Plaintiffs intended to petition the Court for service awards not to exceed \$15,000 for each of the Class Representatives in recognition of their services to the Class. SA ¶ 8.2.2.

Consistent with the Settlement Agreement's terms, Class Counsel seek \$2.9 million in attorneys' fees and \$67,649.70 in out-of-pocket litigation expenses. Further, Plaintiffs request the following service awards for the Class Representatives: \$15,000 to Mr. Kallas, and \$10,000 each to Ms. Ahrendsen, Mr. Clement, and Ms. Bush.

IV. ARGUMENT

A. The Percentage-of-Recovery Method Is the Favored Method for Determining a Reasonable Attorneys' Fee in this Common Fund Case

In cases like this one, in which the efforts of class counsel create a common fund for the benefit of members of the class, courts in this Circuit calculate attorneys' fees as a percentage of the recovery. *See In re Rite Aid Corp. Secs. Litig.*, 396 F.3d 294, 300 (3d Cir. 2005), *as amended* (Feb. 25, 2005) (quoting *In re Prudential Ins. Co.*, 148 F.3d 283, 333 (3d Cir. 1998)) ("The percentage-of-recovery method is generally favored in common fund cases because it allows courts to award fees from the fund 'in a manner that rewards counsel for success and penalizes it for failure.'"); *see also* Third Circuit Task Force Report on Selection of Class Counsel, 208 F.R.D. 340, 421 (2002) ("The Third Circuit, following the recommendations of the 1985 Task Force, has favored the use of the percentage of the fund method in common fund cases.").

In addition, district courts “should consider seven factors when analyzing a fee award in a common fund case:

(1) the size of the fund created and the number of persons benefitted; (2) the presence or absence of substantial objections by members of the class to the settlement terms and/or fees requested by counsel; (3) the skill and efficiency of the attorneys involved; (4) the complexity and duration of the litigation; (5) the risk of nonpayment; (6) the amount of time devoted to the case by plaintiffs’ counsel; and (7) the awards in similar cases.

Rite Aid, 396 F.3d at 301 (citing *Gunter v. Ridgewood Energy Corp.*, 223 F.3d 190, 195 n.1 (3d Cir. 2000)). These “*Gunter* factors” “need not be applied in a formulaic way . . . and in certain cases, one factor may outweigh the rest.” *Id.* (ellipsis in original). “The most important factors are typically the complexity and duration of the litigation and the awards in similar cases (numbers four and seven).” *Sweda v. Univ. of Pa.*, 2021 WL 5907947, at *6 (E.D. Pa. Dec. 14, 2021).

B. The *Gunter* Factors Strongly Support the Award of One-Third of the Settlement Fund as Counsel Fees

In this case, the application of the *Gunter* factors strongly supports the award of one-third of the Settlement Fund as counsel fees.

i. The size of the fund and the number of persons benefitted

The Settlement Fund of \$8,700,000 is large enough to provide each of the approximately 608 Class Members, on average, approximately \$14,309, subject to reduction for amounts awarded as attorneys’ fees, expenses, settlement administration costs, and service awards. Porter Decl. ¶ 24. Assuming the Court grants the instant motion in full, each of the Class Members would still receive, on average, more than \$9,000 in individual net payments. *Id.* ¶ 25. In other ERISA cases in this Circuit, per-class-member recoveries that are a fraction of the amount provided here (about 1/8 to 1/10 as large) have been found to be “excellent” or “substantial.” *See Stevens v. SEI Invs. Co.*, 2020 WL 996418, at *10 (E.D. Pa. Feb. 28, 2020) (approximately \$1,200 per class member); *Huffman v. Prudential Ins. Co. of Am.*, 2019 WL 1499475, at *6 (E.D. Pa. Apr. 5, 2019) (“[A]round

\$1,000 to each Class Member . . . is an excellent result.”); *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *6 (D.N.J. May 31, 2012) (around \$900 per class member deemed a “substantial” benefit). Moreover, the \$8,700,000 recovery here is \$100,000 *more* than the low end of the damages range calculated by Plaintiffs’ valuation expert, and thus potentially more than Plaintiffs would have recovered even had they prevailed at trial (and on appeal). *See supra* Section II.B (stating valuation expert’s range of damages being \$8.6 to \$22.4 million). This recovery undeniably represents an excellent result for the Class Members, and weighs in favor of a one-third fee.

ii. The presence or absence of substantial objections

As of the filing of this motion, there have been no objections to the Settlement or to attorneys’ fees, costs, and service awards. Yau Decl. ¶¶ 48-49; Porter Decl. ¶ 43; Mitchell Decl. ¶ 17. However, objections are not due until May 22, 2023, twenty-one days prior to the June 12, 2023 Fairness Hearing. *See* SA ¶ 9.1. Because no objections have been raised as of the filing of this motion, this factor weighs in favor of the requested attorneys’ fees and costs.

iii. The skill and efficiency of the attorneys involved

Class Counsel in this matter, Bailey & Glasser LLP and Cohen Milstein Sellers & Toll PLLC, are two of the nation’s preeminent ERISA litigation firms. *See* Porter Decl. ¶ 22; Yau Decl. ¶¶ 43-47; Yau Decl. Ex. 1. *Law360* named Cohen Milstein’s ERISA practice “Benefits Group of the Year” for three of the last four years (2019, 2021, and 2022). Yau Decl. ¶ 43. Chambers and Partners recognized Bailey & Glasser’s lead partner in this Lawsuit, Gregory Porter, as one of only six “Band 1” attorneys for ERISA Litigation: Mainly Plaintiffs. Porter Decl. ¶ 10.

Moreover, “the ‘single clearest factor reflecting the quality of class counsels’ services to the class are the results obtained.” *Huffman*, 2019 WL 1499475, at *6 (quoting *In re AremisSoft Corp. Secs. Litig.*, 210 F.R.D. 109, 132 (D.N.J. 2002)). Here, the results obtained reflect well on

Class Counsel's skill and efficiency. The initial Complaint in this matter was filed on May 11, 2021. ECF 1. Despite the complexity of ERISA class actions in general and this case in particular, Class Counsel managed to achieve, in less than 21 months, a Settlement for \$100,000 *more* than the low end of the range of damages calculated by Plaintiffs' valuation expert. Obtaining such an excellent result for the Class in such a relatively short period of time amply demonstrates the skill and efficiency of Class Counsel, and strongly supports the requested fee award.

iv. The complexity and duration of the litigation

This factor, typically one of the two most important *Gunter* factors for district courts to consider, *see Sweda*, 2021 WL 5907947, at *6, "is intended to capture 'the probable costs, in both time and money, of continued litigation.'" *High St. Rehab., LLC v. Am. Specialty Health Inc.*, 2019 WL 4140784, at *12 (E.D. Pa. Aug. 29, 2019) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 812 (3d Cir. 1995)). "ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation." *Stevens*, 2020 WL 996418, at *3 (citation omitted). This ERISA action is no exception; the issues presented are complex and hotly contested. Plaintiffs' core allegations regarding the ESOP Transaction rested on factual assertions that were challenged by Defendants. These allegations involved the accuracy of World Travel's projections, whether the valuation methods (including the appropriate discounts and premiums) employed by the Trustee's financial advisors were proper, whether there were negative facts that were ignored or insufficiently investigated by the Trustee during the due diligence and negotiation process, and the fair market value of World Travel stock as of the transaction date.

Continued litigation would have required Class Counsel to complete fact discovery—including briefing potential motions to compel, taking depositions, preparing witnesses, and engaging in formal expert discovery—as well as preparing and arguing motions for class

certification, *Daubert* motions, and likely motions for summary judgment. Trial of Plaintiffs' claims would have required substantial additional investment of attorney time and expenses, particularly with respect to experts. And, regardless of the outcome, there likely would have been appeals, further delaying resolution and incurring significant additional expense.

Complex ERISA class actions like this one often take many years to resolve. *See, e.g., Huffman*, 2019 WL 1499475, at *1 (nearly nine years); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 465 (E.D. Pa. 2008) (eight years). That Class Counsel were able to avoid the uncertainty and delay of trial and appeals and secure an excellent result for Class Members in less than two years, despite the complexity of this matter, further supports the requested fee. *See High Street Rehab.*, 2019 WL 4140784, at *12 (quoting *In re Viropharma Inc.*, 2016 WL 312108, at *16 (E.D. Pa. Jan. 25, 2016)) (securing a favorable settlement now, "rather than the 'speculative promise of a larger payment years from now,'" supported award of one-third fee).

v. The risk of nonpayment

Class Counsel undertook this case on a purely contingent-fee basis; had Plaintiffs lost the case, Class Counsel would have received neither fees nor reimbursement of their expenses. *See Yau Decl.* ¶¶ 29-30. Despite this significant risk of nonpayment, Class Counsel devoted more than 1,500 hours of attorney and paralegal time (worth more than \$1 million) and approximately \$67,649.70 in out-of-pocket expenses to litigating this matter to a successful resolution.

"Courts routinely recognize that the risk created by undertaking an action on a contingency fee basis militates in favor of approval" of attorneys' fee requests. *High Street Rehab.*, 2019 WL 4140784, at *13 (quoting *Schering-Plough*, 2012 WL 1964451, at *7). "Class Counsel has litigated this case without pay from the inception and has shouldered the risk that the litigation would yield little-to-no recovery. Accordingly, the fifth *Gunter* factor weighs in favor of approving the attorneys' fee request. *Stevens*, 2020 WL 996418, at *12 (approving one-third fee).

vi. The amount of time devoted to the case by class counsel

As of April 27, 2023, Class Counsel devoted approximately 1,599.90 hours to this case, for a total “lodestar” (hours multiplied by counsel’s hourly billing rates) of approximately \$1,045,300.50. Porter Decl. ¶¶ 29, 32-34; Yau Decl. ¶¶ 23, 32.³ The significant time Class Counsel dedicated to this case—thereby forgoing other potentially remunerative work—further supports the requested fee. *See Stevens*, 2020 WL 996418, at *12.

vii. Awards in similar cases

This factor, along with the factor described in section IV.B.iv above, is typically one of the two most important considerations in determining the appropriate percentage fee in common fund cases. *See Sweda*, 2021 WL 5907947, at *6. Here, this factor weighs strongly in support of the requested fee.

Courts in comparable ERISA cases in this District have routinely awarded one-third of the common fund as attorneys’ fees. *See, e.g., Sweda*, 2021 WL 5907947, at *7 (awarding one-third of \$13,000,000 fund); *Stevens*, 2020 WL 996418, at *14 (awarding one-third of \$6,800,000 fund); *High Street Rehab.*, 2019 WL 4140784, at *14-15 (awarding one-third of \$11,750,000 fund); *In re Cigna-Am. Specialty Health Admin. Fee Litig.*, 2019 WL 4082946, at *14-15 (E.D. Pa. Aug. 29, 2019) (awarding one-third of \$8,250,000 fund and noting, “In complex ERISA cases, courts in this Circuit and others also routinely award attorneys’ fees in the amount of one-third of the total settlement fund”); *Huffman*, 2019 WL 1499475, at *7 (awarding one-third of \$9,000,000 fund); *Schering-Plough*, 2012 WL 1964451, at *6–7 (awarding 33.3% of \$12,250,000 fund); *see*

³ This estimate does not include future anticipated attorney and staff time on this case, such as preparing responses to objections (if any) to the Settlement, responding to questions from Settlement Class members, preparing for and attending the Fairness Hearing, and supervising the distribution of payments to Settlement Class members if final approval is granted. Yau Decl. ¶ 33.

also *McCoy v. Health Net, Inc.*, 569 F. Supp. 2d 448, 478 (E.D. Pa. 2008) (awarding 32.4% of \$215,000,000 fund). Thus, this key factor strongly supports the requested fee award.

C. A Lodestar “Cross-Check” Confirms the Appropriateness of an Award of One-Third of the Settlement Fund as Counsel Fees

The U.S. Court of Appeals for the Third Circuit has “suggested it is ‘sensible’ for district courts to ‘cross-check’ the percentage fee award against the ‘lodestar’ method.” *Rite Aid*, 396 F.3d at 305 (quoting *Prudential*, 148 F.3d at 333). The lodestar is determined by multiplying the number of hours reasonably worked on a case by the billing rates⁴ of the timekeepers who worked those hours. *Rite Aid*, 396 F.3d at 305. The lodestar “multiplier” is computed by dividing the percentage fee by the lodestar and represents an attempt “to account for the contingent nature or risk involved in a particular case and the quality of the attorneys’ work.” *Id.* at 305-06. The “lodestar cross-check entails an abridged lodestar analysis that requires neither ‘mathematical precision nor bean counting.’” *High Street Rehab.*, 2019 WL 4140784, at *13 (quoting *Rite Aid*, 396 F.3d at 305).

Here, Class Counsel and their paralegals worked approximately 1,599.90 hours, for a total lodestar of approximately \$1,045,300.50. Yau Decl. ¶¶ 23-25; Porter Decl. ¶¶ 32-34. This lodestar reflects reasonable hourly rates that have been approved by federal courts in light of Class Counsel’s experience. *See, e.g., Godfrey v. GreatBanc Tr. Co.*, No. 18-cv-7918, ECF 324 (N.D. Ill. Oct. 4, 2022) (granting final settlement approval and motion for attorneys’ fees); *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016, ECF 285 (D. Minn. Sept. 1, 2022) (approving plaintiffs’ counsel’s motion for attorneys’ fees and costs as reasonable); *Baird v. BlackRock Int’l Tr. Co.*,

⁴ Federal courts, including courts within this District, recognize that the reasonable hourly rates in ERISA class actions are based on national, rather than local, rates. *Frommert v. Conkright*, 223 F. Supp. 3d 140, 151 (W.D.N.Y. 2016), *amended on other grounds*, 2017 WL 3867795 (W.D.N.Y. May 4, 2017); *Pfeifer v. Wawa, Inc.*, 2018 WL 4203880, at *14 (E.D. Pa. Aug. 31, 2018) (finding requested attorneys’ fees in ERISA class action settlement to be reasonable, in part because of reasonable hourly rates based on a national market in lodestar cross check analysis).

N.A., 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (approving hourly rates as reasonable); *Blackwell v. Bankers Tr. Co.*, No. 18-cv-141, ECF No. 94 (S.D. Miss. June 23, 2021) (granting final settlement approval and motion for attorneys' fees). What is more, courts within this District have approved of similar hourly rates in ERISA actions. *See, e.g., Pfeifer*, 2018 WL 4203880, at *14 (approving hourly rates ranging from \$235 to \$910 per hour as "reasonable given the complexity of this ERISA action and the skill and experience of the attorneys involved").

Dividing the requested fee of \$2,900,000 by the lodestar yields a multiplier of approximately 2.77. "[M]ultiples ranging from 1 to 8 are often used in common fund cases." *Stevens*, 2020 WL 996418, at *13 (citing *In re Rite Aid Sec. Litig.*, 362 F. Supp. 2d 587, 590 (E.D. Pa. 2005) (approving 6.96 multiplier)). A comparison with lodestar multipliers in other ERISA cases in this Circuit demonstrates the reasonableness of a 2.77 multiplier. *See, e.g., Stevens*, 2020 WL 996418, at *13 (approving 6.16 multiplier); *McCoy*, 569 F. Supp. 2d at 479 (approving 2.3 multiplier); *In re Lucent Techs., Inc., Sec. Litig.*, 327 F. Supp. 2d 426, 450 (D.N.J. 2004) (approving 2.46 multiplier for ERISA counsel); *see also* 3 Newberg on Class Actions § 14.03 at 14–5 ("Multiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied."); *Viafara v. MCIZ Corp.*, 2014 WL 1777438, at *14 (S.D.N.Y. May 1, 2014) ("Courts award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers.").

In light of the complexity of this case, the fully contingent-fee basis on which Class Counsel undertook the representation, and the excellent result obtained for the Class Members, a 2.77 multiplier is eminently reasonable, and confirms the appropriateness of a one-third fee.

D. Class Counsel’s Reasonably Incurred Litigation Expenses Should Be Reimbursed from the Settlement Fund

“Counsel in ‘common fund cases is entitled to reimbursement of expenses that were adequately documented and reasonably and appropriately incurred in the prosecution of the case,’” including “items such as: expert fees, filing fees, postage, transportation, working meals, printing, and consultant fees.” *High Street Rehab.*, 2019 WL 4140784, at *15 (quoting *In re Cendant Corp. Deriv. Action Litig.*, 232 F. Supp. 2d 327, 343 (D.N.J. 2002)). Reimbursable expenses also include legal research charges, *see Huffman*, 2019 WL 1499475, at *8, and settlement administration expenses. *Stevens*, 2020 WL 996418, at *14. “This type of reimbursement has been expressly approved by the Third Circuit.” *Schering-Plough*, 2012 WL 1964451, at *8 (citing *Abrams v. Lightolier*, 50 F.3d 1204, 1225 (3d Cir. 1995)).

Here, Class Counsel reasonably incurred \$67,649.70 in such expenses, which were all contemporaneously documented in the firms’ books and records. *See* Porter Decl. ¶¶ 33, 40; Yau Decl. ¶¶ 34-36. These expenses were necessary to the prosecution of the case and helped to achieve a successful result for the Class Members. *See* Porter Decl. ¶ 39; Yau Decl. ¶ 37. They are also of the “type routinely billed by attorneys to paying clients in similar cases,” and should therefore be reimbursed from the Settlement Fund. *Schering-Plough*, 2012 WL 1964451, at *8; *see also High Street Rehab.*, 2019 WL 4140784, at *15.

E. The Requested Settlement Administration Expenses Are Reasonable

In addition to Class Counsel’s out-of-pocket litigation expenses, Plaintiffs seek approval of the settlement administration expenses necessary for the effectuation of this Settlement. The Settlement Agreement provides for disbursement from the Settlement Fund Account to cover the amount required for payment of any taxes owed on the Settlement Fund Account; the fees and

costs of the Independent Fiduciary; and amounts for the reasonable expenses of administering the Settlement Fund Account. SA ¶ 8.1.

The Settlement's Independent Fiduciary, Fiduciary Counselors Inc., is reviewing the Settlement, including (1) the scope of the release of claims, (2) the Settlement recovery and the amount of any attorneys' fees award and other sums to be paid from such recovery, (3) the Plan of Allocation; (4) whether the Settlement terms are reasonable; and (5) whether the Settlement complied with all relevant requirements set forth in the Prohibited Transaction Exemption 2003-39. Yau Decl. ¶¶ 21-22.

The parties selected Fiduciary Counselors Inc. as the Independent Fiduciary after a competitive bidding process involving two (2) additional potential independent fiduciaries. *Id.* ¶¶ 19, 22. The expense of Fiduciary Counselors Inc.'s services will amount to \$15,000. *Id.* ¶ 39. The Parties' Settlement Administrator, Analytics Consulting, LLC ("Analytics"), has performed settlement administration services, which includes (1) reviewing the Settlement Class member information provided by Defendants; (2) preparing and mailing the Settlement Notices; (3) searching for valid addresses for any Settlement Class members whose Notices were returned as undeliverable; (4) establishing a telephone support line for Settlement Class members; (5) creating and maintaining the Settlement website; and (6) managing the project and communicating with the Parties regarding the status of settlement administration. *Id.* ¶ 38; Mitchell Decl. ¶¶ 4, 16. If the Settlement is approved, then Analytics will also facilitate delivery of settlement payments to Settlement Class members as provided by the Settlement. Yau Decl. ¶ 38; Mitchell Decl. ¶ 16. Class Counsel selected Analytics after a competitive bidding process involving three (3) additional settlement administration companies, and Analytics' cost of providing these services has been capped at \$17,500.00. Yau Decl. ¶¶ 19, 38.

The maximum total settlement administration expense is only 0.37% of the Settlement Fund and is comparable to the settlement administration costs approved by other courts in ERISA class action settlements. *See, e.g., Reetz v. Lowe's Cos.*, No. 5:18-cv-00075, ECF 263 (W.D.N.C. Oct. 12, 2021) (approving settlement administration costs of \$160,545, reflecting 1.4% of the gross settlement value); *Stevens*, 2020 WL 996418, at *14 (approving settlement administration expenses of \$60,170.97, reflecting 0.8% of the gross settlement value). Therefore, this Court should approve the requested settlement administration expenses.

F. Service Awards of \$15,000 for Named Plaintiff Kallas and \$10,000 Each for Named Plaintiffs Ahrendsen, Clement, and Bush Are Appropriate

Courts in this Circuit routinely approve service awards, also known as “incentive awards,” to named plaintiffs in ERISA class actions. These awards are intended to compensate named plaintiffs for the time they spend responding to discovery requests, reviewing documents filed in the case, and communicating with Class Counsel, as well as to compensate them for the risks they incur in stepping forward to vindicate the rights of others. *See, e.g., Stevens*, 2020 WL 996418, at *14; *Mehling*, 248 F.R.D. at 467. All of the Named Plaintiffs in this action dedicated significant time and effort to this matter, including by reviewing pleadings, responding to discovery requests, communicating with counsel, and evaluating the merits of the proposed settlement. *See* Declarations of Thomas Kallas and Lisa Bush, Yau Decl. Exs. 3, 4; Yau Decl. ¶¶ 40-42; Declarations of Shari Ahrendsen and Barry Clement, Porter Decl. Exs. 2, 3; Porter Decl. ¶ 20. Plaintiffs’ active participation in the Lawsuit support the request for service awards.

Mr. Kallas in particular provided additional information that helped with the litigation. Kallas Decl. ¶¶ 3, 8. For example, the operative Second Amended Complaint attributes to Mr. Kallas various allegations furnished by “Confidential Witness 1,” which provided useful information to support Plaintiffs’ legal theories. *See Myers v. Jani-King of Phila., Inc.*, 2019 WL

4034736, at *10 (E.D. Pa. Aug. 26, 2019) (recognizing employment reputation risk in serving as a class representative and granting service award); *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014) (approving service awards to each plaintiff in part because “ERISA litigation against an employee’s current or former employer carries unique risks and fortitude, including alienation from employers or peers”); *Velez v. Majik Cleaning Serv., Inc.*, 2007 WL 7232783, at *7 (S.D.N.Y. June 25, 2007) (“[I]n employment litigation, the plaintiff is often a former or current employee of the defendant, and thus, by lending his name to the litigation, he has, for the benefit of the class as a whole, undertaken the risk of adverse actions by the employer or co-workers.”) (quoting *Frank v. Eastman Kodak Co.*, 228 F.R.D. 174, 187 (W.D.N.Y. 2005) (internal quotation marks omitted)). Given Mr. Kallas’ additional contributions to the Lawsuit, a higher service award is warranted and supported by caselaw. *See Slipchenko v. Brunel Energy, Inc.*, 2015 WL 338358, at *15 (S.D. Tex. Jan. 23, 2015) (“Courts recognize that ‘[a] differentiation among class representatives based upon the role that each played may be proper in given circumstances.”) (quoting *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)); *Chesmore v. Alliance Holdings, Inc.*, 2014 WL 4415919, at *4–5 (W.D. Wis. Sept. 5, 2014) (awarding varying levels of service awards depending on the extent of each class representative’s contributions).

Plaintiffs seek relatively modest service awards for the Named Plaintiffs, in the amounts of \$15,000 for Mr. Kallas and \$10,000 each for Ms. Ahrendsen, Mr. Clement, and Ms. Bush. These awards are similar to, and in some cases much less than, service awards in other ERISA cases in this District. *See, e.g., McCoy*, 569 F. Supp. 2d at 480 (\$60,000 to each named plaintiff); *Sweda*, 2021 WL 5907947, at *7-8 (\$25,000 to each named plaintiff); *Mehling*, 248 F.R.D. at 467 (\$15,000 to one named plaintiff and \$7,500 to another named plaintiff); *Stevens*, 2020 WL 996418, at *14

(\$10,000 to named plaintiff); *Cigna-Am.*, 2019 WL 4082946, at *16 (\$10,000 to each named plaintiff); *High Street Rehab.*, 2019 WL 4140748, at *15 (\$10,000 to each named plaintiff).

“Courts have considered [service] awards around 3.1 to 3.5 percent of the total recovery as proportional.” *Sweda*, 2021 WL 5907947, at *8. The requested service awards here, which total \$45,000, comprise approximately 0.5 percent of the Settlement Fund, and therefore will not materially affect the recovery of the absent Class Members. The requested service awards are eminently reasonable and should be approved.

V. CONCLUSION

For all the foregoing reasons, Plaintiffs respectfully request that the Court grant their motion for an award of attorneys’ fees in the amount of one-third of the Settlement Fund (\$2,900,000); authorize reimbursement from the Settlement Fund of Class Counsel’s out-of-pocket costs in the amount of \$67,649.70; approve the requested settlement administration expenses; and authorize payment from the Settlement Fund of service awards in the amounts of \$15,000 to Mr. Kallas and \$10,000 each to Ms. Ahrendsen, Mr. Clement, and Ms. Bush.

Dated: April 28, 2023

Respectfully Submitted,

By: /s/ Gregory y. Porter
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CERTIFICATION OF COUNSEL

Pursuant to Local Rule 7.1(b), I certify that I have conferred with counsel for all Parties and this motion is uncontested.

/s/ Gregory Y. Porter _____

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of April, 2023, a copy of the foregoing document was served on all counsel of record via ECF.

/s/ Gregory Y. Porter _____
Gregory Y. Porter