IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA
PHILADELPHIA DIVISION

JENNIFER SWEDA, ET AL., *Plaintiffs*, v. THE UNIVERSITY OF PENNSYLVANIA, ET AL., *Defendants*.	No. 2:16-cv-4329-GEKP

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

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Plaintiffs allege that Defendants the University of Pennsylvania, the Investment Committee, and Jack Heuer breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 relating to the management, operation, and administration of The University of Pennsylvania Matching Plan, The University of Pennsylvania Supplemental Retirement Annuity Plan, and The University of Pennsylvania Basic Plan (all three plans collectively referred to as the "Plan" or "Plans") by causing the Plans to pay unreasonable recordkeeping and administrative fees and maintaining high-cost, underperforming investment options. Docs. 1, 69. Defendants dispute these allegations and deny liability for any alleged fiduciary breach. After extensive arm's length negotiations, the parties reached a settlement that provides meaningful monetary and non-monetary relief to class members. In light of the litigation risks further prosecution of this action would inevitably entail, Plaintiffs respectfully request that this Court: (1) preliminarily approve the proposed settlement; (2) approve the proposed form and method of notice to the Settlement Class; and (3) schedule a hearing at which the Court will consider final approval of the settlement.

BACKGROUND

I. The claims in this action.

Plaintiffs filed their complaint on August 11, 2016. Doc. 1. They amended their complaint as of right under Rule 15(a)(2) on November 21, 2016. Doc. 27. Plaintiffs assert seven counts against Defendants. In Counts I and II, Plaintiffs allege Defendants breached their duty of loyalty and prudence under 29 U.S.C. §1104(a)(1)(A)–(B) and committed prohibited transactions under §1106(a)(1) by locking the Plan into providing the CREF Stock Account, regardless of its performance or fees, and locking the Plan into TIAA's recordkeeping services. In Counts III and IV, Plaintiffs allege that Defendants breached their duties of loyalty and prudence under 29 U.S.C. §1104(a)(1)(A)–(B) and committed prohibited transactions under §1106(a)(1) by using

two vendors instead of a single recordkeeper, allowing those recordkeepers to receive unreasonable compensation, failing to prudently monitor and control recordkeeping expenses, and failing to solicit bids from other recordkeepers. Under Counts V and VI, Plaintiffs assert that Defendants breached their duties of loyalty and prudence under 29 U.S.C. §1104(a)(1)(A)–(B) and committed prohibited transactions under §1106(a)(1) by failing to prudently monitor Plan investment options, resulting in the use of high-cost and underperforming funds compared to alternatives available to the Plan. Under Count VII, to the extent Defendants delegated any of their fiduciary duties, Plaintiffs allege that Defendants failed to prudently monitor the actions of those individuals.

On January 5, 2017, Defendants moved to dismiss the amended complaint. Doc. 33. On September 21, 2017, the Court granted Defendants' motion to dismiss Plaintiffs' amended complaint. Doc. 57. Plaintiffs appealed the Court's dismissal, which was overturned for counts III and V and remanded for further proceedings. *Sweda v. Univ. of Penn.*, 923 F.3d 320 (3d Cir. 2019). Defendants sought a stay to the mandate while they petitioned the Supreme Court. The Third Circuit denied their motion to stay. Subsequently, Defendants' Petition for Writ of Cert to the Supreme Court was denied. *Univ. of Pennsylvania v. Sweda*, 140 S.Ct. 2565 (2020).

After remand from the Third Circuit, Plaintiffs filed a second amended complaint. Doc. 69. The parties then proceeded to discovery. The parties negotiated a stipulated confidentiality and seal order (Doc. 32), a supplemental protective order (Doc. 82), and a stipulation for discovery of hard copy documents and electronically stored information (or "ESI") (Doc. 76). The parties issued written discovery and engaged in extensive written discovery with almost 15,000 documents produced by the parties or relevant third parties. These materials required extensive review by all parties, particularly Plaintiffs' counsel. All documents produced required close and

detailed analysis along with discussions with consultants and experts retained by Plaintiffs' counsel. Declaration of Heather Lea ("Lea Decl."), ¶4.

After the materials were thoroughly analyzed, the parties proceeded to the deposition phase of discovery. In total, the parties took the deposition of thirteen fact witnesses. The majority of these depositions lasted several hours with some lasting all day. During the discovery phase, the parties were engaged with experts in preparation for their expert disclosures and supporting materials. Plaintiffs were engaged with several consultants and experts on this matter. Lea Decl. ¶5.

On September 15, 2020, Plaintiffs filed their motion and supporting memorandum for class certification. Doc. 84, 84-02. Defendants filed their opposition on November 3, 2030 and Plaintiffs filed their reply brief on November 24, 2020. Doc. 91, 92.

At this time, the parties commenced settlement negotiations. These discussions covered a period of over four weeks and entailed intense, arms-length negotiations. Ultimately, the parties were able to reach an agreement to settle the case which culminated in the execution of the Settlement Agreement. Lea Decl. ¶6.

II. The terms of the proposed settlement.

Plaintiffs are requesting that the Court certify a Settlement Class consisting of "all persons who participated in the Plans at any time during the Class Period, including any Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period. Excluded from the Settlement Class are each of the individual members of the Investment Committee during the

Class Period." Ex. A, §2.41.[1] Contemporaneous with this motion, Plaintiffs filed a motion for a conditional class certification of this settlement class. Doc. 94. In exchange for the dismissal of this action and for entry of the Judgment as provided for in the Settlement Agreement, Defendants will make available to Settlement Class members the monetary and non-monetary benefits described below.

A. Monetary Relief.

Defendants will deposit $13,000,000 (the "Gross Settlement Amount") in an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, and Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Compensation if awarded by the Court.

B. Non-Monetary Terms.

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

1. Defendants acknowledge that in or around Spring 2021, the Plan will begin utilizing a single recordkeeper for recordkeeping and administrative services and be charged for those services on a fixed-fee (per Plan participant) basis. Defendants further acknowledge that in or around Spring 2021, the Plan intends to offer an updated investment menu, including investment options offered in the lowest-cost share class available to the Plan.
2. There will be a Settlement Period of three years from the Settlement Effective Date

[1] The Class Period is August 10, 2010 through January 14, 2021. Ex. A, §2.12. Defendants do not oppose Plaintiffs' motion to certify a settlement only class.

during which Defendants will comply with the terms set forth herein.

3. Defendants agree that, in connection with the implementation of the updated investment menu in or around Spring 2021, the Plan fiduciaries will inform Plan participants of their ability to redirect their assets held in any frozen investment options to investment options available in the updated investment menu or brokerage account option.

4. During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.

5. To the extent an asset-based fee is used to offset a fixed-fee for recordkeeping and administrative services, any asset-based fee collected in excess of the fixed-fee amount and not used to defray reasonable expenses of administering the Plan shall be rebated back to Plan participants. The Plan shall allocate excess amounts to participants in a manner the Plan fiduciaries determine to be fair, equitable, and appropriate under the circumstances.

6. Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

7. Before the expiration of the Settlement Period, Defendants or their consultant shall initiate a request for proposal ("RFP") for recordkeeping and administrative services. Within sixty (60) days after the conclusion of the RFP, Defendants shall notify Class

Counsel that they have fulfilled this obligation.

8. Defendants agree to instruct the current recordkeeper of the Plan in writing within ninety (90) calendar days of the Settlement Effective Date that, in performing previously agreed-upon recordkeeping services with respect to the Plan, the recordkeeper must not use information received as a result of providing services to the Plan and/or the Plan's participants to solicit the Plan's current participants for the purpose of cross-selling non-Plan products and services, including, but not limited to, Individual Retirement Accounts ("IRAs"), non-Plan managed account services, life or disability insurance, investment products, and wealth management services, unless in response to a request by a Plan participant. In the event Defendants enter into a new recordkeeping agreement with an existing recordkeeper or a new recordkeeper during the Settlement Period, Defendants agree that any resulting contract shall include a provision restricting the recordkeeper from using information received as a result of providing services to the Plan and/or the Plan's participants for the purpose of soliciting the Plan's current participants for the purpose of cross-selling non-Plan products and services, unless in response to a request by a Plan participant.

The non-monetary terms are substantial and materially add to the total value of the settlement. These provisions ensure that current and future participants in the Plan are offered a prudently administered retirement program in which they can invest their retirement savings going forward.

C. Notice and Class Representatives' Compensation.

The costs to administer the Settlement, including those associated with providing notice to the Settlement Class, will be paid from the Gross Settlement Amount. For the costs associated with the Independent Fiduciary and the Settlement Administrator, Plaintiffs received proposals

from candidates to provide these services. After consideration of the proposed fees and the quality of the services to be provided by each candidate, Gallagher Fiduciary Advisors was selected as the Independent Fiduciary, and RG2 Claims Administration, LLC was selected as the Settlement Administrator to provide notices electronically for those class members for whom a current e-mail address is available and by first-class mail to the current or last known address of all class members for whom there is no current email address.[2]

Plaintiffs will seek $25,000 for each of the named plaintiffs. This amount is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested complex litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery and alienation from their employers and peers. *Clark v. Duke Univ.*, No. 16-1044, Doc. 165 at 11 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, 2019 WL 1993519, at *4 (M.D.N.C. May 6, 2019); *Kruger v. Novant Health, Inc*., No. 14-208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016); *Savani v. URS Prof'l Solutions LLC,* 121 F.Supp.3d 564, 576 (D.S.C. 2015).

D. Attorneys' Fees and Costs.

Plaintiffs' counsel will request attorneys' fees to be paid out of the Gross Settlement Fund in an amount not more than one-third of the Gross Settlement Amount, or $4,333,333 as well as reimbursement for costs incurred of no more than $410,000. Plaintiffs' counsel "pioneer[ed]" 401(k) excessive fee litigation as recognized by multiple federal judge, *e.g., Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D.Ill. July 17, 2015), and successfully

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

handled the only ERISA excessive fee case taken by the Supreme Court, *Tibble v. Edison, Int'l*, 135 S.Ct. 1823 (2015). Plaintiffs' counsel also filed the first 403(b) excessive fee cases in history, of which this case was one. Before Plaintiffs' counsel filed both the 401(k) cases and the 403(b) cases, no one had ever brought a case alleging excessive 401(k) or 403(b) fees. *See infra* Argument §II. A contingent one-third fee is the market rate for complex ERISA excessive fee cases. *Kruger*, 2016 WL 6769066, at *2 (collecting cases); *Sims*, 2019 WL 1993519, at *2; *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *2 (S.D.Ill. Mar. 31, 2016); *see also Hall v. Accolade, Inc.,* No. 17-3423, 2019 WL 3996621, *5 (E.D. Penn. Aug. 23, 2019)(citing *Williams v. Aramark Sports, LLC,* No. 10-1044, 2011 WL 4018205, at *10 (E.D. Pa. Sept. 9, 2011)). It is also the rate contractually agreed to by the named plaintiffs. Decl. of Jerome J. Schlichter, ¶6.

Although Plaintiffs' counsel will not request a fee greater than one-third of the monetary recovery, the additional terms of the settlement provide meaningful value in addition to the monetary amount. This results in the requested fee being significantly lower than a one-third award. In addition, Plaintiffs' counsel will not seek attorneys' fees: (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with communicating with class members or Defendant during the Settlement Period; and (3) for work required in future years to enforce the settlement, if necessary. Plaintiffs' counsel will submit a formal application for attorneys' fees and costs and for the Class Representatives' incentive awards at least 30 days prior to the deadline for class members to file objections to the settlement. However, as this Court has noted, fee awards in common fund cases generally range from 19% to 45% of the settlement fund. *Leap v. Yoshida*, No. 14-3650, 2015 WL 619908, *4 (E.D. Pa. Feb. 15, 2015). Thus, Plaintiffs' request here is preliminarily reasonable.

ARGUMENT

As a preliminary matter, this Court may inquire if there are any obvious deficiencies with the Settlement and assess the proposed plan for notifying class members. *Id*. at *2. Counsel for both Plaintiffs and Defendants are not aware of any obvious deficiency with the Settlement and they believe that the proposed plan for notifying all class members is appropriate. As explained in more detail below, all counsel herein are extensively experienced in this type of litigation and have settled numerous similar cases in the same manner as proposed here. For this reason, these preliminary inquiries this Court may make are met. Given that this Court has not yet certified a class in this case, "it must determine whether the proposed settlement class should be certified for purposes of settlement." *Id*. at *3. For the reasons stated in Plaintiffs' Unopposed Motion for Certification of Settlement Class, Plaintiffs respectfully state that the requested certification of the settlement class is appropriate and should be granted. Doc. 94.

"The preliminary approval determination requires the Court to consider whether '(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *Yoshida*, 2015 WL 619908 at *3 (quoting *In re Linerboard Antitrust Litig.*, 292 F.Supp.2d 631, 638 (E.D.Pa.2003)); see also *In re Cendant Corp. Litig.*, 264 F.3d 201, 233 n. 18 (3d Cir.2001). "If, after consideration of those factors, a court concludes that the settlement should be preliminarily approved, 'an initial presumption of fairness' is established." *Yoshida*, 2015 WL 619908 at *3 (citing *In re Linerboard*, 292 F.Supp.2d at 638).

At the preliminary approval stage, this Court need only make "a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms" and "direct[s] the preparation of notice of the certification, proposed settlement, and date of the final fairness

hearing." *Id.* (*quoting* Manual for Complex Litigation (Fourth), §21.632 (2004)). At a later final fairness hearing, the Court will consider several additional factors in making its determination in granting final approval to the Settlement. *In re Prudential Ins. Co. Am. Sales Practice Litig.*, 148 F.3d 283, 317 (3d Cir. 1998). For the reasons stated above and detailed below, the four factors in assessing the preliminary approval of this Settlement are met.

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

There is a strong initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. *See Newberg on Class Actions* §11.41 at 11-88 (3d ed. 1992); *In re General Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litigation*, 55 F.3d 768, 785 (3d Cir. 1995). As described above, and as supported with the declaration by Plaintiffs' counsel, this Settlement is the result of lengthy and complex arm's-length negotiations between the Settling Parties. *See* Schlichter Decl., ¶2. Indeed, only after protracted discussions that extended over a period of several weeks was final agreement accomplished. *Id*. These discussions were led by experienced counsel for both parties who have settled numerous similar cases and are extremely experienced in negotiating complex settlement such as this Settlement. *Id*.

II. The settlement was reached after extended litigation and significant discovery related to Plaintiffs' claims was conducted.

At the time the settlement was reached, the parties had been engaged in years of litigation. Plaintiffs' counsel extensively developed the facts and legal theories supporting their claims. They conducted a substantial investigation of their claims prior to the filing of the complaint. Thereafter, they obtained extensive fact discovery, including obtaining from Defendants approximately 15,000 pages of documents. As part of Plaintiffs' counsel's discovery practice in preparing the case for depositions, potential summary judgment, and ultimately trial, the majority

of these documents were electronically indexed and sorted, and thereafter individually examined, analyzed, and cataloged by an attorney. Plaintiffs' counsel thoroughly reviewed and analyzed materials provided by the named plaintiffs and took numerous fact and expert witness depositions. The parties took thirteen depositions of parties or fact witnesses. Many of these depositions lasted several hours, some all day. The deposition transcripts were thoroughly analyzed and used in preparation for upcoming depositions. While these depositions were being conducted, Plaintiffs were consulting with experts in the various fields of investment management, fiduciary process, and recordkeeping. Plaintiffs' counsel was thoroughly engaged with these experts and preparing for their reports to be disclosed.

On this record, Plaintiffs conducted extensive and detailed discovery and months of deep investigation related to their claims against Defendants pertaining to the management and administration of the Plan. *Gen. Motors Corp.*, 55 F.3d at 785; *Yoshida*, 2015 WL 619908 at *4.

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

Plaintiffs' counsel strongly supports the preliminary approval and ultimate approval of the Settlement. *Gen. Motors Corp.*, 55 F.3d at 785. Plaintiffs' counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) plans, but "pioneer[ed]…the field of retirement plan litigation." *Abbott,* 2015 WL 4398475, at *1. Schlichter Bogard and Denton is the "preeminent firm" in excessive fee litigation having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks". *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *3–4 (C.D.Ill Oct. 15, 2013). They are "experts in ERISA litigation", *Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 WL 4246879, at *2 (D.Minn. July 13, 2015)(citation omitted), and "highly experienced", *In re Northrop Grumman Corp. ERISA Litig*., No. 06-6213, 2017 WL 9614818, at *4 (C.D.Cal. Oct. 24, 2017). The firm also obtained the only victory of an ERISA 401(k) excessive fee Supreme Court case, which held that an ERISA fiduciary has a

continuing duty to monitor plan investments and remove imprudent ones. *Tibble,*135 S.Ct. at 1828–29.

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

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

Kruger, 2016 WL 6769066, at *3. Recently, on June 24, 2019, Judge Eagles from the same District "recognized the experience, reputation, and ability" of Plaintiffs' counsel and found that the firm "demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Clark,* Doc. 165 at 7. In another ERISA class action, Judge Eagles also recognized the "skill and determination" of the firm and noted that "[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery." *Sims,* 2019 WL 1993519, at *3.

Judge McDade of the Central District of Illinois, again speaking of the firm, observed that achieving a favorable result in this type of case required extraordinary efforts because the "litigation entails complicated ERISA claims". *Martin v. Caterpillar, Inc*., No. 07-1009, 2010 WL 3210448, at *2 (C.D.Ill. Aug. 12, 2010). Judge Baker from the same District also found:

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

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

Several judges from the Southern District of Illinois have commended the work of Schlichter

Bogard and Denton. Judge Murphy stated:

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

Will v. Gen. Dynamics Corp., No. 06-698, 2010 WL 4818174, at *3 (S.D.Ill. Nov. 22, 2010).

Judge Herndon echoed those thoughts:

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

Beesley v. Int'l Paper Co., No. 06-703, 2014 WL 375432, at *2 (S.D.Ill. Jan. 31, 2014).

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

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

Spano, 2016 WL 3791123, at *3.

For these reason, Plaintiffs' counsel has substantial experience in "similar litigation" and it is their belief that this Settlement is appropriate for approval. *Yoshida*, 2015 WL 619908 at *5.

IV. No objections to the preliminary approval of the Settlement have been lodged.

At this preliminary stage, no initial objections to the Settlement or the concept of settling this matter have been lodged by any class member. *Gen. Motors Corp.*, 55 F.3d at 785; *Yoshida*, 2015 WL 619908 at *5. As part of the settlement process, the parties will engage in a robust notice program ensuring that class members are informed of the Settlement and its terms. Notice

must be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co*., 339 U.S. 306, 314 (1950). "Individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974).

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

The notices themselves contain all the pertinent and necessary information for class members to learn about the terms of the Settlement. The parties' proposed notices to current and former participants are attached as Exhibits 3 and 4 to the Settlement Agreement. The notices will fully apprise class members of the existence of the lawsuit, the proposed settlement, and the information they need to make informed decisions about their rights, including: (i) the terms and operation of the settlement; (ii) the nature and extent of the release; (iii) the maximum attorneys' fees and costs that will be sought; (iv) the procedure and timing for objecting to the settlement

and the right of parties to seek limited discovery from objectors; (v) the date and place of the fairness hearing; and (vi) the website on which the full settlement documents and any modifications thereto will be posted.

CONCLUSION

Plaintiffs submit that all preliminary criteria necessary for this Court's consideration have been met and this Settlement should be preliminarily approved as presumptively fair. *Harlan v. Transworld Systems, Inc.*, 302 F.R.D. 319, 324 (E.D.Pa. Sept. 9, 2014). For these reasons, Plaintiffs respectfully request that the Court grant preliminary approval of the Settlement.

January 14, 2021

Respectfully submitted,

/s/ Heather Lea

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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on January 14, 2021.

/s/ Heather Lea