

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

Martha Walther, Trent Kumfer, Jayme Lea,
Megan Kelsey, Dave Lowe, Carol Whisler, and
Michele Porter, as representatives of a class of
similarly situated persons, and on behalf of the
80/20, Inc. Employee Stock Ownership Plan,

Plaintiffs,

v.

John Wood and Brian Eagle,

Defendants.

1:23-cv-00294-GSL-ALT

**PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF
THEIR UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS &
ADMINISTRATIVE EXPENSES AND CLASS REPRESENTATIVE COMPENSATION**

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INTRODUCTION

In connection with the class action Settlement regarding the management and termination of the 80/20, Inc. Employee Stock Ownership Plan (the “Plan” or “ESOP”), Plaintiffs Martha Walther, Trent Kumfer, Jayme Lea, Megan Kelsey, Dave Lowe, Carol Whisler, and Michele Porter (“Plaintiffs”) and Class Counsel submit this memorandum in support of their unopposed motion for (1) an award of attorneys’ fees to Class Counsel in the amount of \$2,333,333.33, or one-third of the Gross Settlement Amount; (2) class representative service awards to each of the Class Representatives in the amount of \$5,000.00 each; (3) reimbursement to Class Counsel of \$35,812.79 in advanced litigation costs; (4) payment of settlement administration expenses in the amount of \$9,800.00, to the appointed administrator, Atticus Administration, and (5) payment of independent fiduciary expenses in the amount of \$15,000.00.

Under the Settlement, a Gross Settlement Amount of \$7,000,000.00 will be paid to resolve the claims of the Settlement Class. This is a significant recovery for the Class in a novel and complex case. To date, Class Counsel have received no payment for any of their efforts in this litigation, nor have they been reimbursed for their out-of-pocket costs advanced on behalf of the Class. All compensation to Class Counsel is subject to Court approval as provided in the Settlement. Class Counsel’s request of one-third of the settlement fund is reasonable and standard in cases such as this, as elaborated below.

In addition, the Class Representatives, without whom there would be no recovery, have served the Class by aiding in the investigation, litigation, and mediation of this matter. Finally, the requested Settlement-related expenses are reasonable and typical for a case such as this. Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the requested distributions from the Settlement Fund.

BACKGROUND

I. PROCEDURAL HISTORY

Plaintiffs filed this ERISA class action on July 14, 2023, Dkt. 1, and amended their complaint twice to add new support for the claims of the putative class and new members as putative class representatives. Dkts. 47, 63. In their operative Second Amended Complaint (“SAC”), Plaintiffs allege that the Plan’s fiduciaries, Defendants John Wood, Brian Eagle, Patrick Buesching, Patrice Mauk, and Rodney Strack (together, Buesching, Mauk, and Strack are the “Officer Defendants”), breached their duty of care to the Plan under ERISA by failing to acquire 80/20, Inc. (“80/20 or the “Company”) stock from founder Don Wood’s estate and committing the Plan to join the estate in a third-party sale on unfavorable terms to the Plan. Plaintiffs further allege that Defendants MPE Partners II, L.P., MPE Partners III, L.P., and Pareto Efficient Solutions, LLC (together, the “MPE Defendants”), knowingly participated in the other Defendants’ violations of ERISA through their purchase of the Company from the estate and the Plan. Dkt. 63. Defendants deny these allegations.

Defendants moved to dismiss the claims in the SAC or sought judgment on the pleadings. Dkts. 65, 68, 130, 152. While the initial motions to dismiss were pending, Plaintiffs aggressively pursued discovery from Defendants and third parties. First Declaration of Melissa A. Carrington (“First Carrington Dec.”), Dkt. 183-1, ¶ 12. Plaintiffs then marshalled that evidence in support of their motion for class certification. Dkt. 109.

Before Plaintiffs’ motion for class certification was fully briefed, the Court granted in part and denied in part Eagle’s motion to dismiss and granted in full the motions to dismiss filed by the Officer and MPE Defendants. Dkt. 125. The parties then sought a stay of discovery and other deadlines to pursue further motions practice and briefing related to the scope of the case following the Court’s order, which the Court granted. Dkts. 137, 143. After hearing the second

round of motions related to the pleadings and scope of the case, the Court denied motions for judgment on the pleadings by Defendants Wood and Eagle, allowing Plaintiffs' claim for breach of fiduciary duty, 29 U.S.C. § 1104(a), to proceed against Eagle and Plaintiffs' breach of fiduciary duty and prohibited transaction claims, 29 U.S.C. §§ 1104(a), 1106, to proceed against Wood. Dkt. 167. Shortly after the Court's order, the parties agreed to mediate and submitted a proposed schedule to complete the case if the mediation failed. Dkt. 171.

On December 2, 2025, the parties conducted an in-person mediation with the Honorable John A. Jarvey, a retired U.S. District Court Judge who served for 35 years on the federal bench. First Carrington Dec. ¶ 14, Ex. 2 (Hon. John A. Jarvey (ret.) Biography). Although the parties were unable to reach a settlement in person, Judge Jarvey continued to facilitate negotiations remotely over the following two weeks, and the parties succeeded in reaching a settlement. First Carrington Dec. ¶ 15.

II. SETTLEMENT

A Gross Settlement Amount of \$7 million will be paid to resolve Class Members' claims. Settlement Agreement ("SA"), Dkt. 183-2, § 1.20. After accounting for Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Service Awards approved by the Court, the Net Settlement Amount will be distributed to Class Members according to the Plan of Allocation. *Id.* §§ 1.23, 5.1. The Plan of Allocation requires the Settlement Administrator to calculate a Settlement Credit Amount for each Settlement Class Member. *Id.* § 5.1. The Settlement Credit Amount is based on the amount of each Settlement Class Member's Termination Distribution. *Id.* A "Termination Distribution" is defined as "all distributions from the Plan that were issued to Participants or their Beneficiaries or Alternate Payee after the termination of the Plan." *Id.* § 1.31. Thus, each person with a stake in the Plan when it was terminated will participate in the Settlement on a *pro rata* basis. *Id.* § 5.1.

Settlement Class Members will have the option of receiving their Settlement distribution through a rollover to a qualified retirement account. *Id.* § 5.4.1. Alternatively, Settlement Class Members may receive their distribution by electronic funds transfer or check. *Id.* § 5.4.3. If they do nothing, Settlement Class Members will receive their distribution by check. *Id.* Under no circumstances will any monies revert to Defendants. *Id.* §§ 5.5.1-5.5.2.

III. WORK OF CLASS COUNSEL

Class Counsel has dedicated substantial time and effort to prosecuting this novel and complex action in order to achieve this outstanding Settlement. Class Counsel is unaware of any other ESOP class action that sought to enforce ERISA duties in connection with rights and opportunities arising from an estate plan. Second Declaration of Melissa A. Carrington (“Second Carrington Dec.”) ¶ 6.

A. Work Conducted to Date

Prior to filing the Complaint, Class Counsel conducted an in-depth investigation of information relating to the ESOP, the Company, Don Wood’s estate plan, and the circumstances of the ESOP’s termination. As a result of these investigatory efforts, Class Counsel drafted and filed a detailed 24-page complaint in May 2023. Second Carrington Dec. ¶ 5. As the record developed and additional members of the putative class joined the case, Class Counsel drafted and filed two amended complaints, in November 2023 and January 2024, respectively, adding new support for the claims of the putative class and new members as putative class representatives. Dkts. 47 & 63; Second Carrington Dec. ¶ 7. Class Counsel briefed oppositions to two motions to dismiss and two motions for judgment on the pleadings. Dkts. 65, 68, 130, 152.

Class Counsel served extensive written discovery on Defendants and 14 subpoenas for documents on third parties. First Carrington Dec. ¶ 12. Class Counsel also successfully moved to compel discovery responses from Defendants. Dkt. 104. As a result of their efforts, Plaintiffs

obtained more than 40,000 documents totaling more than 300,000 pages, which they used to prepare a thorough motion for class certification. First Carrington Dec. ¶ 12; Dkt. 109. Class Counsel also worked with an expert to prepare a preliminary expert opinion concerning liability and damages, which they included in support of their motion for class certification. Dkt. 121.

Class Counsel applied the same diligence and care to mediation and settlement. Class Counsel prepared and delivered a pre-mediation communication to Defendants outlining Plaintiffs' positions. Second Carrington Dec. ¶ 10. Class Counsel also crafted a mediation statement advocating and elaborating on Plaintiffs' positions to Judge Jarvey, including a claim-by-claim analysis of the record developed in discovery and more than fifty exhibits. *Id.* Class Counsel then traveled in person to participate in a day-long mediation session. *Id.*

After the in-person mediation ended without a settlement, Class Counsel engaged in follow-on communications with Plaintiffs, Judge Jarvey, and Defense Counsel over the next two weeks until the Parties reached a settlement in principle. *Id.* Class Counsel then drafted the Settlement Agreement, Settlement Notice, Rollover Form, and proposed preliminary and final approval orders. *Id.* ¶ 11. In addition, Class Counsel drafted Plaintiffs' motion for preliminary approval of the settlement. *Id.*

Class Counsel selected Atticus Administration ("Atticus") to serve as Settlement Administrator and worked with Atticus and Defense Counsel to ensure the Court-approved notices were timely mailed to class members. *Id.* ¶ 12. In addition, Class Counsel worked with Atticus to ensure the settlement website was established with all required information and a telephone line was created for Class Members who wished to obtain additional information about the settlement. *Id.* After overseeing the launch of the notice campaign, Class Counsel have

responded to questions from Class Members and Atticus to ensure that the Settlement is properly administered for the Class. *Id.*

B. Remaining Work to be Performed

Class Counsel's work on this matter is ongoing. Prior to the Fairness Hearing, Class Counsel will draft Plaintiffs' motion for final approval of the Settlement and respond to any objections. *Id.* ¶ 13. Class Counsel also will communicate with the Independent Fiduciary that has been engaged to review the Settlement and will provide it with all necessary information in connection with its review. *Id.* Class Counsel will then attend the Fairness Hearing, and if final approval is granted, supervise the distribution of payments to eligible Class Members. *Id.* In addition, Class Counsel will continue to respond to questions from Class Members and take other actions necessary to support the Settlement until the conclusion of the Settlement Period. *Id.* Class Counsel estimates this will require an additional 30–60 hours. *Id.* ¶ 15.

IV. WORK OF CLASS REPRESENTATIVES

As Class Representatives, Martha Walther, Trent Kumfer, Jayme Lea, Megan Kelsey, Dave Lowe, Carol Whisler, and Michele Porter gave focused and diligent efforts to advancing the interests of the Class. They have actively engaged with these proceedings, having reviewed filings, asked questions, responded to written discovery, assisted with preparation for mediation, participated telephonically in mediation and post-mediation conferences, decided whether to settle the case, and reviewed the term sheet and settlement agreement. First Carrington Dec. ¶ 26. They have remained engaged since settlement was reached, including sharing information about the settlement with other Class Members and assisting in locating Class Members whose notices were returned as undeliverable. Second Carrington Dec. ¶ 18.

V. WORK OF THIRD PARTIES TO EFFECTUATE SETTLEMENT

In order to be administered and effectuated, the Settlement also requires time, resources, and expertise from the Settlement Administrator and Independent Fiduciary.

On and prior to April 10, 2026, Atticus printed and mailed settlement notices and rollover forms to Class Members and established the settlement website and telephone support line as provided by the Settlement. *Id.* ¶ 22. Atticus has since reviewed completed rollover forms, monitored returned mail, and researched additional means to contact the few Class Members whose notices were returned undeliverable. *Id.* ¶ 23. If the Settlement receives final approval, Atticus will review and process rollover forms, calculate payments to Class Members pursuant to the Plan of Allocation, and facilitate distribution of payments to Class Members. *Id.* ¶ 24. For these services, Atticus will charge \$9,800.00. *Id.* ¶ 25.

Fiduciary Counselors, the appointed independent fiduciary, will review the Settlement and independently determine whether it is in the best interest of the Plan to release its claims against Defendants in exchange for the relief provided. SA § 2.1. This independent fiduciary review is required by DOL regulations. *See* PTE 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830. For their services, Fiduciary Counselors will charge \$15,000. Second Carrington Dec. ¶ 27.

VI. ATTORNEYS' FEES, EXPENSES, AND SERVICE AWARDS SOUGHT

In consideration of the work summarized above and associated expenses, Article 6 of the Settlement Agreement provides that Plaintiffs may seek (1) attorneys' fees equal to one-third of the Gross Settlement Amount; (2) litigation costs; (3) a \$5,000 service award for each of the Class Representatives; and (4) payment of settlement administrative expenses. Consistent with the above, Plaintiffs seek the following amounts in connection with this motion:

- Attorneys' fees: \$2,333,333.33 (equal to one-third of the Gross Settlement Amount);
- Advanced litigation costs: \$35,812.79;
- Class Representative service awards: \$5,000 to each of the seven Class Representatives (\$35,000 total);
- Settlement Administrator expenses: \$9,800;
- Independent Fiduciary expenses: \$15,000.

ARGUMENT

I. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Class Counsel's request for 33.3% of the Gross Settlement Amount (or, stated differently, 33.6% of the Net Settlement Amount) is consistent with Federal Rule of Civil Procedure 23(h), the agreements of the parties, and the law governing fee awards in the Seventh Circuit.

A. Legal Standard

When Class Counsel obtain a settlement for a class, courts "may award reasonable attorneys' fees and nontaxable costs that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). "[L]awyer[s] who recover[] a common fund . . . [are] entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). "[W]hen deciding on appropriate fee levels in common-fund cases, courts must do their best to award counsel the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001).

Non-determinative factors that may inform the Court’s analysis of a reasonable, market-rate fee include: (1) the actual agreements between the parties;¹ (2) the risk of non-payment at the outset of the case; (3) the caliber of Class Counsel’s performance and the amount of work performed; and (4) information from other cases, including fees awarded in comparable cases. *See Hash v. First Fin. Bancorp*, 2021 WL 12269064, at *4 (S.D. Ind. Nov. 22, 2021) (citing *Synthroid*, 263 F.3d at 719); *accord Hale v. State Farm Mut. Auto. Ins. Co.*, 2018 WL 6606079, at *7 (S.D. Ill. Dec. 16, 2018) (citation omitted); *see also Allegretti v. Walgreen Co.*, 2022 WL 484216, at *1 (N.D. Ill. Jan. 4, 2022) (in addition to the quality of work performed, noting that “the amount of work necessary” may also be relevant).

B. All Factors Indicate Class Counsel’s Fee Request is Reasonable and Market-Rate

1. The Agreements Among the Parties Support Class Counsel’s Fee Request

Class Counsel entered into legal services agreements with the Class Representatives at the outset of the case that provided for a contingent fee of one-third of the Gross Settlement Amount. Second Carrington Dec. ¶ 17. *See Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 957-58 (7th Cir. 2013) (reasoning that *ex ante* fee structures are evidence of the “market rate that prevails between willing buyers and willing sellers of legal services”). Additionally, Class Counsel’s fee request is expressly authorized by the Settlement Agreement, Article 6. *See Fed. R. Civ. P. 23(h)* (courts “may award reasonable attorneys’ fees and nontaxable costs that are authorized by law or *by the parties’ agreement.*” (emphasis added)).

¹ Courts sometimes also consider “fee agreements reached by sophisticated entities in the market for legal services.” *Hale*, 2018 WL 6606079, at *7. “[S]ophisticated clients and sophisticated class representatives regularly agree to pay 33.33% or more in risky, complex litigation[.]” *id.*, consistent with the fee request here.

2. The Risk of Non-Payment Supports Plaintiffs' Fee Request

Class Counsel's compensation was entirely contingent upon a successful resolution for the Class and Court approval, meaning that Class Counsel fully assumed the risk of receiving no payment at the outset of this challenging and novel case more than three years ago. ERISA "fiduciary breach class actions are extremely complex and require a willingness to risk significant resources in time and money, given the uncertainty of recovery and the protracted and sharply-contested nature of ERISA litigation." *Allegretti*, 2022 WL 484216, at *2 (citation and quotation marks omitted). Given the risk, Class Counsel's requested fee is appropriate. *See Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019) (one-third fee in ERISA class settlement was "wholly appropriate given the extraordinary risk Class Counsel accepted in agreeing to represent the Class"). Notably, the novelty of this case also supports Class Counsel's fee award. *See* Second Carrington Dec. ¶ 6 (noting that Class Counsel is not aware of any other ESOP class action that sought to enforce ERISA duties in connection with rights and opportunities arising from an estate plan). *See Bell*, 2019 WL 4193376 ("the fact that Class Counsel brought this kind of case when no one else had" supported fee request).

3. The Caliber of Class Counsel's Performance and the Amount of Work Performed (Factor 3)

This case required significant expertise in ERISA and, more specifically, the fiduciary duties attendant to ESOP transactions. Because of the expertise required, "few lawyers or law firms are capable of handling, much less willing to handle, this type of national [ERISA] litigation." *Beesley v. Int'l Paper Co.*, 2014 WL 375432, at *3 (S.D. Ill. Jan. 31, 2014).

Class Counsel are highly skilled and experienced ERISA class action attorneys who have litigated numerous ERISA class actions, including those relating to ESOPs, and have obtained

outstanding results on behalf of Plan participants nationwide. *See* First Carrington Dec. ¶ 25 & Ex. 3. Class Counsel were able to leverage their expertise in this difficult field to obtain an outstanding result for the Settlement Class, measured both as average net recovery per Class Member and as a percentage of recovery of possible damages, had the case proceeded to trial. Dkt. 183 at 19-20 (describing comparable settlements). *See Allegretti*, 2022 WL 484216, at *1 (highlighting significant recovery for the class when evaluating class counsel’s caliber of performance).

This exceptional result required Class Counsel to invest significant time and resources in this action. Class Counsel have billed 1,578 hours to this matter, including investigating and preparing the Complaint and two amended Complaints, defending four dispositive motions, conducting comprehensive written party- and third-party discovery and reviewing the voluminous productions in response, prevailing on a motion to compel, preparing a preliminary expert report, briefing a motion for class certification, preparing for and attending a highly contested in-person mediation, and preparing the settlement agreement, related documents, and associated motions. Second Carrington Dec. ¶ 14.

Class Counsel’s requested fee is also consistent with their standard fee approved in multiple recent ERISA class cases. Second Carrington Dec. ¶ 17. This further weighs in favor of approval. *See Bell*, 2019 WL 4193376, at *3 (finding with favor that the fee sought was “consistent with the awards in many other cases” brought by the same counsel).

4. Fees Awarded in Comparable Cases Support Class Counsel’s Fee Request

Class Counsel’s fee request of one-third of the recovery is also reasonable and at market rate when compared to fees awarded in similar cases in this Circuit. Generally, “a pure percentage fee approach best replicate[s] the market for ERISA class action attorneys.” *Williams*

v. Rohm & Haas Pension Plan, 658 F.3d 629, 636 (7th Cir. 2011); *see also Bell*, 2019 WL 4193376, at *3 (“In a common fund class action settlement, the Seventh Circuit Court of Appeals uses a percentage of the relief obtained rather than a lodestar or other basis.”); *Hale*, 2018 WL 6606079, at *7 (“[T]he percentage method is employed by the vast majority of courts in the Seventh Circuit (like other Circuits).” (citation and quotation marks omitted)).

One-third is the standard proportion of the fund awarded in complex class cases generally and ERISA cases specifically. *In re TikTok, Inc., Consumer Priv. Litig.*, 617 F. Supp. 3d 904, 941 (N.D. Ill. 2022) (“A one-third flat fee . . . is routine for class action settlements in . . . complex fields.”); *George v. Kraft Foods Global, Inc.*, 2012 WL 13089487, at *2-3 (N.D. Ill. Jun. 26, 2012) (awarding one-third fee in ERISA class action); *Bell*, 2019 WL 4193376, at *3 (awarding one-third fee in ERISA class action) (collecting cases).

Accordingly, Class Counsel’s requested fee, which totals 33.3% of the Gross Settlement Amount, and 33.6% of the Net Settlement Amount,² fits squarely within well-established market rates for this type of action.

C. The Lodestar Crosscheck Supports the Reasonableness of the Requested Fee.

The lodestar crosscheck, while not required—*see Bell*, 2019 WL 4193376, at *5 (observing that “use of a lodestar cross-check is no longer recommended in the Seventh Circuit”)—confirms the reasonableness of Plaintiffs’ percentage fee request. *See Schulte v. Fifth Third Bank*, 805 F. Supp. 2d 560, 598 (N.D. Ill. 2011) (“While many courts in this circuit have

² In the Seventh Circuit, “[t]he proper formula to calculate the fee request for purposes of the reasonableness analysis is as a percentage of the gross or total common settlement fund less administration and notice expenses and litigation costs.” *In re Advoc. Aurora Health Pixel Litig.*, 740 F. Supp. 3d 736, 751 (E.D. Wis. 2024). Class representative service awards need not be deducted as part of said expenses for purposes of the reasonableness calculation. *See id.* n.8. Here, the net fund would be \$6,939,387.21 (\$7,000,000 – Advanced Litigation Costs of \$35,812.79, Settlement Administrator expenses of \$9,800, and Independent Fiduciary expenses of \$15,000 = \$6,939,387.21). Class Counsel’s fee request is of \$2,333,333.33 is 33.6% of the net common fund.

criticized the use of a lodestar cross-check in common fund cases, the fee request here would nevertheless survive such an analysis.”).

A percentage fee that represents a multiple of the lodestar properly compensates risk of non-recovery. *Cook v. Niedert*, 142 F.3d 1004, 1014 (7th Cir. 1998) (“[R]isk multipliers are appropriate in cases that are initiated under ERISA and settled with the creation of a common fund.”). Here, Plaintiffs’ requested fee would be a 1.82 multiple of the lodestar. Carrington Second Decl. ¶ 14. A 1.82 multiplier would be in the bottom third of the typically approved range in the Seventh Circuit of 1.00 to 4.00. *See In re TikTok*, 617 F. Supp. 3d at 943 (“In practice, most multipliers fall between one and four.”). The multiplier is also consistent with recent awards in ERISA class actions in this Circuit. *Holloway v. Kohler Co.*, 2024 WL 5088316, at *3 (E.D. Wis. Dec. 12, 2024) (approving percentage award that would represent a lodestar multiplier of 2.23). Moreover, Class Counsel’s hourly rates used to determine the 1.82 multiplier are modest compared to the rates that have been approved in this Circuit for similar ERISA class action work. *Compare* Second Carrington Decl. ¶ 14 (range of \$258 to \$900) *with Bell*, 2019 WL 4193376, at *5 (approving up to \$1,060).

II. THE REQUESTED CLASS REPRESENTATIVE AWARDS ARE REASONABLE

The requested class representative compensation of \$5,000 per class representative is also reasonable and should be approved. “Because a named plaintiff is an essential ingredient of any class action, an incentive award is appropriate if it is necessary to induce an individual to participate in the suit.” *Cook*, 142 F.3d at 1016. Significantly, “ERISA litigation against an employee’s current or former employer carries unique risks,” including “alienation from employers or peers.” *Beesley*, 2014 WL 375432, at *4.

The requested \$5,000 amount (\$35,000 total for the seven Class Representatives) is commensurate with the services provided by the Class Representatives here (detailed in Section

IV, *supra*) and is in line with service awards granted in other ERISA class. *See, e.g., Allegretti*, 2022 WL 484216, at *2 (awarding \$15,000 per class representative for similar work); *George*, 2012 WL 13089487, at *4 (awarding \$15,000 per class representative).

III. THE REQUESTED COSTS AND EXPENSES ARE REASONABLE

A. Litigation Costs

Class Counsel's advanced litigation costs of \$35,812.79 should also be awarded. "It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses, which includes such things as expert witness costs; computerized research; court reports; travel expense; copy, phone and facsimile expenses and mediation." *George*, 2012 WL 13089487, at *4. These are precisely the types of costs and expenses for which reimbursement is sought here. Second Carrington Dec. ¶¶ 20-21.

B. Settlement Administration Expenses

Finally, the requested settlement administration expenses are also reasonable. The Settlement Notice, claims review, and payment distribution services provided by Atticus are essential to carry out the Settlement. The cost of providing those services (\$9,800) is reasonable in light of the services provided and comes to only \$29.80 per class member compared to an average projected net recovery of \$13,923 per class member. Second Carrington Dec. ¶ 25; First Carrington Decl. ¶ 21 & n.1.

Further, review of the Settlement by the Independent Fiduciary is called for by Department of Labor regulations and is deemed to be a "critically important" benefit to plan participants. *In re Marsh*, 265 F.R.D. 128, 139 (S.D.N.Y. 2010). The requested \$15,000 for the Independent Fiduciary is in line with amounts approved in other ERISA settlements. *See, e.g., Harvey v. Bed Bath & Beyond, Inc. 401(k) Savings Plan Committee*, No. 2:23-cv-20376-CCC-SDA, Dkt. 77 (D.N.J. Oct. 9, 2025) (approving \$15,000 payment to independent fiduciary);

Tufano v. Pride Mobility Prods. Corp., No. 3:24-cv-00765-KM, Dkt. 52 (M.D. Pa. June 17, 2025) (approving payment up to \$20,000 to independent fiduciary).

CONCLUSION

For the reasons set forth above, Plaintiffs and Class Counsel respectfully request that the Court approve the requested distributions from the Settlement Fund.

Dated: May 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 22, 2026, the foregoing was electronically filed using the CM/ECF system, causing a Notice of Electronic Filing to be transmitted to all counsel of record.

/s/Melissa A. Carrington
Melissa A. Carrington