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12 UNITED STATES DISTRICT COURT
13 CENTRAL DISTRICT OF CALIFORNIA
14 WESTERN DIVISION

15 ALLEN MUNRO *et al.*,
Plaintiffs,
16 v.
17 UNIVERSITY OF SOUTHERN
18 CALIFORNIA *et al.*,
Defendants.

CASE NO. 2:16-cv-06191-VAP-E

**DECLARATION OF
JEROME J. SCHLICHTER**

Hon. Virginia A. Phillips

Hearing Date: August 14, 2023
Time: 2:00 p.m.
Place: Courtroom 8A
350 West 1st Street
Los Angeles, CA 90012

1 I, JEROME J. SCHLICHTER, hereby declare and state:

2 1. I am the founding partner of the law firm Schlichter Bogard, LLP (formerly
3 named Schlichter Bogard & Denton LLP), counsel for Plaintiffs. This declaration
4 is submitted in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement
5 of Expenses, and Incentive Awards for Class Representatives. I am familiar with
6 the facts set forth below and able to testify to them.

7 2. I received my Bachelor's degree in business administration from the
8 University of Illinois in 1969, with honors, and was a James Scholar. I received my
9 Juris Doctorate from the University of California at Los Angeles (UCLA) Law
10 School in 1972, where I was an Associate Editor of the UCLA Law Review. I am
11 licensed to practice law in the states of Illinois, Missouri, and California and am
12 admitted to practice before the Supreme Court of the United States, the Second,
13 Third, Fourth, Fifth, Seventh, Eighth and Ninth Circuit Courts of Appeal and
14 numerous U.S. District Courts. I have also been an Adjunct Professor teaching
15 trials at Washington University School of Law and have been repeatedly selected
16 by my peers for the list of The Best Lawyers in America.

17 3. Through over 45 years of practice, I have handled, on behalf of plaintiffs,
18 substantial personal injury cases, civil rights class actions, mass torts claims, and
19 fiduciary breach litigation under the Employee Retirement Income Security Act
20 (ERISA). In 2014, I was ranked number 4 in a list of the 100 most influential
21 people nationally in the 401(k) industry in the industry publication 401(k) Wire.
22 Examples of class action cases I have successfully handled include: *Brown v.*
23 *Terminal Railroad Association*, a race discrimination case in the Southern District
24 of Illinois on behalf of all African-American and Hispanic employees at a railroad;
25 *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-
26 to-hire class action brought on behalf of hundreds of African-American applicants
27 from East St. Louis, Illinois at a major railroad which was tried to conclusion,
28 successfully appealed to the Seventh Circuit Court of Appeals, and finally

1 concluded with more than \$10 million for the class after 12-and-a-half years of
2 litigation; *Wilfong v. Rent-A-Center*, No. 00-680, 2002 U.S. Dist. LEXIS 28016
3 (S.D. Ill. 2002), a nationwide gender discrimination in employment case on behalf
4 of women, which was successfully settled for \$47 million and substantial
5 affirmative relief to the class of thousands, after I defeated the defendant's attempt
6 to conduct a reverse auction.

7 4. My firm has been named Class Counsel in numerous cases involving claims
8 of fiduciary breaches in large retirement plans. *See, e.g., Turner v. Schneider Elec.*
9 *Holdings, LLC*, No. 20-11006, Doc. 212 (D. Mass. May 5, 2023); *Ford v. Takeda*
10 *Pharms. U.S.A., Inc.*, No. 21-10090, Doc. 101 (D. Mass. Nov. 21, 2022); *Wachala*
11 *v. Astellas US LLC*, No. 20-3882, 2022 U.S. Dist. LEXIS 24052 (N.D. Ill. Feb. 10,
12 2022), *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2022 U.S. Dist. LEXIS 95857
13 (C.D. Cal. Feb. 16, 2022); *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist.
14 LEXIS 121336 (E.D. Pa. June 28, 2021); *Pledger v. Reliance Trust Co.*, No. 15-
15 04444, 2020 U.S. Dist. LEXIS 25548, at *4 (reaffirming appointment); *Munro v.*
16 *Univ. of S. Cal.*, No. 16-6191, 2019 U.S. Dist. LEXIS 226682 (C.D. Cal. Dec. 20,
17 2019); *Vellali v. Yale Univ.*, 333 F.R.D. 10 (D. Conn. 2019); *Kelly v. The Johns*
18 *Hopkins Univ.*, No. 16-2835, Doc. 87 (D. Md. Aug. 16, 2019); *Bell v. Pension*
19 *Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 U.S. Dist. LEXIS 11369
20 (S.D. Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 U.S.
21 Dist. LEXIS 10357 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-
22 2086, 2018 U.S. Dist. LEXIS 181850 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trs. of*
23 *Columbia Univ.*, No. 16-6524, Doc. 218 (S.D. N.Y. Nov. 15, 2018); *Henderson v.*
24 *Emory Univ.*, No. 16-2920, 2018 U.S. Dist. LEXIS 180349 (N.D. Ga. Sept. 13,
25 2018); *Tracey v. MIT*, No. 16-11620, 2018 U.S. Dist. LEXIS 179945 (D. Mass.
26 Oct. 19, 2018); *Ramsey v. Philips N. Am.*, No. 18-1099, Doc. 19 (S.D. Ill. June 12,
27 2018); *Sacerdote v. N.Y. Univ.*, No. 16-6284, 2018 U.S. Dist. LEXIS 23540 (S.D.
28 N.Y. Feb. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 U.S. Dist. LEXIS

1 62532 (M.D. N.C. Apr. 13, 2018); *Ramos v. BannerHealth*, 325 F.R.D. 382 (D.
2 Colo. 2018); *Troudt v. Oracle Corp.*, 325 F.R.D. 373 (D. Colo. 2018); *Pledger v.*
3 *Reliance Tr. Co.*, 325 F.R.D. 373 (N.D. Ga. 2017); *Marshall v. Northrop*
4 *Grumman Corp.*, No. 16-6794, 2017 U.S. Dist. LEXIS 222531 (C.D. Cal. Nov. 2,
5 2017); *Sims v. BB&T Corp.*, No. 15-732, 2017 U.S. Dist. LEXIS 137738 (M.D.
6 N.C. Aug. 28, 2017); *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, Doc.
7 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Doc. 53
8 (M.D. N.C. May 17, 2016); *Kreuger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 574
9 (D. Minn. 2014); *Abbott v. Lockheed Martin*, No. 06-701, Doc. 403 (S.D. Ill. Aug.
10 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Doc. 542 (S.D. Ill. Oct. 10,
11 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 101165, at *6–7
12 (C.D. Ill. July 3, 2013); *Will v. Gen. Dynamics*, No. 06-698, 2010 U.S. Dist.
13 LEXIS 95630, at *5–6 (S.D. Ill. Aug. 9, 2010); *Martin v. Caterpillar Inc.*, No. 07-
14 1009, Doc. 173 (C.D. Ill. April 21, 2010); *George v. Kraft Foods Global Inc.*, 251
15 F.R.D. 338 (N.D. Ill. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008
16 U.S. Dist. LEXIS 43655 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*, 254
17 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-4305, 2007 U.S. Dist.
18 LEXIS 88668 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900,
19 2007 U.S. Dist. LEXIS 46893 (N.D. Ill. June 26, 2007).

20 5. My work in plaintiffs' class action cases has been noted by federal judges.
21 U.S. District Judge James Foreman, in the *Mister* case, *supra*, speaking of my
22 efforts, stated: "This Court is unaware of any comparable achievement of public
23 good by a private lawyer in the face of such obstacles and enormous demand of
24 resources and finance." Order on Attorney's Fees, *Mister v. Illinois Cent. Gulf*
25 *R.R.*, No. 81-3006 (S.D. Ill. 1993). District Judge David R. Herndon wrote,
26 regarding my handling of the *Wilfong* class action *supra*:

27 Class counsel has appeared in this court and has been known to this
28 Court for approximately 20 years. This Court finds that Mr.

1 Schlichter’s experience, reputation and ability are of the highest
2 caliber. Mr. Schlichter is known well to the District Court Judge and
3 this Court agrees with Judge Foreman’s review of Mr. Schlichter’s
4 experience, reputation and ability.

5 Order on Attorney’s Fees, *Wilfong v. Rent-A-Center*, No. 00-680, Doc. 223 (S.D.
6 Ill. 2002).

7 6. Judge Herndon also noted in *Wilfong* that I “performed the role of a ‘private
8 attorney general’ contemplated under the common fund doctrine, a role viewed
9 with great favor in this Court” and described my action as “an example of
10 advocacy at its highest and noblest purpose.” *Id.*

11 7. Turning specifically to my work on retirement accounts, federal judges have
12 noted my and my firm’s pioneering in this space, our tenacity, the results we have
13 obtained both for clients and in changing the retirement fund industry, and the
14 resulting savings experienced by workers and retirees. In approving fees of one-
15 third of the monetary recovery in a similar case, United States District Judge André
16 Birotte Jr. of this District praised the firm:

17 Schlichter, Bogard & Denton is exceptionally skilled having achieved
18 unparalleled success in actually pioneering complex ERISA 401(k)
19 excessive fee litigation, such as this case and *Grabek*. The Court
20 agrees with other district courts that Schlichter, Bogard & Denton are
21 attorneys of the highest caliber. This Court agrees that, in creating the
22 field of 401(k) excessive fee litigation, when neither the Department
23 of Labor or any private law firm had ever filed such a case, Schlichter
24 Bogard & Denton functioned as a private attorney general. The firm
25 handled the first ever trial of such [a] case. It also successfully
26 petitioned the United States Supreme Court to hear its first ERISA
27 fiduciary breach case regarding excessive fees in 401(k) plans, and
28 obtained a unanimous 9-0 decision holding that an ERISA fiduciary
has a continuing duty to monitor plan investments and remove
imprudent ones.

Marshall v. Northrop Grumman Corp., No. 16-6794, 2020 U.S. Dist. LEXIS
177056, at *11–12 (C.D. Cal. Sep. 18, 2020)

1
2 8. In *Ford v. Takeda Pharms. U.S.A., Inc.*, U.S. District Court Judge William G.
3 Young acknowledged that Schlichter Bogard “is a recognized leader in ERISA
4 excessive fee litigation, having pioneered the field.” No. 21-10090, 2023 U.S. Dist.
5 LEXIS 93286, at *4 (D. Mass. Mar. 31, 2023). Further, in *Cates v. Trs. of*
6 *Columbia University*, U.S. District Judge George B. Daniels recognized and
7 repeated several accolades my firm had received from other judges:

8 Class Counsel is not only highly experienced in handling ERISA class
9 actions involving 401(k) and 403(b) plans, but “pioneer[ed] . . . the
10 field of retirement plan litigation.” Class Counsel is the “preeminent
11 firm” in excessive fee litigation, having “achieved unparalleled results
12 on behalf of its clients” in the face of “enormous risks.” Class Counsel
13 are “experts in ERISA litigation,” and “highly experienced.” The firm
14 also obtained a significant victory in the Supreme Court, which in
15 2015 unanimously held that an ERISA fiduciary has a continuing duty
16 to monitor plan investments and remove imprudent ones. Courts
17 across the country have recognized the reputation, skill, and
18 determination of Class Counsel in pursuing relief on behalf of
retirement plan participants. Recently, Judge Blackburn of the District
of Colorado wrote that Class Counsel “have shown their ability by
achieving the excellent result obtained for the class” and “admirably
served as private attorneys general in this instance, fulfilling one of
the purposes of ERISA.”

19 *Cates v. Trs. of Columbia Univ.*, No. 16-06524, 2021 U.S. Dist. LEXIS 200890, at
20 *13–14 (S.D. N.Y. Oct.18, 2021) (internal citations omitted).

21 9. In *Sweda v. University of Pennsylvania*, No. 16-4329, 2021 U.S. Dist. LEXIS
22 121336, at *10 (E.D. Pa. June 28, 2021), U.S. District Judge Gene E.K. Pratter,
23 appointing the firm class counsel, wrote that the firm’s work “has been
24 acknowledged as leading to fee reductions in the industry that total almost \$2.8
25 billion in annual savings for American workers and retirees.” *Id.* (cleaned up).
26 Numerous other cases have noted this impact as well. *See, e.g., Kelly v. Johns*
27 *Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *12 (D. Md. Jan.
28 28, 2020); *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *9

1 (S.D. Ill. Mar. 31, 2016); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist.
2 LEXIS 12037, at *10 (S.D. Ill. Jan. 31, 2014) (noting savings approaching “\$2.8
3 billion in annual savings for American workers and retirees”).

4 10. U.S. District Judge Michael Ponsor has also commended this firm’s
5 “extraordinary resourcefulness, skill, efficiency, and determination,” crediting the
6 “exceptional result in th[e] case” to “Class Counsel’s unique expertise and
7 outstanding effort.” *Gordan*, 2016 U.S. Dist. LEXIS 195935, at *7–8.

8 11. My firm received similar praise from U.S. District Judge George L. Russell,
9 III:

10 Schlichter Bogard & Denton . . . pioneered excessive fee litigation
11 involving 401(k) plans. As has been repeatedly recognized, Schlichter
12 Bogard & Denton’s work on behalf of participants in large 401(k) and
13 403(b) plans has significantly improved these plans, brought to light
14 fiduciary misconduct that has detrimentally impacted the retirement
savings of American workers, and dramatically brought down fees in
defined contribution plans.

15 *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *4
16 (D. Md. Jan. 28, 2020).

17 12. U.S. District Judge Tanya Walton Pratt said of the firm:

18 For over a decade, Class Counsel, in pioneering a new area of the law,
19 have continuously demonstrated an unwavering and zealous
20 commitment to represent American employees and retirees seeking to
21 recover losses incurred due to alleged retirement plan
22 mismanagement. Jerome Schlichter and Schlichter Bogard & Denton
23 actually created the field of 401(k) excessive fee litigation which did
24 not exist before. Before Jerome Schlichter and the firm of Schlichter
25 Bogard & Denton filed a series of cases in 2006 regarding excessive
26 fees in 401(k) plans, there had never been a case brought for excessive
fees in a 401(k) plan by any lawyer in the United States. Class
Counsel is firmly established as the “pioneer and the leader in the
field of retirement Plan litigation.”

27 *Bell v. Pension Comm. of ATH Holding Co. LLC*, No. 15-02062, 2019 U.S. Dist.
28 LEXIS 150302, at *3–4 (S.D. Ind. Sept. 4, 2019) (internal citations omitted).

1 13. United States District Judge Nancy Rosenstengel emphasized the firm’s
2 impact on the Department of Labor and the retirement industry:

3 The law firm Schlichter Bogard & Denton has significantly improved
4 401(k) plans across the country by bringing cases such as this one,
5 which have “educated plan administrators, the Department of Labor,
6 the courts and retirement plan participants about the importance of
7 monitoring recordkeeping fees. The fee reduction attributed to
8 Schlichter Bogard & Denton’s fee litigation and the Department of
9 Labor’s fee disclosure regulations approach \$2.8 billion in annual
10 savings for American workers and retirees. Schlichter Bogard &
11 Denton has left an indelible mark on the 401(k) industry by bringing
comprehensive changes to fiduciary practices in order to ensure that
employees and retirees have the opportunity to save for retirement
through prudently administered retirement programs.”

12 *Ramsey v. Philips N. Am. LLC*, No. 28-1099, 2018 U.S. Dist. LEXIS 226672, at
13 *9–10 (S.D. Ill. Oct. 18, 2018).

14 14. Judge Rosenstengel, considering the settlement in *Spano v. Boeing Co.*, also
15 commented that “Schlichter, Bogard & Denton added great value to the Class
16 throughout the litigation through the persistence and skill of their attorneys.” No.
17 06-743, 2016 U.S. Dist. LEXIS 161078, at *9 (S.D. Ill. Mar. 31, 2016).

18 15. In *Beesley v. International Paper*, an ERISA excessive fee case similar to
19 this one, Judge Herndon observed:

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

25 *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037 at 8 (S.D. Ill.
26 Jan. 31, 2014).

27 16. Similarly, in *Abbott v. Lockheed Martin*, Chief Judge Reagan observed that
28 “[t]he law firm Schlichter, Bogard & Denton has had a humongous impact over the

1 entire 401(k) industry, which has benefitted employees and retirees throughout the
2 country by bringing sweeping changes to fiduciary practices.” *Abbott v. Lockheed*
3 *Martin Corp.*, 2015 U.S. Dist. LEXIS 93206, at *9 (S.D. Ill. July 17, 2015).

4 17. United States District Judge Nanette Laughrey, of the Western District of
5 Missouri, emphasized the significant contribution that Plaintiffs’ attorneys have
6 made to ERISA litigation, including educating the Department of Labor and
7 federal courts about the importance of monitoring fees in retirement plans:

8 Of special importance is the significant, national contribution made by
9 the Plaintiffs whose litigation clarified ERISA standards in the context
10 of investment fees. The litigation educated plan administrators, the
11 Department of Labor, the courts and retirement plan participants about
12 the importance of monitoring recordkeeping fees and separating a
13 fiduciary’s corporate interest from its fiduciary obligations.

13 *Tussey v. ABB, Inc.*, No. 06-4305, 2015 U.S. Dist. LEXIS 164818 at 7–8 (W.D.
14 Mo. Dec. 9, 2015).

15 18. U.S. District Judge Harold Baker, in *Nolte v. Cigna*, commented that
16 Schlichter Bogard is the “preeminent firm in 401(k) fee litigation” and has
17 “persevered in the face of the enormous risks of representing employees and
18 retirees in this area.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS
19 184622, at *8 (C.D. Ill. Oct. 15, 2013). Moreover, the firm “act[ed] as a private
20 attorney general, risking breathtaking amounts of time and money while
21 overcoming many obstacles for the benefit of employees and retirees.” 2013 U.S.
22 Dist. LEXIS 184622. Judge Baker also observed:

23 Class Counsel’s enforcement of ERISA’s fiduciary obligation has
24 contributed to rapid reductions in the level of 401(k) recordkeeping
25 fees paid across the country. The law firm Schlichter, Bogard &
26 Denton is the leader in 401(k) fee litigation. One independent
27 investment advisory company, NEPC, has found the 401(k)
28 recordkeeping fees have dropped \$38 per account per year since Class
counsel filed their first 401(k) fee cases in 2006. They attribute the fee
reductions to improved fee disclosure requirements from the

1 Department of Labor and attention brought by 401(k) fee litigation.
2 The Department of Labor reports an estimated 73 million accounts in
3 the United States. *Accordingly, the fee reduction attributed to*
4 *Schlichter, Bogard & Denton’s fee litigation and the Department of*
5 *Labor’s fee disclosure regulations approach \$2.8 billion in annual*
6 *savings for American workers and retirees.*

7 *Id.* at 5–6.

8 19. In *Will v. General Dynamics*, another ERISA excessive fee case, Judge
9 Patrick Murphy, U.S. District Judge for the Southern District of Illinois, found that
10 litigating the case and achieving a successful result for the class “required Class
11 Counsel to be of the highest caliber and committed to the interests of the
12 participants and beneficiaries of the General Dynamics 401(k) Plans.” *Will v. Gen.*
13 *Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at *9 (S.D. Ill. Nov.
14 22, 2010). Judge Murphy also praised our work as “an exceptional example of a
15 private attorney general risking large sums of money and investing many
16 thousands of hours for the benefit of employees and retirees.” *Id.* at *8.

17 20. I have also spoken on ERISA litigation breach of fiduciary duty claims at
18 national ERISA seminars as well as other national bar seminars.

19 21. In the decades of my private practice, I have never been disciplined with
20 respect to any aspect of the practice of law.

21 22. Since 2005, my firm and I have been investigating, preparing, and handling,
22 on behalf of plan participants, numerous cases against fiduciaries of large defined
23 contribution plans alleging fiduciary breaches including excessive fees, conflicts of
24 interests and prohibited transactions under ERISA. My firm has filed these cases in
25 numerous judicial districts throughout the United States, including districts within
26 the First, Second, Third, Fourth, Fifth, Seventh, Eighth, Ninth, Tenth and Eleventh
27 Circuits.

28 23. Our firm pioneered 401(k) excessive fee cases. Before we filed the first
cases in 2006, no law firm in the United States had ever filed such a case, and the

1 Department of Labor, which regulates 401(k) plans, had never brought an
2 excessive fee case. The firm handled the first full trial of such a case, resulting in a
3 judgment for the plaintiffs that was affirmed in part by the Eighth Circuit. *Tussey*
4 *v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 45240 (W.D. Mo. Mar. 31,
5 2012), *aff'd in part, rev'd in part*, 746 F.3d 327 (8th Cir. 2014). As Judge
6 Laughrey noted in that case, “[i]t is well established that complex ERISA litigation
7 involves a national standard and special expertise. Plaintiffs’ attorneys are clearly
8 experts in ERISA litigation.” *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist.
9 LEXIS 157428, at *9–10 (W.D. Mo. Nov. 2, 2012), *rev'd on other grounds*, 746
10 F.3d 327 (8th Cir. 2014) (citations omitted).

11 24. In the second 401(k) excessive fee trial, *Tibble v. Edison Int’l*, which
12 originated in the Central District of California, the United States Supreme Court
13 granted our petition for writ of certiorari in the first and only ERISA 401(k)
14 excessive fee case taken by the Supreme Court. In a 9-0 unanimous decision, the
15 Supreme Court vacated the Ninth Circuit’s affirmance of the summary judgment
16 order and held that an ERISA fiduciary has a continuing duty to monitor plan
17 investments and remove imprudent ones regardless of when they were added.
18 *Tibble v. Edison Int’l*, 575 U.S. 523 (2015). This was a landmark decision in
19 ERISA litigation. Sitting en banc, ten judges of the Ninth Circuit on remand then
20 unanimously vacated a Ninth Circuit panel decision and remanded to the district
21 court to determine whether the defendants violated their continuing duty to monitor
22 the 401(k) plan’s investments, stating that “cost-conscious management is
23 fundamental to prudence in the investment function.” *Tibble v. Edison Int’l*, 843
24 F.3d 1187, 1197–98 (9th Cir. 2016) (citation omitted). Following remand, in
25 August 2017, the plaintiffs obtained a judgment of \$13.4 million in plan losses and
26 investment opportunity. *Tibble*, No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D.
27 Cal. Aug. 16, 2017); *Tibble*, ECF Nos. 570, 572.

28 25. Several of the 401(k) cases my office filed were dismissed and the

1 dismissals upheld by Courts of Appeals. *Loomis v. Exelon Corp.*, 658 F.3d 667
2 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Hecker v.*
3 *Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). Others had summary judgment granted
4 against the plaintiffs in whole or in part. *Turner v. Schneider Elec. Holdings, LLC*,
5 No. 20-11006, 2023 U.S. Dist. LEXIS 12528 (D. Mass. Jan. 24, 2023); *Kanawi v.*
6 *Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs.*
7 *Corp.*, No. 06-1494, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*,
8 354 F. App'x 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F. Supp.
9 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v.*
10 *Edison Int'l*, 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir.
11 2013), *vacated*, 575 U.S. 523, (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir.
12 2016).

13 26. The non-profit equivalent of a 401(k) plan is a 403(b) plan. After close to a
14 decade of handling excessive 401(k) fee cases, in 2016, my firm and I filed similar
15 claims for excessive fees and imprudent investments involving large 403(b) plans
16 sponsored by private universities, another new, ground-breaking area of law that
17 no other firm had then brought. This case is one of those first 403(b) cases.

18 27. The firm's work in the 403(b) space again brought it to the Supreme Court,
19 this time in *Hughes v. Northwestern Univ.*, 142 S. Ct. 737 (2022). For the second
20 time, the Supreme Court agreed with us, reversing a dismissal that had been upheld
21 on appeal, and did so unanimously, holding that the inclusion of prudent options in
22 a plan does not offset the inclusion of imprudent options, and that a plan sponsor
23 must monitor each fund in a plan and remove those that are imprudent. *Id.* No law
24 firm has anything like this record in both 401(k) and 403(b) litigation.

25 28. On August 17, 2016, we filed this action. The complaint contains detailed
26 allegations laying out a variety of fiduciary breaches and prohibited transactions.

27 29. My firm has spent substantial time litigating the case, as is evidenced by the
28 six-year litigation history and over 300 entries on the docket. The parties have

1 engaged in substantial motion practice, including Defendants’ attempt to compel
2 arbitration and subsequent appeal to the Ninth Circuit, where the district court’s
3 denial was upheld. *Munro v. Univ. of S. Cal.*, 896 F.3d 1088, 1094 (9th Cir.).
4 Plaintiffs survived Defendants’ motion to dismiss and achieved class certification
5 over Defendants’ vigorous opposition. As trial neared, the parties briefed motions
6 to exclude expert witnesses, motions *in limine*, and additional trial briefs. The
7 parties submitted voluminous pre-trial filings, including proposed findings of fact
8 and conclusions of law. The firm also spent considerable time conducting
9 discovery, including deposing eight fact witnesses and three expert witnesses and
10 analyzing over 664,000 documents produced in this case by the parties and
11 subpoenaed parties. Additionally, the parties engaged in two separate mediations
12 with a national mediator.

13 30. The firm will spend continued significant time on this matter without
14 additional compensation both before and after final approval and before the end of
15 the three-year settlement period. This will include many actions to work with the
16 Settlement Administrator, with the Independent Fiduciary, and with opposing
17 counsel, answering many questions from plan participants, and preparing for and
18 attending the final approval hearing. The work will not stop at that point, however,
19 because my firm will also be monitoring compliance with the settlement’s
20 nonmonetary relief for three years after final approval.

21 31. The Settlement Agreement provides—as part of its comprehensive
22 affirmative relief—that Class Counsel will continue to monitor and enforce the
23 terms of the agreement. Class Counsel will not request an additional fee award for
24 its future services related to this settlement. Further, Class Counsel will take no fee
25 if it becomes necessary for us to bring further proceedings to enforce compliance
26 with the settlement’s terms.

27 32. The parties engaged in over six years of intense and hard-fought litigation
28 and extended settlement negotiations before finally agreeing to the proposed

1 settlement.

2 33. My firm also obtained valuable affirmative relief for the Plan, including a
3 commitment to engage in a competitive bidding process for the Plan's
4 recordkeeping services and prohibiting Plan recordkeepers from soliciting outside
5 business with Plan participants. That will provide additional value to Plan
6 participants and could result in further reduction of Plan administrative expenses.

7 34. As a practical matter, litigants such as the Class Representatives could not
8 afford to pursue litigation against well-funded fiduciaries of a multi-billion-dollar
9 plan sponsored by a large employer such as the University of Southern California
10 in federal court on any basis other than a contingent fee. I know of no law firm in
11 the United States, of the few firms which would even consider handling such a
12 case as this, that would handle any ERISA class action with an expectation of
13 anything but a percentage of the common fund created.

14 35. The contingency fee agreements entered into between my firm and
15 Plaintiffs in this case provide for our fee to be one-third of any recovery plus
16 expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my firm
17 have also signed similar agreements calling for a one-third contingency fee plus
18 expenses.

19 36. These kinds of cases involve tremendous risk, require finding and obtaining
20 opinions from expensive and unconflicted consulting and testifying experts in
21 finance, investment management, fiduciary practices, recordkeeping, and related
22 fields, and are extremely hard fought and well-defended.

23 37. These cases bear a substantial risk that all the time spent and the expenses
24 incurred for experts, document discovery, depositions taken and defended, travel,
25 trial preparation, and ultimately trial will be uncompensated by defeat, either on
26 dispositive motions, *Daubert* motions, or at trial. In fact, that is what has happened
27 in numerous cases we have brought. *See, e.g., Hecker v. Deere & Co.*, 556 F.3d
28 575 (7th Cir. 2009); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Loomis*

1 *v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *see also Divane v. Northwestern*
2 *Univ.*, 953 F.3d 980, 994 (7th Cir. 2020), *vacated and remanded*, 142 S. Ct. 737
3 (2022) (affirming dismissal in early 403(b) excessive fees case; the case is
4 currently pending on remand). In a later 403(b) case, the plaintiffs lost after a two-
5 week trial. *Sacerdote v. N.Y. Univ.*, 328 F. Supp. 3d 273, 317 (S.D.N.Y. 2018),
6 *aff'd in part, vacated and remanded in part*, 9 F.4th 95 (2d Cir. 2021).

7 Consequently, we received compensation or reimbursement of extremely high
8 costs.

9 38. Before we filed 401(k) excessive fee cases, no firm was willing to bring
10 such a case, and I know of no other firm that has made the financial and attorney
11 commitment to such cases to this date. Few firms have the necessary expertise and
12 are willing to take the risk and devote the resources necessary to litigate complex
13 ERISA claims.

14 39. A law firm that brings a putative class action such as this must be prepared
15 to finance the case through trial and appeals, all at substantial expense. These cases
16 are defended by sophisticated national firms with ERISA experience and vast
17 resources. This has been my experience in handling these types of cases. For
18 example, in *Tussey v. ABB*, seven experts testified at trial, and the two defendant
19 groups therein had a total 15 or more lawyers present in the courtroom throughout
20 the month-long trial. In addition, all parties, including plaintiffs, had a technology
21 team present throughout. Our firm expended over \$2,000,000 in expenses by the
22 conclusion of the trial therein, and carried them until recovery 12 years after
23 litigation began, and after over 27,000 attorney hours spent.

24 40. Based on my experience, the market for experienced and competent lawyers
25 willing to pursue 401(k) ERISA Fee Litigation is a national market, and the rate of
26 33 1/3% of any recovery, plus expenses, is necessary to bring such cases. This is
27 the rate that a qualified and experienced attorney would negotiate at the beginning
28 of the litigation and the rate found reasonable in similar 401(k) and 403(b) ERISA

1 fee cases in numerous federal district courts, including:

Case	Fee %
<i>Marshall v. Northrop Grumman Corp.</i> , No. 16-6794, 2020 U.S. Dist. LEXIS 177056, at *25 (C.D. Cal. Sep. 18, 2020)	33.33%
<i>In re Northrop Grumman Corp. ERISA Litig.</i> , No. 06-6213, 2017 U.S. Dist. LEXIS 223293 (C.D. Cal. Oct. 24, 2017)	33.33%
<i>Sweda v. Univ. of Pa.</i> , No. 16-4329, 2021 U.S. Dist. LEXIS 239990 (E.D. Pa. Dec. 14, 2021)	33.33%
<i>Cates v. Trs. of Columbia Univ.</i> , No. 16-6524, 2021 U.S. Dist. LEXIS 200890, at *19 (S.D.N.Y Oct. 18, 2021)	33.33%
<i>Pledger v. Reliance Tr. Co.</i> , No. 15-4444, 2021 U.S. Dist. LEXIS 105868 (N.D. Ga. Mar. 8, 2021)	33.33%
<i>Henderson, et al. v. Emory University, et al.</i> , No. 16-2920, 2020 U.S. Dist. LEXIS 218676 (N.D. Ga. Nov. 4, 2020)	33.33%
<i>Troudt v. Oracle Corp</i> , No. 16-00175, ECF No. 236 (D. Col. July 10, 2020)	33.33%
<i>Kelly v. Johns Hopkins Univ.</i> , No. 16-2835, 2020 U.S. Dist. LEXIS 14772 (D. Md. Jan. 28, 2020)	33.33%
<i>Cassell v. Vanderbilt Univ.</i> , No. 16-2086, 2019 U.S. Dist. LEXIS 242062 (M.D. Tenn. Oct. 22, 2019)	33.33%
<i>Tussey v. ABB, Inc.</i> , No. 06-4305, 2019 U.S. Dist. LEXIS 138880 (W.D. Mo. August 16, 2019)	33.33%
<i>Sims v. BB&T Corp.</i> , No. 15-1705, 2019 U.S. Dist. LEXIS 75839 (M.D.N.C. May 6, 2019)	33.33%
<i>Clark v. Duke</i> , No. 16-1044, 2019 U.S. Dist. LEXIS 105696 (M.D.N.C. June 24, 2019)	33.33%
<i>Ramsey v. Phillips N.A.</i> , No. 18-1099, 2018 U.S. Dist. LEXIS 226672 (S.D. Ill. Oct. 15, 2018)	33.33%
<i>Gordan v. Mass. Mut. Life Ins. Co.</i> , No. 13-30184, 2016 U.S. Dist. LEXIS 195935 (D. Mass. Nov. 3, 2016)	33.33%
<i>Kruger v. Novant Health, Inc.</i> , No. 14-208, 2016 U.S. Dist. LEXIS 193107 (M.D.N.C. Sept. 29, 2016)	33.33%
<i>Spano v. Boeing Co.</i> , No. 06-743, 2016 U.S. Dist. LEXIS 161078 (S.D. Ill. Mar. 31, 2016)	33.33%
<i>Abbott v Lockheed Martin Corp.</i> , No. 06-701, 2015 U.S. Dist. LEXIS 93206 (S.D. Ill. July 17, 2015)	33.33%

Case	Fee %
<i>Krueger v. Ameriprise Fin., Inc.</i> , No. 11-2781, 2015 U.S. Dist. LEXIS 91385 (D. Minn. July 13, 2015)	33.33%
<i>Beesley v. Int’l Paper Co.</i> , No. 06-703, 2014 U.S. Dist. LEXIS 12037 (S.D. Ill. Jan. 31, 2014)	33.33%
<i>Nolte v. Cigna Corp.</i> , No. 07-2046, 2013 U.S. Dist. LEXIS 184622 (C.D. Ill. Oct. 15, 2013)	33.33%
<i>Will v. Gen. Dynamics Corp.</i> , No. 06-698, 2010 U.S. Dist. LEXIS 123349 (S.D. Ill. Nov. 22, 2010)	33.33%
<i>Martin v. Caterpillar Inc.</i> , No. 07-1009, 2010 U.S. Dist. LEXIS 145111 (C.D. Ill. Sept. 10, 2010)	33.33%

41. Schlichter Bogard does not bill clients on an hourly basis. In March 2023, based on the national market for complex ERISA fiduciary breach litigation, the following hourly rates for my firm as a lodestar check were approved: \$1,370 for attorneys with at least 25 years of experience; \$1,165 for attorneys with 15–24 years of experience; \$840 for attorneys with 5–14 years of experience; \$635 for attorneys with 0–4 years of experience; and \$425 for paralegals and law clerks. *See Ford*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at *6–7 (D. Mass. Mar. 31, 2023). In *Ford*, Sanford Jay Rosen, a founding partner of Rosen, Bien & Galvin, LLP, a 27-lawyer litigation firm in San Francisco and a recognized national expert on prevailing rates for complex class action attorneys, opined that the above rates were reasonable based on the current legal market, Schlichter Bogard’s extensive experience in ERISA class actions, and the fees charged by national attorneys of equivalent experience, skill, and expertise in complex class actions. *Ford*, No. 21-10090, Doc. 109 at 2, 21–25 (Jan. 20, 2023). The court agreed and approved the above rates. *Ford*, 2023 U.S. Dist. LEXIS 93286, at *6–7.

Executed on June 30, 2023

SCHLICHTER BOGARD, LLP

/s/ Jerome J. Schlichter
Jerome J. Schlichter