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

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

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

DECLARATION OF MICHAEL A. WOLFF

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, MICHAEL A. WOLFF, hereby declare and state:

2 1. I am a partner at the law firm of Schlichter Bogard, LLP (formerly named
3 Schlichter Bogard & Denton LLP). I am one of the attorneys representing the
4 plaintiffs and the class in this matter. This declaration is submitted in support of
5 Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive
6 Awards for Class Representatives.

7 2. I am admitted pro hac vice in this case (Doc. 38) and have been involved in
8 all aspects of this litigation. If called as a witness, I could and would competently
9 testify to the facts set forth below as I know them to be true based upon my own
10 personal knowledge or upon my review of the records and files maintained by the
11 firm in the regular course of its representation of Plaintiffs in this case.

12 3. This action commenced on August 17, 2016. It has been my experience that
13 retirement plan participants are reluctant to serve as named plaintiffs and class
14 representatives in class actions because of the commitment of time and resources
15 necessary to prosecute those actions, being subject to examination at deposition
16 and at trial, and for fear of retaliation or alienation.

17 4. Class Counsel prepared and served on Defendants an interrogatory and 47
18 requests for production of documents. Class Counsel also issued subpoenas duces
19 tecum to seven third parties: Fidelity Investments Institutional Operations
20 Company, Teachers Insurance and Annuity Association of America and Annuity
21 Association of America-College Retirement Equities Fund (twice), CapFinancial
22 Partners, LLC, the Prudential Insurance Company of America, the Vanguard
23 Group, Inc., Ropes & Gray, LLP, and the California Institute of Technology.

24 5. Defendants produced 38,353 documents and third parties produced 7,028
25 documents. In addition, in response to Plaintiffs' second subpoena duces tecum,
26 TIAA produced more than 2,000,000 pages of documents. The documents were
27 produced in electronic format and had to be stored by Class Counsel on its ESI
28 storage system.

1 6. Defendants issued to the Class Representatives four sets of interrogatories
2 and three sets of requests for production of documents. Class Counsel discussed
3 these discovery requests with the Class Representatives and assisted them in
4 responding.

5 7. Class Counsel took the depositions of eight University of Southern
6 California current or former executives and three of Defendants' expert witnesses.

7 8. Defendants took the depositions of each of the eight Class Representatives
8 and Plaintiffs' five expert witnesses. Class Counsel prepared each of them for their
9 depositions and defended those depositions. Plaintiffs' depositions lasted 4 hours
10 (Clark), 3.75 hours (Dickman and Olson), 6.5 hours (Munro), 4.5 hours
11 (Singleton), 3.5 hours (Snyder), 3 hours (Wheeler), and 2.75 hours (Wolgemuth).
12 Class Counsel met with each Class Representative in person to prepare for the
13 depositions and attended the depositions in person with each Plaintiff.

14 9. The Class Representatives stayed apprised of the proceedings at each stage
15 of the case. Throughout the course of the litigation, the Class Representatives
16 remained in regular contact with Class Counsel through e-mail, telephone calls,
17 video conference, and written correspondence.

18 10. Each Class Representative sat for a deposition and assisted with preparing
19 their declarations in support of class certification and responding to Defendants'
20 discovery requests.

21 11. Class Counsel intended to call Plaintiffs Allen Munro, Steven Olson, Corey
22 Clark, Jane Singleton, and Dion Dickman to testify at trial, and spent several hours
23 preparing for their testimony. The other Class Representatives also discussed
24 issues in this case with Class Counsel to assist Class Counsel in preparing for trial.

25 12. The parties engaged in two mediations: on July 2, 2019 with David
26 Geronemus of JAMS (Doc. 148) and on June 28, 2022 with Robert Meyer of
27 JAMS (Doc. 263). Thereafter, the parties engaged in further repeated settlement
28 negotiations in December 2022, separately and with the assistance of JAMS

1 mediator, Robert Meyer. Negotiations continued until the parties reached a
 2 settlement in principle on the evening before trial. The parties continued
 3 negotiating final terms, and Plaintiffs filed the Settlement Agreement on February
 4 23, 2023. Class Counsel provided the terms of the tentative settlement and the
 5 Settlement Agreement to the Class Representatives, who provided their approval
 6 on behalf of the Class to Class Counsel.

7 13. Over the course of litigation through May 8, 2023, Class Counsel have
 8 expended 13,285 attorney hours and 1,393 non-attorney hours on this case, for a
 9 total attorney and staff expenditure of 14,678 hours. The chart below shows the
 10 amount of hours spent by attorneys and staff broken down by experience:

| Attorneys | <i>Hours</i> | <i>Rate</i> | <i>Total</i> |
|------------------|------------------|-------------|----------------------|
| 25 Years + | 2,952.80 | \$ 1,370 | \$ 4,045,336 |
| 15-24 Years | 1,877.00 | \$ 1,165 | \$ 2,186,705 |
| 5-14 Years | 7,427.30 | \$ 840 | \$ 6,238,932 |
| 0-4 Years | 1,028.10 | \$ 635 | \$ 652,844 |
| | 13,285.20 | | \$ 13,123,817 |
| Staff | <i>Hours</i> | <i>Rate</i> | <i>Total</i> |
| IT | 25.70 | \$ 425 | \$ 10,923 |
| Law Clerk | 16.30 | \$ 425 | \$ 6,928 |
| Paralegal | 1,340.90 | \$ 425 | \$ 569,883 |
| Staff | 10.40 | \$ 190 | \$ 1,976 |
| | 1,393.30 | | \$ 589,709 |
| Total | 14,678.50 | | \$ 13,713,525 |

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21 14. Detailed billing records can be made available for the Court's review upon
22 request.

23 15. The rates included in the above chart were approved for Class Counsel in a
 24 similar ERISA fiduciary-breach action in *Ford v. Takeda Pharms. U.S.A., Inc.*, No.
 25 21-10090, 2023 U.S. Dist. LEXIS 93286, at *6–7 (D. Mass. Mar. 31, 2023). They
 26 were provided by Sanford Jay Rosen, a founding partner of Rosen, Bien & Galvin,
 27 LLP, a 27-lawyer litigation firm in San Francisco and a recognized national expert
 28

1 on prevailing rates for complex class action attorneys, who testified that the above
2 rates were reasonable based on the current legal market, Schlichter Bogard's
3 extensive experience in ERISA class actions, and the fees charged by national
4 attorneys of equivalent experience, skill, and expertise in complex class actions.
5 *Ford*, No. 21-10090, Doc. 109 at 2, 21–25 (Jan. 20, 2023) (declaration). *See*
6 Declaration of Jerome J. Schlichter ¶41.

7 16. The above chart provides a lodestar cross check for Class Counsel's request
8 for a one-third fee of \$4,350,000. That award constitutes a lodestar multiplier of
9 nothing like even a straight hourly rate, much less any award for risk. It is merely a
10 fraction of the lodestar of 0.32—an award of only 32% of a reasonable hourly rate.
11 To compensate attorneys for the risk they undertake in contingency fee
12 arrangements, courts usually award more than the lodestar amount, including
13 multiples of 1.5–3 times the lodestar. *See, e.g., Campos v. Converse, Inc.*, No. 20-
14 1576-JGB, 2022 U.S. Dist. LEXIS 147715, at *15 (C.D. Cal. Aug. 15, 2022).

15 17. Even if the Class Counsel were allowed only half of the hours they
16 expended on this case or were paid at rates that were half the market rates allowed
17 in *Ford*, which would be far lower than the rates that were allowed in *Marshall v.*
18 *Northrop Grumman Corp.*, No. 16-6794-AB, 2020 U.S. Dist. LEXIS 177056, at
19 *20 (Sep. 18, 2020), and *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-
20 6213-AB, 2017 U.S. Dist. LEXIS 223293, at *16 (C.D. Cal. Oct. 24, 2017), the
21 requested one-third fee award *still* would not fully compensate Class Counsel for
22 its time, or anything for the massive risk incurred.

23 18. Class Counsel have continued to and will spend time on this case in
24 discussing the notice procedure with the Settlement Administrator and the
25 Independent Fiduciary, coordinating conclusion of the settlement procedure with
26 opposing counsel, preparing and filing documents with the Court to conclude the
27 settlement process, responding to Class member inquiries, and attending the final
28 approval hearing on August 14, 2023. Class Counsel will not be compensated for

1 any of this work.

2 19. Class Counsel incurred \$1,184,891.40 in litigation expenses. Below is a list
3 of expenses:

| | |
|---|------------------------|
| 4 Depositions | \$ 64,225.25 |
| 5 Experts and Consultants | \$ 882,635.17 |
| Filing Fees, Hearing Transcripts, Subpoena Services and Related Costs | \$ 6,743.15 |
| 6 Mediation | \$ 29,078.63 |
| Copies and Postage | \$ 16,702.10 |
| 7 ESI expenses | \$ 89,805.71 |
| 8 Research and Investigation | \$ 5,285.03 |
| Travel and Lodging | \$ 55,849.55 |
| 9 Trial Expenses | \$ 34,566.81 |
| Total Expenses | \$ 1,184,891.40 |

10 20. "Depositions" refers to costs for deposition transcripts and video recording
11 in this case.

12 21. "Experts and Consultants" are the costs for the experts and consultants that
13 Class Counsel utilized in this case.

14 22. "Filing Fees *etc.*" refers to costs related to obtaining admission of Class
15 Counsel *pro hac vice*, service of summonses and subpoenas, costs for court
16 hearing transcripts, and court filing fees.

17 23. "Mediation" refers to the charges of the two mediators that the parties used
18 in this case.

19 24. "Copies and Postage" refers to costs for delivering documents in this case
20 to the Class Representatives and courtesy copies to the Court and the cost of
21 printing those documents.

22 25. "ESI Expenses" refers to the cost for ESI storage and organization.

23 26. "Research and investigation" refers to Lexis, Westlaw, and PACER
24 charges for research related to this case.

25 27. "Travel and Lodging" refers to the costs for traveling and accommodations
26 of Class Counsel for meetings with the Class Representatives and other class
27 members (\$2,029), attending court hearings (\$9,264), arguing Defendants' appeal
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1 of the Court's denial of the motion to compel arbitration (\$1,847), attending
2 depositions (\$12,968), attending two mediations (\$2,704), meeting with proposed
3 Class Representatives for declarations and attending the hearing on class
4 certification (\$2,173), preparing for, meeting with Class Representatives, and
5 attending trial (\$24,511), and attending the hearing on preliminary approval of the
6 settlement of this case (\$354). (All amounts are rounded).

7 28. Class Counsel paid all of these expenses when they were incurred. Class
8 Counsel paid other expenses related to this litigation in excess of \$19,000, of
9 which they are not seeking payment from the Gross Settlement Fund.

10 29. On or about June 15, 2023, the settlement administrator sent notices to
11 Class members. In total, approximately 58,846 notices were sent. The Settlement
12 Agreement and Plaintiffs' memorandum in support of preliminary approval have
13 been published on the website www.usc403bsettlement.com since March 31, 2023.

14 30. Class Counsel has not received any objections from Class members to
15 Class Counsel's request for one-third of the Gross Settlement Amount as attorneys'
16 fees, reimbursement of expenses of up to \$1.5 million, or incentive awards of
17 \$25,000 for each Class Representative.

18 31. In accordance with Article 3 of the Settlement Agreement, Defendants
19 engaged Gallagher Fiduciary Advisors LLC to be the Independent Fiduciary for
20 the Plans to review the Settlement Agreement and determine whether to approve
21 and authorize the settlement on those terms on behalf of the Plans in accordance
22 with the requirements of ERISA Prohibited Transaction Class Exemption 2003-39,
23 as amended. That review included the provisions for payment to Class Counsel of
24 fees equal to one-third of the Gross Settlement Amount (\$4,350,000) and expenses
25 up to \$1,500,000 and payment to each Class Representative of \$25,000 as an
26 incentive award. Doc. 362-1 §7.1. On June 29, 2023, the Independent Fiduciary
27 informed counsel of its approval and authorization of the Settlement Agreement.

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1 I declare under penalty of perjury under the laws of the United States of
2 America that the foregoing is true and correct to the best of my knowledge and
3 belief.

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Executed on June 30, 2023

/s/ Michael A. Wolff
Michael A. Wolff