

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

SHAWN WILLIAMS, *et al.*,

Plaintiffs,

vs.

CENTERRA GROUP, LLC, *et al.*,

Defendants.

No.: 1:20-cv-04220-SAL

**PLAINTIFFS' MOTION FOR ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND CLASS REPRESENTATIVES' COMPENSATION**

Plaintiffs move that the Court approve an attorneys' fee award to Class Counsel of \$2,500,000 (one-third of the monetary recovery), reimburse Class Counsel's reasonable litigation expenses of \$659,240.95, and grant incentive awards of \$20,000 each for Class Representatives Shawn Williams, David Green, Jamie Coomes, Malcolm Kenner, and Andrew Barrett. Class Counsel bore tremendous risk in order to benefit the Class. Despite this, Class Counsel leveraged their extensive experience in ERISA class action litigation to achieve a successful resolution of this matter, thereby avoiding the delay of further litigation and substantial risk of non-recovery for the Class. The requested percentage of the settlement fund is comparable to attorneys' fees awards in similar cases, and a lodestar cross-check confirms the reasonableness of the same. Based on all of the relevant factors, and for the reasons stated in Plaintiffs' supporting memorandum, Plaintiffs respectfully request that the Court grant their motion.

Plaintiffs shall submit an updated Proposed Order granting this Motion prior to the Final Fairness Hearing on July 2, 2024.

May 3, 2024

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CERTIFICATE OF SERVICE

I, Beth B. Richardson, hereby certify that on May 3, 2024, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing to all registered participants.

/s/ Beth Burke Richardson

LOCAL RULE 7.02 ATTESTATION

I attest that before filing this motion, Plaintiffs' counsel conferred with counsel for Defendants to ascertain whether Defendants consent or intend to oppose the motion. Counsel for Defendants responded that they do not intend to object to Plaintiffs' request.

/s/ Beth Burke Richardson

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF THEIR MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CLASS
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INTRODUCTION

After nearly three years of litigation and nearing the eve of trial, Plaintiffs and Defendants Centerra Group, LLC, the Benefit Plan Committee of the Centerra Group, LLC, the Investment Committee of the Centerra Group, LLC, Paul Donahue, and Marcia Aldrich (collectively the “Centerra Defendants”), Aon Hewitt Investment Consulting, Inc. (n/k/a Aon Investments USA, Inc.) (“Aon”), and Deborah F. Ricci (“Ricci”), reached a settlement to resolve all remaining claims for \$7,500,000. Dkt. 258 at 2.¹

In accordance with Local Civ. Rule 54.02(A) (D.S.C.), Schlichter Bogard LLP, as Class Counsel, seeks an attorney fee award of one-third of the Gross Settlement Amount, or \$2,500,000, and reimbursement of reasonable out-of-pocket expenses of \$659,240.95 that Class Counsel incurred in prosecuting the case on behalf of participants and beneficiaries of the Centerra Group, LLC 401(k) Plan (the “Plan”). In ERISA class actions such as this, courts routinely approve a one-third fee award of the common fund. Although conducting a lodestar analysis by the Court is unnecessary to approve Class Counsel’s requested fee, the analysis overwhelmingly confirms the reasonableness of their request. Class Counsel also seeks \$20,000 as an incentive award for each Class Representative who was dedicated to securing a successful result for the Class.

For these reasons and those set forth below, Class Counsel respectfully requests that the Court grant their motion.

BACKGROUND

Plaintiffs, individually and as representatives of a class of participants and beneficiaries of the Plan, filed this action on December 4, 2020, against Defendants. Dkt. 1. The Complaint alleges

¹ If not defined herein, capitalized terms have definitions in the Settlement Agreement, which is incorporated herein by reference. “Dkt.” page references are to the CM/ECF header page number.

that Defendants breached their fiduciary duties and committed prohibited transactions in connection with the use of the Aon Collective Investment Trusts (“Aon Funds”) in the Plan.

On September 16, 2021, the Court granted in part and denied in part Defendants’ motions to dismiss after lengthy briefing and submission of voluminous exhibits. Dkt. 83.² The Court later granted Defendants’ motion to strike Plaintiffs’ jury trial demand. Dkt. 113. Following the Court’s dismissal order, the parties engaged in extensive merits discovery, which included 11 fact depositions and the review of over 18,000 documents produced by Defendants. The parties proceeded to expert discovery, which included the disclosure of 8 expert witnesses for all parties.

Plaintiffs moved for class certification on April 25, 2023. Dkt. 159. On June 20, 2023, the parties subsequently stipulated to class certification. Dkt. 175. The stipulated class under Federal Rule of Civil Procedure 23(b)(1) (and the Class under the terms of the Settlement) is:

All participants and beneficiaries of the Centerra Group, LLC 401(k) Plan from July 1, 2016 until January 1, 2019, excluding Defendants and members of the Benefit Plan Committee of Centerra Group, LLC, and the Investment Committee of Centerra Group, LLC.

Id. at 4; Dkt. 258-1 at 6 (§ 2.13). The parties also stipulated that the Named Plaintiffs may be appointed as Class Representatives and that Plaintiffs’ lead counsel (Schlichter Bogard LLP) and their local counsel (Beth B. Richardson of Robinson Gray Stepp & Laffitte, LLC) are adequate to represent the Class. Dkt. 175 at 5. On December 29, 2023, the Court granted Plaintiffs’ motion and accepted the stipulation and certified this action. Dkt. 247.

The parties engaged in two separate mediations. On September 13, 2023, they participated in a mediation before nationally known mediator Hunter Hughes. While a resolution was not reached on that date, Plaintiffs and Aon engaged in additional discussions with the mediator

² A summary of the background of this action and the claims asserted is set forth in the Court’s dismissal order. See *id.* at 1–4.

thereafter, and these discussions ultimately resulted in a partial settlement. Dkt. 208-1. However, the Court later denied preliminary approval of that settlement. Dkt. 250. In that Order, the Court also denied Plaintiffs' request to voluntarily dismiss Ricci from the action. *Id.*

The parties participated in a second mediation on December 13, 2023, before a Court-appointed mediator, Magistrate Judge Kevin F. McDonald. Dkt. 223. While Plaintiffs were unable to reach an agreement with the Centerra Defendants on that date, negotiations continued, and all parties were ultimately able to reach a settlement in principle on January 12, 2024. Dkt. 255. The parties reached a final settlement on February 2, 2024. Dkt. 258-1.

When the parties reached a settlement, the Centerra Defendants' and Ricci's motions for summary judgment remained pending. *See* Dkts. 200, 201. Aon had filed its motion for summary judgment, but Aon and Plaintiffs had not completed their briefing at the time of the settlement. *Cf.* Dkts. 245, 252. Plaintiffs then filed the joint motion for preliminary approval of the settlement on February 2, 2024. Dkt. 258.

ARGUMENT

Class Counsel is entitled to a reasonable fee award from the common fund. In ERISA cases and class actions generally, the market rate is a contingency fee of one-third of the monetary recovery. The Settlement provides substantial monetary relief to the Class, particularly in light of the risk of non-recovery. The Court should reimburse Class Counsel's reasonable and necessary costs they incurred to pursue Plaintiffs' claims and grant incentive awards to the Class Representatives.

I. Class Counsel's requested attorneys' fees are reasonable.

Under the "common fund" doctrine, Class Counsel are entitled to an award of reasonable attorneys' fees from the settlement proceeds. Fed. R. Civ. P. 23(h). An award is authorized by both the common fund doctrine, *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980), and the parties'

Settlement Agreement, Dkt. 258-1 at 4, 26 (§§ 2.6, 7.1).

In the Fourth Circuit, the percentage-of-recovery approach is “overwhelmingly” preferred to determine attorney’s fees from the common fund. *Krakauer v. Dish Network, L.L.C.*, No. 14-333, 2018 U.S. Dist. LEXIS 203725, at *6 (M.D.N.C. Dec. 3, 2018) (citation omitted); *Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 568 (D.S.C. 2015) (Childs, J.) (“Within this Circuit, the percentage-of-recovery approach is not only permitted, but is the preferred approach to determine attorney’s fees.”). The percentage-of-recovery method is “advantageous because it ties the attorneys’ award to the overall result achieved rather than the number of hours worked.” *In re Allura Fiber Cement Siding Litig.*, No. 19-2886-DCN, 2021 U.S. Dist. LEXIS 96931, at *10 (D.S.C. May 21, 2021). For ERISA cases in particular, courts consistently recognize that “a reasonable [attorney] fee is normally a percentage of the Class recovery.” *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 U.S. Dist. LEXIS 193107, at *7 (M.D.N.C. Sept. 29, 2016) (quoting *Smith v. Krispy Kreme Doughnut Corp.*, No. 05-187, 2007 U.S. Dist. LEXIS 2392, at *3 (M.D.N.C. Jan. 10, 2007)).

In determining a reasonable attorney fee from a common fund, this Court applies the twelve factors from *Barber v. Kimbrell’s, Inc.*, 577 F.2d 216, 226 (4th Cir. 1978). Local Civ. R. 54.02(A) (D.S.C.); *Pecora v. Big M Casino*, No. 18-1422-SAL, 2020 U.S. Dist. LEXIS 255079, at *7 (D.S.C. July 23, 2020) (citing *Robinson v. Equifax Info. Servs., LLC*, 560 F.3d 235, 243–44 (4th Cir. 2009) (citing *Barber*, 577 F.2d at 226 n.28)). The *Barber* factors include:

- (1) the time and labor expended;
- (2) the novelty and difficulty of the questions raised;
- (3) the skill required to properly perform the legal services rendered;
- (4) the attorney’s opportunity costs in pressing the instant litigation;
- (5) the customary fee for like work;
- (6) the attorney’s expectations at the outset of the litigation;
- (7) the time limitations imposed by the client or circumstances;
- (8) the amount in controversy and the results obtained;
- (9) the experience, reputation and ability of the attorney;
- (10) the undesirability of the case within the legal community in which the suit arose;
- (11) the nature and length of the

professional relationship between attorney and client; and (12) attorney's fees awards in similar cases.

577 F.2d at 226 & n.28. Applying these factors to this case demonstrates that the requested award is fair, reasonable, and clearly warranted.

(1) The time and labor expended:

Class Counsel dedicated substantial time and effort to prosecuting Plaintiffs' claims. Schlichter Bogard LLP expended 6,256.10 hours of attorney time to date and 1,273.40 hours of non-attorney time. Struckhoff Decl. ¶ 6. The time and labor already expended easily supports the fee award. *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *5. In addition, Class Counsel will denote significantly more time in the future for follow-up, communication with Class Members, and coordinating with the Settlement Administrator.

(2) The novelty and difficulty of the questions raised:

ERISA class actions are "highly complex." *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *5. This "rapidly evolving" area of law places demands on counsel and the Court that are "complex and require the devotion of significant resources." *In re Wachovia Corp. ERISA Litig.*, No. 09-262, 2011 U.S. Dist. LEXIS 123109, at *22 (W.D.N.C. Oct. 24, 2011). 401(k) litigation "entails complicated ERISA claims that are not only dependent on the statute but also on various regulations that implement ERISA." *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 U.S. Dist. LEXIS 82350, at *7 (C.D. Ill. Aug. 12, 2010). It also involves "novel questions of law." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 U.S. Dist. LEXIS 157428, at *10 (W.D. Mo. Nov. 2, 2012).

Successfully obtaining a judgment in these actions is extraordinarily difficult. It requires counsel to risk very significant amounts of time and money "in the face of vigorous resistance by employers." *Ramsey v. Philips N.A.*, No. 18-1099, 2018 U.S. Dist. LEXIS 226672, at *4 (S.D. Ill. Oct. 15, 2018); Schlichter Decl. ¶¶ 26–27. Even after a successful trial on the merits, recovery is

far from certain. Class Counsel obtained a successful judgment in March 2012 in *Tussey v. ABB, Inc.*, the first full trial of any 401(k) excessive fee case. No. 06-4305, 2012 U.S. Dist. LEXIS 45240 (W.D. Mo. Mar. 31, 2012). After multiple appeals to the Eighth Circuit and remands to the district court, and over 25,000 hours of attorney and paralegal time, the parties ultimately settled the action in 2019, almost 14 years after filing. *Tussey v. ABB, Inc.*, No. 06-4305, 2019 U.S. Dist. LEXIS 138880, at *4 (W.D. Mo. Aug. 16, 2019); *Tussey*, 2012 U.S. Dist. LEXIS 157428, at *18. *Tibble v. Edison International* is another example of the uncertainty in obtaining a successful recovery. Class Counsel appealed unfavorable rulings after a partial trial to the Ninth Circuit, lost there, and ultimately obtained a successful unanimous decision at the United States Supreme Court, reversing the Ninth Circuit. *Tibble v. Edison Int'l*, 135 S. Ct. 1823 (2015). Following remand to the Ninth Circuit, an *en banc* reversal of the panel decision, and remand to the district court, a successful judgment for the plaintiffs was entered after the second trial over 10 years after filing. No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D. Cal. Aug. 16, 2017).

Judgments in favor of the defendants following trial in ERISA litigation further illustrate the difficulty of obtaining a successful judgment. Recently, the defendant fiduciaries prevailed at trial in similar actions alleging that a discretionary investment manager breached its fiduciary duty by selecting its proprietary funds. *See, e.g., Mills v. Molina Healthcare, Inc.*, No. 22-1813, 2024 U.S. Dist. LEXIS 50572 (C.D. Cal. Mar. 20, 2024); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2024 U.S. Dist. LEXIS 31527 (C.D. Cal. Feb. 23, 2024); *see also Vellali v. Yale Univ.*, No. 16-1345, Dkt. 575 (D. Conn. June 28, 2023) (involving fiduciaries employed by the plan sponsor). The Fourth Circuit recently affirmed a judgment in favor of Aon after trial on similar claims involving the Aon Funds. *Reetz v. Aon Hewitt Inv. Consulting, Inc.*, 74 F.4th 171 (4th Cir. 2023). This decision was greatly relied upon by Aon in moving for summary judgment here. *See* Dkt.

252-1 at 5 (passim). Without question, there is “significant risk of nonpayment” in these cases. *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *14 (citations omitted).

(3) The skill required to properly perform the legal services rendered:

“[I]t takes skilled counsel to manage a nationwide class action, carefully analyze the facts and legal claims and defenses under ERISA, and bring a complex case to the point at which settlement is a realistic possibility.” *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *6. It is “well established that complex ERISA litigation” requires “special expertise,” *Tussey*, 2012 U.S. Dist. LEXIS 157428, at *10, and class counsel of the “the highest caliber,” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 184622, at *9 (C.D. Ill Oct. 15, 2013). *See also Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 U.S. Dist. LEXIS 91385, at *6 (D. Minn. July 13, 2015) (requires “extraordinary skill and determination”). With an opponent that is a “sophisticated corporation with sophisticated counsel,” such as here with Centerra and Jackson Lewis P.C. or Aon and O’Melveny & Myers LLP, additional skill is necessary. *Savani*, 121 F. Supp. 3d at 572 (citation omitted).

401(k) excessive fee litigation did not even exist until 2006, when Class Counsel “began holding employers responsible for alleged fiduciary breaches.” *Spano v. Boeing Co.*, No. 06-743, 2016 U.S. Dist. LEXIS 161078, at *9 (S.D. Ill. Mar. 31, 2016). For years, Class Counsel “has been virtually alone in its willingness to fully pursue ERISA fiduciary breach claims against large employers for excessive fees, imprudent investment options, and the types of breaches at issue in this case.” *George v. Kraft Foods Glob., Inc.*, No. 07-1713, 2012 U.S. Dist. LEXIS 166816, at *16 (N.D. Ill. June 26, 2012). Not only has Class Council pioneered this area of litigation, but Class Counsel also conducted the first ever full trial of such a case (*Tussey, supra*), the first ever such case in the Supreme Court (a unanimous favorable decision in *Tibble, supra*), and the first ever 403(b) case in the Supreme Court involving a claim of excessive fees—also a unanimous favorable

decision (*Hughes v. Nw. Univ.*, 142 S. Ct. 737, 738 (2022)).

Given the expertise required, few law firms “are capable of handling this type of national litigation.” *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at *11 (S.D. Ill. July 17, 2015); Schlichter Decl. ¶ 16. A successful recovery in this matter was only obtained by Class Counsel’s zealous prosecution of this case and their reputation as “experts in ERISA litigation[.]” *Tussey*, 2012 U.S. Dist. LEXIS 157428, at *10; *Abbott*, 2015 U.S. Dist. LEXIS 93206, at *11 (class “would not have obtained any recovery” but for Class Counsel’s “determined prosecution”).

(4) The attorney’s opportunity costs in pressing the instant litigation:

As a plaintiff’s law firm that works solely on a contingency basis, the decision to pursue this class action and commit significant resources and potentially thousands of attorney hours to obtain a successful recovery impacts the firm’s ability to handle other class actions. *E.g.*, Schlichter Decl. ¶ 30. This time and expense incurred “could have [been] put towards other simpler and less risky matters.” *Krakauer*, 2018 U.S. Dist. LEXIS 203725, at *12; *Sims v. BB&T Corp.*, No. 15-1705, 2019 U.S. Dist. LEXIS 75839, at *12–13 (M.D.N.C. May 6, 2019).

(5) The customary fee for like work:

In this Circuit, a contingent one-third fee of the common fund is common. *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *6; *Krakauer*, 2018 U.S. Dist. LEXIS 203725, at *8; *Phillips v. Triad Guar. Inc.*, No. 09-71, 2016 U.S. Dist. LEXIS 60950, at *18 (M.D.N.C. May 9, 2016); *DeWitt v. Darlington Co.*, No. 11-740-RBH, 2013 U.S. Dist. LEXIS 172624, at *24 (D.S.C. Dec. 6, 2013) (“One-third of the recovery appears to be a fairly common percentage in contingency cases[.]”). Many district courts have found that a one-third fee is the market rate for a “complex ERISA 401(k) fee case[.]” *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *7 (citing ERISA class action fee awards to Class Counsel); *Sims*, 2019 U.S. Dist. LEXIS 75839, at *13; *Clark v. Duke*,

No. 16-1044, 2019 U.S. Dist. LEXIS 105696, at *10 (M.D.N.C. June 24, 2019).

Class Counsel Schlichter Bogard LLP entered into contingency fee agreements with each of the Named Plaintiffs for one-third of any monetary recovery plus reimbursement of expenses. Schlichter Decl. ¶ 24. As a practical matter, the Named Plaintiffs could not afford to pursue litigation against well-funded fiduciaries of large 401(k) plan other than on a contingency fee. *Id.* ¶ 22.

(6) The attorney's expectations at the outset of the litigation:

At the outset of this litigation, Class Counsel fully expected this case to be vigorously defended by corporate defendants with sophisticated counsel. Schlichter Decl. ¶¶ 26–27. This was the repeated experience of Class Counsel many, many times in ERISA class actions. *E.g.*, *Ramsey*, 2018 U.S. Dist. LEXIS 226672, at *4; *Clark*, 2019 U.S. Dist. LEXIS 105696, at *9; *Sims*, 2019 U.S. Dist. LEXIS 75839, at *13. *Tussey v. ABB, Inc.* represents a prime example of this. In that case, the two corporate defendants had 15 or more lawyers present in the courtroom throughout the month-long trial. Schlichter Decl. ¶ 27. The defendants' legal fees in that case alone exceeded \$42 million through the trial, at rates approximately 15 years ago. *Tussey v. ABB Inc.*, No. 06-4305, 2015 U.S. Dist. LEXIS 164818, at *21 (W.D. Mo. Dec. 9, 2015).

This lawsuit was no exception. This case was defended by four national law firms involving three corporate defendants and three individual defendants. As of the date of this filing, there were 15 attorneys entered on the case for the defense on the docket. Throughout this litigation, Defendants vigorously represented their clients. They separately filed motions to dismiss (Dkts. 46, 48, 49), motions for summary judgment (Dkts. 200, 201, 252), retained three expert witnesses (Dkts. 187–189), and as to Centerra, strongly opposed the initial settlement reached between Plaintiffs and Aon (Dkt. 212). Class Counsel knew it would have to devote tremendous resources and incur substantial out-of-pocket expenses to effectively prosecute this case. Schlichter Decl. ¶

27; *see, e.g., Tussey*, 2019 U.S. Dist. LEXIS 138880, at *14 (\$2.3 million in expenses); *Spano*, 2016 U.S. Dist. LEXIS 161078, at *3 (\$1.8 million in expenses); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 U.S. Dist. LEXIS 12037, at *3–4 (S.D. Ill. Jan. 31, 2014) (\$1.6 million in expenses); *Clark*, 2019 U.S. Dist. LEXIS 105696, at *14 (\$822,212 in expenses); *Sims*, 2019 U.S. Dist. LEXIS 75839, at *17 (\$737,377 in expenses) (all cases handled by Class Counsel).

(7) The time limitations imposed by the client or circumstances:

Class Counsel devoted over 7,500 hours of attorney and non-attorney time to prosecute this action. The time necessary to devote to this action prevented Class Counsel from pursuing other class actions or devoting additional resources to other matters. Schlichter Decl. ¶ 30.

(8) The amount in controversy and the results obtained:

The “most critical factor in determining the reasonableness of a fee award is the degree of success obtained.” *In re Abrams & Abrams, P.A.*, 605 F.3d 238, 247 (4th Cir. 2010) (citation omitted). Class Counsel obtained \$7.5 million in monetary compensation for the Class. This is an excellent result that benefits over 4,000 current and former participants in the Plan. Through expert testimony, Plaintiffs claimed damages that ranged from \$14.7 million to \$28.7 million. Dkt. 201-12 at 7–9. If the Plan’s fiduciaries did not replace the Legacy Investment Options with the Aon Funds, Plaintiffs estimated damages of \$16.0 million. *Id.* at 7. Class Counsel secured a settlement of approximately 46.9% of those estimated damages. However, recovery of any portion of Plaintiffs’ damage estimates was uncertain based on recent judgments entered in favor of the defendant fiduciaries, especially in *Reetz*. *See supra* Section I(1).

The value of the settlement is greater than its monetary value because Class Members do not have to “wait as long as a decade as other classes in similar 401(k) cases” to obtain their recovery. *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *16. Current participants will receive their distributions directly into their accounts tax-deferred and former participants have the right to

direct their distribution into a tax-deferred vehicle, such as an Individual Retirement Account. *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *13–14 (D. Md. Jan. 28, 2020) (recognizing same). The Investment Company Institute estimates that the benefit of the present value of tax deferral for 20 years is an additional 18.6%,³ so the actual value to the Class of the settlement is \$8,895,000. Accordingly, Class Counsel’s requested fee award is approximately 28% of this amount.

(9) The experience, reputation, and ability of the attorney:

Class Counsel is the most experienced law firm in the United States in handling ERISA class actions involving 401(k) plans. Class Counsel is the “preeminent firm in 401(k) fee litigation,” having “achieved unparalleled results on behalf of its clients” in the face of “enormous risks.” *Nolte*, 2013 U.S. Dist. LEXIS 184622, at *8; *Abbott*, 2015 U.S. Dist. LEXIS 93206, at *4–5 (the firm is the “pioneer and the leader in the field”). They are “experts in ERISA litigation.” *Krueger*, 2015 U.S. Dist. LEXIS 91385, at *6 (citation omitted); *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2017 U.S. Dist. LEXIS 223293, at *10–11 (C.D. Cal. Oct. 24, 2017) (“SBD is highly experienced”). The firm obtained the only two victories in the United States Supreme Court on claims alleging excessive retirement plan fees in violation of ERISA. *Tibble*, 135 S. Ct. 1823; *Hughes v. Nw. Univ.*, 142 S. Ct. 737, 738 (2022). They have also obtained several favorable reversals of dismissal or summary judgment orders on appeal. *E.g.*, *Sacerdote v. N.Y. Univ.*, 9 F.4th 95 (2d Cir. 2021); *Sweda v. Univ. of Pa.*, 923 F.3d 320 (3d Cir. 2019); *Tibble v. Edison Int’l*, 843 F.3d 1187, 1197 (9th Cir. 2016); *George v. Kraft Foods Global, Inc.*, 641 F.3d 786, 796 (7th Cir. 2011). The quality of the professional legal services had to be exceptional to

³ *Abbott v. Lockheed Martin Corp.*, No. 06-701, Dkt. 497 at 37 (S.D. Ill. Apr. 14, 2015) (Report of the Special Master) (citing Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral*, Investment Company Institute, Sept. 17, 2013, available at http://www.ici.org/viewpoints/view_13_marginal_tax_and_deferral).

navigate the complex area of ERISA fiduciary breach litigation. Schlichter Decl. ¶ 14.

District courts in the Fourth Circuit have recognized the reputation and extraordinary skill and determination of Class Counsel. *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *8 (“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”); *Clark*, 2019 U.S. Dist. LEXIS 105696, at *12 (“Class Counsel has 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”); *Sims*, 2019 U.S. Dist. LEXIS 75839, at *14 (“Class Counsel displayed skill and determination.”); *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *12 (“Class Counsel achieved an excellent result on behalf of the class.”).

Other district courts across the country have recognized the exceptional skill of Class Counsel. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at *4 (D. Mass. Mar. 31, 2023) (Schlichter Bogard’s “work on this case was exemplary and benefitted the Class by securing both monetary and affirmative relief”); *Pledger v. Reliance Tr. Co.*, No. 15-4444, 2021 U.S. Dist. LEXIS 105868, at *21 (N.D. Ga. Mar. 8, 2021) (“Class Counsel are highly experienced and recognized experts in ERISA litigation.”); *Beesley*, 2014 U.S. Dist. LEXIS 12037, at *8 (“Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination.”); *Nolte*, 2013 U.S. Dist. LEXIS 184622, at *6–7 (“[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.”); *Martin*, 2010 U.S. Dist. LEXIS 82350, at *7 (achieving a favorable result in this type of case required extraordinary efforts because the “litigation entails complicated ERISA claims”); *Will v. Gen. Dynamics Corp.*, No. 06-698-

GPM, 2010 U.S. Dist. LEXIS 123349, at *8–9 (S.D. Ill. Nov. 22, 2010) (Schlichter Bogard’s work “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”); *see also* Schlichter Decl. ¶¶ 5–10.

(10) The undesirability of the case within the legal community in which the suit arose:

Prior to filing this lawsuit, no other law firm pursued the action to recover this Plan’s losses against formidable defendants. This is not surprising given the tremendous risk of nonpayment and the substantial commitment of resources that is required to successfully prosecute such an action. In the context of ERISA class action litigation generally, few law firms are “willing to handle” these cases. *Nolte*, 2013 U.S. Dist. LEXIS 184622, at *12. As a district court in this Circuit recognized, “[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 U.S. Dist. LEXIS 75839, at *14; *see also Clark*, 2019 U.S. Dist. LEXIS 105696, at *11 (“Class Counsel has 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.”). When Class Counsel pioneered this area of ERISA fiduciary breach litigation, “no other firm was willing to accept such a daunting challenge on this case at any rate[.]” *Nolte*, 2013 U.S. Dist. LEXIS 184622, at *9; *Ramsey*, 2018 U.S. Dist. LEXIS 226672, at *3; *see also* Schlichter Decl. ¶ 16.

Class Counsel’s willingness to bear the risk of prosecuting this action and the limited interest of others in the legal community supports the reasonableness of their request for attorneys’ fees. *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *22; *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *8.

(11) The nature and length of the professional relationship between attorney and client:

Class Counsel Schlichter Bogard LLP did not have a professional relationship with any of the Named Plaintiffs prior to this litigation. Schlichter Decl. ¶ 25. This factor supports the reasonableness of the requested fee award. *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *9; *Clark*, 2019 U.S. Dist. LEXIS 105696, at *11.

(12) Attorney fee awards in similar cases:

District courts consistently award Class Counsel a one-third fee in similar ERISA litigation. The chart below lists those consistent outcomes in 25 separate actions, including within this Circuit noted with an asterisk (*).

Case	Fee %
<i>Wachala v. Astellas US LLC</i> , No. 20-3882, Dkt. 241 (N.D. Ill. Nov. 2, 2023)	33.33%
<i>Munro v. Univ. of S. Cal.</i> , No. 16-06191, Dkt. 384 (C.D. Cal. Aug. 24, 2023)	33.33%
<i>Ford v. Takeda Pharms. U.S.A., Inc.</i> , No. 21-10090, 2023 U.S. Dist. LEXIS 93286 (D. Mass. Mar. 31, 2023)	33.33%
<i>Marshall v. Northrop Grumman Corp.</i> , No. 16-6794, 2020 U.S. Dist. LEXIS 177056 (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 (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 v. Emory University</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, Dkt. 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	33.33%

Case	Fee %
(W.D. Mo. August 16, 2019)	
<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%
<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%

“This great weight of authority more than demonstrates that a one-third fee is justified in this case.” *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *8 (citing awards). Apart from attorney fee awards in cases handled by Class Counsel, district courts in this Circuit frequently award a fee of one-third of the settlement common fund. *See, e.g., Krakauer*, 2018 U.S. Dist. LEXIS 203725, at *13 (awarding one-third fee of the common fund, or \$20,447,600); *DeWitt*, 2013 U.S. Dist. LEXIS 172624, at *24 (same); *Decohen v. Abbasi, LLC*, 299 F.R.D. 469, 481–83 (D. Md. 2014) (same); *In re Allura Fiber*, 2021 U.S. Dist. LEXIS 96931, at *10 (same); *cf. Temp. Servs. v. Am. Int'l Grp., Inc.*, No. 08-271, 2012 U.S. Dist. LEXIS 131201, at 22–23 (D.S.C. Sept. 14, 2012) (market rate “33 1/3 percent to 40 percent”).

II. A lodestar cross-check confirms the reasonableness of Class Counsel's request.

“Given that courts in the Fourth Circuit approve of the percentage-of-fund method for awarding fees in common fund cases, ‘[i]t is not necessary for the Court to conduct a lodestar analysis[.]’” *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *11 (citation omitted). However, courts have sometimes used a lodestar “cross-check” to confirm that the percentage award is fair and reasonable by determining the hours reasonably expended and then multiplying that amount by the reasonable hourly rate. *Id.*; *Junious v. FedEx Ground Package Sys.*, No. 19-00381-SAL, 2020 U.S. Dist. LEXIS 107023, at *7–8 (D.S.C. June 18, 2020). “The hourly rate should be in line with the market rate for ‘similar services by lawyers of reasonably comparable skill, experience, and reputation.’” *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *12 (citation omitted). The Court does not need to “‘exhaustively scrutinize[]’” the hours documented by counsel and ‘the reasonableness of the claimed lodestar can be tested by the court’s familiarity with the case.’” *Krakauer*, 2018 U.S. Dist. LEXIS 203725, at *13 (citation omitted). Plaintiffs need only submit documentation appropriate to meet the burden establishing an entitlement to an award, not to satisfy “green-shade accountants.” *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011).

ERISA litigation, such as this, involves a national market because the number of plaintiff’s firms who have the necessary expertise and are willing to take the risk and devote the resources to litigate complex ERISA fiduciary breach claims is small. *Abbott*, 2015 U.S. Dist. LEXIS 93206, at *11. Class Counsel has brought ERISA class actions across the country defended by national firms with ERISA expertise. Schlichter Decl. ¶ 4. Thus, the relevant hourly rate is a “nationwide market rate.” *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *12; *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *21; *Clark*, 2019 U.S. Dist. LEXIS 105696, at *9.

Class Counsel spent 6,256.10 hours of attorney time and 1,273.40 hours of non-attorney

time on this matter to date.⁴ Struckhoff Decl. ¶ 6; *see also id.* (breakdown of these hours by attorney experience).⁵ The time and labor expended is consistent with other ERISA fee cases handled by Class Counsel that were settled at summary judgment or closely before trial. *See, e.g., Munro v. Univ. of S. Cal.*, No. 16-06191, Dkt. 384 at 16 (C.D. Cal. Aug. 24, 2023) (13,285.2 attorney hours and 1,393.3 non-attorney hours); *Sims*, 2019 U.S. Dist. LEXIS 75839, at *14 (14,605.70 attorney hours and 1,951.70 non-attorney hours); *Clark*, 2019 U.S. Dist. LEXIS 105696, at *11 (7,841.60 attorney hours and 661.30 non-attorney hours); *Spano*, 2016 U.S. Dist. LEXIS 161078, at *10 (21,986.8 attorney hours and 4,828.2 non-attorney hours); *Abbott*, 2015 U.S. Dist. LEXIS 93206, at *10–11 (20,124 attorney hours and 4,960 non-attorney hours); *Krueger*, 2015 U.S. Dist. LEXIS 91385, at *6–7 (27,991 attorney hours and 2,716 non-attorney hours).

As recent as November 2, 2023, Class Counsel’s reasonable hourly rates have been approved in similar ERISA class action litigation. *Wachala v. Astellas US LLC*, No. 20-3882, Dkt. 241 at 3 (N.D. Ill. Nov. 2, 2023) (approving rates set forth in *Wachala*, Dkt. 233 ¶ 5); *see also Ford*, 2023 U.S. Dist. LEXIS 93286, *6–7 (same rates approved). The approved hourly rates are as follows: for attorneys with at least 25 years of experience, \$1,370 per hour; for attorneys with 15–24 years of experience, \$1,165 per hour; for attorneys with 5–14 years of experience, \$840 per hour; for attorneys with 0–4 years of experience, \$635 per hour; and for Paralegals and Law Clerks, \$425 per hour. Struckhoff Decl. ¶ 5. In light of the close similarities between the fiduciary breach claims in these cases and this one, Class Counsel being the same, and the recency of the decisions, the same rates are appropriate. *See Kruger*, 2016 U.S. Dist. LEXIS 193107, at *13.

⁴ Additional time was spent by local counsel, Ms. Richardson. Her time was not included in the hours listed.

⁵ If the Court deems it necessary, Class Counsel is willing to submit their time entries beyond the sworn declaration herein for in camera review, since they reflect sensitive work product of their attorneys.

Using these rates, Class Counsel's lodestar is \$6,453,266, which is the amount attorneys are paid without assuming any risk of litigation. This amount is substantially more than the requested attorney fee award of \$2,500,000. Struckhoff Decl. ¶ 6. Class Counsel's requested one-third fee is only 0.39% of the lodestar (0.39). This pales in comparison to lodestar multipliers of 4.5 or higher approved in the Fourth Circuit to compensate attorneys for the risk they assumed. *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *14; *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *21. A lodestar multiplier of less than 1 *overwhelmingly* demonstrates the reasonableness of the requested fee award. *Junious*, 2020 U.S. Dist. LEXIS 107023, at *7–8; *Sims*, 2019 U.S. Dist. LEXIS 75839, at *16; *Clark*, 2019 U.S. Dist. LEXIS 105696, at *12–13. Moreover, the multiplier demonstrates that Class Counsel will not be fully compensated for their time or the tremendous risk they assumed in prosecuting this complex ERISA case. Because the fee request is so much less than the lodestar, the one-third fee request is imminently reasonable.

III. The Court should award reimbursement of Class Counsel's litigation expenses.

Class Counsel is entitled to reimbursement of litigation expenses of \$659,240.95 advanced in prosecuting this case. Fed. R. Civ. P. 23(h). A cost award is authorized by both the parties' Settlement Agreement and the common fund doctrine. Dkt. 258-1 at 5, 26 (§§ 2.6, 7.1); *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *21. "Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine." *Savani*, 121 F. Supp. 3d at 576; *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *16. Reimbursable expenses include expert fees, travel, mediation, deposition, postage, and computerized legal research, among others. Alba Conte, 1 Attorney Fee Awards §2:19 (3d ed. 2004); *Phillips*, 2016 U.S. Dist. LEXIS 60950, at *28; *Sims*, 2019 U.S. Dist. LEXIS 75839, at *17; *Brown v. Rita's Water Ice Franchise Co. LLC*, 242 F. Supp. 3d 356, 371 (E.D. Pa. 2017). An itemized listing of the expenses submitted is attached hereto. *See* Struckhoff Decl. ¶ 24.

Class Counsel brought this case without guarantee of reimbursement or recovery. They had a strong incentive to limit costs. Given the complexity of this case, the costs incurred necessarily were substantial, but were consistent with what would be expected in a case of this magnitude that was litigated for years, proceeded to summary judgment, and ultimately settled prior to trial. *See, e.g., Munro*, Dkt. 384 at 17 (\$1.2 million); *Clark*, 2019 U.S. Dist. LEXIS 105696, at *14 (\$822,212); *Sims*, 2019 U.S. Dist. LEXIS 75839, at *17 (\$737,377); *Spano*, 2016 U.S. Dist. LEXIS 161078, at *3 (\$1.8 million); *Beesley*, 2014 U.S. Dist. LEXIS 12037, at *3–4, 15 (\$1.6 million); *Abbott*, 2015 U.S. Dist. LEXIS 93206, at *15 (\$1.6 million); *In re Northrop Grumman ERISA Litig.*, 2017 U.S. Dist. LEXIS 223293, at *24 (\$1.2 million); *George*, 2012 U.S. Dist. LEXIS 166816, at *16 (\$1.5 million); *Kanawi v. Bechtel Corp.*, No. 06-5566, Dkt. 828 at 4–5 (N.D. Cal. Mar. 1, 2011) (\$1.5 million) (all cases handled by Class Counsel).

IV. The Court should approve case contribution awards for the Named Plaintiffs.

“At the conclusion of a successful class action case, it is common for courts, exercising their discretion, to award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the class.” *Krispy Kreme*, 2007 U.S. Dist. LEXIS 2392, at *11–12. “A substantial incentive award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiff’s] efforts.” *Savani*, 121 F. Supp. 3d at 577.

The Named Plaintiffs provided invaluable assistance to Class Counsel in prosecuting the case. They showed commitment to the case, including their participation and engagement in responding to Defendants’ discovery requests and requests for deposition. Dkts. 159-8 – 159-12; Struckhoff Decl. ¶¶ 7, 12, 15. They also risked their reputation and alienation from employers “in bringing an action against a prominent company in their community.” *Kruger*, 2016 U.S. Dist. LEXIS 193107, at *17.

A case contribution award of \$20,000 for each Class Representative represents just over one percent of the Settlement Fund. That amount is reasonable and appropriate given their contributions to the case. This amount is consistent with awards in similar 401(k) plan settlements handled by Class Counsel. *See Kruger*, 2016 U.S. Dist. LEXIS 193107, at *17–18; *Munro*, Dkt. 384 at 21; *Abbott*, 2015 U.S. Dist. LEXIS 93206, at *13–14; *Krueger*, 2015 U.S. Dist. LEXIS 91385, at *10–11; *Beesley*, 2014 U.S. Dist. LEXIS 12037, at *13–14; *Will*, 2010 U.S. Dist. LEXIS 123349, at *12–13 (all awarding \$25,000 to each named plaintiff); *Clark*, 2019 U.S. Dist. LEXIS 105696, at *15–16 (awarding \$25,000 to \$35,000 to each named plaintiff); *Wachala v. Astellas US LLC*, No. 20-3882, Dkt. 241 at 4 (N.D. Ill. Nov. 2, 2023) (awarding \$20,000 to each named plaintiff).

CONCLUSION

This Court should grant Plaintiffs’ motion.

May 3, 2024

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**pro hac vice* admission

Lead Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I, Beth B. Richardson, hereby certify that on May 3, 2024, I electronically filed the foregoing using the CM/ECF system, which will send notification of such filing to all registered participants.

/s/ Beth Burke Richardson

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

SHAWN WILLIAMS, *et al.*,

Plaintiffs,

vs.

CENTERRA GROUP, LLC, *et al.*,

Defendants.

No.: 1:20-cv-04220-SAL

DECLARATION OF KURT C. STRUCKHOFF

I, Kurt C. Struckhoff, declare as follows:

1. I am a partner at the law firm of Schlichter Bogard LLP, of St. Louis, Missouri, and I am one of the attorneys representing the Plaintiffs in this matter. This declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representatives' Compensation.

2. I have been active in all aspects of this litigation. I am familiar with the facts set forth below and able to testify to them based on my personal knowledge or review of the records and files maintained by this firm in the regular course of its representation of Plaintiffs in this case.

3. I am licensed to practice in the States of Missouri and Illinois, as well as numerous federal courts.

4. I received my Bachelor of Science from Saint Louis University in 2006 and my Juris Doctorate from Saint Louis University School of Law in 2009. I have been exclusively

involved in national ERISA class actions involving 401(k) plans and other defined contribution plans since joining the private practice of law over 15 years ago.

5. As set forth in the Memorandum in Support of Plaintiffs' Motion and the Declaration of Jerome Schlichter, the District Court for the Northern District of Illinois approved the following hourly rates for my firm: for attorneys with at least 25 years of experience, \$1,370 per hour; for attorneys with 15–24 years of experience, \$1,165 per hour; for attorneys with 5–14 years of experience, \$840 per hour; for attorneys with 0–4 years of experience, \$635 per hour; and for Paralegals and Law Clerks, \$425 per hour. *Wachala v. Astellas US LLC*, No. 20-3882, Dkt. 241 at 3 (N.D. Ill. Nov. 2, 2023) (approving rates set forth in *Wachala*, Dkt. 233 ¶ 5); *see also Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, *6–7 (D. Mass. Mar. 31, 2023) (same rates approved).

6. To calculate the lodestar, Schlichter Bogard LLP applied these rates to the number of hours incurred by attorneys and non-attorneys during this litigation. This calculation is shown in the following table. A general summary by categories of the time entries is set forth below.

Experience	Hours	Rate	Total
25 Years +	1,273.90	\$1,370.00	\$1,745,243.00
15–24 Years	1,302.30	\$1,165.00	\$1,517,179.50
5–14 Years	1,526.40	\$840.00	\$1,282,176.00
0–4 Years	2,153.50	\$635.00	\$1,367,472.50
Attorney Total	6,256.10		\$5,912,071.00
Paralegal	1,273.40	\$425.00	\$541,195.00
Paralegals and Law Clerks Total	1,273.40		\$541,195.00
Total of All Hours	7,529.50		\$6,453,266.00

7. Investigation and Preparation of Complaint: Starting in early 2020, Schlichter Bogard LLP began their investigation of the claims at issue in this lawsuit. The attorneys

conducted in-depth investigative analysis and research of publicly available documents, including participant statements, prospectuses, and the Centerra Group 401(k) Plan Forms 5500 filed with the Department of Labor, among other sources. The investigation included many meetings with Plan participants. These meetings were invaluable to the attorneys in gaining additional understanding relating to the operation and administration of the Plan, as well as fee and performance disclosures concerning the Plan's investments and expenses.

8. During the investigation, Schlichter Bogard LLP conducted extensive research and legal analysis of potential claims and performed financial analyses of the Plan's estimated losses. This required an evaluation of all expenses paid by the Plan for investment and administrative services, and a performance analysis of the Plan's investments. Once a decision was made to pursue an action against the Defendants, Schlichter Bogard LLP then began their preparation and drafting of the complaint.

9. The firm filed the complaint on December 4, 2020. *Williams, et al. v. Centerra Group, LLC, et al.*, No. 20-4220, Dkt. 1 (D.S.C.). The complaint contained factually detailed allegations regarding the claims at issue. In total the complaint was over 60 pages in length and contained over 160 separately numbered paragraphs.

10. Motion to Dismiss: Defendants filed their motions to dismiss on February 22, 2021. Dkts. 46, 48, 49. Their combined 65 pages of memoranda were extensive and detailed. Dkts. 46-1, 48-1, 49-1. Defendants raised complex legal arguments that addressed all of Plaintiffs' claims. Plaintiffs' attorneys spent extensive time responding to their arguments, which included conducting research and analysis of relevant authority. Plaintiffs filed their oppositions on March 29, 2021. Dkts. 59, 60. The Court granted in part and denied in part Defendants' motions to dismiss after lengthy briefing and submission of exhibits. Dkt. 83.

11. Motion for Class Certification: Plaintiffs filed their motion for class certification on April 25, 2023. Dkt. 159. The briefing, accompanied by declarations and Plan documents, was extensive and took significant time to prepare. Dkts. 159–159-14. On June 20, 2023, the parties subsequently stipulated to class certification, Dkt. 175, and on December 29, 2023, the Court granted Plaintiffs’ motion and accepted the stipulation and certified this action. Dkt. 247.

12. Discovery: Following the Court’s dismissal order, Plaintiffs proceeded with discovery. The parties conferred and submitted a Confidentiality Order for the Court’s approval on April 29, 2022, Dkt. 118, and the Court entered it on May 6, 2022. Dkt. 120. On December 3, 2021, the parties submitted their Joint Rule 26(f) Report, which required meet-and-confer sessions in preparation of the report. Dkt. 110. Plaintiffs served their initial disclosures on the same day. On December 22, 2021, Plaintiffs served their written discovery on all Defendants, and they responded to Ricci and Aon’s discovery requests on March 2, 2022 and July 15, 2022, respectfully. Plaintiffs served their second set of discovery requests on the Centerra Defendants on April 21, 2022. Apart from extensive discussions with their clients, Schlichter Bogard LLP also reviewed and analyzed all materials provided by their clients, including participant communications received by them from Centerra, in response to the discovery requests, and prepared responsive documents for production.

13. Throughout the course of discovery, Class Counsel diligently reviewed and analyzed over 170,000 pages of documents (over 18,000 documents) that were produced. Defendants alone made over 30 separate productions. A detailed review and analysis of the document production was crucial for Plaintiffs to prove their claims. Without a firm understanding of the core materials to support their claims, including a significant email

production with attachments, Plaintiffs would have been unable to successfully prosecute this action.

14. To support those efforts, Schlichter Bogard LLP developed a document review and analysis protocol for systematically and methodically evaluating the document production. It was incumbent on Plaintiffs' attorneys to review each and every document produced in this litigation. The ongoing review and analysis of the document production was aided by numerous internal discussions and meetings to ensure a proper and efficient evaluation process, as well as to inform the litigation strategy when responding to particular motions and other challenges presented by Defendants over the course of the litigation.

15. Apart from ongoing tasks related to the document production, Class Counsel defended five depositions of the Named Plaintiffs and took six depositions of fact witnesses from Centerra and Aon. Each of the fact witness depositions required extensive preparation and ongoing coordination among the litigation team to ensure an effective examination.

16. Throughout all stages of the case, including discovery, the attorneys at Schlichter Bogard LLP met internally, both in large and small groups, to thoroughly discuss the legal theories at issue, the development of the case, and other issues that arose during the litigation. Those internal meetings were critical to obtaining a successful recovery on behalf of the Class.

17. Experts: The parties disclosed eight expert witnesses, five for Plaintiffs and three for Defendants. Plaintiffs initially disclosed their experts on June 30, 2023. Class Counsel took two expert depositions and defended their experts in each of their own depositions. These experts were in the fields of investment management, fiduciary practices, recordkeeping, and costs of 401(k) plans. Their depositions required familiarity with these fields. Plaintiffs' attorneys expended significant time and effort in working with their experts to prepare their reports and in

preparation for their depositions, particularly due to the complex issues these experts addressed in their reports. Plaintiffs' attorneys also conducted thorough research and analysis concerning the expert opinions and bases for such opinions offered by Defendants' experts.

18. Motions for Summary Judgment: On October 10, 2023, Defendant Ricci and the Centerra Defendants each moved for summary judgment. Dkts. 200, 201. Aon followed suit and filed their motion for summary judgment on January 5, 2024. Dkt. 252. The briefing on summary judgment was extensive and voluminous. In order to successfully oppose the Centerra Defendants' and Ricci's motions, Plaintiffs' attorneys devoted substantial time to preparing their legal arguments in response. Given the volume of evidence submitted by these Defendants, including over 100 exhibits and 9 declarations, Plaintiffs' attorneys also devoted extensive time to analyzing those facts and developing contrary and undisputed facts to demonstrate a genuine issue of material fact. In opposing summary judgment, Plaintiffs relied on an additional 31 exhibits. *Cf.* Dkt. 205.

19. Pre-Trial Preparations: The Court set this case for trial at various times throughout the litigation. In October 2023, the trial was set to commence on January 8, 2024, which was subsequently continued to February 27, 2024, and March 4, 2024. Dkt. 203, 240, 249. Given the pending pretrial deadlines when Plaintiffs and Aon or all parties were negotiating the potential resolution of this case, Plaintiffs devoted extensive time and resources to meet those deadlines because preliminary approval of any settlement was uncertain. Accordingly, Plaintiffs had to prepare for a trial involving only the Centerra Defendants and separately involving all Defendants, including Aon. For instance, this required Plaintiffs to prepare two versions of their exhibit list, deposition designations, and proposed stipulations.

20. Mediation: The parties engaged in two separate mediations. On September 13, 2023, they participated in a mediation before nationally known mediator Hunter Hughes. While a resolution was not reached on that date, Plaintiffs and Aon engaged in additional discussions with the mediator thereafter, and these discussions ultimately resulted in a partial settlement. Dkt. 208-1. However, the Court later denied preliminary approval of that settlement. Dkt. 250. In that Order, the Court also denied Plaintiffs' request to voluntarily dismiss Ricci from the action. *Id.*

21. The parties participated in a second mediation on December 13, 2023, before a Court-appointed mediator, Magistrate Judge Kevin F. McDonald. Dkt. 223. While Plaintiffs were unable to reach an agreement with the Centerra Defendants on that date, all parties were ultimately able to reach a settlement in principle on January 12, 2024. Dkt. 255. The parties reached a final settlement on February 2, 2024.

22. The description of the time and effort that Class Counsel expended during this litigation illustrates the determination that these attorneys displayed through all aspects of this litigation. The attorney and non-attorney hours were reasonably and efficiently expended to obtain a successful recovery on behalf of the Class. Without committing the necessary resources to diligently pursue Plaintiffs' claims, a favorable recovery that benefits thousands of Class Members would not have been possible.

23. Lastly, in coordination with the Lead Paralegal of my firm and the Office Administrator, I reviewed the incurred expenses listed below and ensured that they represented an accurate accounting of our costs in this matter. The incurred case expenses total \$659,240.95. These expenses include those incurred or to be incurred through the date of the Final Fairness Hearing, such travel and lodging expenses for Class Counsel.

24. Below is a list of expenses according to their categories:

Depositions	\$ 62,653.25
Experts and Consultants	\$ 472,894.90
Filing Fees, Hearing Transcripts, Subpoena Services and Related Costs	\$ 4,493.33
Mediation and Settlement Expenses	\$ 10,000.00
Copies and Postage	\$ 2,494.43
Data Development and Document Organization	\$ 20,338.85
Research and Investigation	\$ 5,187.26
Travel, Lodging, and Parking	\$ 13,469.93
Local Counsel Legal Services	\$ 67,709.00
Total Expenses	\$ 659,240.95

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on May 3, 2024, in St. Louis, Missouri.

/s/ Kurt C. Struckhoff
Kurt C. Struckhoff

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
AIKEN DIVISION

SHAWN WILLIAMS, *et al.*,

Plaintiffs,

vs.

CENTERRA GROUP, LLC, *et al.*,

Defendants.

No.: 1:20-cv-04220-SAL

DECLARATION OF JEROME J. SCHLICHTER

I, Jerome J. Schlichter, declare as follows:

1. I am the founding partner of the law firm of Schlichter Bogard LLP (formerly named Schlichter Bogard & Denton LLP), Class Counsel for Plaintiffs in the above-referenced matter. This declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Class Representatives' Compensation. I am familiar with the facts set forth below and able to testify to them.

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

3. Through over 45 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury cases, civil rights class actions, mass torts claims, and fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA). In 2014, I was ranked number 4 in a list of the 100 most influential people nationally in the 401(k) industry in the industry publication 401(k) Wire. Examples of class action cases I have successfully handled include: *Brown v. Terminal Railroad Association*, a race discrimination case in the Southern District of Illinois on behalf of all African-American and Hispanic employees at a railroad; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought on behalf of hundreds of African-American applicants from East St. Louis, Illinois at a major railroad which was tried to conclusion, successfully appealed to the Seventh Circuit Court of Appeals, and finally concluded with more than \$10 million for the class after 12-and-a-half years of litigation; *Wilfong v. Rent-A-Center*, No. 00-680, 2002 U.S. Dist. LEXIS 28016 (S.D. Ill. 2002), a nationwide gender discrimination in employment case on behalf of women, which was successfully settled for \$47 million and substantial affirmative relief to the class of thousands, after I defeated the defendant's attempt to conduct a reverse auction.

4. In addition to this case, my firm has been named Class Counsel in numerous cases involving claims of fiduciary breaches in large retirement plans. *See, e.g., Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, Dkt. 101 (D. Mass. Nov. 21, 2022); *Wachala v. Astellas US LLC*, No. 20-3882, 2022 U.S. Dist. LEXIS 24052 (N.D. Ill. Feb. 10, 2022); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2022 U.S. Dist. LEXIS 95857 (C.D. Cal. Feb. 16, 2022); *Sweda v. Univ. of Pa.*, No. 16-4329, 2021 U.S. Dist. LEXIS 121336 (E.D. Pa. June 28, 2021); *Pledger v. Reliance Trust Co.*, No. 15-04444, 2020 U.S. Dist. LEXIS 25548, at *4 (reaffirming appointment); *Munro v. Univ. of S. Cal.*, No. 16-6191, 2019 U.S. Dist. LEXIS 226682 (C.D. Cal. Dec. 20, 2019); *Vellali v. Yale*

Univ., 333 F.R.D. 10 (D. Conn. 2019); *Kelly v. The Johns Hopkins Univ.*, No. 16-2835, Dkt. 87 (D. Md. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-2062, 2019 U.S. Dist. LEXIS 11369 (S.D. Ind. Jan. 24, 2019); *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 U.S. Dist. LEXIS 10357 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2018 U.S. Dist. LEXIS 181850 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trs. of Columbia Univ.*, No. 16-6524, Dkt. 218 (S.D. N.Y. Nov. 15, 2018); *Henderson v. Emory Univ.*, No. 16-2920, 2018 U.S. Dist. LEXIS 180349 (N.D. Ga. Sept. 13, 2018); *Tracey v. MIT*, No. 16-11620, 2018 U.S. Dist. LEXIS 179945 (D. Mass. Oct. 19, 2018); *Ramsey v. Philips N. Am.*, No. 18-1099, Dkt. 19 (S.D. Ill. June 12, 2018); *Sacerdote v. N.Y. Univ.*, No. 16-6284, 2018 U.S. Dist. LEXIS 23540 (S.D. N.Y. Feb. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 U.S. Dist. LEXIS 62532 (M.D. N.C. Apr. 13, 2018); *Ramos v. Banner Health*, 325 F.R.D. 382 (D. Colo. 2018); *Troudt v. Oracle Corp.*, 325 F.R.D. 373 (D. Colo. 2018); *Pledger v. Reliance Tr. Co.*, 325 F.R.D. 373 (N.D. Ga. 2017); *Marshall v. Northrop Grumman Corp.*, No. 16-6794, 2017 U.S. Dist. LEXIS 222531 (C.D. Cal. Nov. 2, 2017); *Sims v. BB&T Corp.*, No. 15-732, 2017 U.S. Dist. LEXIS 137738 (M.D. N.C. Aug. 28, 2017); *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, Dkt. 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health*, No. 14-208, Dkt. 53 (M.D. N.C. May 17, 2016); *Kreuger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559, 574 (D. Minn. 2014); *Abbott v. Lockheed Martin*, No. 06-701, Dkt. 403 (S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Dkt. 542 (S.D. Ill. Oct. 10, 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS 101165, at *6–7 (C.D. Ill. July 3, 2013); *Will v. Gen. Dynamics*, No. 06-698, 2010 U.S. Dist. LEXIS 95630, at *5–6 (S.D. Ill. Aug. 9, 2010); *Martin v. Caterpillar Inc.*, No. 07-1009, Dkt. 173 (C.D. Ill. April 21, 2010); *George v. Kraft Foods Global Inc.*, 251 F.R.D. 338 (N.D. Ill. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008 U.S. Dist. LEXIS 43655 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*,

254 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-4305, 2007 U.S. Dist. LEXIS 88668 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 U.S. Dist. LEXIS 46893 (N.D. Ill. June 26, 2007).

5. My work in plaintiffs' class action cases has been noted by federal judges. Honorable Judge James Foreman, in the *Mister* case, *supra*, speaking of my efforts, stated:

This Court is unaware of any comparable achievement of public good by a private lawyer in the face of such obstacles and enormous demand of resources and finance.

Order on Attorney's Fees, *Mister v. Illinois Central Gulf R.R.*, No. 81-3006 (S.D. Ill. 1993).

6. Honorable Judge David R. Herndon wrote, regarding my and the firm's handling of the *Wilfong* class action, *supra*:

Class counsel has appeared in this court and has been known to this Court for approximately 20 years. This Court finds that Mr. Schlichter's experience, reputation and ability are of the highest caliber. Mr. Schlichter is known well to the District Court Judge and this Court agrees with Judge Foreman's review of Mr. Schlichter's experience, reputation and ability.

Order on Attorney's Fees, *Wilfong v. Rent-A-Center*, No. 0068-DRH (S.D. Ill. 2002). Judge Herndon also noted in *Wilfong* that I "performed the role of a 'private attorney general' contemplated under the common fund doctrine, a role viewed with great favor in this Court" and described my action as "an example of advocacy at its highest and noblest purpose." *Id.*

7. In *Beesley v. International Paper*, a 401(k) ERISA excessive fee case that resulted in a settlement of \$30 million plus substantial affirmative relief following seven years of litigation, Judge David Herndon observed: "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 U.S. Dist. LEXIS 12037,

at 8 (S.D. Ill. Jan. 31, 2014). Similarly, in *Abbot v. Lockheed Martin*, a 401(k) excessive fee case that took over nine years, Honorable Chief Judge Reagan observed that “[t]he law firm Schlichter, Bogard & Denton has had a humongous impact over the entire 401(k) industry, which has benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices.” *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 U.S. Dist. LEXIS 93206, at 9 (S.D. Ill. July 17, 2015).

8. In *Will v. General Dynamics*, another ERISA excessive fee case, Honorable Judge Patrick Murphy found that litigating the case and achieving a successful result for the class “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. General Dynamics Corp.*, No. 06-698, 2010 U.S. Dist. LEXIS 123349, at 9 (S.D. Ill. Nov. 22, 2010).

9. Honorable Judge Baker, in *Nolte v. Cigna*, commented that Schlichter, Bogard & Denton is the “preeminent firm in 401(k) fee litigation” and has “persevered in the face of the enormous risks of representing employees and retirees in this area.” *Nolte v. Cigna Corp.*, No. 07-2046, Dkt. 413 at 1, 5 (C.D. Ill. Oct. 15, 2013).

10. In approving a settlement including \$32 million plus significant affirmative relief, in a 403(b) excessive fee case in this Circuit, Honorable Chief Judge William Osteen in *Kruger v. Novant Health, Inc.*, No. 14-208, Dkt. 61 at 7–8 (M.D.N.C. Sept. 29, 2016) found that “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[.]”

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

12. In the decades of my private practice, I have never been reprimanded, sanctioned or otherwise disciplined with respect to any aspect of the practice of law.

13. Since 2005, my firm and I have been investigating, preparing, and handling, on behalf of plan participants, numerous cases against fiduciaries of large 401(k) plans alleging fiduciary breaches including excessive fees, conflicts of interests and prohibited transactions under ERISA. My firm has filed these cases in numerous judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits.

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

15. In the second 401(k) excessive fee trial, *Tibble v. Edison Int'l*, which originated in the Central District of California, the United States Supreme Court granted our petition for writ of certiorari in the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. In a 9-0 unanimous decision, the Supreme Court vacated the Ninth Circuit’s affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan

investments and remove imprudent ones regardless of when they were added. *Tibble v. Edison Int'l*, 575 U.S. 523 (2015). This was a landmark decision in ERISA litigation. Sitting *en banc*, ten judges of the Ninth Circuit on remand then unanimously vacated a Ninth Circuit panel decision and remanded to the district court to determine whether the defendants violated their continuing duty to monitor the 401(k) plan's investments, stating that "cost-conscious management is fundamental to prudence in the investment function." *Tibble v. Edison Int'l*, 843 F.3d 1187, 1197–98 (9th Cir. 2016) (citation omitted). Following remand, in August 2017, the plaintiffs obtained a judgment of \$13.4 million in plan losses and investment opportunity. *Tibble*, No. 07-5359, 2017 U.S. Dist. LEXIS 130806 (C.D. Cal. Aug. 16, 2017); *Tibble*, Dkt. Nos. 570, 572.

16. Before my firm brought ERISA 401(k) excessive fee cases, virtually no firm was willing to bring such a case, and I know of no other firm that has made anything close to the financial and attorney commitment to such cases as my firm to this date.

17. Several of the 401(k) cases my office filed were dismissed and the dismissals upheld by Courts of Appeals. *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). Others, such as this case, had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-1494, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 F. App'x 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F. Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 575 U.S. 523, (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016).

18. Prior to the filing this lawsuit, my firm began researching the Centerra Group, LLC 401(k) Plan, investigating claims, and consulting with experts in the field of 401(k) administration and investment management. The investigation began with obtaining and reviewing each of the Plan's Annual Reports since 2009 (Forms 5500), which are publicly available documents filed with the United States Department of Labor in which the Plan discloses its investment holdings and financial statements. Using this data, we conducted an extensive analysis of the Plan's administrative fees and investment performance based on our knowledge of industry practices.

19. On December 4, 2020, a complaint was filed in this action by Class Counsel. The complaint contains detailed allegations laying out a variety of alleged fiduciary breaches and prohibited transactions related to the administration and management of the Centerra Group, LLC 401(k) Plan.

20. In this case, my firm will likely spend significant time and expenses, without additional compensation, both before and after final approval and during the eighteen-month settlement period. For instance, with approximately 4,000 current and former participants who are mailed notices, in my experience, the firm will receive a high volume of calls from Class Members to address questions related to the Settlement. The firm will also work with the Settlement Administrator to facilitate the settlement during the Settlement Period.

21. The Settlement Agreement provides that Class Counsel will continue to monitor and enforce the terms of the agreement. Class Counsel will not request an additional award of fee for its future services to the Plan.

22. As a practical matter, litigants such as Class Representatives Shawn Williams, David Green, Jamie Coomes, Malcum Kenner, and Andrew Barrett could not afford to pursue litigation against well-funded fiduciaries of 401(k) plan sponsored by a large employer, such as

Centerra, and previously managed by a large investment manager, such as Aon, in federal court on any basis other than a contingent fee. I know of no law firm in the United States, of the firms which would even consider handling such a case as this or that would handle any ERISA class action, with an expectation of anything but a percentage of the common fund created.

23. Moreover, I know of no law firm that would agree to handle such a case on a contingent hourly rate basis. Defendants' attorneys in these cases are paid according to their hourly rate without delay, without taking the risk of loss, and without advancing and risking expenses.

24. The contingency fee agreements entered into between my firm and each of the Class Representatives Shawn Williams, David Green, Jamie Coomes, Malcum Kenner, and Andrew Barrett in this case provide for our fee to be one-third of any recovery plus expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my firm have also signed similar agreements calling for a one-third contingency fee plus expenses. I know of no firm in the country that accepts such cases for less than a one-third contingency fee.

25. Prior to this lawsuit, my firm did not have a professional relationship with any of the Class Representatives.

26. These kinds of cases involve tremendous risk, require finding and obtaining opinions from expensive and unconflicted consulting and testifying experts in finance, investment management, fiduciary practices, recordkeeping, and related fields, and are extremely hard fought and well-defended. Recent judgments in favor of the defendants following trial in ERISA litigation further illustrate the difficulty of obtaining a successful judgment. *See, e.g., Mills v. Molina Healthcare, Inc.*, No. 22-1813, 2024 U.S. Dist. LEXIS 50572 (C.D. Cal. Mar. 20, 2024); *Lauderdale v. NFP Ret., Inc.*, No. 21-301, 2024 U.S. Dist. LEXIS 31527 (C.D. Cal. Feb. 23, 2024); *Vellali v. Yale Univ.*, No. 16-1345, Dkt. 575 (D. Conn. June 28, 2023).

27. A law firm that brings a putative class action such as this must be prepared to finance the case through trial and appeals, all at substantial expense. These cases are defended by sophisticated national firms with ERISA experience and vast resources. This has been my experience in handling these types of cases. For example, in *Tussey v. ABB*, seven experts testified at trial, and the two defendant groups therein had a total of fifteen or more lawyers present in the courtroom throughout the month-long trial. In addition, all parties, including plaintiffs, had a technology team present throughout. Our firm expended over \$2,000,000 in expenses by the conclusion of the trial and carried them until recovery 14 years after litigation began, and after over 25,000 attorney hours were spent.

28. Based on my experience, the market for experienced and competent lawyers willing to pursue 401(k) ERISA litigation is a national market, and the rate of 33 1/3% of any recovery, plus expenses, is necessary to bring such cases. This is the rate that a qualified and experienced attorney would negotiate at the beginning of the litigation and the rate found reasonable in similar 401(k) and 403(b) ERISA fee cases in numerous federal district courts, including:

Case	Fee %
<i>Wachala v. Astellas US LLC</i> , No. 20-3882, Dkt. 241 (N.D. Ill. Nov. 2, 2023)	33.33%
<i>Munro v. Univ. of S. Cal.</i> , No. 16-06191, Dkt. 384 (C.D. Cal. Aug. 24, 2023)	33.33%
<i>Ford v. Takeda Pharms. U.S.A., Inc.</i> , No. 21-10090, 2023 U.S. Dist. LEXIS 93286 (D. Mass. Mar. 31, 2023)	33.33%
<i>Marshall v. Northrop Grumman Corp.</i> , No. 16-6794, 2020 U.S. Dist. LEXIS 177056 (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 (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%

Case	Fee %
<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, Dkt. 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%
<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%

29. This kind of long-term, expensive commitment of time and resources is needed if plan participants are to receive full compensation for their losses in such cases. Because my firm has committed to doing this in each case we pursue, it is my opinion that defendants take into account this firm's long-term commitment to these cases in assessing their costs and the likelihood of success.

30. My firm devoted over 7,500 hours of attorney and non-attorney time to prosecuting the ERISA claims on behalf of the Plan participants and beneficiaries. Because my firm works solely on a contingency fee basis, and there is a limited number of active cases it can handle at any given point, the decision to pursue this class action and commit significant resources to obtain a successful recovery on behalf of the class through potentially years of litigation impacts the firm's ability to handle other class actions or pursue other less risky matters.

31. By my firm obtaining this settlement for the Class without further delay, the Class members will benefit by not only avoiding risk but also avoiding what would have been substantial costs and delay for trial and potential appeals. In addition, they will benefit by being able to invest their recoveries and benefit from the earnings much earlier than if there had been years of delay.

32. Schlichter Bogard LLP does not bill clients on an hourly basis. In November 2023, based on the national market for complex ERISA fiduciary breach litigation, the District Court for the Northern District of Illinois approved the following hourly rates for my firm: for attorneys with at least 25 years of experience, \$1,370 per hour; for attorneys with 15–24 years of experience, \$1,165 per hour; for attorneys with 5–14 years of experience, \$840 per hour; for attorneys with 0–4 years of experience, \$635 per hour; and for Paralegals and Law Clerks, \$425 per hour. *Wachala v. Astellas US LLC*, No. 20-3882, Dkt. 241 at 3 (N.D. Ill. Nov. 2, 2023) (approving rates set forth in *Wachala*, Dkt. 233 ¶ 5); *see also Ford v. Takeda Pharms. U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, *6–7 (D. Mass. Mar. 31, 2023) (same rates approved).

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 3rd day of May 2024, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter