

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

JENNIFER SWEDA, ET AL.,

Plaintiffs,

v.

THE UNIVERSITY OF PENNSYLVANIA, ET
AL.,

Defendants.

No. 2:16-cv-4329-GEKP

**UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request preliminary approval of a Class Action Settlement. Defendants do not oppose this motion.

On August 10, 2016, Plaintiffs brought this action alleging that Defendants the University of Pennsylvania, the Investment Committee, and Jack Heuer breached their fiduciary duties relating to the management, operation, and administration of The University of Pennsylvania Matching Plan, The University of Pennsylvania Supplemental Retirement Annuity Plan, and The University of Pennsylvania Basic Plan (all three plans collectively referred to as the “Plans”). Doc. 1, 69. Defendants dispute these allegations and deny liability for any alleged fiduciary breach.

After over four years of litigation, adversarial discovery, and four weeks of arm’s length negotiations, on November 30, 2020, the parties agreed to settle the case. *See* Exhibit A (Settlement Agreement attached hereto).

Under the terms of the Settlement Agreement, the Settlement Class is defined as:

All persons who participated in the Plans at any time during the Class Period, including any Beneficiary of a deceased person who participated in one or more

of the Plans at any time during the Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period. Excluded from the Settlement Class are each of the individual members of the Investment Committee during the Class Period.

The Class Period is from August 10, 2010 through January 14, 2021.

The Settlement is fundamentally fair, adequate, and reasonable in light of the circumstances of this case and preliminary approval of the settlement is in the best interests of the class members. In return for a release of the class representatives' and class members' claims, Defendants have agreed to pay a sum of \$13,000,000 into a Gross Settlement Fund. Defendants have further agreed to certain non-monetary terms under Article 10 of the Settlement Agreement, which adds further value to the settlement on behalf of class members.

At the preliminary approval stage, the Court is only required to determine whether the proposed settlement is "sufficiently within the range of reasonableness so that notice ... should be given." *In re Am. Capital S'holder Derivative Litig.*, No. 11-2424 PJM, 2013 WL 3322294, at *3 (D.Md. June 28, 2013); *In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F.Supp. 1379, 1385 (D.Md.1983). The settlement reached between the parties here more than satisfies this standard given the complex nature of the case and the results obtained for the Settlement Class. Preliminary approval will not foreclose interested persons from objecting to the settlement and thereby presenting dissenting viewpoints to the Court.

In support of preliminary approval, Plaintiffs submit a memorandum in support of this Motion and the Declaration of Plaintiffs' counsel, Jerome J. Schlichter.

Plaintiffs respectfully request:

- That the Court enter an Order granting its preliminary approval of the Settlement Agreement;

- That the Court order any interested party to file any objections to the Settlement within the time limit set by the Court, with supporting documentation, order such objections, if any, to be served on counsel as set forth in the proposed Preliminary Approval Order and Class Notice, and permit the Settling Parties the right to limited discovery from any objector as provided for in the proposed Preliminary Approval Order;
- That the Court schedule a Fairness Hearing for the purpose of receiving evidence, argument, and any objections relating to the Settlement Agreement. However, given the processing and delivering of Settlement Notices, the objection deadline to the Settlement, the review and approval period of the Independent Fiduciary, among other interim milestones and deadlines, Plaintiffs request that a Fairness Hearing **May 17, 2021**; and
- That following the Fairness Hearing, the Court enters an Order granting final approval of the Settlement and dismissing the Second Amended Complaint (Doc. 69) with prejudice.

January 14, 2021

Respectfully submitted,

/s/ Heather Lea
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CERTIFICATE OF SERVICE

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

/s/ Heather Lea

LOCAL RULE 7.1(B) CERTIFICATION

I, Christopher Boran, counsel for Defendants hereby certify that they do not oppose Plaintiffs' Motion for Preliminary Approval of Class Action Settlement, and consent to this filing.

/s/ Christopher Boran (w/permission)
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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT**

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

BACKGROUND

I. The claims in this action.

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

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

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

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

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

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

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

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

II. The terms of the proposed settlement.

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

Class Period.” Ex. A, §2.41.¹ Contemporaneous with this motion, Plaintiffs filed a motion for a conditional class certification of this settlement class. Doc. 94. In exchange for the dismissal of this action and for entry of the Judgment as provided for in the Settlement Agreement, Defendants will make available to Settlement Class members the monetary and non-monetary benefits described below.

A. Monetary Relief.

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

B. Non-Monetary Terms.

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

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

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

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

3. Defendants agree that, in connection with the implementation of the updated investment menu in or around Spring 2021, the Plan fiduciaries will inform Plan participants of their ability to redirect their assets held in any frozen investment options to investment options available in the updated investment menu or brokerage account option.
4. During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
5. To the extent an asset-based fee is used to offset a fixed-fee for recordkeeping and administrative services, any asset-based fee collected in excess of the fixed-fee amount and not used to defray reasonable expenses of administering the Plan shall be rebated back to Plan participants. The Plan shall allocate excess amounts to participants in a manner the Plan fiduciaries determine to be fair, equitable, and appropriate under the circumstances.
6. Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.
7. Before the expiration of the Settlement Period, Defendants or their consultant shall initiate a request for proposal ("RFP") for recordkeeping and administrative services. Within sixty (60) days after the conclusion of the RFP, Defendants shall notify Class

Counsel that they have fulfilled this obligation.

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

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

C. Notice and Class Representatives' Compensation.

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

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

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

D. Attorneys' Fees and Costs.

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Bogard and Denton. Judge Murphy stated:

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

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

Judge Herndon echoed those thoughts:

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

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

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

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

Spano, 2016 WL 3791123, at *3.

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

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

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

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

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

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

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

CONCLUSION

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

January 14, 2021

Respectfully submitted,

/s/ Heather Lea
Jerome J. Schlichter (admitted *pro hac vice*)
Troy A. Doles (admitted *pro hac vice*)
Heather Lea (admitted *pro hac vice*)
Sean E. Soyars (admitted *pro hac vice*)
SCHLICHTER BOGARD & DENTON, LLP
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Lead Counsel for Plaintiffs

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Malvern, PA 19355
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Fax: (215) 600-2642
david@prolawpa.com

Local Counsel for Plaintiffs

CERTIFICATE OF SERVICE

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

/s/ Heather Lea _____

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

JENNIFER SWEDA, ET AL.,

Plaintiffs,

v.

THE UNIVERSITY OF PENNSYLVANIA, ET
AL.,

Defendants.

No. 2:16-cv-4329-GEKP

DECLARATION OF JEROME J. SCHLICHTER

1. I am the founding partner of the law firm Schlichter, Bogard & Denton LLP, counsel for the Plaintiffs in the above-referenced matter. This declaration is submitted in support of Plaintiffs' Memorandum in Support of their Unopposed Motion for Preliminary Approval of Class Settlement. I am familiar with the facts set forth below and able to testify to them.

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle this class action. As illustrated in Plaintiffs' Memorandum, all settlement negotiations in this case were conducted at arm's length by adverse, represented parties. The negotiations were extensive and adversarial and were led by experienced counsel for both parties who have settled numerous similar cases and are extremely experienced in negotiating complex settlement such as this Settlement.

3. Schlichter Bogard & Denton has extensive experience in prosecuting ERISA fiduciary breach class actions. The firm has expended significant resources representing the class and prosecuting Plaintiffs' claims, as it has done in all of its prior ERISA fiduciary breach actions. The firm's experience is evidenced by its appointment as class counsel in over 30 large ERISA fiduciary breach class actions.

4. It is my opinion that the proposed settlement is not only “within the range of reasonableness,” but also is fair, reasonable, adequate, and in the best interests of the Plan and its participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue.

5. Attached to Plaintiffs’ Unopposed Motion for Preliminary Approval of Class Settlement is a true and accurate copy of the Settlement Agreement between Plaintiffs and the Defendants University of Pennsylvania, the Investment Committee, and Jack Heuer.

6. Each of the six named plaintiffs in this litigation have a contract with this firm agreeing to a one-third fee to Schlichter Bogard & Denton LLP in the event of any recovery.

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 on January 14, 2021, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

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

JENNIFER SWEDA, ET AL.,

Plaintiffs,

v.

THE UNIVERSITY OF PENNSYLVANIA, ET
AL.,

Defendants.

No. 2:16-cv-4329-GEKP

DECLARATION OF HEATHER LEA

1. I am a partner at the law firm of Schlichter Bogard & Denton, LLP. I am one of the attorneys representing the Plaintiffs in this matter. This declaration is submitted in support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement.

2. I have been involved 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. I am admitted to practice in the United States Supreme Court and numerous district courts across the country, including the District Court of Colorado. I received my undergraduate degree from Rhodes College in 1994 and my Juris Doctorate from Washington University in 2000, where I served as the Editor-in-Chief of the Journal of Law and Policy and graduated Order of the Coif. After law school, I served as a law clerk for a Federal District Court Judge in the Central District of Illinois. Since 2005, I have been employed as an attorney at SBD, Class Counsel in this matter. I have been actively engaged in complex class actions for over 19 years. For most of that time, I have been dedicated to fiduciary litigation concerning defined contribution plans.

4. The parties negotiated a stipulated confidentiality and seal order (Doc. 32), a supplemental protective order (Doc. 82), and a stipulation for discovery of hard copy documents and electronically stored information (or “ESI”) (Doc. 76). The parties issued written discovery and engaged in extensive written discovery with almost 15,000 documents produced by the parties or relevant third parties. These materials required extensive review by all parties, particularly Plaintiffs’ counsel. All documents produced required close and detailed analysis along with discussions with consultants and experts retained by Plaintiffs’ counsel.

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

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

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 on January 14, 2021, in St. Louis, Missouri.

/s/ Heather Lea
Heather Lea

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

JENNIFER SWEDA, ET AL.,

Plaintiffs,

v.

THE UNIVERSITY OF PENNSYLVANIA, ET
AL.,

Defendants.

No. 2:16-cv-4329-GEKP

**[PROPOSED] ORDER GRANTING MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

This litigation arises out of a class action alleging breaches of fiduciary duties and prohibited transactions against the defendants under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001, *et seq.*, with respect to their management, operation, and administration of The University of Pennsylvania Matching Plan, The University of Pennsylvania Supplemental Retirement Annuity Plan, and The University of Pennsylvania Basic Plan (all three plans collectively referred to as the “Plans”). The Defendants deny the allegations, claims, and contentions of the Class Representatives, deny that they are liable at all to the Settlement Class, and deny that the Settlement Class or the Plans have suffered any harm or damage for which the Defendants could be held liable.

In their Unopposed Motion for Preliminary Approval of Class Settlement, Plaintiffs seek preliminary approval of a settlement of the claims asserted. The terms of the Settlement are set out in a Class Action Settlement Agreement dated January 13, 2021, executed by the Settling Parties and their counsel.

The Court has considered the proposed Settlement. For purposes of this Order, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated

herein by reference. Having reviewed the Settlement Agreement and the accompanying and supporting papers, it is **ORDERED** as follows.

1. **Class Findings:** Solely for the purposes of the Settlement, the Court finds that the requirements of Rule 23 of the Federal Rules of Civil Procedure have been met as to the Settlement Class, which is defined as:

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

The Class Period is August 10, 2010 through January 14, 2021.

- A. The Court finds that Rule 23(a)(1) is satisfied because there are over 20,000 potential class members making joinder impracticable.
- B. The Court finds that Rule 23(a)(2) is satisfied because there are one or more questions of fact and/or law common to the Settlement Class that can or would be resolved as to the Plan, not only as to individual participants, including: whether the fiduciaries to the Plan breached their duties; whether the Plans suffered losses resulting from each breach of duty; and what Plan-wide equitable and other relief, if any, the Court should impose in light of Defendants' alleged breach of duty.
- C. The Court finds that Rule 23(a)(3) is satisfied because the claims of the Class Representatives are typical of the claims of the Settlement Class because they all arise from a Plan-level course of conduct.

D. The Court finds that Rule 23(a)(4) is satisfied because there is no conflict between Plaintiffs' individual interests and the interests of the Settlement Class. Instead, they share the same objectives, share the same factual and legal positions, and share the same interest in establishing Defendants' liability. Additionally, Class Counsel is qualified, reputable, and has extensive experience in ERISA fiduciary breach class actions such as this one.

E. The Court finds that, as required by Rule 23(b)(1), individual members of the Settlement Class pursuing their own claims could result in inconsistent or varying adjudications as to individual members of the Settlement Class that would establish incompatible standards of conduct for Defendants, and that adjudication as to individual class members would, as a practical matter, be dispositive of the interest of other members not parties to the individual adjudications, or would substantially impair or impeded those persons' ability to protect their interests.

F. The Court finds that Rule 23(g) is satisfied because the law firm Schlichter Bogard & Denton, LLP, is capable of fairly and adequately representing the interests of the Settlement Class. Class Counsel has done substantial work on this case, including significant investigation, both before filing and thereafter, of the underlying merit of Plaintiffs' claims alleged in the Class Action. Class Counsel is highly experienced in these types of cases and is knowledgeable of the applicable law.

2. **Settlement Class Certification:** The Court certifies the following class for settlement purposes under Federal Rule of Civil Procedure 23(b)(1):

All persons who participated in the Plans at any time during the Class Period, including any Beneficiary of a deceased person who participated in one or more of the Plans at any time during the Class

Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in one or more of the Plans at any time during the Class Period. Excluded from the Settlement Class are each of the individual members of the Investment Committee during the Class Period.

The Class Period is August 10, 2010 through January 14, 2021.

3. **Appointment of Class Representatives and Class Counsel:** The Court appoints the Class Representatives to represent the Settlement Class, and Schlichter Bogard & Denton, LLP, as Class Counsel.

4. **Preliminary Findings Regarding Proposed Settlement:** The Court preliminarily finds that:

- A. The proposed Settlement resulted from extensive arm's-length negotiations;
- B. The Settlement Agreement was executed only after the parties engaged in substantial litigation for over four years and after settlement negotiations had continued within that period, including extensive telephonic and email communications;
- C. Class Counsel has concluded that the Settlement Agreement is fair, reasonable, and adequate;
- D. The Settlement is sufficiently fair, reasonable, and adequate to warrant sending notice of the Settlement to the Settlement Class; and

5. **Fairness Hearing:** A hearing is scheduled at the United States District Court for the Eastern District of Pennsylvania, the Honorable District Court Judge Pratter presiding, at ____ a.m./p.m. on _____, 2021, [**not before June 13, 2021**] (the "Fairness Hearing") to determine, among other issues:

- A. Whether the Settlement Agreement should be approved as fair, reasonable, and adequate;

- B. Whether the Settlement Notice and notice methodology were performed as directed by this Court;
- C. Whether the motion for attorneys' fees and costs to be filed by Class Counsel should be approved;
- D. Whether an amount of compensation to Class Representatives should be approved; and
- E. Whether the Administrative Expenses specified in the Settlement Agreement and requested by the Settling Parties should be approved for payment from the Gross Settlement Amount.

6. **Establishment of Qualified Settlement Fund:** A common fund is agreed to by the Settling Parties in the Settlement Agreement and is hereby established and shall be known as the *Sweda v. Univ. of Pennsylvania* Litigation Settlement Fund (the "Settlement Fund" or "Gross Settlement Amount"). The Settlement Fund shall be a "qualified settlement fund" within the meaning of Treasury Regulations § 1.468-1(a) promulgated under Section 468B of the Internal Revenue Code. The Settlement Fund shall consist of \$13,000,000 and any interest earned thereon. The Settlement Fund shall be administered as follows:

- A. The Settlement Fund is established exclusively for the purposes of: (i) making distributions to Class Representatives and the Settlement Class specified in the Settlement Agreement; (ii) making payments for all settlement administration costs and costs of notice, including payments of all Administrative Expenses specified in the Settlement Agreement; (iii) making payments of all Attorneys' Fees and Costs to Class Counsel as awarded by the Court; and (iv) paying employment, withholding, income, and other applicable taxes, all in accordance with the terms of the Settlement Agreement and

this Order. Other than the payment of Administrative Expenses or as otherwise expressly provided in the Settlement Agreement, no distribution shall be made from the Settlement Fund until after the Settlement Effective Date.

B. Within the time period set forth in the Settlement Agreement, Defendants or their insurer(s) shall cause \$2,000,000 to be deposited into the Settlement Fund.

C. The Court appoints RG2 Claims Administration, LLC as the Settlement Administrator for providing Settlement Notice, implementing the Plan of Allocation, and otherwise assisting in administration of the Settlement as set forth in the Settlement Agreement.

D. Defendants shall timely furnish a statement to the Settlement Administrator that complies with Treasury Regulation § 1.468B-3(e)(2), which may be a combined statement under Treasury Regulation § 1.468B-3(e)(2)(ii) and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendants make a transfer to the Settlement Fund.

E. Defendants shall have no withholding, reporting, or tax reporting responsibilities with regard to the Settlement Fund or its distribution, except as otherwise specifically identified herein. Moreover, Defendants shall have no liability, obligation, or responsibility for administration of the Settlement Fund or the disbursement of any monies from the Settlement Fund except for: (1) their obligation to cause the Gross Settlement Amount to be paid; and (2) their agreement to cooperate in providing information that is necessary for settlement administration set forth in the Settlement Agreement.

F. The oversight of the Settlement Fund is the responsibility of the Settlement

Administrator. The status and powers of the Settlement Administrator are as defined by this Order and as approved in the Settlement Agreement.

G. The Gross Settlement Amount caused to be paid by the Defendants and/or their insurer(s) into the Settlement Fund in accordance with the Settlement Agreement, and all income generated by that amount, shall be *in custodia legis* and immune from attachment, execution, assignment, hypothecation, transfer, or similar process by any person. Once the Settlement Fund vests, it is irrevocable during its term and Defendants have divested themselves of all right, title, or interest, whether legal or equitable, in the Settlement Fund, if any; provided, however, in the event the Settlement Agreement is not approved by the Court or the Settlement set forth in the Settlement Agreement is terminated or fails to become effective in accordance with its terms (or, if following approval by this Court, such approval is reversed or modified), the parties shall be restored to their respective positions in this case as of the day prior to the Settlement Agreement Execution Date; the terms and provisions of the Settlement Agreement and this Order shall be void and have no force and effect and shall not be used in this case or in any proceeding for any purpose; and the Settlement Fund and income earned thereon shall immediately be returned to the entity(ies) that funded the Settlement Fund.

H. The Settlement Administrator may make disbursements out of the Settlement Fund only in accordance with this Order or any additional Orders issued by the Court.

I. The Settlement Fund shall expire after the Settlement Administrator distributes all of the assets of the Settlement Fund in accordance with Article 6 of the Settlement Agreement, provided, however, that the Settlement Fund shall not terminate until its liability for any and all government fees, fines, taxes, charges, and excises of any kind,

including income taxes, and any interest, penalties, or additions to such amounts, are, in the Settlement Administrator's sole discretion, finally determined and all such amounts have been paid by the Settlement Fund.

J. The Settlement Fund shall be used to make payments to Class Members under the Plan of Allocation set forth in the Settlement Agreement. Individual payments to Class Members will be subject to tax withholding as required by law and as described in the Class Notice and its attachments. In addition, all Class Representatives' Compensation, Administrative Expenses, and all Attorneys' Fees and Costs of Class Counsel shall be paid from the Settlement Fund.

K. The Court and the Settlement Administrator recognize that there will be tax payments, withholding, and reporting requirements in connection with the administration of the Settlement Fund. The Settlement Administrator shall, in accordance with the Settlement Agreement, determine, withhold, and pay over to the appropriate taxing authorities any taxes due with respect to any distribution from the Settlement Fund, and shall make and file with the appropriate taxing authorities any reports or returns due with respect to any distributions from the Settlement Fund. The Settlement Administrator also shall determine and pay any income taxes owing with respect to the income earned by the Settlement Fund. Additionally, the Settlement Administrator shall file returns and reports with the appropriate taxing authorities with respect to the payment and withholding of taxes.

L. The Settlement Administrator, in its discretion, may request expedited review and decision by the IRS or the applicable state or local taxing authorities, with regard to the correctness of the returns filed for the Settlement Fund and shall establish reserves to

assure the availability of sufficient funds to meet the obligations of the Settlement Fund itself and the Settlement Administrator as fiduciaries of the Settlement Fund. Reserves may be established for taxes on the Settlement Fund income or on distributions.

M. The Settlement Administrator shall have all the necessary powers, and take all necessary ministerial steps, to effectuate the terms of the Settlement Agreement, including the payment of all distributions. Such powers include receiving and processing information from Former Participants pertaining to their claims and investing, allocating and distributing the Settlement Fund, and in general supervising the administration of the Settlement Agreement in accordance with its terms and this Order.

N. The Settlement Administrator shall keep detailed and accurate accounts of all investments, receipts, disbursements and other transactions of the Settlement Fund. All accounts, books, and records relating to the Settlement Fund shall be open for reasonable inspection by such persons or entities as the Court orders. Included in the Settlement Administrator's records shall be complete information regarding actions taken with respect to the award of any payments to any person, the nature and status of any payment from the Settlement Fund, and other information which the Settlement Administrator considers relevant to showing that the Settlement Fund is being administered, and awards are being made, in accordance with the purposes of the Settlement Agreement, this Order, and any future orders that the Court may find it necessary to issue.

O. The Settlement Administrator may establish protective conditions concerning the disclosure of information maintained by the Settlement Administrator if publication of such information would violate any law, including rights to privacy. Any person entitled to such information who is denied access to the Settlement Fund's records may submit a

request to the Court for such information. However, the Settlement Administrator shall supply such information to any claimant as may be reasonably necessary to allow him or her to accurately determine his or her federal, state, and local tax liabilities. Such information shall be supplied in the form and manner prescribed by relevant law.

P. This Order will bind any successor Settlement Administrator. The successor Settlement Administrator(s) shall have, without further act on the part of anyone, all the duties, powers, functions, immunities, and discretion granted to the original Settlement Administrator. Any Settlement Administrator(s) who is replaced (by reason other than death) shall execute all instruments, and do all acts, that may be necessary or that may be ordered or requested in writing by the Court or by any successor Settlement Administrator(s), to transfer administrative powers over the Settlement Fund to the successor Settlement Administrator(s). The appointment of a successor Settlement Administrator(s), if any, shall not under any circumstances require any of the Defendants to make any further payment of any nature into the Settlement Fund or otherwise.

7. **Class Notice:** The Settling Parties have presented to the Court proposed forms of Settlement Notice, which are appended hereto as Exhibit 3 and Exhibit 4, respectively.

A. The Court finds that the proposed forms and the website referenced in the Settlement Notice fairly and adequately:

- i. Describe the terms and effect of the Settlement Agreement and of the Settlement;
- ii. Notify the Settlement Class concerning the proposed Plan of Allocation;
- iii. Notify the Settlement Class that Class Counsel will seek compensation from the Settlement Fund for the Class Representatives, Attorneys' Fees

and Costs;

- iv. Notify the Settlement Class that Administrative Expenses related to the implementation of the Settlement will be paid from the Settlement Fund;
- v. Give notice to the Settlement Class of the time and place of the Fairness Hearing; and
- vi. Describe how the recipients of the Class Notice may object to any of the relief requested and the rights of the Settling Parties to discovery concerning such objections.

B. The Settling Parties have proposed the following manner of communicating the notice to Class Members: the Settlement Administrator shall, by no later than sixty (60) days before the Fairness Hearing, cause the Settlement Notices, with such non-substantive modifications thereto as may be agreed upon by the Settling Parties, to be sent by electronic mail to all Class Members for whom the Settlement Administrator is provided a current email address and mailed, by first-class mail, postage prepaid, to the last known address of each member of the Settlement Class for whom there is no current email address that can be identified through commercially reasonable means. The Court finds that such proposed manner is the best notice practicable under the circumstances and directs that the Settlement Administrator provide notice to the Settlement Class in the manner described. Defendants shall cooperate with the Settlement Administrator by providing or facilitating the provision of, in electronic format, the names, addresses, email addresses (to the extent available), and social security numbers or other unique identifiers of members of the Settlement Class. The names, addresses, email addresses (to the extent available), and social security numbers or other unique identifiers obtained

pursuant to this Order shall be used solely for the purpose of providing notice of this settlement and as required for purposes of tax withholding and reporting, and for no other purpose.

C. For any Settlement Notice returned as undeliverable, the Settlement Administrator shall utilize the provided social security number or other unique identifier to attempt to determine the current address of the person and shall mail notice to that address.

D. At or before the Fairness Hearing, Class Counsel or the Settlement Administrator shall file with the Court a proof of timely compliance with the foregoing requirements.

E. The Court directs Class Counsel, no later than sixty (60) days before the Fairness Hearing, to cause the Settlement Notice to be published on the Settlement Website.

8. **Objections to Settlement:** Any Class Member who wishes to object to the fairness, reasonableness, or adequacy of the Settlement, to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and costs, or to any request for Class Representatives' Compensation, must file an objection in the manner set out in this Order.

A. A Class Member wishing to raise an objection to the Plan of Allocation, to any term of the Settlement Agreement, to the proposed award of attorneys' fees and costs, or to any request for Class Representatives' Compensation must do the following: (i) file with the Court a statement of his, her, or its objection(s), specifying the reason(s), if any, for each such objection made, including any legal support or evidence that such objector wishes to bring to the Court's attention or introduce in support of such objection; and (ii) serve copies of the objection and all supporting authorities or evidence to Class Counsel and Defense Counsel. The addresses for filing objections with the Court and for service

of such objections on counsel for the parties to this matter are as follows:

Clerk of the Court
United States District Courthouse
Eastern District of Pennsylvania
James A. Byrne U.S. Courthouse
601 Market Street
Philadelphia, PA 19106

SCHLICHTER, BOGARD & DENTON, LLP
Attn: Univ. of Pennsylvania 403(b) Settlement
100 S. 4th Street, Ste. 1200
St. Louis, MO 63102
Attorneys for Plaintiffs

MORGAN, LEWIS, BOCKIUS LLP
Attn: Christopher Boran (Christopher.Boran@morganlewis.com)
77 W. Wacker Dr.
Chicago, IL 60601-5094
Attorneys for Defendants

- B. The objector or his, her, or its counsel (if any) must serve copies of the objection(s) on the attorneys listed above and file it with the Court by no later than thirty (30) calendar days before the date of the Fairness Hearing.
- C. If an objector hires an attorney to represent him, her, or it for the purposes of making such objection pursuant to this paragraph, the attorney must serve a notice of appearance on the attorneys listed above and file it with the Court by no later than thirty (30) calendar days before the date of the Fairness Hearing.
- D. Failure to serve objections(s) on either the Court or counsel for the parties shall constitute a waiver of the objection(s). Any Class Member or other person who does not timely file and serve a written objection complying with the terms of this Order shall be deemed to have waived, and shall be foreclosed from raising, any objection to the Settlement, and any untimely objection shall be barred.
- E. Any party wishing to obtain discovery from any objector may, but is not required to, serve discovery requests, including requests for documents and notice of deposition

not to exceed two (2) hours in length, on any objector within ten (10) calendar days of receipt of the objection and that any responses to discovery or depositions must be completed within ten (10) calendar days of the request being served on the objector.

F. Any party wishing to file a response to an objection must do so, and serve the response on all parties, no later than ten (10) calendar days before the Fairness Hearing.

9. **Appearance at Fairness Hearing:** Any objector who files and serves a timely, written objection in accordance with the terms of this Order as set out in Paragraph 5 above may also appear at the Fairness Hearing either in person or through counsel retained at the objector's expense. Objectors or their attorneys intending to speak at the Fairness Hearing must serve a notice of intention to speak setting forth, among other things, the name, address, and telephone number of the objector (and, if applicable, the name, address, and telephone number of the objector's attorney) on Class Counsel and Defense Counsel (at the addresses set out above) and file it with the Court by no later than ten (10) calendar days before the date of the Fairness Hearing. Any objector (or objector's attorney) who does not timely file and serve a notice of intention to appear in accordance with this paragraph shall not be permitted to speak at the Fairness Hearing.

10. **Claim Form Deadline:** All valid Former Participant Claim Forms must be received by the Settlement Administrator with a postmark date no later than _____, 2021, or electronically submitted online at www.UPenn403bSettlement.com no later than _____, 2021.

11. **Service of Papers:** Defense Counsel and Class Counsel shall promptly furnish each other with copies of all objections that come into their possession.

12. **Termination of Settlement:** If the Settlement is terminated in accordance with the Settlement Agreement, this Order shall become null and void, and shall be without prejudice

to the rights of the Settling Parties, all of whom shall be restored to their respective positions existing the day before the Settlement Agreement Execution Date.

13. **Use of Order:** This Order shall not be construed or used as an admission, concession, or declaration by or against the Defendants of any fault, wrongdoing, breach, or liability, or a waiver of any claims or defenses, including but not limited to those as to the propriety of any amended pleadings or the propriety and scope of class certification. This Order shall not be construed or used as an admission, concession, or declaration by or against any named plaintiff, Class Representatives, or the Settlement Class that their claims lack merit, or that the relief requested by Plaintiffs is inappropriate, improper, or unavailable. This Order shall not be construed or used as a waiver by any party of any arguments, defenses, or claims he, she, or it may have, including but not limited to any objections by the Defendants to class certification in the event that the Settlement Agreement is terminated.

14. **Parallel Proceedings:** Pending final determination of whether the Settlement Agreement should be approved, the Class Representatives, every Class Member, and the Plans are prohibited and enjoined from directly, through representatives, or in any other capacity, commencing any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties, including Defendants.

15. **Class Action Fairness Act Notice:** The form of notice under the Class Action Fairness Act of 2005 (“CAFA”) submitted as Exhibit 6 to the Settlement Agreement complies with the requirements of CAFA and will, upon mailing, discharge Defendants’ obligations pursuant to CAFA.

16. **Continuance of Hearing:** The Court may continue the Fairness Hearing in its discretion without direct notice to the Settlement Class, other than by notice to Class Counsel

and Defense Counsel, and any Class Member wishing to appear should check the Court's docket or call the Clerk's office three (3) calendar days before the scheduled date of the Fairness Hearing.

IT IS SO ORDERED.

DATED: _____, 2021

HON. GENE E.K. PRATTER.
UNITED STATES DISTRICT JUDGE