

**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

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL

Plaintiffs, by and through their counsel, in accordance with Rule 23(e) of the Federal Rules of Civil Procedure, move for final approval of the Settlement. Defendants do not oppose this motion. In support, the Plaintiffs state the following:

1. This action involves claims for alleged breaches of 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") in violation of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA").

2. On November 30, 2020, the Settling Parties reached a class settlement that provides meaningful monetary relief to Class Members. The fully executed Settlement Agreement dated January 13, 2021 ("Settlement") is located at Doc. 95-2.¹ In exchange for the Released Claims, Defendants have agreed to pay a sum of \$13,000,000 into a Settlement Fund.

3. On June 29, 2021, the Court granted preliminary approval of the Settlement. Docs. 102, 103. On that date, the Court also granted Plaintiffs' Unopposed Motion for

¹ Capitalized terms herein are defined in the Settlement.

Certification of Settlement Class and for Appointment of Class Counsel. Doc. 103. The Class definition is as follows:

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.

4. The deadline for Class Members to file objections to the Settlement was September 27, 2021. As of the filing of this Motion, no formal objections were filed. However, two communications were sent by Class Members noting their disagreement with the Settlement and requesting that they be excluded from the Settlement. Declaration of Troy A. Doles (“Doles Decl.”), ¶¶ 8, 9, Exs. 4, 5.

5. The Settlement was not the product of collusion between the Settling Parties. In light of the circumstances of this case, and for the reasons stated in the accompanying memorandum in support, the Settlement is fundamentally fair, adequate and reasonable and is in the best interests of Class Members.

6. In support of this Motion, Plaintiffs separately submit a Memorandum of Law in Support of Final Approval, the Declaration of Angeion Group, the settlement administrator, the Statement of Gallagher Fiduciary Advisors, LLC, serving as the Independent Fiduciary, and the Declaration of Troy A. Doles.

This Motion is also supported by Plaintiffs’ Memorandum in Support of the Unopposed Motion for Preliminary Approval of Class Settlement [Doc. 95-1], the Court’s Order for Preliminary Approval of Class Action Settlement [Docs. 102, 103], the Court’s Order Granting

Plaintiffs' Unopposed Motion for Certification of Settlement Class and for Appointment of Class Counsel [Docs. 102, 103], Plaintiffs' Memorandum in Support of their Motion for Attorneys' Fees, Class Representative Awards and Expenses [Doc. 107-1], the Declarations of Jerome J. Schlichter [Docs. 95-3, 107-2], the Declarations of Heather Lea [Docs. 95-3, 107-3], the Declaration of James C. Sturdevant [Doc. 107-5], and the Declaration of Stewart Brown [Doc. 107-4].

Pursuant to L.R. 7.1(b) Plaintiffs' have conferred with Defendants and this motion is unopposed.

Dated: October 13, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Troy A. Doles
Attorney for Plaintiffs

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**PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR
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Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs seek this Court’s final approval of the Settlement. Plaintiffs brought this action against the University of Pennsylvania, the Investment Committee, and Jack Heuer (“Defendants”) alleging that they breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 (“ERISA”) by causing 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”) to pay unreasonable recordkeeping and administrative fees and maintaining high-cost, underperforming investment options. Docs. 1, 69. After years of hard-fought litigation, the parties reached a Settlement that provides a substantial monetary recovery for the Class along with significant non-monetary relief that will benefit the Plan for years. For the reasons set forth below, this Court should provide final approval to the Settlement.

BACKGROUND

I. Plaintiffs’ Claims

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 asserted seven counts against Defendants. *Id.* In Counts I and II, Plaintiffs alleged 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 alleged 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. In Counts V and VI, Plaintiffs alleged 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. As to Count VII, to the extent Defendants delegated any of their fiduciary duties, Plaintiffs alleged that Defendants failed to prudently monitor the actions of those individuals.

II. The Litigation History

On January 5, 2017, Defendants moved to dismiss the amended complaint. Doc. 33. On September 21, 2017, the Court granted, *in full*, Defendants’ motion to dismiss. Doc. 57. Plaintiffs appealed the Court’s dismissal to the Third Circuit Court of Appeals. The Third Circuit overturned this Court’s dismissal as to Counts III and V and remanded those counts to this Court for further proceedings. *Sweda v. Univ. of Penn.*, 923 F.3d 320 (3d Cir. 2019). Prior to that however, Defendants sought a stay to the mandate while they petitioned the United States Supreme Court for further review. Not only did the Third Circuit deny Defendants’ stay request, the Supreme Court denied Defendants’ Petition for Writ of Certiorari. *Univ. of Pennsylvania v. Sweda*, 140 S.Ct. 2565 (2020).

After remand from the Third Circuit, Plaintiffs filed their second amended complaint. Doc. 69. From that point, the parties prepared for discovery by negotiating 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).

As to discovery, the parties issued written discovery, and Plaintiffs received almost 15,000 *documents* (not pages) produced by the Defendants and relevant third parties. This voluminous set of materials required extensive review by Class Counsel. As noted previously, all of this

information required close and detailed analysis along with discussions with consultants and experts retained by Class Counsel. Doc. 95-4 at ¶4. After the materials were thoroughly analyzed, the parties proceeded to the deposition phase of discovery. *Id.* at ¶5. In total, the parties took the deposition of thirteen fact witnesses. *Id.* The majority of these depositions lasted the full seven hours allowed under the Federal Rules. *Id.* During the discovery phase, the parties were engaged with experts in preparation for their expert disclosures and supporting reliance materials. Plaintiffs were engaged with several consultants and experts on this matter. *Id.*

While discovery was proceeding, on September 15, 2020, Plaintiffs filed their motion and supporting memorandum for class certification. Docs. 84, 84-02. In response, Defendants filed their opposition on November 3, 2030, and Plaintiffs filed their reply brief on November 24, 2020. Docs. 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. Doc. 95-4 at ¶6. Ultimately, the parties were able to reach an agreement to settle the case, which culminated in the execution of the Settlement Agreement. *Id.*

III. The Terms of the Proposed Settlement.

In exchange for the dismissal of all of Plaintiffs' remaining claims, Defendants will make available to Class Members the benefits, both monetary and affirmative relief, as described previously and as summarized again below.

A. Monetary Relief.

Defendants will deposit \$13,000,000 (the "Gross Settlement Amount") in an interest-bearing settlement account (the "Qualified Settlement Fund"). The Gross Settlement Fund will be used to pay the Class Members' recoveries, Administrative Expenses to facilitate the Settlement, Class Counsel's Attorneys' Fees and Costs, and the Class Representatives'

Compensation, if approved by the Court. Any reserve or remaining funds will be deposited into the Plans to pay legitimate plan expenses. No remainder of the monetary relief will revert back to the Defendants. The Qualified Settlement Fund will be held in trust, as required by the Escrow Agent. See Declaration of Troy Doles (“Doles Decl.”) ¶7, Ex. 3 (reciting that Angeion Group shall serve as the Escrow Agent with Huntington Bank serving as the custodial bank).¹

B. Non-Monetary Terms.

In addition to the monetary relief provided in the Settlement, Defendants agreed to significant non-monetary or affirmative relief that will inure to the benefit of the Plan and Plan participants for years to come. Those terms, as identified and cited below in Section 10 of the Settlement, include the following:

- 10.1** 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.
- 10.2** There will be a Settlement Period of three years from the Settlement Effective Date during which Defendants will comply with the terms set forth herein.
- 10.3** 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.
- 10.4** During the Settlement Period, Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
- 10.5** 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 that is 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

¹ The Court requested certain revisions to the escrow agreement. Those revisions are reflected in the attached.

under the circumstances.

- 10.6** 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.
- 10.7** 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.
- 10.8** 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. Doc. 95-2.

As explained in prior briefing, this significant non-monetary relief substantially and materially adds value to the Settlement beyond the value of the monetary relief. Doc. 107-1 at 18.² Indeed, based on Class Counsel's estimates and those of an expert, the total value of the Settlement is approximately \$38 million. *Id.*

IV. Proceedings Since Preliminary Approval and Class Members' Reaction

Plaintiffs filed an unopposed motion for preliminary approval of the Settlement on January 14, 2021. Doc. 95. The Court granted the motion and preliminarily approved the Settlement on

² Citation to page numbers is to the pdf page header assigned in the CM/EFC filing.

June 29, 2021. Docs. 102, 103. As required, on August 27, 2021, Plaintiffs filed a Motion for Attorneys' Fees, Class Representatives' Compensation Awards and Expenses. Doc. 107.

Also on August 27, 2021, the Settlement Administrator, Angeion Group, caused the Court-approved Settlement Notices to be e-mailed or mailed to 44,252 Class Members. *See* Declaration of Markham Sherwood of Angeion Group ¶4 (“Angeion Decl.”). Notices were mailed to 1,266 participants whose emails were undeliverable. *Id.* ¶8. Of all physically mailed notices, 90 were returned as undeliverable. *Id.* ¶9. New addresses were located for 64 Class Members. *Id.* The Court-approved Settlement Notice was also published on a dedicated Settlement Website hosted by Class Counsel. Doles Decl. ¶4. Class Counsel established the dedicated website (www.upenn403bsettlement.com) and published the Court-approved Settlement Notice with the Settlement Agreement on that website on August 26, 2021. *Id.* In addition, the Settlement Administrator hosted a toll-free number for automated information and live operators to answer any questions for members of the Settlement Class. Angeion Decl. ¶10. As of October 8, there have been a total of 423 calls. *Id.* Of those calls, 139 were connected with a live agent. *Id.*

As instructed by these Court-approved Settlement Notices, Class Members were provided the opportunity to object to the Settlement by writing to the Court and lodging their formal, written objections to the Settlement. Per this Court's order, objections were due to the Court by September 27, 2021. Doc. 103 ¶¶7, 11(B). Out of over 44,252 notices sent, no objections have been formally filed with the Court as instructed. However, two written letters containing objections to varying degrees were mailed to counsel for the parties or the Settlement Administrator. In full candor with the Court, those two letters are attached and addressed briefly below. Doles Decl. ¶¶8,9, Exs. 4, 5.

In addition to the overwhelming, positive reaction to the Settlement by Class Members, the

Settlement's Independent Fiduciary, Gallagher Fiduciary Advisors, LLC, has thoroughly reviewed all aspects of the Settlement and has approved the Settlement and Class Counsel's attorneys' fees and expenses as reasonable. *See* Doles Decl. ¶6, Ex. 2.

ARGUMENT

In this Circuit, there is a “strong presumption in favor of voluntary settlement agreements.” *Pennwalt Corp. v. Plough*, 676 F.2d 77, 79–80 (3d Cir. 1982). “The strong judicial policy in favor of class action settlement contemplates a circumscribed role for the district courts in settlement review and approval proceedings.” *Ehrheart v. Verizon Wireless*, 609 F.3d 590, 594–95 (3d Cir. 2010). Indeed, this Circuit encourages settlements “because they promote the amicable resolution of disputes and lighten the increasing load of litigation faced by the federal courts.” *Id.* “In addition to the conservation of judicial resources, the parties may also gain significantly from avoiding the costs and risks of a lengthy and complex trial.” *Id.*

This Settlement merits that presumption. As detailed previously and acknowledged by the Court, this Settlement was the product of arm's-length negotiations by and between experienced counsel on both sides. Doc. 102 at 14. Further, substantial discovery occurred for a period of years prior to any settlement discussions. *Id.* at 15. In addition, “[t]he imprimatur of the independent fiduciary is further evidence of the procedural fairness of the Settlement.” *In re AOL Time Warner ERISA Litig.*, 2006 WL 2789862, at *5 (S.D.N.Y. Sept. 27, 2006) (citing *In re Glob. Crossing Sec. & ERISA Litig.*, 225 F.R.D. 436, 462 (S.D.N.Y. 2004)). Here, the independent fiduciary has approved all aspects of the Settlement as fair and reasonable and only two objections, *out of 44,252 notices sent*, have been asserted against the Settlement. For these reasons, the Settlement is presumptively fair and should be approved.

In determining the final fairness of a proposed settlement, the Third Circuit has enumerated

nine factors to be considered. *Girsh v. Jepson*, 521 F.2d 153, 157 (3d. Cir. 1975). These “*Girsh* factors” are the following:

- (1) the complexity, expense and likely duration of the litigation;
- (2) the reaction of the class to the settlement;
- (3) the stage of the proceedings and the amount of discovery completed;
- (4) the risks of establishing liability;
- (5) the risks of establishing damages;
- (6) the risks of maintaining the class action through the trial;
- (7) the ability of the defendants to withstand a greater judgment;
- (8) the range of reasonableness of the settlement fund in light of the best possible recovery; [and]
- (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

The Settling Parties have the burden of establishing that a weighing of the *Girsh* factors weighs in favor of the Settlement being approved. *In re Nat’l Football League Players Concussion Inj. Litig.*, 821 F.3d 410, 437 (3d. Cir. 2016).³ As explained below, a weighing of the *Girsh* factors results in this Settlement being appropriate for final approval.

I. The *Girsh* Factors Weigh in Favor of Approving the Settlement

A. The Complexity, Expense, and Duration of the Litigation if the Case Proceeded to Trial Supports Approval (Factor 1)

The first *Girsh* factor, the probable costs in both time and money if the litigation continued, strongly supports final approval of the Settlement. *In re Nat’l Football League*, 821

³ The Third Circuit has also noted additional factors that *may* be considered, depending on the type of case and the nature of the settlement details. *In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 323 (3d Cir. 1998). Class Counsel submits that those *Prudential* factors are more prudential in nature and not entirely applicable to nuances of this Settlement.

F.3d at 437. A Settlement should be approved when “continuing litigation through trial would have required additional discovery, extensive pretrial motions addressing complex factual and legal questions, and ultimately a complicated, lengthy trial.” *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 536 (3d Cir. 2004). In making this assessment, this Court should balance the proposed Settlement against the time and expense of achieving a potentially more favorable result through further litigation. If the complexity, expense, and likely duration of the litigation are significant, the court should weigh this factor in favor of approving the settlement. *Lenahan v. Sears, Roebuck & Co.*, No. 02-0045, 2006 WL 2085282, at *12 (D.N.J. July 24, 2006), *aff’d*, 266 Fed. Appx 114 (3d Cir. 2008) (citing *In re Prudential Ins. Co. of Am. Sales Practices Litig.*, 962 F.Supp. 450, 536 (D.N.J. 1997)).

Although this case was hotly litigated for over four years, there is no question that significant stages and milestones of litigation remained. As noted previously, at the time a settlement was announced to the Court, the parties were in the middle of briefing class certification and preparing expert disclosures. Doc. 95-4 at ¶¶5–6. After those pieces of the litigation were complete, expert challenges and dispositive motion practice remained. Undoubtedly, the continued litigation in this matter would be long, complex, expensive, and burdensome. Assuming the litigation reached a trial, there would likely be appeals by one or both parties. Given this uncertainty, as compared to a Settlement that provides significant monetary relief and affirmative relief, a “bird in the hand in this litigation is surely worth more than whatever birds are lurking in the bushes.” *In re Chambers Dev. Sec. Litig.*, 912 F.Supp. 822, 838 (W.D. Pa. 1995).

As previously explained to the Court, two cases in which Class Counsel were directly involved demonstrate the risk of prolonged litigation and appeals. In *Tibble v. Edison*

International, a case filed in 2007, the district court entered judgment in favor of the plaintiffs on a limited portion of their claims in 2010. No. 07-5359, 2010 WL 2757153 (C.D. Cal. July 8, 2010). That case then went through six years of appeals, including to the Supreme Court, until it ultimately was remanded for another trial in 2016. 843 F.3d 1187 (9th Cir. 2016). Only in 2020, thirteen years after the case was filed, did the plan finally recover its damages. No. 07-5359, ECF No. 612, (C.D. Cal. June 9, 2020). In *Tussey v. ABB, Inc.*, the case was filed in 2006 and culminated in a judgment in the favor of the plaintiffs in 2012. No. 06-4305, 2012 WL 1113291 (W.D. Mo. March 31, 2012). That judgment, however, was reversed in substantial part two years later. 746 F.3d 327 (8th Cir. 2014). On remand, the judgment was substantially reduced, 850 F.3d 951, 954–56 (8th Cir. 2017), then that judgment was reversed on a second appeal, *id.* at 959–61, and on remand, the case was ultimately settled in 2019, No. 06-4305, ECF No. 869, (W.D. Mo. Aug. 16, 2019).

Although this case was heavily litigated for four years, there is no question that multiple years remained if the litigation continued. For these reasons, by concluding this case with a favorable settlement that significantly benefits past, present and future Plan participants now, the first *Girsh* factor is easily met.

B. The Class’s Reaction to the Settlement Strongly Supports Approval (Factor 2)

As described above, per this Court’s instructions, the Settlement Administrator provided notice of the Settlement to over 44,252 Class Members. No formal objections have been lodged/filed with the Court. This is proof positive of the overwhelming support in favor of the Settlement. *In re Cendant Corp. Litig.*, 264 F.3d 201, 235 (3d Cir. 2001) (“The vast disparity between the number of potential class members who received notice of the Settlement and the number of objectors creates a strong presumption that this factor weighs in favor of the Settlement”); *In re Auto. Refinishing Pain Antitrust Litig.*, 617 F.Supp.2d 336, 342 (E.D. Pa.

2007) (“The fact that an overwhelming majority of the Class did not file objections is a significant element to consider in determining the overall fairness of the settlements”). This factor resoundingly supports the final approval of the Settlement.

In full candor with the Court, although not filed with the Court as instructed, two individuals voiced their opposition to being included in the Settlement and opposed the award of Class Counsel’s attorneys’ fees and the Class Representatives’ Compensation. With all due respect to these two individuals, the points made by each do not warrant this Court’s rejection of the Settlement.

As to the first communication, the Class Member voiced her opposition to the notice and requested to be excluded from the Settlement. Doles Decl. ¶8, Ex. 4 (herein “Class Member A”). Respectfully, both points are without merit. As to the notices, the parties and this Court spent considerable time and effort editing the Settlement Notices to ensure readability and comprehension. The Settlement Notices contained clear instructions and provided contact information to the Settlement Administrator for additional questions.

Class Member A’s request that she be excluded from the Settlement is contrary to this Court’s Rule 23(b)(1) non-opt out class certification. As noted by the Court, allowing Class Members to opt out and potentially pursue separate actions under ERISA “could easily result in varying adjudications over whether Penn allegedly breached its fiduciary duties.” Doc. 102 at 8. Further, Class Member A’s final comments that she does not and will not support *any* settlement of a class action is simply contrary to the well-established Third Circuit authority that encourages arm’s-length negotiated settlements of complex cases by experienced counsel. As noted above, this is precisely what this Settlement represents. For these reasons, these objections and requests should be rejected.

As to the second communication, the Class Member voiced his opposition to the amount of the Class Representatives' Compensation awards and to the amount of Class Counsel's requested attorneys' fees. Doles Decl. ¶9, Ex. 5 (herein "Class Member B"). First, both points were extensively addressed in Plaintiffs' Memorandum in Support of their Motion for Award of Attorneys' Fees, Expenses, and Class Representative Awards. Doc. 107-1. Those arguments are incorporated herein. For those reasons, and respectfully stated, both points raised by Class Member B are without merit.

As to the amount of the Class Representatives' Compensation, Class Counsel extensively explained why the award to the Class Representatives was appropriate. Those reasons included their substantial efforts in litigating this case, the risk in participating in the Class Action, and the low ratio of the total awards compared to the total Settlement amount, among others. Doc. 107-1 at 33–35. Again, those points and arguments are incorporated herein. Briefly, however, the Court specifically noted that approving incentive awards is "not uncommon in class action litigation." Doc. 102 at 12, FN 2. The Court specifically went on to state that "even very generous incentive awards such as that proposed here are not uncommon." *Id.* "A substantial incentive award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiffs'] efforts." *Savani v. URS Prof'l Solutions LLC*, 121 F.Supp.3d 564, 577 (D. S.C. 2015). Class Member B's assertion that the requested Class Representatives' Compensation lacks evidentiary support, such as billing records evidencing time spent or proof of alienation from participating in the Class Action, is without merit. That level of "proof" is simply not required for these awards. "Even where there is not a record of actual retaliation, notoriety, or personal difficulties, Class Representatives merit recognition for assuming the risk of such for the sake of absent class members. Today, the fact that a plaintiff has filed a federal

lawsuit is searchable on the internet and may become known to prospective employers when evaluating the person.” *Guippone v. BHS & B Holdings, LLC*, No. 09-01029, 2011 WL 5148650, at *7 (S.D.N.Y. Oct. 28, 2011) (citation omitted); *see also Delijanin v. Wolfgang's Steakhouse Inc.*, No. 18-7854, 2021 WL 535635, at *4–5 (S.D.N.Y. Feb. 12, 2021) (same); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F.Supp.3d 265, 271 (S.D.N.Y. 2020) (holding that, in an ERISA action, a named plaintiff risks “alienation from employers or peers”). To be clear, however, the risk Class Representatives assume in pursuing this type of action is unquestionably real. In a similar but unsuccessful ERISA class action case, a court entered judgement for costs *against* the Class Representatives for over \$200,000. *Hecker v. Deere & Co.*, 556 F.3d 575, 591 (7th Cir. 2009) (upholding an order assessing costs against the named plaintiffs for \$219,211). Class Member B’s objection on this point is without merit.

As to the amount of the requested attorneys’ fees and costs to Class Counsel, Class Member B’s points are, again, simply without merit, and Class Counsel again incorporates those arguments previously submitted in favor of the award of fees herein. Doc. 107-1. Nevertheless, Class Counsel will briefly address the high points and ignore the Class Member B’s ad hominem attacks on Class Counsel’s firm. First, Class Member B correctly notes that the market rate for this type of work is a contingency fee award, typically 33 1/3%, given the significant risk assumed in taking the case. The Third Circuit is quite clear that a percentage of the recovery as a fee is appropriate. 107-1 at 14–15. Class Member B’s second point, that Class Counsel has filed other litigation against other universities alleging similar claims is also correct. It is logical that the recognized pioneering law firm of this type of important litigation would have a track record of filing these types of cases. *Id.* at 19. Class Member B’s implied assertion that all breach of fiduciary duty cases are somehow the same, thus warranting a reduced fee due to some form of

efficiencies, is without merit. Each case is unique and extremely complex. *Id.* at 24–25 (detailing unique case histories for just two landmark 401(k) decisions handled by Class Counsel).

Moreover, every fee awarded to Class Counsel in previous cases has been approved by a federal judge. *Id.* at 26–27.

Class Member B’s disagreement with Class Counsel’s hourly rates is also without merit. Those rates have been approved by federal courts repeatedly. *Id.* at 29–30. Nevertheless, Class Counsel also applied local rates acknowledged by this District in assessing the reasonableness of the requested fees. *Id.* at 31. This alternative analysis confirms the reasonableness of the requested fees.

Finally, while Class Counsel readily acknowledges the valuable work performed by all Class Members in their day-to-day work for the University of Pennsylvania, Class Member B’s comparisons between that work and Class Counsel’s work are wholly inapt and contrary to the Third Circuit’s authority allowing for an award based on a percentage of the recovery in this line of work. *Id.* at 14–15. For these reasons, Class Member B’s objections should be rejected.

C. Settlement After Full and Complete Discovery Supports Approval (*Girsh* Factor 3)

As described in detail previously, after four years of litigation, fact discovery was fully completed, thus providing Class Counsel with a complete appreciation of the merits of the case. *In re Cendant*, 264 F.3d at 235 (quoting *In re GMC Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 813 (3d Cir. 1995)). In total, Defendants and third parties produced over 15,000 documents. Doc. 95-1 at 14. In addition, the parties took thirteen fact witness depositions, many of which lasted all day. *Id.* at 15. Those efforts were detailed extensively. Doc. 107-1 at 11–13. A settlement after such extensive discovery supports approval.

**D. At All Stages of the Action, Plaintiffs Faced Significant Risk of Not Prevailing
(*Girsh* Factors 4-6)**

Girsh factors four through six all “examine what the potential rewards (or downside) of litigation might have been had class counsel elected to litigate the claims rather than settlement them.” *GMC*, 55 F.3d at 814. Those factors are: (4) the risks of establishing liability; (5) the risks of establishing damages; and (6) the risks of maintaining the class action through trial. *Girsh*, 521 F.2d at 157. In addressing these factors, the Court need not delve into the details of the strengths and weaknesses of every contested point in the litigation. Rather, the Court may credit Class Counsel’s views on these issues in light of their experience litigating similar cases. *Perry v. FleetBoston Fin. Corp.*, 229 F.R.D. 105, 115 (E.D. Pa. 2005) (quoting *Lachance v. Harrington*, 965 F.Supp. 630, 638 (E.D. Pa. 1991)).

To be clear, Class Counsel believed, and continues to believe, strongly in the merits of this case. Nevertheless, there are undeniable and significant legal obstacles and defenses with respect to establishing liability and damages, along with maintaining the case through dispositive motion practice and trial. First, there is the overarching difficulty in litigating complex cases. Although Class Counsel pioneered this area of litigation, that experience did not come without losses. See *Hecker*, 556 F.3d at 575; *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011), and *Cunningham v. Cornell Univ.*, No. 16-6525, 2019 WL 4735876 (S.D.N.Y. Sept. 27, 2019), *reconsideration denied*, No. 16-6525, 2020 WL 1165778 (S.D.N.Y. Mar. 11, 2020) (also filed in August 2016 with similar allegations as in this case). As noted above, one of those losses, *Renfro*, came from the Third Circuit.

The extreme risk at all stages in *this* Action is undeniable. As noted above, this Court dismissed, in total, this Action at the motion to dismiss stage. Doc. 57. Although Plaintiffs successfully reversed that decision, in part, in the Third Circuit, there is no question that the

previous complete dismissal loomed heavy over the ultimate success of the remaining claims.⁴ For this reason, establishing liability and damages would have been *extremely* difficult and subject to a certain appeal. Throughout this litigation, Defendants vigorously disputed that they breached any duty or were liable for any amount of losses. Not surprisingly, Defendants continue to deny any wrongdoing today. There is no question that Defendants would have mounted a vigorous defense at the class certification stage, expert disclosure stage, summary judgment stage and trial.

The risk to Plaintiffs that their claims might fail is underscored by the result of another trial handled by Class Counsel in a similar 403(b) university case. *Sacerdote v. New York Univ.*, 328 F.Supp.3d 273 (S.D.N.Y. 2018). In *Sacerdote*, after an eight-day bench trial, the court entered its judgment wholly in favor of the defendants and against the plaintiffs. Moreover, the Second Circuit recently *affirmed* that decision relating to the investment performance claims also raised here. *Sacerdote v. New York University*, 9 F.4th 95, 120-21 (2d Cir. 2021)(rejecting plaintiffs' claims relating to the CREF Stock Account and the TIAA Real Estate Account). Given these challenges in establishing liability, damages, and maintaining the action through trial, this Settlement and the relief provided therein is a significant victory for the Plan and the Class Members.

E. Defendant's Ability to Pay Favors the Settlement or Is Neutral (Factor 7)

While Defendants might, theoretically, be able to pay more than the agreed upon amount of \$13 million, that alone is not enough to suggest that the Settlement is unfair. The Third Circuit "regularly find[s] a settlement to be fair even though the defendant has the practical ability to pay greater amounts." *McDonough v. Toys "R" Us, Inc.*, 80 F.Supp. 626, 645 (E.D. Pa. 2015)(citing

⁴ To the extent this case was to be a non-jury case, this Court is best suited to evaluate Class Counsel's chances of success on the merits of this case.

cases), *Lazy Oil v. Witco Corp.*, 95 F.Supp.2d 290, 318 (W.D. Pa. 1997). This factor favors final approval or, at a minimum, is neutral.

F. The Settlement is Reasonable in Light of the Best Possible Recovery and Risks of Litigation (Factors 8 and 9)

Considering that the Class Action was previously dismissed in total, a \$13 million recovery is an incredible result. Moreover, with the estimated value of the non-monetary relief increasing the total value of the Settlement to \$38 million, this result matches or exceeds the value of similar settlements. Doc. 107-1 at 18.

As stated during the preliminary approval hearing, based on the facts in this case, Class Counsel reasonably believed that the claims of excessive recordkeeping and administrative fees were the factually strongest claims. See May 25, 2021 Hearing Transcript at 19:22–20:23. Based on Class Counsel’s experience, and as stated to the Court, Class Counsel estimated that the \$13 million monetary recovery is likely just more than half of the best recovery possible for this claim. *Id.* Of course, this all assumes that Class Counsel convinced this Court that Defendants were in fact liable for breaches of their fiduciary duties. As noted above, and to say the least, clearing the liability hurdle was far from certain, if not remote. Thus, in viewing the Settlement amount in light of the significant uphill battle in establishing liability and damages, the recovery is immensely fair. *GMC*, 55 F.3d at 806. For this reason, and in Class Counsel’s views and experience, this is a significant result for the Class Members. *In re Aetna Inc.*, No. MDL 1219, 2001 WL 20928, at *6 (E.D. Pa. Jan. 4, 2001).

As a meaningful point of reference confirming the reasonableness of the monetary value, the Settlement of \$13 million is consistent with or larger than settlements reached in similar cases. *Henderson v. Emory University*, No. 16-cv-2920 (N.D. Ga. 2020) (\$16,750,000 settlement); *Sweda v. University of Pennsylvania*, No. 16-cv-4329 (E.D. Pa. 2020) (\$13,000,000 settlement);

Cassell v. Vanderbilt University, No. 16-cv-2086 (M.D. Tenn. 2019) (\$14,500,000 settlement); *Kelly v. Johns Hopkins University*, No. 16-cv-2835 (D. Md. 2019) (\$14,000,000 settlement); *Short v. Brown University*, 17-cv-0031 (D.R.I. 2019) (\$3,500,000 settlement); *Clark v. Duke University*, No. 16-cv-1044 (M.D.N.C. 2018) (\$10,650,000 settlement); *Daugherty v. University of Chicago*, No.17-cv-03736 (N.D. Ill. 2018) (\$6,500,000 settlement). Considering the risk of continued litigation, including the risk of establishing liability and damages, against the potential recovery on the claim most likely to succeed, the settlement of \$13,000,000 is reasonable.

Given that all the *Girsh* factors are met, the Settlement should be finally approved.

II. The Court Should Approve Plaintiffs' Motion for Attorneys' Fees and Costs

Class Counsel have submitted a detailed and unopposed motion, along with supporting declarations, that demonstrate the reasons that they should receive \$4,333,333.33 in attorneys' fees and \$369,857 in expenses from the Gross Settlement Fund. Doc. 107. For the reasons stated in that motion, Class Counsel requests that those fees and expenses be awarded from the Gross Settlement Amount.

III. The Court Should Approve a \$25,000 Award to Each Class Representative

Class Counsel has requested that the Court award \$25,000 to each Class Representative as an award from the Gross Settlement Amount for their invaluable service in this case. Doc. 107 at 33–35. For the reasons stated in Plaintiffs' motion (Doc. 107), and those additional reasons provided herein, that award is reasonable and fair compensation for the work provided, and risks undertaken, by those representatives. *Id.*

CONCLUSION

Plaintiffs respectfully request that the Court grant final approval of the Settlement as fair, reasonable, and adequate.

Dated: October 13, 2021

/s/ Troy A. Doles
SCHLICHTER BOGARD & DENTON LLP
Jerome J. Schlichter*
Troy A. Doles*
Kurt C. Struckhoff*
100 South Fourth Street, Ste. 1200
St. Louis, MO 63102
Phone: 314- 621-6115
Fax: 314-621-5934
jschlichter@uselaws.com
tdoles@uselaws.com
kstruckhoff@uselaws.com
*(admitted *pro hac vice*)
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on October 13, 2021, I electronically filed the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to the attorneys of record.

/s/ Troy A. Doles
Counsel for Plaintiffs

**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

I, Troy A. Doles, declare as follows:

1. I am a partner of the law firm of Schlichter Bogard & Denton, LLP, counsel for Plaintiffs in this case. I am familiar with the facts set forth below and able to testify to them.

2. I received my Bachelor of Arts from Indiana University in 1992 and my Juris Doctorate from Saint Louis University in 1996. I have been in the private practice of law for 25 years. I have been actively engaged in complex litigation, including class actions, since 1999. I have been exclusively involved in national ERISA excessive fee class actions involving 401(k) plans and other defined contribution plans since 2006.

3. 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 and 401(k) cases filed by Schlichter Bogard & Denton.

4. Schlichter Bogard & Denton LLP established a website for this settlement, www.UPenn403bsettlement.com. The class notices were placed on the website on August 26, 2021. All the filings related to the settlement were placed on the website within 24 hours of when they were docketed in this case.

5. As required by the Class Action Fairness Act (“CAFA”) and §4.1.6 of the Settlement Agreement, a Notice of Proposed Settlement was caused to be served by Federal Express or Certified Return Receipt Requested First-Class mail, where applicable, to the United States Attorney General, as well as the Attorney Generals for the 50 states and the District of Columbia, the US Virgin Islands, Guam, and Puerto Rico. A copy of the Notice of Proposed Settlement, excluding exhibits, is attached hereto as Exhibit 1.

6. On September 24, 2021, Gallagher Fiduciary Advisors, LLC informed the parties that they approved the Settlement. Attached to this declaration as Exhibit 2 is a true and correct copy of the report of the Independent Fiduciary for the Settlement in *Sweda, et al. v. The University of Pennsylvania, et al* from Gallagher Fiduciary Advisors.

7. Attached to this declaration as Exhibit 3 is a true and correct copy of the revised Escrow Agreement.

8. Attached to this declaration as Exhibit 4 is a true and correct copy of an email communication sent to Class Counsel and Defendants, identified as Class Member A.

9. Attached to this declaration as Exhibit 5 is a true and correct copy of a letter sent to Class Counsel, identified as Class Member B.

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 October 13, 2021, in St. Louis, Missouri.

/s/ Troy A. Doles
Troy A. Doles



January 25, 2021

VIA «Via_Mail»

«First» «Last», «Esquire»

«Title»

«Street_1» «Street2»

«City», «State1» «Zip»

Re: Sweda, et al., v. Univ. of Pennsylvania, et al.,
Case No. 2:16-cv-4329, (E.D. Pa.), Notice Pursuant to 28 U.S.C. § 1715

Dear Sir or Madam:

On behalf of Defendants University of Pennsylvania, Investment Committee, and Jack Heuer (collectively “Defendants”), RG/2 Claims Administration LLC, the Settlement Administrator, hereby provides this Notice of a Proposed Class Action Settlement in the above-referenced class action pursuant to the Class Action Fairness Act of 2005 (“CAFA”). The proposed settlement will resolve the case.

In accordance with its obligations under CAFA, the Settlement Administrator provides the following at www.rg2claims.com/upennerisa.html for viewing:

(1) The Complaint, any materials filed with the Complaint, and any Amended Complaints.

Plaintiffs’ Class Action Complaint and Second Amended Complaint filed in the *Sweda, et al., v. University of Pennsylvania, et al.* case can be found at the aforementioned URL as “Exhibit 1- Univ. of Penn. Complaints.”

(2) Notice of any scheduled judicial hearing in the class action.

The Court has not yet scheduled a fairness hearing regarding the settlement. Once the Court sets a hearing date, such date(s) can be found on PACER as follows: (1) enter PACER through <https://ecf.paed.uscourts.gov/cgi-bin/login.pl>, (2) click on “Query,” (3) enter the civil case number, 2:16-cv-4329, (4) click on “Run Query,” and (5) click on the link “Docket Report.” The order(s) scheduling hearing(s) will be found on the docket entry sheet.

(3) Any proposed or final notification to class members.

The proposed Notices of Class Action Settlement as submitted to the Court can be found at the aforementioned URL as “Exhibit 2 – Notice of Class Action Settlement and Fairness Hearing to Class Members.”

«First» «Last», «Esquire»
January 25, 2021
Page 2



(4) Any proposed or final class action settlement.

The Settlement Agreement entered into by the parties and as submitted to the Court can be found at the aforementioned URL as “Exhibit 3 – Settlement Agreement.” There are no other agreements contemporaneously made between Class Counsel and counsel for the defendants.

(5) A final judgment or notice of dismissal.

Final judgment has not yet been entered. Upon entry, a copy of the Final Order and Judgment will be available through PACER and can be accessed online as follows: (1) enter PACER through <https://ecf.paed.uscourts.gov/cgi-bin/login.pl>, (2) click on “Query,” (3) enter the civil case number, 2:16-cv-4329, (4) click on “Run Query,” and (5) click on the link “Docket Report.” The order(s) entering final judgment will be found on the docket entry sheet.

(6) Names of class members who reside in each state and the estimated proportionate share of the claims of such members to the entire settlement.

Enclosed is a list of the currently known names of Class Members who reside in your state. As of today, it is not feasible to identify the names of every Class Member who resides in your state; the list of names enclosed represents our best current estimate of the total number of Class Members residents in your state. The specific settlement allocation to each Class Member will be determined by the Settlement Administrator according to a Court-approved formula. As a result, we do not yet know which Class Members will receive settlement proceeds or how much each Class Member will receive, and it is not feasible to determine the estimated proportionate share of the claims of the Class Members who reside in each state to the entire settlement. Upon final approval of the Court, the settlement proceeds will be distributed among the Class Members according to the Plan of Allocation as set forth in the Settlement Agreement.

(7) Any written judicial opinion relating to the materials described in (3) through (5).

The Court has not yet entered a Preliminary Approval Order or any opinions relating to the materials described in sections (3) through (5). Upon entry, a copy of said Order or opinion can be found online through the process described in section (5) above.

Final judgment has not yet been entered. Upon entry, a copy of said judgment can be found online through the process described in section (5) above.

If you have questions about this notice, the lawsuits, or the enclosed materials, please do not hesitate to contact me.

Sincerely,

RG/2 Claims Administration LLC

Enclosures



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Gallagher Fiduciary Advisors, LLC
250 Park Avenue, 5th Floor
New York, NY 10177 USA

212-918-9666
www.ajg.com

September 24, 2021

VIA ELECTRONIC MAIL

Christopher Boran, Esq.
Morgan, Lewis & Bockius LLP
77 W. Wacker Drive
Chicago, IL 60601

Re: Sweda, et al. v. The University of Pennsylvania, et al.

Dear Mr. Boran:

Pursuant to the agreement between The University of Pennsylvania, and Gallagher Fiduciary Advisors, LLC (“Gallagher”), Gallagher has been engaged to act as the independent fiduciary of The University of Pennsylvania Matching Plan, The University of Pennsylvania Supplemental Retirement Annuity Plan and The University of Pennsylvania Basic Plan (collectively, the “Plans”) in connection with the Settlement Agreement (the “Settlement Agreement”) in Sweda, et al. v. The University of Pennsylvania, et al., 2:16-cv-4329 (E.D. PA), executed on January 14, 2021.

This will confirm that, on behalf of the Plans, and in its capacity as independent fiduciary, Gallagher approves and authorizes the settlement of Released Claims, as defined in the Settlement Agreement. In making our determination, Gallagher, as the independent fiduciary, has determined that the Settlement Agreement meets the requirements of ERISA Prohibited Transaction Class Exemption 2003-39, as amended.

GALLAGHER FIDUCIARY ADVISORS, LLC

By: 

Darin R. Hoffner
Area Senior Vice President and
Area Counsel

cc: Troy Doles, Esq.
Brian Ortelere, Esq.
Elizabeth Solasko, Esq.



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SWEDA V. THE UNIVERSITY OF PENNSYLVANIA SETTLEMENT OF ERISA LITIGATION

September 24, 2021

I. Summary

Gallagher Fiduciary Advisors, LLC (“Gallagher”) was appointed to act as an independent fiduciary for The University of Pennsylvania Matching Plan, The University of Pennsylvania Supplemental Retirement Annuity Plan and The University of Pennsylvania Basic Plan (collectively, the “Plans”) in connection with the proposed settlement dated January 14, 2021 of Sweda, et al. v. The University of Pennsylvania, et al., 2:16-cv-4329 (E.D. PA) (the “Litigation”) that resolves the ERISA class action claims brought in the Litigation. All terms not otherwise defined herein shall have the meanings set forth in the Settlement.

Gallagher’s responsibilities pursuant to its agreement and the Settlement are to (i) determine whether to approve and authorize the settlement of Released Claims on behalf of the Plans and (ii) determine whether the Settlement satisfies the requirements of the Prohibited Transaction Class Exemption 2003-39 (the “Class Exemption”).

Gallagher engaged in the following activities: (i) we reviewed documents filed with the court, including the Complaint and the Amended Complaints, the motion to dismiss and the Court’s order dismissing the case, the decision of the 3rd Circuit Court of Appeals remanding part of the complaint for further proceedings, motion for Preliminary Approval of Class Action Settlement, the Settlement Agreement and Notice, the Order granting preliminary approval of the Settlement, and the Plaintiffs’ Motion for Attorneys’ Fees; (ii) we interviewed Troy Doles and Heather Lea from Schlichter Bogard & Denton, LLP, counsel for Plaintiffs; and (iii) we interviewed Christopher Boran, from Morgan Lewis & Bockius, LLP, counsel for Defendants.

II. Requirements of the Class Exemption

In order for the Class Exemption to apply, the following conditions must be met:



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1. Where the litigation has not been certified as a class action by the court, and no federal or state agency is a plaintiff in the litigation, an attorney or attorneys retained to advise the plan on the claim, and having no relationship to any of the parties, other than the plan, determines that there is a genuine controversy involving the plan.
 - This condition has been met because on June 28, 2021, the Court certified the Class as set forth in the Settlement Agreement.
2. The settlement is authorized by a fiduciary (the authorizing fiduciary) that has no relationship to, or interest in, any of the parties involved in the claims, other than the plan, that might affect the exercise of such person's best judgment as a fiduciary.
 - Gallagher has no relationship to, or interest in, any of the parties involved in the Litigation that could affect the exercise of its judgment.
3. The settlement terms, including the scope of the release of claims; the amount of cash received by the plan; the proposed attorney's fee award of one third of the Settlement; and any other sums to be paid from the recoveries, are reasonable in light of the plan's likelihood of full recovery, the value of claims foregone and the risks and costs of litigation.
 - Plaintiffs filed their complaint on August 11, 2016. They amended their complaint on November 21, 2016. Plaintiffs asserted seven counts against Defendants alleging Defendants breached their duty of loyalty and prudence and their duty to monitor other fiduciaries and committed prohibited transactions under ERISA.
 - On January 5, 2017, Defendants moved to dismiss the amended complaint. On September 21, 2017, the Court granted Defendants' motion to dismiss Plaintiffs' amended complaint. Plaintiffs appealed the Court's dismissal, which was overturned by the Third Circuit for counts III and V and remanded for further proceedings. 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.
 - After remand from the Third Circuit, Plaintiffs filed a second amended complaint. The parties then proceeded to discovery. The parties issued written discovery and engaged in extensive written discovery



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with almost 15,000 documents produced by the parties or relevant third parties.

- 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. 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.
 - On September 15, 2020, Plaintiffs filed their motion and supporting memorandum for class certification. Defendants filed their opposition on November 3, 2020, and Plaintiffs filed their reply brief on November 24, 2020.
 - At that 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.
 - The settlement involves a cash payment to the Plan of \$13 million, arrived at after extremely hard fought negotiations by the parties. The Defendants also agreed to provide non-monetary relief as part of the Settlement.
 - Plaintiffs' counsel has applied to the Court to approve its fee request of 1/3 of the settlement amount, or \$4,333,333. On an hourly basis, the lodestar amount would be over \$6 million. The Court will have to determine the fairness of the fee request.
 - After a thorough review of the pleadings and interviews with the parties' counsel, Gallagher has concluded that the Settlement was achieved at arms' length and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims foregone. The fee request is also reasonable in light of the effort expended by Plaintiffs' counsel in the Litigation.
- 4.** The terms and conditions of the transaction are no less favorable to the plan than comparable arms-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances.



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- This condition has been met. The Settlement is at least as favorable as an arms-length transaction agreed to by unrelated parties would likely have been. Counsel for both sides confirmed that the Settlement was the product of arms-length negotiations.
5. The transaction is not part of an agreement, arrangement, or understanding designed to benefit a party in interest.
- Although the transaction will have the incidental effect of releasing the fiduciaries, the Settlement is not designed to benefit those fiduciaries, but rather to resolve claims that have not been fully adjudicated and to enable the Plans to recover a portion of their losses.
6. Any extension of credit by the plan to a party in interest in connection with the settlement of a legal or equitable claim against the party in interest is on terms that are reasonable, taking into consideration the creditworthiness of the party in interest and the time value of money.
- The condition is not applicable in that the Settlement does not require the Plans to extend credit to any party in interest.
7. The transaction is not described in Prohibited Transaction Exemption (PTE) 76-1 (relating to delinquent employer contributions to multiemployer and multiple employer collectively bargained plans).
- Neither the Settlement nor the underlying claims relate to delinquent employer contributions, and the Settlement is therefore not described in PTE 76-1.
8. All the terms of the settlement are specifically described in a written settlement agreement or consent decree.
- The condition has been met.
9. Assets other than cash may be received by the plan from a party in interest in connection with a settlement in limited, specified circumstances. To the extent assets other than cash are received by the plan in exchange for the release of the plan's or the plan fiduciary's claims, such assets must be specifically described in the written settlement agreement and



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valued at their fair market value, as determined in accordance with section 5 of the Voluntary Fiduciary Correction (VFC) Program.

- The condition does not apply because the monetary portion of the Settlement is being paid in cash.
- 10.** The plan does not pay any commissions in connection with the acquisition of assets.
- This condition will be met in that the Settlement provides for a cash payment, and no commission is indicated under the terms of the Settlement.
- 11.** The authorizing fiduciary acting on behalf of the plan has acknowledged in writing that it is a fiduciary with respect to the settlement of the litigation on behalf of the plan.
- The condition has been met.
- 12.** The plan fiduciary maintains or causes to be maintained for a period of six years the records necessary to enable authorized persons to determine whether the conditions of this exemption have been met.
- This condition will be met.

In light of the above factors, it is fair to conclude that the Settlement on the terms described above meets the requirements of the Class Exemption.

Investment advisory, named and independent fiduciary services are offered through Gallagher Fiduciary Advisors, LLC, an SEC Registered Investment Adviser. Gallagher Fiduciary Advisors, LLC is a single-member, limited-liability company, with Gallagher Benefit Services, Inc. as its single member. Neither Arthur J. Gallagher & Co., Gallagher Fiduciary Advisors, LLC nor their affiliates provide accounting, legal or tax advice.

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ESCROW AGREEMENT

This Escrow Agreement dated July 13, 2021, is made among Schlichter Board and Denton (“Class Counsel”) and Angeion Group, as escrow agent (“Escrow Agent”).

Recitals

A. This Escrow Agreement governs the deposit, investment and disbursement of the settlement funds that, pursuant to the Class Action Settlement Agreement (the “Settlement Agreement”) dated January 13, 2021 attached hereto as Exhibit A, entered into by, among others, Class Counsel on behalf of the Lead Plaintiffs, will be paid to settle the class action (“Class Action”) captioned *Sweda v. The University of Pennsylvania et al.*, Case No. 16-4329, pending in United States District Court for the Eastern District of Pennsylvania (the “Court”).

B. Pursuant to the terms of the Settlement Agreement, Defendants have agreed to pay or cause to be paid the total amount of \$13,000,000 in cash (the “Gross Settlement Amount”) in settlement of the claims brought against the Defendants in the Class Action.

C. The Gross Settlement Amount, together with any interest accrued thereon, is to be deposited into escrow and used to satisfy payments to Authorized Current and Former Participants, Class Counsel’s attorneys’ fees and expenses, payments for tax liabilities incurred by the Gross Settlement Amount, and authorized Administrative Expenses pursuant to the terms of the Settlement Agreement.

D. Unless otherwise defined herein, all capitalized terms shall have the meaning ascribed to them in the Settlement Agreement.

Agreement

1. Appointment of Escrow Agent. The Escrow Agent is hereby appointed to receive, deposit and disburse the Settlement Fund upon the terms and conditions provided in this Escrow Agreement, the Settlement Agreement and any other mutually agreed exhibits or schedules later annexed hereto and made a part hereof.

2. The Escrow Account. The Escrow Agent shall establish and maintain an escrow account titled as the *Sweda v. University of Pennsylvania* Settlement (the “Escrow Account”) to hold and maintain the Settlement Fund. Pursuant to the Settlement Agreement, Defendants shall cause two million dollars (\$2,000,000) to be deposited into the Escrow Account within twenty-one (21) calendar days following entry of the Court’s order preliminarily approving the settlement and the remaining balance of eleven million dollars (\$11,000,000) to be deposited into the Escrow Account within five (5) business days after the Settlement Effective Date. The Settlement Fund shall be held and invested on the terms and subject to the limitations set forth herein, and shall be released by Escrow Agent in accordance with the terms and conditions hereinafter set forth and set forth in the Settlement Agreement and in orders of the Court approving the disbursement of the Settlement Fund.

3. Investment of Settlement Fund. Per the Settlement Agreement Sections 5.1 and 5.2, Escrow Agent serving in that dedicated role (5.1), shall invest the Settlement Fund exclusively in an interest-bearing instrument or account within the meaning of Treas. Reg. § 1.468B-1 and backed by the full faith and credit of the United States Government or fully insured by the United States Government or an agency thereof, including a U.S. Treasury Fund or a bank account that is either (a) fully insured by the Federal Deposit Insurance Corporation (“FDIC”) or (b) secured by instruments backed by the full faith and credit of the United States Government. Settlement Agreement, Section 5.6. Escrow Agent shall prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur. Settlement Agreement, Section 5.1.

4. Escrow Funds Subject to Jurisdiction of the Court. The Settlement Fund shall remain subject to the jurisdiction of the Court until such time as the Fund shall be distributed, pursuant to the Settlement Agreement and on further order(s) of the Court.

5. Tax Treatment & Report. As noted above, the Settlement Fund shall be treated at all times as a “Qualified Settlement Fund” within the meaning of Treasury Regulation §1.468B-1. Per Section 5.1, Escrow Agent shall ensure that necessary and timely elections are made as necessary or advisable to fulfill the requirements of such Treasury Regulation, including the “relation-back election” under Treas. Reg. § 1.468B-1(j)(2) if necessary to the earliest permitted date. For purposes of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” of the Settlement Fund shall be the Escrow Agent. Settlement Agreement, Section 5.2. Class Counsel shall cooperate with Escrow Agent to provide requisite information, if available, to allow Escrow Agent to timely and properly prepare, deliver to all necessary parties for signature, and file all necessary documentation for any elections required under applicable tax laws.

6. Tax Payments of Settlement Fund. All Taxes with respect to the Settlement Fund, as more fully described in the Settlement Agreement, shall be treated as and considered to be a cost of administration of the Settlement Fund and the Escrow Agent shall timely pay such Taxes out of the Settlement Fund without prior order of the Court. As per Section 5 of the Settlement Agreement, Escrow Agent shall be responsible for the timely and proper preparation and delivery of any necessary documentation for signature by all necessary parties, and the timely filing of all tax returns and other tax reports required by law. Any taxes that may be deemed to be payable by the Defendant, Defense Counsel or Class Counsel by reason of the income earned on the Settlement Fund shall be deemed an Administrative Expense to be deducted and paid from the Gross Settlement Amount as provided in Sections 5.2, 5.3 and 5.9 of the Settlement Agreement. Escrow Agent shall establish such reserves as are necessary to cover the tax liabilities of the Settlement Fund by this paragraph and the provisions of the Settlement Agreement. If the Settlement Fund is returned to the Defendant pursuant to the terms of the Settlement Agreement, the Settling Parties agree to cooperate with the Escrow Agent to the extent necessary to carry out the provisions of the Settlement Agreement in the event the Court does not enter an order of final approval of the Settlement, including providing the Escrow Agent the necessary tax forms.

7. Disbursement Instructions

(a) Escrow Agent may, without further order of the Court or authorization by Class Counsel disburse the funds necessary to pay Administration Expenses as defined by the Settlement Agreement. However, Escrow Agent shall use best efforts to notify Class Counsel in advance of each payment to confirm that the expenses meet the definition of Administrative Expense as defined by the Settlement Agreement.

(b) Disbursements other than those described in paragraph 7(a), including disbursements for distribution of the Settlement Fund according to the Plan of Allocation, must be authorized by either (i) an order of the Court, or (ii) the written direction of Class Counsel.

(c) In the event funds transfer instructions are given (other than in writing at the time of execution of this Agreement), whether in writing, by facsimile, e-mail, or otherwise, Escrow Agent will seek confirmation of such instructions by telephone call back or electronic mail with requested receipt when new wire instructions are established to the person or persons designated in subparagraphs (a) and (b) above only if it is reasonably necessary, and Escrow Agent may rely upon the confirmations of anyone purporting to be the person or persons so designated. It will not be reasonably necessary to seek confirmation if Escrow Agent receives written letters authorizing a disbursement from each of the law firms of Class Counsel and Defense Counsel required in subparagraphs (a) and (b), as applicable, on their letterhead and signed by one of the persons designated in subparagraphs (a) and (b). To assure accuracy of the instructions it receives, Escrow Agent may record such calls back. If Escrow Agent is unable to verify the instructions, or is not satisfied with the verification it receives, it shall not execute the instruction until all issues have been resolved. The persons and telephone numbers for calls back may be validly changed only in a writing that (i) is signed by the party changing its notice designations, and (ii) is received and acknowledged by Escrow Agent. Class Counsel will notify Escrow Agent of any errors, delays or other problems within 30 days after receiving notification that a transaction has been executed. If it is determined that the transaction was delayed or erroneously executed as a result of Escrow Agent's error, Escrow Agent's sole obligation is to pay or refund the amount of such error and any amounts as may be required by applicable law. Any claim for interest payable will be at the then-published rate for United States Treasury Bills having a maturity of 91 days.

(d) The Escrow Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Escrow Agent's reliance upon and compliance with such instructions or any valid subsequent written instruction. The party providing electronic instructions agrees (i) to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Escrow Agent, including, without limitation, the risk of the Escrow Agent acting on unauthorized instructions, except as limited above, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting instructions to the Escrow Agent and that there may be more secure methods of transmitting instructions than the method(s) selected by the Escrow Agent; and (iii) that the security procedures (if any) to be followed in connection with its

transmission of instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances.

(e) It is understood and agreed that fund transfers may be accomplished by way of written check or other valid written instrument.

8. Termination of Settlement. If the Settlement Agreement terminates in accordance with its terms, Class Counsel shall notify Escrow Agent of the termination of the Settlement Agreement. Upon such notification, the balance of the Settlement Fund, together with any interest earned thereon, less any Administrative Expenses paid and actually incurred in accordance with the terms of the Settlement Agreement but not yet paid, and any unpaid Taxes due, shall be returned to the Defendant in accordance with instruction from the Defense Counsel.

9. Fees. All fees and expenses of Escrow Agent shall be paid solely from the Settlement Fund. The Escrow Agent may pay itself such fees from the Settlement Fund only after such fees have been approved for payment by Class Counsel. If Escrow Agent is asked to provide additional services, such as the preparation and administration of payments to Authorized Claimants, a separate agreement and fee schedule will be entered into.

10. Compensation of Custodial Bank. Escrow Agent intends to use The Huntington Bank, Federal Reserve Routing Number: 044000024, 41 S High Street, Columbus OH 43287 as the custodial bank to maintain or invest the Settlement Fund in an interest-bearing instrument or account as required above, Escrow Agent shall utilize its best efforts to provide Class Counsel a complete disclosure of all compensation the bank or other third party may receive as a result of this interest-bearing instrument or account. Compensation shall include all forms of compensation including any direct or indirect dollars, soft dollar payments, float, and/or finder's fees. The Huntington National Bank has disclosed to Class Counsel and the Escrow Agent that its estimated compensation, as defined above, as a result of this Settlement is \$335.94.

11. Duties, Liabilities and Rights of Escrow Agent. This Escrow Agreement and the terms of the Settlement Agreement set forth all of the obligations of Escrow Agent, and no additional obligations shall be implied from the terms of this Escrow Agreement or any other agreement, instrument or document.

(a) Escrow Agent may act in reliance upon any instructions, notice, certification, demand, consent, authorization, receipt, power of attorney or other writing delivered to it by Class Counsel, as provided herein and as contained in the Settlement Agreement, without being required to determine the authenticity or validity thereof or the correctness of any fact stated therein, the propriety or validity of the service thereof, or the jurisdiction of the court issuing any judgment or order. Escrow Agent may act in reliance upon any signature which is reasonably believed by it to be genuine, and may assume that such person has been properly authorized to do so.

(b) Escrow Agent may consult with legal counsel of its selection in the event of any dispute or question as to the meaning or construction of any of the provisions hereof or its duties hereunder, and it shall incur no liability and shall be fully protected to the extent Escrow

Agent acts in accordance with the reasonable opinion and instructions of counsel. Escrow Agent shall have the right to reimburse itself for reasonable legal fees and reasonable and necessary disbursements and expenses actually incurred from the Escrow Account only (i) upon approval by Class Counsel or (ii) pursuant to an order of the Court.

(c) The Escrow Agent, or any of its affiliates, is authorized to manage, advise, or service any money market mutual funds in which any portion of the Settlement Fund may be invested. However, any management, advice or service provided shall not result in any additional compensation to the Escrow Agent. Any compensation derived from these services, if any, shall be remitted to the Settlement Fund.

(d) Escrow Agent is authorized to hold any treasuries held hereunder in its federal reserve account. However, any holdings in any treasury in its federal reserve account shall not result in any additional compensation beyond that described in this agreement. Any compensation derived from these holdings, if any, shall be remitted to the Settlement Fund.

(e) Escrow Agent shall not bear any risks related to the investment of the Settlement Fund provided that the provisions of paragraph 3 of this Escrow Agreement are fully met.

(f) Escrow Agent shall not bear any liability or be responsible for the payment of any damages that result from Class Counsel's bad faith, willful misconduct or gross negligence, such damages and costs associated with the finding of such damages are to be paid by Class Counsel.

(g) Upon distribution of all of the funds in the Escrow Account pursuant to the terms of this Escrow Agreement, the Settlement Agreement and any orders of the Court, Escrow Agent shall be relieved of any and all further obligations and released from any and all liability under this Escrow Agreement, except as otherwise specifically set forth herein.

(h) In the event any dispute shall arise between the parties with respect to the disposition or disbursement of any of the assets held hereunder, the Escrow Agent shall be permitted to interplead all of the assets held hereunder into a court of competent jurisdiction, and thereafter be fully relieved from any and all liability or obligation with respect to such interpleaded assets. Class Counsel further agrees to pursue any redress or recourse in connection with such a dispute, without making the Escrow Agent a party to same.

12. Non-Assignability by Escrow Agent. Escrow Agent's rights, duties and obligations hereunder may not be assigned or assumed without the written consent of Class Counsel.

13. Resignation of Escrow Agent. Escrow Agent may, in its sole discretion, resign and terminate its position hereunder at any time following 120 days prior written notice to the parties to the Escrow Agreement herein. On the effective date of such resignation, Escrow Agent shall deliver this Escrow Agreement together with any and all related instruments or documents and all funds in the Escrow Account to the successor Escrow Agent, subject to this Escrow Agreement. If a successor Escrow Agent has not been appointed prior to the expiration of 120 days following the date of the notice of such resignation, then Escrow Agent may petition the Court for the

appointment of a successor Escrow Agent, or other appropriate relief. Any such resulting appointment shall be binding upon all of the parties to this Escrow Agreement.

14. Notices. Notice to the parties hereto shall be in writing and delivered by hand-delivery, facsimile, electronic mail or overnight courier service, addressed as follows:

If to Class Counsel: Jerome J. Schlichter
Schlichter Bogard and Denton
100 South Fourth Street
Suite 1200
Saint Louis, Missouri 63102

If to Escrow Agent: Angeion Group
Shawn Naugle
1650 Arch Street, Suite 2210
Philadelphia, PA 19103
Telephone: (215) 400-2199
E-mail: snaugle@AngeionGroup.com

15. Patriot Act Warranties. Section 326 of the USA Patriot Act (Title III of Pub. L. 107-56), as amended, modified or supplemented from time to time (the "Patriot Act"), requires financial institutions to obtain, verify and record information that identifies each person or legal entity that opens an account (the "Identification Information"). The parties to this Escrow Agreement agree that they will provide the Escrow Agent with such Identification Information as the Escrow Agent may request in order for the Escrow Agent to satisfy the requirements of the Patriot Act.

16. Entire Agreement. This Escrow Agreement, including all Schedules and Exhibits hereto, including the Settlement Agreement, constitute the entire agreement and understanding of the parties hereto. Any modification of this Escrow Agreement or any additional obligations assumed by any party hereto shall be binding only if evidenced by a writing signed by each of the parties hereto. To the extent this Escrow Agreement conflicts in any way with the Settlement Agreement, the provisions of the Settlement Agreement shall govern.

17. Governing Law. This Escrow Agreement shall be governed by the law of the Commonwealth of Pennsylvania in all respects. The parties hereto submit to the jurisdiction of the Court, in connection with any proceedings commenced regarding this Escrow Agreement, including, but not limited to, any interpleader proceeding or proceeding Escrow Agent may commence pursuant to this Escrow Agreement for the appointment of a successor escrow agent, and all parties hereto submit to the jurisdiction of such Court for the determination of all issues in such proceedings, without regard to any principles of conflicts of laws, and irrevocably waive any objection to venue or inconvenient forum.

17. Termination of Escrow Account. The Escrow Account will terminate after all funds deposited in it, together with all interest earned thereon, are disbursed in accordance with the provisions of the Settlement Agreement and this Escrow Agreement.

18. Miscellaneous Provisions.

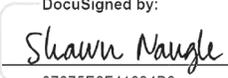
(a) Counterparts. This Escrow Agreement may be executed in one or more counterparts, each of which counterparts shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same Escrow Agreement.

(b) Further Cooperation. The parties hereto agree to do such further acts and things and to execute and deliver such other documents as Escrow Agent may request from time to time in connection with the administration, maintenance, enforcement or adjudication of this Escrow Agreement in order to (a) give Escrow Agent confirmation and assurance of Escrow Agent's rights, powers, privileges, remedies and interests under this Agreement and applicable law, (b) better enable Escrow Agent to exercise any such right, power, privilege or remedy, or (c) otherwise effectuate the purpose and the terms and provisions of this Escrow Agreement, each in such form and substance as may be acceptable to Escrow Agent.

(c) Non-Waiver. The failure of any of the parties hereto to enforce any provision hereof on any occasion shall not be deemed to be a waiver of any preceding or succeeding breach of such provision or any other provision.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Angeion Group, as Escrow Agent

By:  _____
DocuSigned by:
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Class Counsel

By:  _____

**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

Markham Sherwood, under penalty of perjury pursuant to 28 U.S.C. §1746, declares:

1. I am a Project Manager at Angeion Group (“Angeion”), a firm with offices in Philadelphia, PA that provides consulting services relating to the design and implementation of class action and mass tort litigation settlements and notice programs. I am responsible for Angeion’s consulting services, including the implementation of the notice program in this matter. The following statements are based on my personal knowledge and information provided by other Angeion employees working under my supervision, and if called as a witness, could and would testify competently thereto.

2. In compliance with the Order Granting Preliminary Approval of Settlement (Doc. 103, June 29, 2021) and §2.39 of the Settlement Agreement (Doc. 95-2), Angeion was retained by Class Counsel to serve as the Settlement Administrator. Section 3.4 of the Settlement Agreement and the Order provide additional direction on the date and manner of the notice procedure. I submit this Declaration in order to provide the Court and the parties to the Settlement with information regarding the notice program of the Notices of Class Action Settlement and Fairness Hearing (“the Settlement Notice”), the Claim Form, and other administrative activities in accordance with the Settlement Agreement. All capitalized terms in this Declaration have the same meaning as in the Settlement Agreement, unless otherwise specified herein.

3. Angeion was responsible for providing notice to Settlement Class Members.

Specifically, the Notice was to be sent by electronic means or mailed by first class mail, postage prepaid, to the last known address of each Settlement Class Member who could be identified by the Plan's recordkeeper through commercially reasonable means.

4. Angeion received from the Plan's recordkeepers data files containing the names, addresses, social security numbers, plan status, and account balance data for the Class Members. Additionally, some records contained e-mail addresses for the Class Members. The data was consolidated into a single database and was updated using the National Change of Address ("NCOA") database maintained by the United States Postal Service ("USPS"),¹ certified via the Coding Accuracy Support System ("CASS"),² and verified through Delivery Point Validation ("DPV").³ This resulted in mailable address records or e-mail records for 44,252 Settlement Class Members.

5. On August 27, 2021 Angeion caused Settlement Notice to be mailed or e-mailed to all 44,252 Settlement Class Members as follows: (1) 5,228 Settlement Notices for Former Participants and Former Participant Claim Forms were mailed to Class Members who were determined to be Former Participants, meaning persons who participated in the Plan during the Class Period and on January 14, 2021 did not have a Plan balance greater than \$0. In addition to these notices,, on August 27, 2021, 4,276 Former Participants for which an e-mail address was provided were e-mailed Settlement Notices and with a link to an electronic version of the

¹ The NCOA database contains records of all permanent change of address submissions received by the USPS for the last four years. The USPS makes this data available to mailing firms, and lists submitted to it are automatically updated with any reported move based on a comparison with the person's name and last known address.

² Coding Accuracy Support System is a certification system used by the USPS to ensure the quality of ZIP + 4 coding systems.

³ Records that are ZIP + 4 coded are then sent through Delivery Point Validation to verify the address and identify Commercial Mail Receiving Agencies. DPV verifies the accuracy of addresses, and reports exactly what is wrong with incorrect addresses.

Former Participant Claim Form. (2) On August 27, 2021, 13,633 Settlement Notices for Current Participants were mailed to Class Members whom were determined to be Current Participants, meaning persons who participated in the Plan during the Class Period and on January 14, 2021 had a positive Plan balance. In addition to the mailed Settlement Notices for Current Participants, on August 27, 2021, 21,115 Current Participants for which an e-mail address was provided were e-mailed the Settlement Notices for Current Participants. Copies of Former Participant Notice and Claim Form as well as the Current Participant Notice in both mail and e-mail format are attached as Exhibit A.

6. On or about August 27, 2021, Angeion was forwarded an inquiry from Plaintiffs' counsel and received approximately one (1) inquiry from a Class Member who received Former Participant Notices via e-mail that contained a scrivener's error in Question 5 of the Notice identifying them as a Current Participant. The e-mailed Notice was accurate in the three other places they were identified as a Former Participant. Nevertheless, out of an abundance of caution, Angeion corrected the error and re-sent the Notice to all 4,276 Former Participants with a valid e-mail address on August 31, 2021.

7. Angeion developed an electronic Former Participant Claim Form application which was also placed on the website maintained by Class Counsel and referenced in the e-mail version of the Notice to Former Participants. The Former Participant Claim Form application allows Class Members to fill out and electronically submit Former Participant Claim Forms and supporting documentation.

8. Shortly after Settlement Notices were sent, Angeion analyzed the records of those individuals who were sent Settlement Notices via e-mail but were returned as undeliverable and promptly mailed Settlement Notices to Class Members as follows: (1) 422 Settlement Notices to

Former Participants and Former Participant Claim Forms were mailed to Former Participants; and, (2) 844 Settlement Notices were mailed to Current Participants.

9. As of the date of this declaration, the USPS has returned 90 Notices as undeliverable. Of these undeliverable Notices, Angeion located 64 new addresses through a third-party commercial data source, Experian. Angeion re-mailed the Notices to those 64 Class Members at these updated addresses.

10. Angeion established and is maintaining a toll-free phone number (1-855-516-9339) for the Settlement to provide Class Members with additional information regarding the settlement. The toll-free number became operational on August 27, 2021, and automated service was available 24 hours per day, 7 days per week. As of the date of this declaration, Angeion has received a total of 442 telephone calls out of which 147 Class Members requested to speak with a customer service representative for assistance, all of which have been responded to in a timely manner. In response to telephone requests for Settlement Notices made directly to Angeion, an additional five (5) Notices were mailed.

11. Per this Court's Preliminary Approval Order, all valid claim forms must be received by the Settlement Administrator with a postmark date or submitted online no later than October 17, 2021. As of the date of this declaration, Angeion has received 868 completed Claim Forms.

12. Angeion has paid or will pay the following Administrative Expenses from the Gross Settlement Amount: 1.) Angeion total fees for Claims Administration through September 30, 2021, \$41,170.60; 2.) the Independent Fiduciary's fee is \$20,000; and 3.) Escrow Agent fee is \$335.94. Angeion estimates remaining Administrative Expenses for Claims Administration of \$53,500.00. Angeion also will reserve \$150,000 of the Gross Settlement Amount as a reserve for

unanticipated future Administrative Expenses and adjustments due to data or calculation errors to be paid under §5.8 of the Settlement Agreement.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on October 13, 2021 in San Francisco, CA.



Markham Sherwood
Project Manager – Angeion Group

Exhibit A

**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

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Y r r d r r

All participants and beneficiaries of the University of Pennsylvania Matching Plan, the Supplemental Retirement Annuity Plan of the University of Pennsylvania, and the University of Pennsylvania Basic Plan (collectively referred to as either Plan or Plans) from August 10, 2010 through January 14, 2021, excluding the Defendants.

The Class Period is defined as August 10, 2010 through January 14, 2021. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

**IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE YOU HAVE UNTIL
SEPTEMBER 15, 2021 TO FILE YOUR WRITTEN OBJECTION WITH THE COURT**

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY

The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Plans alleging violations of the Employee Retirement Income Security Act ("ERISA"). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of January 14, 2021 ("Current Participants"). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of January 14, 2021 ("Former Participants") will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 13, 2021. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at UPenn403Settlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options and the deadlines to exercise them are explained in this Settlement Notice.

Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement will be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives' petition for Attorneys' Fees and Costs and for Class Representatives' Compensation will take place on October 27, 2021 at 10:00 a.m., before United States District Court Judge Gene E.K. Pratter in Courtroom 10, 601 Market Street, Philadelphia, PA 19106.

Any objections to the Settlement, to the petition for Attorneys' Fees and Costs, or to Class Representatives' Compensation, must be served in writing on Class Counsel and Defendants' Counsel, as identified on page 7 of this Settlement Notice.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at UPenn403Settlement.com.

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 C rr P r S Ad r r F r r P r r d d r
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YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT TO RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT YOU MUST RETURN THE ENCLOSED FORMER PARTICIPANT CLAIM FORM BY OCTOBER	<u>Our records indicate that you are a Former Participant.</u> To receive your share of the Net Settlement Amount, you must return a Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021. If you do not return the Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021, you will forfeit your share of the Net Settlement Amount, even though you will be bound by the Settlement, including the release. A claim form is enclosed with this notice but may also be obtained by accessing UPenn403bSettlemt.com.
YOU CAN OBJECT NO LATER THAN SEPTEMBER	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.
YOU CAN ATTEND A HEARING ON OCTOBER	If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by September 27, 2021, of your intention to appear at the hearing.

T C A

The case is called *eda et al ni ersit fPenns l ania et al*, No. 16-cv-4329 (E.D. Pa.) (the “Class Action”). The Court supervising the case is the United States District Court for the Eastern District of Pennsylvania. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are the University of Pennsylvania and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at UPenn403 Settlement.com.

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The Settlement was reached on January 13, 2021. Class Counsel filed this action on August 10, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions without a mediator. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$13,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$13,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Add Pr S

In addition to the monetary component, the Settlement contains Defendants’ acknowledgement that in or around Spring 2021, the Plans:

- (i) 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 and

- (ii) intend to offer an updated investment menu, including investment options offered in the lowest-cost share class available to the Plans.

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

- (1) 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.
- (2) Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

R

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) The University of Pennsylvania, the Investment Committee, Jack Heuer; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plans (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plans and the Plans' fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at UPenn403 Settlement.com. Generally, the release means that Class Members

will not have the right to sue the Defendants, the Plans, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at UPenn403 Settlement.com.

S A r F d C S C A

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing this case and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys’ Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$4,333,333, in addition to no more than \$410,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys’ Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for nine Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives’ Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will be filed with the Court and made available on the Settlement Website, UPenn403 Settlement.com.

D d I R T S N

The Court caused this Settlement Notice to be sent to you because the Plans’ records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

I T C A A

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §1001, *et se* , with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plans’ participants, including by monitoring, reviewing, and evaluating the Plans’ investment options, by monitoring, reviewing, and evaluating the administrative fees paid by the Plans, by eliminating or adding investment options when appropriate, and by negotiating fees for administrative services for the Plans to ensure that the Plans paid reasonable fees for the services provided.

I T r A S

The Court has not reached a final decision as to the Class Representatives’ claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants’ counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

H M M D r

The amount, if any, that will be allocated to you will be based upon records maintained by the Plans’ recordkeeper(s), or, if on January 14, 2021, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former

Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) “Current Participant” as defined on page 1, or (2) an “Authorized Former Participant” (a “Former Participant” as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at UPenn403 Settlement.com.

There are approximately 20,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

H C I R M D r

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **A r d P r r d r F r r P r T r r r r d r r r S**

I R M D r

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in early to mid-year 2022.

T r N P U d r T S I T S A r I T r d

C I O O T S

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

D I H A L r I T C

The Court has appointed the law firm Schlichter, Rogard Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

H T L r P d

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$4,333,333 in fees and \$410,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

H D I T T C r I I D L T S

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *eda et al ni fPenns l ania et al*, No. 16-cv-4329 (E.D. Pa.). e sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than September 27, 2021. The Court’s address is Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, James A. yrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. Your written objection also must be mailed to the lawyers listed below, r S r Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS COUNSEL
SCHLICHTER, OGARD DENTON Attn: Univ. of Pennsylvania 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 UPenn403bSettlement uselaws.com	MORGAN, LEWIS OCKIUS LLP Attn: Christopher oran 77 W. Wacker Dr. Chicago, IL 60601-5094 (Christopher. oran morganlewis.com)

A d r T C r D d r T A r T S

The Court will hold a Fairness Hearing at 10:00 a.m. on October 27, 2021, at the United States District Court for the Eastern District of Pennsylvania, Courtroom 10- , 601 Market Street, Philadelphia, PA 19106.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel’s Attorneys’ Fees and Costs and any Class Representatives’ Compensation.

D I H T A d T F r H r

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

M I S A T F r H r

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *eda et al ni fPenns l ania et al*, No. 16-cv-4329 (E.D. Pa.)” e sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, r S r .

H I I D N A A

I r C rr P r d d d d r S
C A d r d S N S r d S

If you are a “Former Participant” as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **UT YOU ILL NOT RECEIVE ANY MONEY UNLESS YOU SU MIT A FORMER PARTICIPANT CLAIM FORM.**

A rd P r rd r F r rP r d F r rP r C
F r rd r r r r S

H D I M r I r

If you have general questions regarding the Settlement, you can visit this website: [UPenn403 Settlement.com](http://UPenn403Settlement.com), call 1-855-516-9339, or write to the Settlement Administrator at:

Sweda v. University of Pennsylvania
c o Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

Univ. of Pennsylvania 403(b) Settlement Administrator
www.UPenn403bSettlement.com

FORMER PARTICIPANT CLAIM FORM

ABC1234567890

Claim Number: 1111111

ABC1234567890

Confirmation Code: 12345

JOHN Q CLASS MEMBER
123 MAIN ST
APT 1
ANYTOWN, ST 12345

This Former Participant Claim Form is **ONLY** for Class Members who are **Former Participants**, or the beneficiaries, alternate payees or attorneys-in-fact of Former Participants (all of whom will be treated as Former Participants). A Former Participant is a Class Member who did not have an account in the Plans (as defined below) with a balance greater than \$0 as of January 14, 2021.

This form must be completed, signed, and mailed to the Settlement Administrator with a postmark date on or before **October 17, 2021** or electronically filed online at www.UPenn403BSettlement.com no later than **October 17, 2021** in order for you to receive your share of the Settlement proceeds. **Former Participants who do not complete and timely return this form will not receive any Settlement payment.** Please review the instructions below carefully. If you have questions regarding this Claim Form, you may contact the Settlement Administrator as indicated below.

PART 1: INSTRUCTIONS FOR COMPLETING FORMER PARTICIPANT CLAIM FORM

1. Complete this claim form and keep a copy of all pages of your Former Participant Claim Form, including page 1 with the address label, for your records.
2. Mail your completed Former Participant Claim Form postmarked no later than **October 17, 2021** to the Settlement Administrator at the following address:

Univ. of Pennsylvania 403(b) Settlement Administrator
Sweda v. University of Pennsylvania
c/o Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

Claim Forms may also be completed and submitted to the Settlement Administrator electronically online at www.UPenn403bSettlement.com. Electronic Claim Forms must be submitted no later than October 17, 2021.

It is your responsibility to ensure the Settlement Administrator has timely received your Former Participant Claim Form.

3. Other Reminders:
 - You must provide date of birth, signature, and a completed Substitute IRS Form W-9, which is attached as Part 5 to this form.
 - If you desire to do a rollover but do not complete in full the rollover information in Part 4 Payment Election of the Settlement Distribution Form, payment will be made to you directly.
 - If you change your address after sending in your Former Participant Claim Form, please send your new address to the Settlement Administrator.
 - **Timing Of Payments To Eligible Settlement Class Members.** Please note that Settlement payments are subject to the Settlement Agreement’s receiving final Court approval. If the Settlement Agreement is approved and if you are entitled to a Settlement payment under the terms of the Settlement, such payments will be distributed no earlier than early to mid-year 2022 due to the need to process and verify information for all Settlement Class Members who are entitled to a payment and to compute the amount of each payment. Payments may be further delayed if any appeals are filed.
4. **Questions?** If you have any questions about this Former Participant Claim Form, please call the Settlement Administrator at 1-855-516-9339.
5. The Settlement Administrator will provide advice only regarding completing this form and will not provide financial, tax, or other advice concerning the Settlement. You therefore may want to consult with your financial or tax advisor. Information about the status of the approval of the Settlement, Settlement administration, and claim processing is available on the lawsuit website, www.UPenn403bSettlement.com.

Your Mailing Address

City	State	Zip Code

PART 4: PAYMENT ELECTION

- Payment to Self** – A check subject to mandatory federal and applicable state withholding tax will be mailed to your address on the previous page.
- Direct Rollover to an Eligible Plan** – Check only one box below and complete Rollover Information Section Below:
 - Government 457(b) 401(a)/401(k) 403(b)
 - Direct Rollover to a Traditional IRA Direct Rollover to a Roth IRA (subject to ordinary income tax)

Rollover Information:

Company or Trustee's Name (to whom the check should be made payable)

--

Company or Trustee's Mailing Address 1

--

Company or Trustee's Mailing Address 2

--

Company or Trustee's City

--	--	--

Account Number

--

Company or Trustee's Phone Number

--	--	--	--	--	--	--	--	--	--

PART 5: SIGNATURE, CONSENT, AND SUBSTITUTE IRS FORM W-9

UNDER PENALTIES OF PERJURY UNDER THE LAWS OF THE UNITED STATES OF AMERICA, I CERTIFY THAT ALL OF THE INFORMATION PROVIDED ON THIS FORMER PARTICIPANT CLAIM FORM IS TRUE, CORRECT, AND COMPLETE AND THAT I SIGNED THIS FORMER PARTICIPANT CLAIM FORM.

1. The Social Security number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. Person (including a U.S. resident alien).

M M	D D	Y Y Y Y
<table border="1" style="display: inline-table; width: 20px; height: 20px;"></table>	<table border="1" style="display: inline-table; width: 20px; height: 20px;"></table>	<table border="1" style="display: inline-table; width: 40px; height: 20px;"></table>

Participant Signature

Date Signed (Month Day Year)

Note: if you have been notified by the IRS that you are subject to backup withholding, you must cross out item 2 above. The IRS does not require your consent to any provision of this document other than this Form W-9 certification to avoid backup withholding.

From: Univ. of Pennsylvania 403(b) Settlement Administrator
<DoNotReply@upenn403bsettlementclaim.com>
Sent: Monday, August 30, 2021 10:39 AM
To: [REDACTED]
Subject: [External] UPenn 403b Plan Notice of Class Action Settlement

[This is an External Email – Do Not Click Unsolicited Links or Attachments]

Notice ID:

Confirmation Code:

If you wish to file a claim online, please visit www.UPenn403bSettlementClaim.com and enter your Notice ID and Confirmation Code as they appear above.

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

JENNIFER SWEDA, ET AL.,

Plaintiff,

v.

THE UNIVERSITY OF PENNSYLVANIA, ET AL.,

Defendant.

No. 2:16-cv-4329-GEKP

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your rights might be affected if you are a member of the following class:

All participants and beneficiaries of the University of Pennsylvania Matching Plan, the Supplemental Retirement Annuity Plan of the University of Pennsylvania, and the University of Pennsylvania Basic Plan (collectively referred to as either Plan or Plans) from August 10, 2010 through January 14, 2021, excluding the Defendants.

The Class Period is defined as August 10, 2010 through January 14, 2021. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE UNTIL SEPTEMBER 27, 2021 TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

The Court has given its preliminary approval to a proposed settlement (the “Settlement”) of a class action lawsuit brought by certain participants in the Plans alleging violations of the Employee Retirement Income Security Act (“ERISA”). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of January 14, 2021 (“Current Participants”). Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of January 14, 2021 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 13, 2021. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at UPenn403BSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on October 27, 2021 at 10:00 a.m., before United States District Court Judge Gene E.K. Pratter in Courtroom 10B, 601 Market Street, Philadelphia, PA 19106.

Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs, or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page 7 of this Settlement Notice.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at

www.UPenn403bSettlement.com

According to the Plans’ records, you are a Former Participant. If you believe instead that you meet the definition of a Current Participant, please contact the Settlement Administrator. Former Participants are individuals who no longer had an account balance in one or more of the Plans greater than \$0 as of January 14, 2021.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:

<p>OUR RECORDS INDICATE THAT YOU ARE A FORMER PARTICIPANT. TO RECEIVE YOUR SHARE OF THE NET SETTLEMENT AMOUNT, YOU MUST RETURN THE LINKED FORMER PARTICIPANT CLAIM FORM BY OCTOBER 17, 2021.</p>	<p><u>Our records indicate that you are a Former Participant.</u> To receive your share of the Net Settlement Amount, you must return a Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021. If you do not return the Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021, you will forfeit your share of the Net Settlement Amount, even though you will be bound by the Settlement, including the release. A claim form is linked in this notice but may also be obtained by accessing www.UPenn403BSettlement.com.</p>
<p>YOU CAN OBJECT (NO LATER THAN SEPTEMBER 27, 2021)</p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.</p>
<p>YOU CAN ATTEND A HEARING ON OCTOBER 27, 2021</p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by September 27, 2021 of your intention to appear at the hearing.</p>

The Class Action

The case is called *Sweda et al. v. University of Pennsylvania et al.*, No. 16-cv-4329 (E.D. Pa.) (the “Class Action”). The Court supervising the case is the United States District Court for the Eastern District of Pennsylvania. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are the University of Pennsylvania and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at www.UPenn403BSettlement.com.

The Settlement

The Settlement was reached on January 13, 2021. Class Counsel filed this action on August 10, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions without a mediator. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$13,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$13,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current

Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Additional Provisions in the Settlement

In addition to the monetary component, the Settlement contains Defendants' acknowledgement that in or around Spring 2021, the Plans:

- i. 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 and
- ii. intend to offer an updated investment menu, including investment options offered in the lowest-cost share class available to the Plans.

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

1. 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.
2. Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
3. 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.
4. 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.
5. 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.
6. 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.

Release

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) The University of Pennsylvania, the Investment Committee, Jack Heuer; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assign; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plans (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plans and the Plans' fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action; and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at UPenn403BSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants, the Plans, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.UPenn403BSettlement.com.

Statement of Attorneys' Fees and Costs Sought in the Class Action

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing this case and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$4,333,333, in addition to no more than \$410,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for six Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.UPenn403BSettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plans' records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plans' participants, including by monitoring, reviewing, and evaluating the Plans' investment options, by monitoring, reviewing, and evaluating the administrative fees paid by the Plans, by eliminating or adding investment options when appropriate, and by negotiating fees for administrative services for the Plans to ensure that the Plans paid reasonable fees for the services provided.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations

between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on January 14, 2021, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at www.UPenn403BSettlement.com.

There are approximately 20,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's

allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to the Plans’ records, you are a Former Participant. Therefore, if this is correct, you need to submit a claim form to receive your share of the Settlement.**

6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in early to mid-year 2022.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$4,333,333 in fees and \$410,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

10. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Sweda et al. v. Univ. of Pennsylvania et al.*, No. 16-cv-4329 (E.D. Pa.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than September 27, 2021. The Court’s address is Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. Your written objection also must be mailed to the lawyers listed below, **no later than September 27, 2021**. Please note that the Court’s Order

Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

Class Counsel	Defendants' Counsel
SCHLICHTER, BOGARD & DENTON Attn: Univ. of Pennsylvania 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 UPenn403bSettlement@uselaws.com	MORGAN, LEWIS & BOCKIUS LLP Attn: Christopher Boran 77 W. Wacker Dr. Chicago, IL 60601-5094 (Christopher.Boran@morganlewis.com)

11. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on October 27, 2021, at the United States District Court for the Eastern District of Pennsylvania, Courtroom 10-B, 601 Market Street, Philadelphia, PA 19106.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

12. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Sweda et al. v. Univ. of Pennsylvania et al.*, No. 16-cv-4329 (E.D. Pa.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than September 27, 2021**.

14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved.

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

According to the Plans' records, you are a Former Participant, so you will need to submit a Former Participant Claim Form in order to receive your share of the Settlement

15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website:

www.UPenn403BSettlement.com, call 1-855-516-9339, or write to the Settlement Administrator at:

Sweda v. University of Pennsylvania

c/o Angeion Group

1650 Arch Street, Suite 2210

Philadelphia, PA 19103

Info@UPenn403bsettlementclaim.com

[Unsubscribe](#)

<p>A r d P r r d r C r r P r I d d</p> <p>F r r P r S A d r r C r r P r d r</p> <p>r r d r r r d U P P r r P</p>
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YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT	
<p>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT</p>	<p>Our records indicate that you are a Current Participant because you had an account balance in one or more of the Plans as of January 14, 2021. If, however, you are a Former Participant who participated in one or more of the Plans during the Class Period and did not have a balance greater than \$0 as of January 14, 2021 or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form. However, if you believe you are a Former Participant, a claim form may be obtained by accessing UPenn403 Settlement.com.</p>
<p>YOU CAN OBJECT NO LATER THAN SEPTEMBER</p>	<p>If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.</p>
<p>YOU CAN ATTEND A HEARING ON OCTOBER</p>	<p>If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by September 27, 2021 of your intention to appear at the hearing.</p>

T C A

The case is called *eda et al ni ersit fPenns l ania et al*, No. 16-cv-4329 (E.D. Pa.) (the “Class Action”). The Court supervising the case is the United States District Court for the Eastern District of Pennsylvania. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are the University of Pennsylvania and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at UPenn403 Settlement.com.

T S

The Settlement was reached on January 13, 2021. Class Counsel filed this action on August 10, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions without a mediator. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$13,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$13,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Add Pr S

In addition to the monetary component, the Settlement contains Defendants' acknowledgement that in or around Spring 2021, the Plans:

- (i) 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 and
- (ii) intend to offer an updated investment menu, including investment options offered in the lowest-cost share class available to the Plans.

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

- (1) 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.
- (2) Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
- (3) 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.
- (4) 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.
- (5) 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.
- (6) 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.

R

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) The University of Pennsylvania, the Investment Committee, Jack Heuer; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plans (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by,

through, or in concert with any of them; and (f) the Plans and the Plans’ fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action; and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at UPenn403 Settlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants, the Plans, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.UPenn403 Settlement.com.

S A r F d C S C A

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing this case and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys’ Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount, \$4,333,333, in addition to no more than \$410,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys’ Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for six Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives’ Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will be filed with the Court and made available on the Settlement Website, UPenn403 Settlement.com.

D d I R T S N

The Court caused this Settlement Notice to be sent to you because the Plans’ records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

I T C A A

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 (“ERISA”), as amended, 29 U.S.C. §1001, *et se*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plans’ participants, including by monitoring, reviewing, and evaluating the Plans’ investment options, by monitoring, reviewing, and evaluating the administrative fees paid by the Plans, by eliminating or adding investment options when appropriate, and by negotiating fees for administrative services for the Plans to ensure that the Plans paid reasonable fees for the services provided.

I T r A S

The Court has not reached a final decision as to the Class Representatives’ claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and

Defendants’ counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

H M M D r

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan’s recordkeeper(s), or, if on January 14, 2021, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) “Current Participant” as defined on page 1, or (2) an “Authorized Former Participant” (a “Former Participant” as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at UPenn403 Settlement.com.

There are approximately 20,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant’s or Authorized Former Participant’s allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

H C IR M D r

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **A r d P r r d r C r r P r T r r**
r r d d r r S

IR M D r

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in early to mid-year 2022.

T r N P U d r T S I T S A r I T r d

C I O O T S

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

D I H A L r I T C

The Court has appointed the law firm Schlichter, Ogard Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

H T L r P d

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$4,333,333 in fees and \$410,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

H D I T T C r I I D L T S

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *eda et al ni fPenns l ania et al*, No. 16-cv-4329 (E.D. Pa.). e sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than September 27, 2021. The Court’s address is Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, James A. yrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. Your written objection also must be mailed to the lawyers listed below, r S r Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

CLASS COUNSEL	DEFENDANTS COUNSEL
SCHLICHTER, OGDARD DENTON Attn: Univ. of Pennsylvania 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 UPenn403bSettlement uselaws.com	MORGAN, LEWIS OCKIUS LLP Attn: Christopher oran 77 W. Wacker Dr. Chicago, IL 60601-5094 (Christopher. oran morganlewis.com)

A d r T C r D d r T A r T S

The Court will hold a Fairness Hearing at 10:00 a.m. on October 27, 2021, at the United States District Court for the Eastern District of Pennsylvania, Courtroom 10- , 601 Market Street, Philadelphia, PA 19106.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel’s Attorneys’ Fees and Costs and any Class Representatives’ Compensation.

D I H T A d T F r H r

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

M I S A T F r H r

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a “Notice of Intention to Appear at Fairness Hearing in *eda et al ni fPenns l ania et al*, No. 16-cv-4329 (E.D. Pa.).” e sure to include your name, address, telephone number, and your signature. Your Notice of

Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, r S r .

H I D N A A											
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C	A	d	r	d	S	N	S	r	d	A	rd
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If you are a “Former Participant” as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **UT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

H D I M r I r											
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If you have general questions regarding the Settlement, you can visit this website: UPenn403 Settlement.com, call 1-855-516-9339, or write to the Settlement Administrator at:

Sweda v. University of Pennsylvania
c/o Angeion Group
1650 Arch Street, Suite 2210
Philadelphia, PA 19103

From: Univ. of Pennsylvania 403 Settlement Administrator
<DoNotReply@upenn403bsettlementclaim.com>
Sent: Friday, August 2, 2021 1:31 PM
To: [REDACTED]
Subject: [External] UPenn 403b Plan Notice of Class Action Settlement

[This is an External Email – Do Not Click Unsolicited Links or Attachments]

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

JENNIFER SWEDA, ET AL.,

Plaintiff,

v.

No. 2:16-cv-4329-GEKP

THE UNIVERSITY OF PENNSYLVANIA, ET AL.,

Defendant.

NOTICE OF CLASS ACTION SETTLEMENT AND FAIRNESS HEARING

Your rights might be affected if you are a member of the following class:

All participants and beneficiaries of the University of Pennsylvania Matching Plan, the Supplemental Retirement Annuity Plan of the University of Pennsylvania, and the University of Pennsylvania Basic Plan (collectively referred to as either Plan or Plans) from August 10, 2010 through January 14, 2021, excluding the Defendants.

The Class Period is defined as August 10, 2010 through January 14, 2021. For purposes of this Notice, if not defined herein, capitalized terms have the definitions in the Settlement Agreement, which is incorporated herein by reference.

IF YOU HAVE ANY OBJECTION TO THE SETTLEMENT DESCRIBED IN THIS NOTICE, YOU HAVE UNTIL SEPTEMBER 27, 2021 TO FILE YOUR WRITTEN OBJECTION WITH THE COURT.

PLEASE READ THIS SETTLEMENT NOTICE CAREFULLY.

The Court has given its preliminary approval to a proposed settlement (the "Settlement") of a class action lawsuit brought by certain participants in the Plans alleging violations of the Employee Retirement Income Security Act ("ERISA"). The Settlement will provide for the allocation of monies directly into the individual accounts of the Settlement Class who had Plan accounts during the Class Period with a balance greater than \$0 as of January 14, 2021 ("Current Participants").

Class Members who are entitled to a distribution but who no longer had a Plan account with a balance greater than \$0 as of January 14, 2021 (“Former Participants”) will receive their allocation in the form of a check mailed to their last known address or a rollover, if elected.

The terms and conditions of the Settlement are set forth in the Settlement Agreement dated January 13, 2021. Capitalized terms used in this Settlement Notice but not defined in this Settlement Notice have the meanings assigned to them in the Settlement Agreement. The Settlement Agreement is available at UPenn403BSettlement.com. Any amendments to the Settlement Agreement or any other settlement documents will be posted on that website. You should visit that website if you would like more information about the Settlement and any subsequent amendments to the Settlement Agreement or other changes, including changes to the Plan of Allocation, the date, time, or location of the Fairness Hearing, or other Court orders concerning the Settlement.

Your rights and options — and the deadlines to exercise them — are explained in this Settlement Notice.

Only if the Court gives final approval to the Settlement, and only if that approval is upheld in the event of an appeal, will payments under the Settlement be made.

A hearing on the final approval of the Settlement and for approval of the Class Representatives’ petition for Attorneys’ Fees and Costs and for Class Representatives’ Compensation will take place on October 27, 2021 at 10:00 a.m., before United States District Court Judge Gene E.K. Pratter in Courtroom 10B, 601 Market Street, Philadelphia, PA 19106.

Any objections to the Settlement, to the petition for Attorneys’ Fees and Costs, or to Class Representatives’ Compensation, must be served in writing on Class Counsel and Defendants’ Counsel, as identified on page 7 of this Settlement Notice.

Further information regarding the litigation, the Settlement, and this Settlement Notice, including any changes to the terms of the Settlement and all orders of the Court regarding the Settlement, may be obtained at

www.UPenn403BSettlement.com.

According to the Plans’ records, you are a Current Participant. If you believe instead that you meet the definition of a Former Participant, please contact the Settlement Administrator. Current Participants include both participants who are current employees and participants who are no longer employed by Univ. of Pennsylvania but continue to have an account balance in one or more of the Plans.

YOUR LEGAL RIGHTS AND OPTIONS UNDER THE SETTLEMENT:	
<p>OUR RECORDS INDICATE THAT YOU ARE A CURRENT PARTICIPANT. YOU DO NOT NEED TO DO ANYTHING TO PARTICIPATE IN THE SETTLEMENT</p>	<p><u>Our records indicate that you are a Current Participant because you had an account balance in one or more of the Plans as of anuary 14, 2021.</u> If, however, you are a Former Participant who participated in one or more of the Plans during the Class Period and did not have a balance greater than 0 as of anuary 14, 2021 or are the beneficiary, alternate payee, or attorney-in-fact of such a person, then, unlike a Current Participant, you must return a Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021 to receive a check for your share of the Net Settlement Amount. If you are a Former Participant, and you do not return the Former Participant Claim Form that is postmarked or electronically filed by October 17, 2021, you will forfeit your share of the Net Settlement Amount. We have not included a claim form in your notice because Current Participants do not need to submit a claim form. However, if you believe you are</p>

	a Former Participant, a claim form may be obtained by accessing UPenn403BSettlement.com.
YOU CAN OBJECT (NO LATER THAN SEPTEMBER 27, 2021)	If you wish to object to any part of the Settlement, you may (as discussed below) write to the Court and counsel about why you object to the Settlement. The Court has authorized the parties to seek information through discovery from any person who files an objection, which means you could be required to produce documents and appear at a deposition to be interviewed and asked questions.
YOU CAN ATTEND A HEARING ON OCTOBER 27, 2021	If you submit a written objection to the Settlement to the Court and counsel before the deadline, you may attend the hearing about the Settlement and present your objections to the Court. You may attend the hearing even if you do not file a written objection, but you will not be permitted to address the Court at the hearing if you do not notify the Court and counsel by September 27, 2021 of your intention to appear at the hearing.

The Class Action

The case is called *Sweda et al. v. University of Pennsylvania et al.*, No. 16-cv-4329 (E.D. Pa.) (the “Class Action”). The Court supervising the case is the United States District Court for the Eastern District of Pennsylvania. The individuals who brought this suit are called Class Representatives, and the entities they sued are called the Defendants. The Class Representatives are current and former participants in the Plans. The Defendants are the University of Pennsylvania and certain affiliates and individuals. The Class Representatives’ claims are described below, and additional information about them is available at UPenn403BSettlement.com.

The Settlement

The Settlement was reached on January 13, 2021. Class Counsel filed this action on August 10, 2016. Since the filing of the case and for a period of over three years, the parties engaged in substantial litigation. Class Counsel devoted substantial time and effort to review and analyze tens of thousands of pages of documents produced by Defendants and hundreds of thousands of pages of other documents to support their underlying claims. The Settling Parties engaged in substantial settlement discussions without a mediator. Only after extensive arm’s-length negotiations were the Settling Parties able to agree to the terms of the Settlement.

Under the Settlement, a Qualified Settlement Fund of \$13,000,000 will be established to resolve the Class Action. The Net Settlement Amount is \$13,000,000 minus any Administrative Expenses, taxes, tax expenses, Court-approved Attorneys’ Fees and Costs, Class Representatives’ Compensation, and other approved expenses of the litigation.

The Net Settlement Amount will be allocated to Class Members according to a Plan of Allocation to be approved by the Court. Class Members fall into two categories: Current Participants and Former Participants. Allocations to Current Participants who are entitled to a distribution under the Plan of Allocation will be made into their existing accounts in the

Plan(s). Former Participants who are entitled to a distribution will receive their distribution as a check mailed to their last known address or, if they elect, as a rollover to a qualified retirement account.

Additional Provisions in the Settlement

In addition to the monetary component, the Settlement contains Defendants' acknowledgement that in or around Spring 2021, the Plans:

- i. 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 and
- ii. intend to offer an updated investment menu, including investment options offered in the lowest-cost share class available to the Plans.

The Settlement further provides the following additional terms for a Settlement Period of three years from the Settlement Effective Date:

1. 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.
2. Defendants shall continue to provide annual training to Plan fiduciaries regarding their fiduciary duties under ERISA.
3. 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.
4. 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.
5. 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.
6. 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.

Release

All Class Members and anyone making a claim on their behalf will fully release the Plan as well as all Defendants and other "Released Parties" from "Released Claims." The Released Parties include (a) The University of Pennsylvania, the Investment Committee, Jack Heuer; (b) their insurers, co-insurers, and reinsurers; (c) their past, present, and future parent corporation(s); (d) their past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assign; (e) their past, present, and future agents, officers, employees, trustees, boards of trustees, members of their board of trustees, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plans (including their owners and employees), members of their immediate families, consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plans and the Plans' fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

The Released Claims include all claims that were asserted or might have been asserted in the Class Action; and all claims relating to the implementation of the Settlement.

This is only a summary of the Released Claims and not a binding description of the Released Claims. The actual governing release is found within the Settlement Agreement at UPenn403BSettlement.com. Generally, the release means that Class Members will not have the right to sue the Defendants, the Plans, or the Released Parties for conduct arising out of or relating to the allegations in the Class Action.

This is only a summary of the Settlement. The entire Settlement Agreement is at www.UPenn403BSettlement.com.

Statement of Attorneys' Fees and Costs Sought in the Class Action

Since mid-2016, Class Counsel has devoted many hours investigating potential claims, bringing this case and handling it. Class Counsel reviewed thousands of pages of documents produced in this case and, prior to filing this action, analyzed thousands of pages of publicly filed documents, including those filed with the Department of Labor, to support their claims. Class Counsel took the entire risk of litigation and has not been paid for any of their time or for any of their costs incurred in bringing this action. Class Counsel has also agreed: (1) to undertake the additional risk of paying half of the costs of the settlement process if the Settlement is not approved; (2) to monitor for three years compliance with the Settlement Agreement; (3) to enforce the Settlement Agreement in accordance with its terms; and (4) to do (1)-(3) without additional pay.

Class Counsel will apply to the Court for payment of Attorneys' Fees and Costs for their work in the case. The amount of fees (not including costs) that Class Counsel will request will not exceed one-third of the Settlement Amount,

\$4,333,333, in addition to no more than \$410,000 in litigation costs. Class Counsel will not seek to receive any interest earned by the Qualified Settlement Fund, which will be added to the amount received by the Class. Any Attorneys' Fees and Costs awarded by the Court to Class Counsel will be paid from the Qualified Settlement Fund and must be approved by the Court.

As is customary in class action cases, in which the Class Representatives have spent time and effort on the litigation, Class Counsel also will ask the Court to approve payments, not to exceed \$25,000 each, for six Class Representatives who took on the risk of litigation, devoted considerable time, and committed to spend the time necessary to bring the case to conclusion. Their activities also included assisting in the factual investigation of the case by Class Counsel and providing information for the case. Any Class Representatives' Compensation awarded by the Court will be paid from the Qualified Settlement Fund.

A full application for Attorneys' Fees and Costs and for Class Representatives' Compensation will be filed with the Court and made available on the Settlement Website, www.UPenn403BSettlement.com.

1. Why Did I Receive This Settlement Notice?

The Court caused this Settlement Notice to be sent to you because the Plans' records indicate that you may be a Class Member. If you fall within the definition of the Class, you have a right to know about the Settlement and about all of the options available to you before the Court decides whether to give its final approval to the Settlement. If the Court approves the Settlement, and after any objections and appeals, if any, are resolved, the Net Settlement Amount will be allocated among Class Members according to a Court-approved Plan of Allocation.

2. What Is The Class Action About?

In the Class Action, Class Representatives claim that, during the Class Period, the Defendant violated the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended, 29 U.S.C. §1001, *et seq.*, with respect to its management, operation and administration of the Plan, including allowing excessive fees and imprudent investments in the Plan.

Defendants have denied and continue to deny the claims and contentions of the Class Representatives, that they are liable at all to the Class, and that the Class or the Plans have suffered any harm or damage for which Defendants could or should be held responsible. Defendants contend that they acted prudently and in keeping with their fiduciary responsibilities under ERISA, and in the best interests of the Plans' participants, including by monitoring, reviewing, and evaluating the Plans' investment options, by monitoring, reviewing, and evaluating the administrative fees paid by the Plans, by eliminating or adding investment options when appropriate, and by negotiating fees for administrative services for the Plans to ensure that the Plans paid reasonable fees for the services provided.

3. Why Is There A Settlement?

The Court has not reached a final decision as to the Class Representatives' claims. Instead, the Class Representatives and Defendants have agreed to the Settlement. The Settlement is the product of extensive negotiations between Class Counsel and Defendants' counsel. The parties to the Settlement have taken into account the uncertainty and risks of litigation and have concluded that it is desirable to settle on the terms and conditions set forth in the

Settlement Agreement. The Class Representatives and Class Counsel, who are highly experienced in this kind of matter, believe that the Settlement is best for all Class Members.

4. How Much Will My Distribution Be?

The amount, if any, that will be allocated to you will be based upon records maintained by the Plan's recordkeeper(s), or, if on January 14, 2021, you either no longer had a Plan account or had a Plan account with no money in it, based upon your Former Participant Claim Form. Calculations regarding the individual distributions will be performed by the Settlement Administrator, whose determinations will be final and binding, pursuant to the Court-approved Plan of Allocation.

To be eligible for a distribution from the Net Settlement Amount, you must either be a (1) "Current Participant" as defined on page 1, or (2) an "Authorized Former Participant" (a "Former Participant" as defined on page 1 who submitted a completed, satisfactory Former Participant Claim Form that is postmarked by the deadline), or (3) a beneficiary, alternate payee, or attorney-in-fact of persons identified in (1) or (2).

The Plan of Allocation will allocate the Net Settlement Fund among Current and Authorized Former Participants as follows:

1. 1. The end-of-quarter balances for the Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Current Participant and each Authorized Former Participant;
3. An average end-of-quarter balance for each Current Participant and each Authorized Former Participant is calculated for the Class Period (with a zero included as the balance for any quarter during which the individual did not participate in the Plan);
4. For each Current Participant and each Authorized Former Participant, the average end-of-quarter balance of step 3 is divided by the average end-of-quarter balance for the Class Period of all Current and Authorized Former Participants;
5. Each Current Participant and each Authorized Former Participant will receive the fraction of the total Net Settlement Amount which is calculated in step 4.

No amount shall be distributed to a Class Member that is ten dollars (\$10.00) or less, because such an amount is de minimis and would cost more in processing than its value. The method of making these calculations is described in the Plan of Allocation, found in Article 6 of the Settlement Agreement and available at UPenn403BSettlement.com.

There are approximately 20,000 Class Members.

Note that if you are an alternate payee pursuant to a Qualified Domestic Relations Order, you will receive payment by check if and to the extent you are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under the Settlement Agreement in accordance with the plan of allocation as if you are a Current Participant or Authorized Former Participant.

5. How Can I Receive My Distribution?

Whether you need to submit a claim form to receive your distribution depends on whether you are considered a “Current Participant” or a “Former Participant.” **According to the Plan’s records, you are a Current Participant. Therefore, if this is correct, you do not need to do anything to receive your share of the Settlement.**

6. When Will I Receive My Distribution?

The timing of the distribution of the Net Settlement Amount depends on several matters, including the Court’s final approval of the Settlement and that approval becoming final and no longer subject to any appeals in any court. An appeal of the final approval may take several years. If the Settlement is approved by the Court, and there are no appeals, the Settlement distribution likely will occur in early to mid-year 2022.

There Will Be No Payments Under The Settlement If The Settlement Agreement Is Terminated.

7. Can I Get Out Of The Settlement?

No. The Class was certified under Federal Rule of Civil Procedure 23(b)(1). Therefore, as a Class Member, you are bound by any judgments or orders that are entered in the Class Action for all claims that were asserted in the Class Action or are otherwise included as Released Claims under the Settlement.

8. Do I Have A Lawyer In The Case?

The Court has appointed the law firm Schlichter, Bogard & Denton, in St. Louis, Missouri, as Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense.

9. How Will The Lawyers Be Paid?

Class Counsel will file a petition for the award of Attorneys’ Fees and Costs. This petition will be considered at the Fairness Hearing. Class Counsel has agreed to limit their application for an award of Attorneys’ Fees and Costs to not more than \$4,333,333 in fees and \$410,000 in costs and Class Counsel will also monitor compliance with the Settlement for three years without charge and has committed to bring an enforcement action, if needed, to enforce the Settlement, also with no charge. The Court will determine what fees and costs will be approved.

10. How Do I Tell The Court If I Don’t Like The Settlement?

If you are a Class Member, you can tell the Court that you do not agree with the Settlement or some part of it. To object, you must send the Court a written statement that you object to the Settlement in *Sweda et al. v. Univ. of Pennsylvania et al.*, No. 16-cv-4329 (E.D. Pa.). Be sure to include your name, address, telephone number, signature, and a full explanation of why you object to the Settlement. Your written objection must be received by the Court no later than September 27, 2021. The Court’s address is Clerk of the Court, United States District Court for the Eastern District of Pennsylvania, James A. Byrne U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106. Your written objection also must be mailed to the lawyers listed below, **no later than September 27, 2021**. Please note that the Court’s Order Granting Preliminary Approval of this Settlement provides that any party to the litigation may, but is not required to, serve discovery requests, including requests for documents and notice of deposition not to exceed two hours in length, on any

objector. Any responses to discovery, or any depositions, must be completed within ten days of the request being served on the objector.

Class Counsel	Defendants' Counsel
SCHLICHTER, BOGARD & DENTON Attn: Univ. of Pennsylvania 403(b) Settlement 100 S. Fourth St., Suite 1200 St. Louis, MO 63102 UPenn403bSettlement@uselaws.com	MORGAN, LEWIS & BOCKIUS LLP Attn: Christopher Boran 77 W. Wacker Dr. Chicago, IL 60601-5094 (Christopher.Boran@morganlewis.com)

11. When And Where Will The Court Decide Whether To Approve The Settlement?

The Court will hold a Fairness Hearing at 10:00 a.m. on October 27, 2021, at the United States District Court for the Eastern District of Pennsylvania, Courtroom 10-B, 601 Market Street, Philadelphia, PA 19106.

At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Fairness Hearing, the Court will decide whether to give its final approval to the Settlement. The Court also will consider the petition for Class Counsel's Attorneys' Fees and Costs and any Class Representatives' Compensation.

12. Do I Have To Attend The Fairness Hearing?

No, but you are welcome to come at your own expense. If you send an objection, you do not have to come to the Court to talk about it. As long as you mailed your written objection on time, the Court will consider it when the Court considers whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but such attendance is not necessary.

13. May I Speak At The Fairness Hearing?

If you are a Class Member, you may ask the Court for permission to speak at the Fairness Hearing. To do so, you must send a letter or other paper called a "Notice of Intention to Appear at Fairness Hearing in *Sweda et al. v. Univ. of Pennsylvania et al.*, No. 16-cv-4329 (E.D. Pa.)." Be sure to include your name, address, telephone number, and your signature. Your Notice of Intention to Appear must be mailed to the attorneys and filed with the Clerk of the Court, at the addresses listed in the Answer to Question No. 10, **no later than September 27, 2021**.

14. What Happens If I Do Nothing At All?

If you are a "Current Participant" as defined on page 1, and do nothing, you will participate in the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is approved. According to the Plans' records, you are a Current Participant.

If you are a "Former Participant" as defined on page 1, and you do nothing, you will be bound by the Settlement of the Class Action as described above in this Settlement Notice if the Settlement is finally approved, **BUT YOU WILL NOT RECEIVE ANY MONEY UNLESS YOU SUBMIT A FORMER PARTICIPANT CLAIM FORM.**

15. How Do I Get More Information?

If you have general questions regarding the Settlement, you can visit this website:

www.UPenn403BSettlement.com, call 1-855-516-9339, or write to the Settlement Administrator at:

Sweda v. University of Pennsylvania

c/o Angeion Group

1650 Arch Street, Suite 2210

Philadelphia, PA 19103

Info@UPenn403bsettlementclaim.com

[Unsubscribe](#)



**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] FINAL ORDER AND JUDGMENT

Upon consideration of the Plaintiffs' Unopposed Motion for Final Approval of the Settlement of the above-referenced litigation under the terms of a Class Action Settlement Agreement dated January 13, 2021, (the "Settlement Agreement"), the Court hereby orders and adjudges as follows:

1. For purposes of this Final Order and Judgment, capitalized terms used herein have the definitions set forth in the Settlement Agreement, which is incorporated herein by reference.
2. In accordance with the Court's Preliminary Approval Order, Settlement Notice was timely distributed by electronic or first-class mail to all Class Members who could be identified with reasonable effort, and Settlement Notice was published on the Settlement Website maintained by Class Counsel. In addition, pursuant to the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, notice was provided to the Attorneys General for each of the states in which a Class Member resides, the Attorney General of the United States, and the United States Secretary of Labor.
3. The form and methods of notifying the Settlement Class of the terms and conditions of the proposed Settlement Agreement met the requirements of Fed. R. Civ. P. 23(c)(2), any other applicable law, and due process, and constituted the best notice practicable

under the circumstances; and due and sufficient notices of the Fairness Hearing and the rights of all Class Members have been provided to all people, powers and entities entitled thereto.

4. All requirements of the Class Action Fairness Act, 28 U.S.C. § 1711, *et seq.*, have been met.

5. Class Members had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

6. Each and every objection to the Settlement is overruled with prejudice.

7. The Motion for Final Approval of the Settlement Agreement is hereby **GRANTED**, the Settlement of the Class Action is **APPROVED** as fair, reasonable, and adequate to the Plans and the Settlement Class, and the Settling Parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

8. The operative complaint and all claims asserted therein in the Class Action are hereby dismissed with prejudice and without costs to any of the Settling Parties and Released Parties other than as provided for in the Settlement Agreement.

9. The Plans, the Class Representatives, and the Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, predecessors, successors, assigns, agents, and attorneys) hereby fully, finally, and forever settle, release, relinquish, waive, and discharge all Released Parties (including Defendants) from the Released Claims, regardless of whether or not such Class Member receives a monetary benefit from the Settlement, executed and delivered a Former Participant Claim Form, filed an objection to the Settlement or to any application by Class Counsel for an award of

Attorneys' Fees and Costs, and whether or not the objections or claims for distribution of such Class Member have been approved or allowed.

10. The Class Representatives, the Class Members, and the Plans acting individually or together, or in combination with others, are hereby barred from suing or seeking to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration, or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Released Claims. Nothing herein shall preclude any action to enforce the terms of the Settlement Agreement in accordance with the procedures set forth in the Settlement Agreement.

11. Class Counsel, the Class Representatives, the Class Members, or the Plans may hereafter discover facts in addition to or different from those that they know or believe to be true with respect to the Released Claims. Such facts, if known by them, might have affected the decision to settle with the Defendants and the other Released Parties, or the decision to release, relinquish, waive, and discharge the Released Claims, or the decision of a Class Member not to object to the Settlement. Notwithstanding the foregoing, each Class Representative each Class Member, and the Plans has and have hereby fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Released Claims. The Class Representatives, Class Members, and the Plans have hereby acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in the Settlement Agreement of which this release is a part.

12. The Class Representatives, Class Members, and the Plans hereby settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the

future may have, under any law relating to the releases of unknown claims, including without limitation, Section 1542 of the California Civil Code, which provides: “A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that if known by him or her would have materially affected his or her settlement with the debtor or released party.” The Class Representatives, Class Members, and the Plans with respect to the Released Claims also hereby waive any and all provisions, rights and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to Section 1542 of the California Civil Code.

13. The Court finds that it has subject matter jurisdiction over the claims herein and personal jurisdiction over Class Members herein pursuant to the provisions of ERISA, and expressly retains that jurisdiction for purposes of enforcing this Final Order and the Settlement Agreement. Any motion to enforce paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including by way of injunction, may be filed in this Court, and the provisions of the Settlement Agreement and/or this Final Order may also be asserted by way of an affirmative defense or counterclaim in response to any action that is asserted to violate the Settlement Agreement.

14. Each Class Member shall hold harmless Defendants, Defense Counsel and the Released Parties for any claims, liabilities, attorneys’ fees and expenses arising from the allocation of the Gross Settlement Amount or Net Settlement Amount and for all tax liability and associated penalties and interest as well as related attorneys’ fees and expenses.

15. The Settlement Administrator shall have final authority to determine the share of the Net Settlement Amount to be allocated to each Current Participant and each Authorized Former Participant.

16. With respect to payments or distributions to Authorized Former Participants, all questions not resolved by the Settlement Agreement shall be resolved by the Settlement Administrator in its sole and exclusive discretion.

17. With respect to any matters that arise concerning the implementation of distributions to Current Participants (after allocation decisions have been made by the Settlement Administrator in its sole discretion), all questions not resolved by the Settlement Agreement shall be resolved by the Plan administrator or other fiduciaries of the Plans in accordance with applicable law and the governing terms of the Plans.

18. Within three (3) calendar days following the issuance of all settlement payments to Class Members, the Settlement Administrator shall prepare and provide to Class Counsel and Defense Counsel a list of each person who was issued a settlement payment and the amount of such payment.

19. Upon entry of this Order, all Class Members shall be bound by the Settlement Agreement (including any amendments) and by this Final Order.

IT IS SO ORDERED.

DATED: _____, 2021

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