IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-02556-MJM-NRN

LORRAINE M. RAMOS, *et al.,*

Plaintiffs,

v.

BANNER HEALTH, *et al.*,

Defendants.

PLAINTIFFS' MOTION FOR APPROVAL OF ATTORNEYS' FEES, EXPENSES, AND CLASS REPRESENTATIVE AWARDS FROM THE SLOCUM SETTLEMENT FUND

After over three years of hard-fought litigation and on the eve of trial, Plaintiffs and Defendant Jeffrey Slocum & Associates, Inc. ("Slocum")[1] reached a settlement to resolve all claims against Slocum for $500,000. Doc. 421. Given the total exposure to Slocum if Plaintiffs' claims had gone to trial was a small fraction of this settlement amount[2], this settlement represents a significant victory for the Settlement Class.[3] For this reason, and under the common fund doctrine, Class Counsel seeks an attorney fee award of one-third of the Gross Settlement Amount or $166,667.00 and reimbursement of reasonable out-of-pocket expenses of $8,199.40 that Class Counsel incurred in prosecuting this action on behalf of employees and retirees in the Banner Health

[1] Defendant Slocum does not oppose this Motion.
[2] Slocum's exposure at trial was $22,000. Doc. 408 at ¶70.
[3] The definition of capitalized terms herein is as defined in the Settlement Agreement. Doc. 461-1.

Employees 401(k) Plan ("Plan"). A one-third fee is consistent with fee awards in settlements involving similar complex ERISA fiduciary breach claims and other class actions in this District. Based on a lode-star comparison, the requested fee is far below the number of hours of attorney and staff time spent in pursuing Plaintiffs' claims against Slocum.

Finally, the Plaintiffs who initiated this action should each receive an incentive award in the amount of $2,500, the Class Representatives' Compensation, for the work they provided in assisting in the litigation and representing the Class. This amount will compensate the Plaintiffs for the risk they undertook, the work they provided, and is below the amounts that other courts have awarded in similar cases.

ARGUMENT

I. Class Counsel should be awarded their requested attorneys' fees.

A. Class Counsel's requested attorneys' fees are reasonable as a percentage of the common fund.

"In class action cases, counsel who obtain a common fund settlement are entitled to recover reasonable attorneys' fees paid from the fund." *Shaw v. Interthinx, Inc.*, No. 13-01229-REB, 2015 WL 1867861, at *5 (D.Colo. Apr. 21, 2015) (*citing Gottlieb v. Barry*, 43 F.3d 474, 482 (10th Cir. 1994)); Fed. R. Civ. P. 23(h). "Courts generally award attorney fees in common fund cases based on a percentage of the common fund obtained for the benefit of the class, thus, proportionately spreading payment of attorney fees among the class members." *Shaw*, 2015 WL 1867861, at *5 (internal quotations omitted). For settlements, "[t]he Tenth Circuit favors the common fund approach, as opposed to the lodestar method, because a percentage of the common fund is less

subjective than the lodestar plus multiplier approach, matches the marketplace most closely, and is the better suited approach when class counsel were retained on a contingent fee basis, as in this case." *Id*. (internal quotations omitted). In complex ERISA class actions, such as this, a one-third contingency fee from the common fund is the market rate. *Troudt v. Oracle Corp.*, No. 16-175, Doc. 236 (D.Colo. Jul. 10, 2020), s*ee also*, *e.g., Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *3 (D.Md. Jan. 28, 2020) (*citing* 14 ERISA cases awarding 33.33% of the common fund); Declaration of Heather Lea ("Lea Decl.") ¶7.

"In assessing the reasonableness of the percentage of the common fund awarded to class counsel for attorneys' fees, courts within the Tenth Circuit weigh the twelve factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974)." *Shaw*, 2015 WL 1867861, at *5 (*citing Gottlieb*, 43 F.3d at 483). The factors include: "(1) the time and labor required; (2) the novelty and difficulty of the case; (3) the skill requisite to perform the legal service properly; (4) the preclusion of other employment by the attorneys due to acceptance of the case; (5) the customary fee for similar work; (6) whether the fee is fixed or contingent; (7) any time limitations imposed by the client or the circumstances; (8) the amount involved and the results obtained; (9) the experience, reputation, and ability of the attorneys; (10) the undesirability of the case; (11) the nature and length of the professional relationship with the client; and (12) awards in similar cases." *Id*. (*citing Johnson*, 488 F.2d at 717–19). "A court may assign different relative weights to the factors—that is, none of the factors is inherently

equiponderant, preponderant, or dispositive." *Id*. (internal quotations omitted). Each factor supports Class Counsel's requested fee.

1. The Time and Labor Required.

First, Class Counsel litigated this case against Slocum for just over three years. By necessity, Class Counsel dedicated substantial time and effort prosecuting Plaintiffs' claims during this time. Conservatively, Class Counsel expended 652.05 hours of attorney time to date and 94.80 hours of non-attorney time.[4] Lea Decl. ¶6; see also Doc. 478 at 34, 45−46. Class Counsel reviewed thousands of pages of documents produced by Slocum, filed, responded to, and reviewed multiple complex motions including summary judgement and class certification, took several depositions of Slocum fact witnesses and its expert, and fully prepared for trial, reaching settlement only days before trial. Lea Decl. at ¶¶8–21. The 746.85 hours spent on this case does not include time spent preparing this motion.[5] In addition, Class Counsel has committed to the following work without any additional fee: (1) time for preparation, travel and attending the final approval hearing; (2) time for managing the process of handling calls from participants that will come regarding the notice, the timing, and the details of the settlement; (3) time for interacting with the Settlement Administrator and the Independent Fiduciary; and (4) Class Counsel has undertaken the risk of paying costs if

[4] This time was specifically carved out of Class Counsel's application for an award of attorney fees and costs against Defendant Banner Health. Doc. 478-1.

[5] In addition, none of the hours submitted herein were included in Plaintiffs' Motion for Attorney Fees and Costs, and for an Award to the Class Representatives, and Memorandum in Support. Doc. 478 at 34, 45−46.

the Settlement is not approved. The time and labor expended easily supports the award. *Shaw*, 2015 WL 1867861, *5.

2. The Novelty and Difficulty of the Case.

ERISA is "an enormously complex and detailed statute." *Teets v. Great-W. Life & Annuity Ins. Co.*, 315 F.R.D. 362, 370 (D.Colo. 2016) (*citing Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993)). "Very few lawyers … understand ERISA." *Id*. As stated by this Court, "Plaintiffs' [ERISA] claims makes it highly unlikely they could be discovered without the investigation of experienced counsel." ECF Doc 372. ERISA litigation "entails complicated ERISA claims that are not only dependent on the statute but also on various regulations that implement ERISA." *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 3210448, at *2 (C.D.Ill. Aug. 12, 2010).

"ERISA 401(k) fiduciary breach class actions involve complex questions of law and have not been widely litigated to this point." *Waldbuesser v. Northrop Grumman Corp.*, No. 06-6213, 2017 WL 9614818, at *4 (C.D.Cal. Oct. 24, 2017) (citation omitted). This "rapidly evolving" area of law places demands on counsel and the Court that are "complex and require the devotion of significant resources". *In re Wachovia Corp. ERISA Litig.*, No. 09-262, 2011 WL 5037183, at *4 (W.D.N.C. Oct. 24, 2011). Successfully obtaining a judgment in these actions requires counsel to risk very significant amounts of time and money "in the face of vigorous resistance by employers" who "devote massive resources and spend substantial sums for defense costs and expert witnesses". *Ramsey v. Philips N.A.,* No. 18-1099, Doc. 27 at 2 (S.D.Ill. Oct. 15, 2018); Declaration of Jerome J. Schlichter ("Schlichter Decl.") ¶34.

Class Counsel is not only highly experienced in handing ERISA class actions involving 401(k), but "pioneer[ed] . . . the field of retirement plan litigation." *Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D.Ill. July 17, 2015). Such litigation did not even exist until 2006, when "Schlichter, Bogard & Denton began holding employers responsible for alleged fiduciary breaches." *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *3 (S.D.Ill. Mar. 31, 2016). Accordingly, few firms "are capable of handling this type of national litigation." *Abbott*, 2015 WL 4398475, *3; Schlichter Decl. ¶¶26.

3. The Skill Requisite to Perform the Legal Services Properly.

It is "well established that complex ERISA litigation", such as this, requires "special expertise", *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D.Mo. Nov. 2, 2012), and class counsel of the "the highest caliber". *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *3 (C.D.Ill Oct. 15, 2013); *see also Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 WL 4246879, at *2 (D.Minn. July 13, 2015) (ERISA litigation requires "extraordinary skill and determination"). With an opponent that is a "sophisticated corporation with sophisticated counsel", such as here with Slocum & Associates, additional skill is necessary. *Nolte,* 2013 WL 12242015, at *3.

Given the expertise required and the vigorous defense, few law firms are capable of successfully prosecuting these lawsuits. *Abbott*, 2015 WL 4398475, at *3; Schlichter Decl. ¶¶22–26. "Schlichter, Bogard & Denton has been virtually alone in its willingness to fully pursue ERISA fiduciary breach claims against large employers for excessive fees, imprudent investment options, and the types of breaches at issue in this case."

George v. Kraft Foods Glob., Inc., No. 07-1713, 2012 WL 13089487, at *4 (N.D.Ill. June 26, 2012).

4. The Preclusion of Other Employment by the Attorneys Due to Acceptance of the Case.

As a plaintiffs' law firm that works solely on a contingency basis, the decision to pursue this class action and commit significant resources and numerous attorney hours to obtain a successful recovery necessarily impacts Class Counsel's ability to handle other actions. Schlichter Decl. ¶38. "There is an inherent preclusion of other work in litigating a complex case such as this on a contingency fee basis." *Shaw*, 2015 WL 1867861, at *6. Class Counsel were "precluded by the ticking of the clock from taking certain other cases given that they [had] decided to take a chance on a possible recovery in a contingency fee rather than strictly working on paid hourly wages." *Id*. (*quoting Whittington v. Taco Bell of Am., Inc.*, No. 10-1884-KMT, 2013 WL 6022972, at *6 (D.Colo. Nov 13, 2013)). There was "the possibility in a case of this kind that [Class Counsel], having given up other cases in order to actively pursue this case, will actually recover no payment for [their] time and efforts." *Id.*

5. The Customary Fee for Similar Work.

"The customary fee awarded to class counsel in a common fund settlement is approximately one third of the total economic benefit bestowed on the class." *Shaw*, 2015 WL 1867861, at *6. In complex ERISA class actions, such as this, district courts throughout the country routinely award a one-third contingency fee of the monetary sum. *See, e.g., Troudt,* Doc. 236 at 7, n.5*; and see Kelly*, 2020 WL 434473, at *3 (collecting cases); Lea Decl. ¶7. The leading treatise on class action litigation has put

the average fee at one third of the common fund. *See* Alba Conte & Herbert Newberg, Newberg on Class Actions (4th ed. 2002), §14:6 at 551 ("Empirical studies show that, regardless whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery.").

6. Whether the Fee is Fixed or Contingent.

Class Counsel litigated this matter on a contingent basis with no guarantee of recovery. Class Counsel entered into contingency fee agreements with each of the Plaintiffs for one third of any monetary recovery plus reimbursement of expenses. Schlichter Decl. ¶30−31. The Plaintiffs would not have been unable to pursue this litigation other than on a contingency fee basis and no competent plaintiffs' lawyer or law firm would take on such risky representation for less than one-third of any monetary recovery. Schlichter Decl. ¶¶30–35.

"Courts have recognized the importance of such arrangements, noting that many workers cannot retain counsel at fixed hourly rates … yet they are willing to pay a portion of any recovery they may receive in return for successful representation." *Shaw*, 2015 WL 1867861, at *7 (quotations omitted). Contingent fee arrangements "transfer a significant portion of the risk of loss to the attorneys taking the case … and [a]ccess to the courts would be difficult to achieve without compensating attorneys for that risk." *Id*. This factor thus weighs in favor of the requested fees because Class Counsel assumed "significant risk of nonpayment when they agreed to represent Named Plaintiffs on a contingency fee basis." *Id*.

7. Any Time Limitations Imposed by the Client or the Circumstances.

This case went to trial on January 6, 2020 against Banner Health and would have also included Slocum. However, on the eve of trial, Plaintiffs and Slocum reached a settlement. Doc. 421. Even if Plaintiffs prevailed at trial, the aggressive defense presented the possibility that the Plan or Class Members would have to wait over a decade to receive any compensation pending multiple appeals. *Tussey v. ABB, Inc.* required over twelve years of litigation following multiple appeals before the parties reached a settlement on March 28, 2019. *Tussey v. ABB, Inc.*, No. 06-4305, Doc. 859 (W.D.Mo. Mar. 28, 2019). *Tibble v. Edison* also took over 12 years and had multiple appeals. No. 07-5359, 2017 WL 3523737 (C.D.Cal. Aug. 16, 2017).

8. The Amount Involved and the Results Obtained.

Here, Class Counsel obtained $500,000 in monetary compensation for the Class. The Settlement occurred after the Court partially granted Slocum's motion summary judgment and denied the certification of a class against Slocum. Lea Decl. ¶¶15, 19. Thus, the ultimate recovery against Slocum at trial was relatively modest and any ultimate recovery at all on the remaining investment claim was uncertain based on the fact-intensive nature of the remaining imprudent investment claims as to the retention of the Freedom Funds. Moreover, any recovery would only have applied to losses incurred by the Named Plaintiffs, not the entire class. Doc. 408 at ¶70. Rather than having to wait years for a final resolution, the Plan will receive a substantial recovery to offset Plan expenses that would otherwise be paid by the Plan participants.

9. The Experience, Reputation, and Ability of the Attorneys.

This Court already found that Class Counsel was adequate to represent the contested class in this case. Doc. 296 at 31. Class Counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) plans, but "pioneer[ed] . . . the field of retirement plan litigation." *Abbott*, 2015 WL 4398475, at *1. In *Beesley v. International Paper*, a 401(k) ERISA excessive fee case that resulted in a settlement of $30 million plus substantial affirmative relief following seven years of litigation, Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at *2 (S.D.Ill. Jan. 31, 2014). Judges throughout the nation have provided similar exceptional reviews of Class Counsel's ability and reputation. Schlichter Decl. ¶¶4–14, 23.

10. The Undesirability of the Case.

Class Counsel pioneered ERISA excessive fee litigation involving 401(k) plans, which no law firm or the Department of Labor had ever brought. Indeed, at the time that Class Counsel first filed an excessive fee lawsuit, "no other firm was willing to accept such a daunting challenge on this case at *any* rate[.]" *Nolte,* 2013 WL 12242015, *3; *Ramsey,* Doc. 27 at 3. Even now, few law firms have the necessary expertise and are willing take the risk and devote the substantial resources necessary, all at risk of nonpayment, to litigate these complex ERISA claims. *Abbott*, 2015 WL 4398475, at *3; Schlichter Decl. ¶¶26. The commitment for this type of litigation when taking it on is

done with the knowledge that it may require 20,000 or more hours over 12 years with a trial, multiple appeals, and multiple remandments to obtain a recovery. *Tussey v. ABB, Inc.,* No. 06-4305, 2015 WL 8485265, at *3 (W.D. Mo. Mar. 9, 2017). This demonstrates the fact that it is undesirable to bring these types of cases for most firms. *See* Schlichter Decl. ¶¶34.

11. The Nature and Length of the Professional Relationship with the Client.

A lawyer "may vary his or her fee for similar work in light of the professional relationship of the client … [.]" *Johnson*, 488 F.2d at 719. Class Counsel did not have a professional relationship with any of the Plaintiffs prior to this class action litigation and Class Counsel only represents clients on a contingent fee basis. Schlichter Decl. ¶32, 38. Thus, this factor weighs in favor of the requested fee award because "[u]nlike corporate clients, who may need future legal services from their counsel, the likelihood that many class members will be seeking additional representation from Class Counsel is slim." *Shaw*, 2015 WL 1867861, at *7. Moreover, the complex ERISA claims asserted in this case "do not lend themselves to continuous, long-term attorney-client relationships" *Id*.

12. Awards in Similar Cases.

"In similar ERISA excessive fee cases, and in particular those brought by Class Counsel, district courts have consistently recognized that a one-third fee is the market rate." *E.g., Kelly*, 2020 WL 434473, at *3 (collecting cases awarding a one-third fee); Lea Decl. ¶7. This is the same amount that Class Counsel requests here.

B. A Lodestar crosscheck fully supports Class Counsel's requested attorneys' fees.

Courts may use a lodestar crosscheck to confirm the reasonableness of the requested fee. *See Shaw*, 2015 WL 1867861, at *8. The "'lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.'" *In re Crocs. Secs. Litig.*, No. 07-2351-PAB, 2014 WL 4670886, at *4 n. 4 (D.Colo. Sep. 18, 2014) (*quoting In re Rite Aid*, 369 F.3d 294, 306–307 (3d Cir. 2005)). Therefore, the Court does not need to undertake an exhaustive analysis because the lodestar method is only for comparison purposes. *Id*.

Class Counsel spent 746.85 hours litigating this matter against Slocum for a combined lodestar of $596,957.50. *See* Lea Decl. ¶¶5-6.[6] The vast majority of this time was previously identified and explained as being completely unique time devoted only to Slocum. Doc. 478 at 34, 45−46. The requested $166,667.00 fee award represents a lodestar multiplier of less than 0.28, which is not only significantly lower than lodestar multipliers that Colorado federal courts and other courts consistently have approved in other ERISA class action cases; it has no multiplier whatsoever. *See, e.g., Miniscribe Corp. v. Harris Trust Co. of California*, 309 F.3d 1234, 1245 (10th Cir. 2002) (affirming fee award based on a lodestar multiplier of 2.57); *Shaw*, 2015 WL 1867861, at *8 (collecting cases approving multipliers ranging from 1.87 to 4.6). Since the inception of

[6] As recently as July 10, 2020, Class Counsel's hourly rates used to calculate the lodestar in this matter were approved in a similar class action litigation in this District. *Troudt,* Doc. 236 at 7, n.5.

this case in late 2015, Class Counsel has not received any payment for its work. In comparison, firms that defend such cases are paid and reimbursed expenses by monthly invoice, taking no risk, and at rates higher than those requested by Class Counsel. *See U.S. Bank Nat'l Assoc. v. Dexia Real Estate Capital Mkts.*, No. 12-9412, 2016 WL 6996176, at *8 (S.D.N.Y. Nov. 30, 2016) (observing in 2016 that Morgan Lewis and another large firm billed at rates ranging from $250 per hour to $1,055 per hour to a client). This provides defense counsel the advantage of obtaining fees to reinvest in greater resources while Class Counsel bears the risk of nonpayment. The lodestar in this case—0.28—fully supports the requested fee award.

II. Class Counsel should be reimbursed for their litigation expenses.

"As with attorney fees, the common fund doctrine allows for an award of costs so that the beneficiaries of the fund share the cost of creating the fund." *In re Qwest Comms. Intern., Inc. Secs. Litig.*, 625 F.Supp.2d 1143,1154 (D.Colo. 2009). Class Counsel have incurred $8,199.40 in litigation expenses related to Plaintiffs' claims against Slocum. *See* Declaration of Heather Lea at ¶¶24–25. The majority of these fees were incurred analyzing the opinions of Slocum's expert witness and preparing for his deposition. *Id*. Each expense was reasonably incurred by Class Counsel in the prosecution of this litigation. *Id*. Class Counsel therefore request the Court approve their request for $8,199.40 in litigation expenses.

III. The requested incentive awards for the Class Representatives are reasonable.

As this District has recognized, "incentive awards are an efficient and productive way to encourage members of a class to become class representatives, and to reward the

efforts they make on behalf of the class." *Shaw*, 2015 WL 1867861, at *8 (quotations omitted). Relative to the recovery in this Settlement, the $2,500 award is in line with incentive awards in other ERISA cases and other class actions in this district. *Id*. *see also, e.g., Kelly,* 2020 WL 434473, at *8; *Kruger v. Novant Health Inc.,* No. 14-208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016).

Each Class Representative provided Class Counsel with necessary documents and other information prior to preparing the Complaint and the Amended Complaint, responded to written discovery, produced documents, sat for deposition, submitted declarations in support of motions and a number of the Class Representatives were prepared to testify at trial. Lea Decl. ¶9. Indeed, the Plan would not have received any recovery without the participation of the Class Representatives. *Id*. The requested incentive awards are reasonable and should be approved.

CONCLUSION

For these reasons, Plaintiffs respectfully request that the Court grant their motion.

September 24, 2020

Respectfully submitted,

/s/ Troy A. Doles
SCHLICHTER, BOGARD & DENTON LLP
Troy A. Doles
Heather Lea
100 South Fourth Street, Suite 1200
St. Louis, Missouri 63102
Telephone: (314) 621-6115
Facsimile: (314) 621-5934
Email: troy@uselaws.com
Email: heather@uselaws.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on September 24, 2020, I served this document on all parties via the Court's CM/ECF system.

/s/ Troy A. Doles

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DECLARATION OF JEROME J. SCHLICHTER

I, Jerome J. Schlichter, declare as follows:

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

2. I received my Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors and was a James Scholar. I received my Juris Doctorate from the University of California at Los Angeles (UCLA) Law School in 1972, where I was an Associate Editor of UCLA Law Review. I am licensed to practice law in the states of Illinois, Missouri, and California and am admitted to practice before the Supreme Court of the United States, the Second, Third, Fourth, Fifth, Seventh, Eighth and Ninth Circuit Courts

of Appeals and numerous U.S. District Courts. I have also been an Adjunct Professor teaching trial practice at Washington University School of Law, and repeatedly selected by my peers for the list of The Best Lawyers in America.

3. Through over 40 years of practice, I have handled, on behalf of plaintiffs, substantial personal injury, civil rights class actions, mass torts and class action fiduciary breach litigation under the Employee Retirement Income Security Act (ERISA), on behalf of participants in large 401(k) and 403(b) plans. In 2014, I was ranked number 4 in a list of the 100 most influential people nationally in the 401(k) industry in the industry publication 401(k) Wire. Examples of class action cases I have successfully handled include: *Brown v. Terminal Railroad Association*, a race discrimination case in the Southern District of Illinois on behalf of all African-American and Hispanic employees at a railroad; *Mister v. Illinois Central Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought on behalf of hundreds of African-American applicants from East St. Louis, Illinois at a major railroad which was tried to conclusion and successfully appealed to the Seventh Circuit Court of Appeals and finally concluded with more than $10 million for the class over twelve years of litigation; *Wilfong v. Rent- A-Center*, No. 00-680-DRH (S.D.Ill. 2002), a nationwide gender discrimination in employment case on behalf of women, which was successfully settled for $47 million and substantial affirmative relief to the class of thousands, after defeating the defendant's attempt to conduct a reverse auction.

4. My firm has been named class counsel in many cases involving claims

of fiduciary breaches in large 401(k) and 403(b) plans. *See Vellali v. Yale Univ.,* 333 F.R.D. 10 (D. Conn. 2019); *Munro v. Univ. of S. California*, No. 16-6191, 2019 WL 7842551 (C.D. Cal. Dec. 20, 2019); *Bell v. Pension Cmte. of ATH Holding Co.*, No. 15-2062, 2018 WL 4385025 (S.D. Ind. Sept. 14, 2018); *Cunningham v. Cornell Univ.*, No. 16-6525, Doc. 219 (S.D.N.Y. Jan. 22, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D.N.Y. Nov. 8, 2018); *Henderson v. Emory Univ.*, No. 16-2920, Doc. 167 (N.D. Ga. Sept. 13, 2018); *Henderson v. Emory Univ.*, No. 16-2920, 2018 WL 6332343 (N.D. Ga. Sept. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 WL 1801946 (M.D.N.C. Apr. 13, 2018); *Sacerdote v. N.Y. Univ.*, No. 16-6284, 2018 WL 840364 (S.D.N.Y. Feb. 13, 2018); *Ramos v. Banner Health*, 325 F.R.D. 382 (D. Colo. 2018); *Troudt v. Oracle Corp*., 325 F.R.D. 373 (D. Colo. 2018), *amended*, No. 16-175-REB, 2019 WL 1006019 (D. Colo.Mar. 1, 2019); *Pledger v. Reliance Trust*, No. 15-4444, Doc. 101 (N.D. Ga. Nov. 7, 2017); *Marshall v. Northrop Grumman Corp*., No. 16-6794, 2017 WL 6888281 (C.D. Cal. Nov. 2, 2017); *Sims v. BB & T Corp.*, No. 15-732, 2017 WL 3730552 (M.D.N.C. Aug. 28, 2017*)*; *Gordan v. Massachusetts Mutual Life Insurance Co*., No. 13-30184, Doc. 112 (D. Mass. June 22, 2016); *Kruger v. Novant Health, Inc*., No. 14-208, 2016 WL 6769054 (M.D.N.C. May 18, 2016); *Krueger v. Ameriprise Financial*, *Inc.*, 304. F.R.D. 559 (D. Minn. 2014); *Abbott v. Lockheed Martin Corp*., 286 F.R.D. 388 (S.D.Ill. 2012), and *Abbott*, No. 06-701, Doc. 403

(S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co*., No. 06-703, Doc. 240 (S.D. Ill. Sept. 30, 2008), and Doc. 543 (S.D. Ill. Oct. 10, 2013); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 3586645 (C.D. Ill. July 3, 2013); *Spano v. Boeing Co*., 294 F.R.D. 114 (S.D. Ill. 2013); *George v. Kraft Foods Global Inc*., No. 08-3799, 2012 U.S.Dist.LEXIS 26536 (N.D. Ill. Feb. 29, 2012)(*George II*); *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2011 WL 505264 (C.D. Cal. Mar. 29, 2011*)*; *Will v. Gen. Dynamics Corp*., No. CIV. 06-698-GPM, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010); *Martin v. Caterpillar Inc*., No. 07-1009, Doc. 173 (C.D. Ill. April 21, 2010); *Tibble v. Edison Int'l*, No. 07-5359, 2009 WL 6764541 (C.D. Cal. June 30, 2009); *George v. Kraft Foods Global Inc*., 251 F.R.D. 338 (N.D. Ill. 2008)(*George I*); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008 WL 2333120 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp*., 254 F.R.D. 102 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-04305, 2007 WL 4289694 (W.D. Mo. Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 WL 2060799 (N.D. Ill. June 26, 2007). A brief biography of my firm, including summaries of our professional experience, is attached as **Exhibit A**.

5. Federal judges across the country have noted my and my firm's work in plaintiffs' class action cases. Honorable Judge James Foreman, in the *Mister* case, *supra*, speaking of my efforts, stated:

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

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

1993).

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

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

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

7. In *Beesley v. International Paper*, a 401(k) ERISA excessive fee case that resulted in a settlement of $30 million plus substantial affirmative relief following seven years of litigation, Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general." *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432, at 2 (S.D.Ill. Jan. 31, 2014). Similarly, in *Abbot v. Lockheed Martin*, a 401(k) excessive fee case that took over nine years, Honorable Chief Judge Reagan observed that "[t]he law firm Schlichter, Bogard & Denton has had a humongous impact over the

entire 401(k) industry, which has benefitted employees and retirees throughout the country by bringing sweeping changes to fiduciary practices." *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at 3 (S.D.Ill. July 17, 2015).

8. In *Will v. General Dynamics*, another ERISA excessive fee case, Honorable Judge Patrick Murphy found that litigating the case and achieving a successful result for the class "required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will v. General Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at 2 (S.D. Ill. Nov. 22, 2010).

9. Honorable Judge Baker, in *Nolte v. Cigna*, commented that Schlichter, Bogard & Denton is the "preeminent firm in 401(k) fee litigation" and has "persevered in the face of the enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at 2 (C.D. Ill. Oct. 15, 2013). Judge McDade of the Central District of Illinois, again speaking of the firm, observed that achieving a favorable result in this type of case required extraordinary efforts because the "litigation entails complicated ERISA claims". *Martin v. Caterpillar, Inc*., No. 07-1009, 2010 WL 3210448, at *2 (C.D.Ill. Aug. 12, 2010).

10. In approving a settlement including $32 million plus significant affirmative relief, in a 403(b) excessive fee case, Chief Judge William Osteen in *Kruger v. Novant Health, Inc.*, No. 14-208, Doc. 61 at 7–8 (M.D.N.C. Sept. 29, 2016) found that "Class Counsel's efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the

Plans are operated and managed which will result in participants and retirees receiving significant savings[.]"

11. In awarding attorney's fees after the first 401(k) excessive fee trial in the history of the United States, Judge Nanette Laughrey concluded that "Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012). Following remand, the district court again awarded Plaintiffs' attorney's fees, emphasizing the significant contribution Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and federal courts about the importance of monitoring fees in retirement plans:

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

Tussey v. ABB, Inc., No. 06-4305, 2015 WL 8485265, at *2 (W.D. Mo. Dec. 9, 2015) (emphasis added).

12. After recognizing "their persistence and skill of their attorneys", Judge Nancy Rosenstengel similarly noted:

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

Spano, 2016 WL 3791123, at *3 (emphasis added).

13. Recently, Judge Catherine Eagles noted that "these [ERISA] cases require a high level of skill on behalf of plaintiffs to achieve any recovery." *Clark v. Duke*, No. 16-1044, Doc. 165 at 6 (M.D.N.C. June 24, 2019). In approving attorneys' fees, Judge Eagles concluded that "Class Counsel has demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Id*. at 7.

14. Earlier this year, Judge George L. Russell, III, in approving a fee of one third of a $14 million settlement in another complex ERISA case, noted that "Schlichter Bogard & Denton's work on behalf of participants in large 401(k) and 403(b) plans has significantly improved these plans, brought to light fiduciary misconduct that has detrimentally impacted the retirement savings of American workers, and dramatically brought down fees in defined contribution plans." *Kelly v. Johns Hopkins Univ.*, No. :6-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020). Judge Russell continued, "[w]ithout the unique and unparalleled foresight for this novel area of litigation by Schlichter, Bogard & Denton, the class would not have obtained any recovery for the alleged fiduciary breaches that affected the Johns Hopkins University 403(b) plan for years prior." *Id.* at *4.

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

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

the practice of law.

17. Since 2005, my firm and I have been investigating, preparing and handling, on behalf of plan participants, numerous cases against fiduciaries of large 401(k) plans alleging fiduciary breaches including excessive fees, conflicts of interests and prohibited transactions under ERISA.

18. My firm filed the first ERISA breach of fiduciary duty cases for excessive fees in the history of ERISA in 2006.

19. My firm has filed ERISA fiduciary breach class actions in numerous judicial districts throughout the United States, including districts within the First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Circuits.

20. After close to a decade of handling excessive 401(k) fee cases, my firm and I began investigating similar claims for excessive fees and imprudent investments involving large plans sponsored by private universities. This investigation was extensive, lasting well over one year prior to the filing of a university plan lawsuit. My firm and I thoroughly researched legal and factual issues concerning university plans in general, as well as conducted specific analyses pertaining to each plan under investigation. We also were assisted by experienced industry professionals knowledgeable about prudent fiduciary practices governing university plans, the market rate for plan services, and other issues pertaining to the administration of plans.

21. Beginning in August 2016, after more than one year of diligently

investigating potential fiduciary breach claims involving private university plans, my firm expanded its national ERISA practice by filing ERISA fiduciary breach cases against private universities. These lawsuits were similar to the corporate ERISA cases previously handled by my firm.

22. No law firm had ever brought an excessive 401(k) or 403(b) case before my firm did, and no other law firm has brought the number of cases our firm has brought, including:

- the first two trials of excessive 401(k) fee cases;
- the first 401(k) case in the United States Supreme Court; and
- the first and only trial of a 403(b) excessive fee case.

23. The first full trial of such a 401(k) case resulted in a judgment for the plaintiffs, affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 1113291 (W.D.Mo. Mar. 31, 2012), *aff'd in part, rev'd in part*, 746 F.3d 327 (8th Cir. 2014). As Judge Laughrey noted in that case, "[i]t is well established that complex ERISA litigation involves a national standard and special expertise. Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at 3 (W.D.Mo. Nov. 2, 2012)(citations omitted). That case involved two appeal, lasted twelve and a half years, and was only recently settled.

24. In the other 401(k) excessive fee trial, *Tibble v. Edison Int'l,* the United States Supreme Court granted our petition for writ of certiorari in the first and only ERISA 401(k) excessive fee case taken by the Supreme Court. In a 9-0 unanimous

decision, the Supreme Court vacated the Ninth Circuit's affirmance of the summary judgment order and held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones regardless of when they were added. *Tibble v. Edison Int'l*, 135 S.Ct. 1823 (2015). This was a watershed and landmark decision in ERISA litigation. Sitting *en banc*, ten judges of the Ninth Circuit on remand unanimously vacated a Ninth Circuit panel decision and remanded to the district court to determine whether the defendants violated their continuing duty to monitor the 401(k) plan's investments, stating that "cost-conscious management is fundamental to prudence in the investment function". *Tibble v. Edison Int'l*, 843 F.3d 1187, 1199 (9th Cir. 2016)(citation omitted). Following remand, in August 2017, the plaintiffs obtained a judgment of $13.4 million in plan losses and investment opportunity. *Tibble,* No. 07- 5359, 2017 WL 3523737 (C.D.Cal. Aug. 16, 2017); *Tibble,* Docs. 570, 572.

25. My firm also handled the first excessive 403(b) case in history to go to trial. *Sacerdote v. New York Univ*., 328 F.Supp.3d 273 (S.D.N.Y. 2018). That trial occurred in April 2018, and judgment was entered on July 31, 2018, finding in favor of New York University and against the plaintiffs. The parties are currently briefing an appeal of that decision before the Second Circuit.

26. Before my firm brought ERISA 401(k) or 403(b) excessive fee cases, virtually no firm was willing to bring such a case, and I know of no other firm that has made anything close to the financial and attorney commitment to such cases to this date. Given that no other private law firm or the Department of Labor brought these

cases before my firm entered this space, the ERISA fiduciary breach actions brought by my firm were novel and certainly groundbreaking.

27. Several of the 401(k) and 403(b) cases my office filed were dismissed and the dismissals upheld by the Courts of Appeals. *Hecker v. Deere & Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Divane v. Northwestern Univ.*, No. 16-8157, 2018 WL 2388118 (N.D.Ill. May 25, 2018), *affirmed* No. 18-2569, Doc. 55 (7th Cir. Mar. 25, 2020). Others had summary judgment granted against the plaintiffs in whole or in part. *Kanawi v. Bechtel Corp.*, 590 F.Supp.2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs. Corp.*, No. 06-3194, 2009 U.S.Dist.LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354 Fed. Appx. 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F.Supp. 2d 992 (N.D.Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*, 639 F.Supp.2d 1074 (C.D.Cal. 2009), aff'd, 729 F.3d 1110 (9th Cir. 2013), *vacated*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016); *Cunningham v. Cornell Univ.*, 16-6525, 2019 WL 4735876 (S.D.N.Y. Sep. 27, 2019).

28. Prior to the filing the *Ramos* lawsuit on November 20, 2015, my firm began researching the Banner Health Employees 401(k) Plan, investigating claims, and consulting with experts in the field of 401(k) administration and investment management. The investigation began with obtaining and reviewing each of the Plan's Annual Reports since 2009 (Forms 5500), which are publicly available documents filed with the United States Department of Labor in which the Plan

discloses its investment holdings and financial statements. Using this data, we conducted an extensive analysis of the Plan's administrative fees and investment performance based on our knowledge of industry practices.

29. On behalf of one of the named plaintiffs in this lawsuit, my firm also requested from the Plan administrator under 29 U.S.C. §1024(b) documents and other information related to the administration of the Plan, which included plan documents, custodial account agreements, recordkeeping services agreements, the summary plan description, and fee disclosures, among other documents. We also analyzed documents obtained from the named plaintiffs and other material obtained from publicly available sources related to the administration of the Plan.

30. As a practical matter, litigants such as named Plaintiffs could not afford to pursue litigation against well-funded fiduciaries of a multi-billion dollar 401(k) plan sponsored by a large employer such as the Banner Health in federal court on any basis other than a contingent fee. I know of no law firm in the United States, of the very few firms which would even consider handling such a case as this or that would handle any ERISA class action, with an expectation of anything but a percentage of the common fund created. Defendants' attorneys in these cases are paid on their hourly rate without delay, without taking risk of loss, and without advancing and risking expenses.

31. The contingency fee agreements entered into between my firm and each of the named Plaintiffs Lorraine Ramos, Constance Williamson, Karen McLeod, Robert Moffitt, Cherlene Goodale, Linda Heyrman, and Delri Hanson in this case

provide for our fee to be one-third of any recovery plus expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my firm have also signed similar agreements calling for a one-third contingency fee plus expenses. I know of no firm in the country that accepts such cases for less than a one-third contingency fee.

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

33. These kinds of ERISA fiduciary breach cases involve tremendous risk, require review and analysis of thousands of documents, finding and obtaining opinions from expensive, unconflicted, consulting and testifying national experts in finance, investment management, fiduciary practices, and related fields, and are extremely hard fought and well-defended.

34. A law firm that brings a putative class action such as this must be prepared to finance the case for years through a trial and appeals, all at substantial expense. This has been my experience in handling these types of cases. For example, in *Tussey v. ABB*, *supra,* seven experts testified at trial, and the two defendant groups therein had 15 or more lawyers present in the courtroom throughout the month long trial. In addition, all parties, including plaintiffs, had a technology team present throughout. In addition, our firm expended over $2,000,000 in out-of-pocket expenses by the conclusion of the trial therein, and carried the expense without reimbursement for more than twelve years. That case continued after being tried over ten years ago, followed by two appeals to the Eighth Circuit, and multiple remandments to the district court. *Tibble v. Edison Int'l*,

supra, was also still pending until an appeal was decided earlier this year, nearly 14 years after it was filed.

35. Based on my experience, the market for experienced and competent lawyers willing to pursue ERISA fiduciary breach litigation is a national market, and the rate of 33 1/3% of any recovery, plus costs is necessary to bring such cases. This is the rate that a qualified and experienced attorney would negotiate at the beginning of the litigation, and the rate found reasonable in similar ERISA fee cases in numerous federal district courts.

- *Troudt v. Oracle Corp.*, No. 16-175, Doc. 236 (D. Col. July 10, 2020)
- *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020);
- *Tussey v. ABB, Inc.,* No. 06-4305, Doc. 869 (W.D. Mo. August 16, 2019);
- *Sims v. BB&T Corp.,* No. 15-1705, 2019 WL 1993519 (M.D.N.C. May 6, 2019);
- *Clark v. Duke*, No. 16-1044, Doc. 166 (M.D.N.C. June 24, 2019);
- *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22, 2019);
- *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-2062, Doc. 380 (S.D. Ind. Sept. 4, 2019);
- *Ramsey v. Philips,* No. 18-1099, Doc. 27 (S.D. Ill. Oct. 15, 2018);
- *In re Northrop Grumman Corp. ERISA Litig.,* No. 06-6213, 2017 WL 9614818 (C.D.Cal. Oct. 24, 2017);
- *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016);
- *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016);

- *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016);
- *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475 (S.D. Ill. July 17, 2015);
- *Krueger v. Ameriprise Financial Inc.*, No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015);
- *Beesley v. Int'l Paper Co.,* No. 06-703, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014);
- *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015 (C.D. Ill Oct. 15, 2013);
- *George v. Kraft Foods Global*, No. 07-1713, 2012 WL 13089487 (N.D. Ill. June 26, 2012);
- *Will v. General Dynamics*, No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010); and
- *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 11614985 (C.D. Ill. Sept. 10, 2010).

36. Our firm has been class counsel in over 30 ERISA breach of fiduciary duty cases.

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

38. Because my firm works solely on a contingency fee basis, and there is a limited number of active cases it can handle at any given point, the decision to pursue this class action and commit significant resources to obtain a successful recovery on behalf of the class through potentially years of litigation impacted the

firm's ability to handle other class actions or pursue other less risky matters.

39. My firm will also handle any enforcement actions if necessary and respond to calls from class members.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed this 24th day of September, 2020, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

SCHLICHTER BOGARD & DENTON

SELECTED ATTORNEYS BIOGRAPHY

Schlichter Bogard & Denton is a plaintiffs' law firm which represents individuals in personal injury actions, class actions and complex litigation involving pension claims, breaches of fiduciary duties, product liability, and pharmaceutical products. The following is biographical information on selected attorneys in the firm.

JEROME J. SCHLICHTER

Jerome J. Schlichter received his Bachelor's degree in Business Administration from the University of Illinois in 1969, with honors and was a James Scholar. Mr. Schlichter received his Juris Doctorate from the University of California at Los Angeles Law School in 1972, where he was an Associate Editor of UCLA Law Review. Mr. Schlichter is a member of the bar of California, Illinois, and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts. He has also been an Adjunct Professor teaching a trial class at Washington University Law School.

During his career, Mr. Schlichter has handled on behalf of plaintiffs many substantial personal injury cases, consumer cases, toxic tort cases, and numerous complex, multi-plaintiff cases including mass tort cases and numerous ERISA breach of fiduciary national class actions. He has also held offices in national plaintiffs' lawyer groups. For each year since 2007, he has been listed among the 100 most influential persons nationally in the 401(k) industry in the industry publication 401(k) Wire; he was listed as 3rd most influential in 2007, and 4th most influential in 2015.

Mr. Schlichter is lead attorney on numerous national class action cases involving claims on behalf of employees and retirees of excessive fees and fiduciary breaches in large 401(k) plans. He and the firm are widely acknowledged to have pioneered the area of 401(k) excessive fee litigation and have obtained settlements in ten of those cases. In the case of *Martin v. Caterpillar* a settlement was obtained for the sum of $16,500,000 plus significant changes in the 401(k) plan. In *Will v. General Dynamics*, a settlement has been reached in the sum of $15.15 million plus additional non-monetary relief. In *Kanawi v. Bechtel*, the settlement obtained included $18.5 million as well as additional affirmative relief. In *Beesley v. International Paper*, a settlement was reached for the sum of $30 Million, as well as significant affirmative relief. In *George v. Kraft Foods*, a settlement was reached for $9.5 Million plus non-monetary relief. In *Nolte v. Cigna*, a settlement was reached for $35 Million plus significant changes in the plan to benefit participants. In

Krueger v. Ameriprise, a settlement was reached for $27.5 Million, and substantial additional changes to the plan. *Abbott v. Lockheed Martin* produced a settlement of $62 million, the largest sum recovered in a 401k excessive fee case in history, plus significant non-monetary relief. *Spano v. Boeing Co.*, resulted in a $57 million settlement on behalf of participants in Boeing's 401(k) plan, including significant non-monetary relief. *Kruger v. Novant Health, Inc.*, a $32 million settlement was reached on behalf of 401(k) plan participants, together with substantial affirmative non-monetary relief. *Gordan v. Mass Mutual Life Inss., Co.*, a settlement was reached for $30.9 Million with plus additional non-monetary relief.

Mr. Schlichter was the lead attorney for plaintiffs in *Tussey v. ABB, Inc.*, the first full trial for excessive fees in a 401(k) plan, which resulted in a multi-million dollar judgment for participants in ABB's 401(k) Plan, plus substantial reform to the 401k plan.

Mr. Schlichter is also lead attorney in *Tibble v. Edison*, in which he and his firm represent participants in the 401(k) plan of Edison International. In that case, the U.S. Solicitor General, AARP and other organizations supported his firm's position that the case was one of critical importance to all 401(k) participants. In May of 2015, the Supreme Court ruled, unanimously, in favor of the participants in the plan.

Examples of other class cases handled by Mr. Schlichter include: *Brown v. Terminal Railroad Association*, a discrimination case on behalf of African American and Hispanic workers, which was certified as a class, and concluded with a multi-million dollar settlement after more than 5 years of litigation; *Mister v. Illinois Central Gulf Railroad,* 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire suit brought on behalf of hundreds of African-Americans applicants, which was certified, tried and successfully appealed to conclusion and finally settled for more than $10 million after 12 ½ years of litigation, and *Wilfong v. Rent-A-Center,* No. 00-680-DRH (S.D. Ill. 2002), a nationwide gender discrimination case on behalf of women employees and applicants, which was successfully settled for $47 million and other relief to the class, after defeating the defendant's attempt to conduct a reverse auction.

Mr. Schlichter has been praised by numerous Federal Judges, retirement plan groups and national experts for his firm's work.

- The AARP Foundation commented that Mr. Schlichter's work in the Bechtel 401(k) fee case was "… truly extraordinary."
- In *Beesley v. International Paper*, an ERISA excessive fee case, U.S. District Judge David Herndon observed: "Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance,

while risking vast amounts of time and money, reflect the finest attributes of a private attorney general." *Beesley v. Int'l Paper Co.*, No. 06-703-DRH, 2014 U.S. Dist. LEXIS 12037, 8 (S.D. Ill. Jan. 31, 2014).

- In *Will v. General Dynamics*, another ERISA excessive fee case, U.S. District Judge Patrick Murphy found that litigating the case and achieving a successful result for the class "required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans." *Will v. General Dynamics Corp.*, No. 06-698-GPM, 2010 U.S. Dist. LEXIS 123349, 9 (S.D. Ill. Nov. 22, 2010).
- U.S. District Judge Harold Baker, in *Nolte v. Cigna*, stated that Schlichter, Bogard & Denton is the "preeminent firm in 401(k) fee litigation" and has "persevered in the face of the enormous risks of representing employees and retirees in this area." *Nolte v. Cigna Corp.,* Case No. 07-2046, Doc. 413 at 5 (C.D.Ill. Oct. 15, 2013).
- Chief U.S. District Judge Michael J. Reagan observed that "Mr. Schlichter and the firm of Schlichter, Bogard & Denton have demonstrated its well-earned reputation as a pioneer and the leader in the field" of 401(k) plan excessive fee litigation. He added: "Schlichter, Bogard & Denton's work embodies the finest attributes of a private attorney general, risking significant resources for the good of those saving for their retirement." *Abbott v. Lockheed Martin Corp*., No. 06-701, 2015 U.S. Dist. LEXIS 93206, at 4–5 (S.D. Ill. July 17, 2015). Similar remarks were given by U S. District Judge Nancy J. Rosenstengel in *Spano v. Boeing Co.* noting that for over nine years, Jerome Schlichter and Schlichter, Bogard & Denton have "zealously represented American workers and retirees seeking to improve their retirement plan". *Spano v. Boeing Co.,* Case No. 06-743, Doc. 587 at 2 (S.D.Ill. Mar. 31, 2015).
- In *Tussey v. ABB, Inc.*, U.S. District Judge Nanette K. Laughrey emphasized he significant contribution Schlichter, Bogard & Denton has made to ERISA litigation, including educating the Department of Labor and courts about the importance of monitoring fees in 401(k) plans.

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

Tussey v. ABB, Inc., 2015 U.S.Dist.LEXIS 164818 at 7–8 (W.D.Mo. Dec. 9, 2015).

- In *Gordan v. Mass Mutual Life Ins., Co.,* U.S. District Judge Michael Ponsor found that by securing a $30.9 million settlement, Schlichter, Bogard & Denton had achieved an "outstanding result for the class," and "demonstrated

> extraordinary resourcefulness, skill, efficiency and determination." *Gordan v. Mass Mutual Life Ins., Co.*, No. 14-30184, Doc. 144 at 5 (D. Mass. November 3, 2016).

Widely cited ERISA experts have expressed their opinions that the 401(k) fee cases brought by Mr. Schlichter directly contributed to the development of the U.S. Department of Labor's regulatory initiatives to improve fee transparency. In total, Schlichter and his firm have been named Class Counsel in fifteen national class actions alleging fiduciary breaches and prohibited transactions involving the 401(k) plans of large companies.

Mr. Schlichter has also spoken on Employee Retirement Income Security Act ("ERISA") litigation breach of fiduciary duty claims at national ERISA seminars as well as other national bar seminars. Mr. Schlichter has been widely featured and quoted in articles concerning 401(k) fees, appearing in such national publications as the New York Times, Wall Street Journal, USA Today, Bloomberg, Business Week, Reuters, Forbes, Consumer Reports, and the Los Angeles Times.

Mr. Schlichter has been called a "pioneer" in litigation involving excessive fee claims under ERISA by the New York Times (October 16, 2014); "A Lone Ranger of the 401(k)'s" by the New York Times (March 29, 2104); "Public Enemy No. 1 for 401(k) Profiteers" by Investment News (January 26, 2014); "Who Needs Fee Disclosure When You Have Jerry Schlichter" in Fiduciary News (April 7, 2015); "His Impact has been humongous" in reducing 401(k) fees in Reuters (November 5, 2013).

ROGER C. DENTON

Roger C. Denton earned his Bachelor of Art degree from Culver Stockton College in 1978, and his Juris Doctorate from Saint Louis University School of Law in 1982, where he graduated *summa cum laude* and Order of Woolsack. He is a member of the bar of Illinois, Missouri and Wisconsin, and is admitted to practice before the United States Supreme Court. Mr. Denton is also admitted to the United States District Courts for the Southern, Central and Northern Districts of Illinois, the Eastern and Western Districts of Wisconsin, and the Eastern and Western Districts of Missouri.

Mr. Denton has spent his career representing seriously injured individuals and in mass tort claims for work related injuries, and injuries resulting from the use of dangerous products and defective pharmaceutical drugs. He has litigated cases in more than a dozen states, both in state and federal courts, and has a national reputation in the field of FELA litigation with substantial verdicts in multiple jurisdictions. In addition to handling his individual cases and medical monitoring class actions, Mr. Denton is currently serves as co-lead counsel in multiple national multi district litigation cases, including *In re: Pradaxa Products Liability Litigation*,

Liaison Counsel in *In re Yasmin® and Yaz ® (Drospirenone) Marketing, Sales Practices and Products Liability Litigation*, lead counsel in *In re NuvaRing® Products Liability Litigation*. In addition, he has served on national steering committees in *In re Gadolinium-Based Contrast Agents Product Liability Litigation* and *In re E.I. Du Pont De Nemours and Company C-8 Personal Injury Litigation*. Mr. Denton has spoken at national seminars and published articles on mass torts and complex litigation.

NELSON G. WOLFF

Mr. Wolff is a partner in the firm and received his Bachelor of Arts degree in Biology from Emory University in 1988 and his Juris Doctorate from the University of Missouri in 1992. He was a member of the Missouri Law Review and a two-time winner of the National Moot Court Prize for Appellate Advocacy.

He is a member of the bar of Missouri, Illinois, and Arkansas. Mr. Wolff is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Fifth, Seventh, Eighth, and Tenth Circuits, in the United States District Courts for the Central, Southern, and Northern Districts of Illinois, Eastern District of Missouri, Western District of Kentucky, and the Eastern and Western Districts of Arkansas.

Mr. Wolff currently serves on the Board of Governors of the Missouri Association of Trial Attorneys. He has been selected as a Missouri and Kansas "Super Lawyer" each year since 2005 and has been repeatedly selected for inclusion in The Best Lawyers in America. Mr. Wolff has also had articles published in numerous legal and scientific journals on personal injury subjects and has presented at numerous legal seminars.

In addition, Mr. Wolff has been involved in multiple national class action ERISA cases involving challenges to 401(k) plan fees and expenses and breaches of fiduciary duty. He conducted the trial of *Tibble v. Edison*, a 401k excessive fee case in the Central District of California, a case in which the firm of Schlichter, Bogard & Denton obtained a writ of certiorari in the U.S. Supreme Court, and, in 2015, a unanimous favorable ruling in the U.S. Supreme Court.

KRISTINE K. KRAFT

Kristine K. Kraft is a partner of the firm. She received her Juris Doctorate from the University of Missouri-Kansas City in 1990, graduating with distinction and the honor of the Order of the Bench and Robe. She graduated *cum laude* from Avila College in 1983 with a Bachelor of Arts degree. She specializes in litigating highly complex pharmaceutical cases, mass tort, and complex litigation cases.

She has represented clients throughout the United States, and is a member of the bar of Missouri, Kansas, and Illinois, as well as in numerous Federal courts.

She serves on the Board of Governors for the Missouri Association of Trial Attorneys, and has also been selected for inclusion in the "Honors Edition" of the Cambridge "Who's Who Among Executive and Professional Women".

Additionally, Ms. Kraft has been appointed to serve as co-lead counsel and liaison counsel of *In Re NuvaRing® Products Liability Litigation*, a Multi-District Litigation which resulted in a substantial settlement in the U. S. District Court for the Eastern District of Missouri. She also serves on the Science and Discovery Committees for the Multi-District Litigation matters: *In re Yasmin® and Yaz® (Drospirenone) Marketing, Sales Practices and Products Liability Litigation, In re Ortho Evra® Products Liability Litigation* and *In re Gadolinium-Based Contrast Agents Product Liability Litigation*.

Ms. Kraft is and has been involved in complex litigation, mass torts, and multi-district litigation.

MICHAEL A. WOLFF

Michael A Wolff is a partner of the firm. He received his Juris Doctor *cum laude* from the University Of Missouri-Columbia in 1990, where he was initiated into the Order of the Coif. He received his Bachelor of Arts *magna cum laude* from Colgate University in 1987, where he was initiated into Phi Beta Kappa. He has extensive experience in Federal and State appellate and trial practice, as well as fiduciary litigation, complex commercial litigation, and 401k excessive fee cases.

Mr. Wolff is a member of the bar of Missouri (1990) and Illinois (1991) and is admitted to practice before the Supreme Court of the United States and many federal courts. Mr. Wolff has successfully briefed and argued numerous dispositive motions and federal appeals in 401k excessive fee litigation.

Mr. Wolff is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

TROY A. DOLES

Troy Doles is a partner of the firm, and received his Bachelor's degree from Indiana University in 1992 and his Juris Doctorate from St. Louis University School of Law in 1996. He is a member of the bar of Missouri and Illinois and is admitted to

practice before the Supreme Court of the United States and numerous federal courts.

Mr. Doles has extensive experience in complex class action cases and complex commercial litigation, including Federal Court and Multi-District Litigation cases. He has been deeply involved in numerous class actions on behalf of retirement plan participants, consumers, and health care providers. Mr. Doles has lectured frequently to a variety of associations and conferences including fiduciary groups, national and state medical associations, and bar associations.

Mr. Doles was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Mr. Doles is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

HEATHER LEA

Heather Lea is a partner of the firm. She graduated with a Bachelor of Arts degree from Rhodes College in 1994 and with a Juris Doctorate degree from Washington University School of Law in 2000, where she was Order of the Coif, and the Editor-in-Chief of the Washington University Journal of Law and Policy. Ms. Lea is a member of the bar of Illinois and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts.

Ms. Lea was a judicial law clerk to the Honorable Jeanne E. Scott, United States District Court for the Central District of Illinois and has specialized in ERISA and pension plan litigation for her entire career. She is currently involved in litigating class actions under ERISA for claims of fiduciary breaches involving plans of large employers.

Ms. Lea was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Ms. Lea is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

ANDREW D. SCHLICHTER

Andrew Schlichter is a partner of the firm. He graduated with a Bachelor of Arts Degree from Georgetown University cum laude in 2002 and from the University of Michigan Law School cum laude in 2005, where he was Executive Editor of the Michigan Law Review and received the Jason H. Honigman award. He is a member of the bars of New York and Missouri, and is admitted to practice before the Supreme Court of the United States and numerous federal courts. From 2005 to 2006, he served as a law clerk to U.S. District Judge David R. Herndon in East St. Louis, Illinois. Prior to joining Schlichter, Bogard & Denton, LLP, Mr. Schlichter worked for a large New York City law firm where he practiced complex commercial litigation.

Mr. Schlichter has extensive experience in high-stakes litigation. He has represented numerous clients in federal and state securities actions, and has obtained successful results in a broad range of complex matters, including dismissal with prejudice of a $147 million action asserted in connection with a debt refinancing and dismissal of several significant claims related to a corporate merger. He has also represented clients in regulatory matters and investigations, including investigations related to the collapse of an investment bank's sponsored hedge funds, off-label promotion at a major pharmaceutical company, and a utility's response to Hurricane Sandy.

In his pro bono practice, he has served as Counsel to the New York Chief Judge's Special Commission on the Future of the New York State Courts and in 2013 received a Pro Bono Publico Award from the Legal Aid Society.

Mr. Schlichter represents clients in complex litigation and personal injury litigation. He is involved in complex national ERISA class actions involving 401k plans of large employers, which have resulted in multi-million dollar settlements and substantial non-monetary improvements to the 401(k) plans.

SEAN E. SOYARS

Mr. Soyars is a partner of the firm. He received his Bachelor of Arts from St. Mary's College in 2000. He received his Juris Doctorate in 2004 from Washington University School of Law. He is a member of the bar of Missouri and is admitted to practice before numerous federal courts.

He has extensive experience in appellate advocacy in representing participants in large 401(k) plans, as well as extensive experience working on all aspects of complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401(k) plans.

KURT C. STRUCKHOFF

Kurt Struckhoff is Counsel in the firm. He graduated with a Bachelor of Science degree in finance and accounting from Saint Louis University in 2006, *summa cum laude*. He received his Juris Doctorate from Saint Louis University School of Law in 2009. He is a member of the bar of Missouri and Illinois and is admitted to practice before the Supreme Court of the United States and numerous federal courts.

Mr. Struckhoff has been with the firm since 2009.

Mr. Struckhoff was a member of the trial team in *Tussey v. A.B.B.*, a month-long trial which was the first and is the only full trial of a 401k excessive fee case in history, and which resulted in a favorable multi-million dollar judgment for plaintiffs.

Mr. Struckhoff is and has been involved in numerous complex, national ERISA class actions involving 401(k) plans of large employers, including numerous cases resulting in multi-million dollar settlements and substantial non-monetary improvements to the 401k plans.

He has worked extensively in complex litigation in areas including ERISA, pension issues, securities fraud and fiduciary liability.

JOEL ROHLF

Joel Rohlf is Counsel in the firm. He graduated with a Bachelor of Arts degree from the University of Iowa with honors and highest distinction. He received his Juris Doctorate from the University of Iowa, College of Law in 2008 with high distinction and order of the coif. He is a member of the bars of Missouri, Illinois, and the District of Columbia and is admitted to practice before several federal courts.

Joel has extensive experience representing clients in high stakes financial litigation. He has successfully represented numerous clients in a broad range of cases, including ERISA, securities, civil RICO, False Claims Act, consumer protection and pharmaceutical matters.

He has also represented pro bono criminal defendants who cannot afford counsel, and has handled cases for the American Civil Liberties Union and handled a case for the National Association of Criminal Defense Lawyers before the United States Supreme Court in *Vermont v. Brillion*, 556 U.S. 81 (2009).

SCOTT APKING

Scott earned his B.A. from The Ohio State University, and an MBA from Webster University. Scott graduated with honors from the University of Missouri School of Law. During law school, Scott co-founded the school's Veterans Clinic, which represents low-income veterans in VA proceedings at all levels, including before the U.S. Court of Appeals for Veterans' Claims and Court of Appeals for Federal Claims. Scott also served as Senior Associate Editor of the Missouri Law Review.

Prior to joining Schlichter, Bogard & Denton, LLP, Scott worked as a litigator for a large law firm in St. Louis. Scott is a veteran of Operation Iraqi Freedom and continues to serve in the United States Army Reserves as a Career Counselor responsible for over 4,000 Soldiers.

Scott represents clients in complex litigation in federal and state courts throughout the country. Scott has a broad range of experience representing clients in high stakes financial litigation, FINRA, consumer protection, and environmental matters.

ALEX BRAITBERG

Alex earned his B.A. from Cornell University, and his Juris Doctorate from Saint Louis University, magna cum laude.

Alex has served on the Board of Governors of the Bar Association of Metropolitan St. Louis since 2017, and is currently the Chair of the Continuing Legal Education Committee.

Alex represents clients in complex high-stakes cases in courts around the country, focusing his practice on Employee Retirement Income Security Act (ERISA) and pension plan litigation. He has extensive experience in class actions, including fiduciary breach, toxic exposure, product liability and consumer protection cases, and has obtained substantial results for his clients in a broad range of matters.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

Civil Action No. 1:15-cv-02556-WJM-NRN

LORRAINE M. RAMOS, *et al.,*

Plaintiffs,

v.

BANNER HEALTH, *et al.*,

Defendants.

DECLARATION OF HEATHER LEA

I, Heather Lea, declare as follows:

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

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

3. I am licensed to practice in the States of Missouri and Illinois. I am admitted to practice in the United States Supreme Court and numerous district courts across the

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

4. As set forth in Plaintiffs' Unopposed Motion for Reimbursement of Attorneys' Fees, Expenses, and Class Representative Awards from the Slocum Settlement, the District of Maryland recently approved hourly rates for Schlichter Bogard & Denton when the court approved a one-third attorney fee of the common fund in an ERISA excessive fee class action settlement. *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, *6 (D.Md. Jan. 28, 2020). The approved hourly rates are as follows: for attorneys with at least 25 years of experience, $1,060 per hour; for attorneys with 15–24 years of experience, $900 per hour; for attorneys with 5–14 years of experience, $650 per hour; for attorneys with 2–4 years of experience, $490 per hour; and for Paralegals and Law Clerks, $330 per hour. These rates also have been approved for the firm by multiple other district courts. *See, e.g., Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 at 3 (M.D.Tenn. Oct. 22, 2019); *Clark v. Duke Univ.*, No. 16-1044, Doc. 165 at 8 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, Doc. 450 at 7–8 (M.D.N.C. May 6, 2019); *Bell v. ATH Holding Co.*, No. 15-2062, Doc. 380 at 10 (S.D.Ind. Sept. 4,

2019); *Ramsey v. Philips N. Am. LLC,* No. 18-1099, Doc. 27 at 8 (S.D.Ill. Oct. 15, 2018). Notably, as recently as July 20, 2020, this District in *Troudt v. Oracle Corp.*, No. 16-175, Doc. 236 at 7, n.5 (D.Colo. Jul. 10, 2020) also approved these rates.

5. To calculate the lodestar, Schlichter Bogard & Denton applied these rates to the number of hours incurred by attorneys and non-attorneys during the *Ramos* action as it related only to their work pertaining to litigating Plaintiffs' claims against Slocum.[1] This calculation is shown in the following table:

Experience	Hours	Rate	Total
25 Years +	48.85	$1,060.00	51,718.00
15–24 Years	487.25	$900.00	438,525.00
5–14 Years	115.95	$650.00	75,367.50
0–4 Years	0.00	$490.00	0.00
Attorney Total	652.05		565,673.50
Paralegals Total	94.80	$330.00	31,284.00
Total of All Hours	**746.85**		**$596,957.50**

6. As set forth in the above table, based on the firm's billing records, Schlichter Bogard & Denton expended to date 652.05 hours of attorney time and 94.80 hours of paralegal time.

7. Apart from the lodestar, Class Counsel's requested one-third of the common fund is routinely awarded in similar cases:

Case	Fee %
Troudt v. Oracle Corp., No. 16-175, Doc. 236 (D. Col. July 10, 2020)	33.33%

[1] This time was not submitted or included in support of Plaintiffs' Motion for Attorney Fees and Costs, and for an Award to the Class Representatives, and Memorandum in Support. Doc. 478.

Case	Fee %
Kelly v. Johns Hopkins Univ., No. 16-2835, 2020 WL 434473 (D.Md. Jan. 28, 2020)	33.33%
Cassell v. Vanderbilt Univ., No. 16-2086, Doc. 174 (M.D.Tenn. Oct. 22, 2019)	33.33%
Tussey v. ABB, Inc., No. 06-4305, 2019 WL 3859763 (W.D.Mo. August 16, 2019)	33.33%
Sims v. BB&T Corp., No. 15-1705, 2019 WL 1993519 (M.D.N.C. May 6, 2019)	33.33%
Clark v. Duke, No. 16-1044, 2019 WL 2579201 (M.D.N.C. June 24, 2019)	33.33%
Ramsey v. Phillips N.A., No. 18-1099, Doc. 27 (S.D.Ill. Oct. 15, 2018)	33.33%
In re Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 WL 9614818 (C.D.Cal. Oct. 24, 2017)	33.33%
Gordan v. Mass. Mut. Life Ins. Co., No. 13-30184, 2016 WL 11272044 (D.Mass. Nov. 3, 2016)	33.33%
Kruger v. Novant Health, Inc., No. 14-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016)	33.33%
Spano v. Boeing Co., No. 06-743, 2016 WL 3791123 (S.D.Ill. Mar. 31, 2016)	33.33%
Abbott v Lockheed Martin Corp., No. 06-701, 2015 WL 4398475 (S.D.Ill. July 17, 2015)	33.33%
Krueger v. Ameriprise Fin., Inc., No. 11-2781, 2015 WL 4246879 (D.Minn. July 13, 2015)	33.33%
Beesley v. Int'l Paper Co., No. 06-703, 2014 WL 375432 (S.D.Ill. Jan. 31, 2014)	33.33%
Nolte v. Cigna Corp., No. 07-2046, 2013 WL 12242015 (C.D.Ill. Oct. 15, 2013)	33.33%
Will v. Gen. Dynamics Corp., No. 06-698, 2010 WL 4818174 (S.D.Ill. Nov. 22, 2010)	33.33%
Martin v. Caterpillar Inc., No. 07-1009, 2010 WL 11614985 (C.D.Ill. Sept. 10, 2010)	33.33%

8. Investigation and Preparation of Complaint: Starting in 2015, Schlichter Bogard & Denton began their investigation of the claims at issue in this lawsuit. The attorneys conducted in-depth investigative analysis and research of publicly available

documents, including summary plan descriptions, participant statements, prospectuses, and the Banner Health 401(k) Plan's Forms 5500 filed with the Department of Labor, among other sources. Class Counsel requested documents from the Plan administrator on behalf of a current participant under 29 U.S.C. §1024(b), which included the production of the plan document, fee disclosures, custodial account agreements, recordkeeping services agreements, and other related documents. After Banner Defendants produced a substantial volume of material, Class Counsel thoroughly reviewed same and concluded that Slocum was a necessary party. With that analysis, Class Counsel prepared an Amended Complaint in late 2016 to, among other things, include Slocum as a Defendant.

9. Involvement of Class Representatives: Class Counsel's investigation included meetings with the Class Representatives, which occurred both in-person and on the phone. The in-person meetings required attorneys to travel to various locations throughout the country.de. These meetings provided valuable insight and additional understanding of the operation and administration of the Plan, the Plan's investment structure, as well as fee and performance disclosures concerning the Plan's investments. Each Class Representative provided Class Counsel with critical documents prior to preparing the Complaint. It has also been my experience that employees are hesitant to bring these large, complex suits against their employer for fear of alienation. Each Class Representative also stayed apprised of the proceedings at each stage of the case, including preparations for trial, sitting for depositions, and submitting declarations in support of class certification.

10. On November 20, 2015, Plaintiffs filed their complaint in *Ramos v. Banner Health*, No. 15-2556 (D.Colo.). Doc. 1.

11. On October 3, 2016, Plaintiffs filed a Motion for Leave to File an Amended Complaint and a Motion for Class Certification. Docs. 94, 96.

12. The Motion to Amend was granted and the Amended Complaint was filed on November 9, 2016. Docs. 117, 118. The Amended Complaint added individual Banner Defendants and added Slocum as a new Defendant. *Id.*

13. The Banner Defendants answered the Amended Complaint. Docs. 139, 188.

14. Defendant Slocum filed a Motion to Dismiss on February 8, 2017. Doc. 181. Defendant Slocum's 15-page memorandum was extensive and raised complex legal arguments that addressed Counts I and II of the Amended Complaint. Doc. 181. Over the next month, Class Counsel spent extensive time responding to Slocum's arguments, which included conducting research and analysis of relevant authority. Plaintiffs filed their amended opposition on April 2, 2017. Doc 201. On September 29, 2017, this Court issued its Order denying Defendant Slocum's Motion to Dismiss. Doc 251

15. Motion to Certify Class: Plaintiffs filed a motion to certify the class on June 23, 2017. Doc 221. Defendant Slocum opposed Plaintiffs' motion as to Counts I and II of the Amended Complaint. Doc 247. On March 28, 2019, the Court granted class certification for the claims brought against the Banner Defendants and denied class certification for the claims brought against Slocum. Doc. 296.

16. Depositions: A substantial number of depositions were taken in this case including three depositions of Slocum employees and officers. These depositions

involved highly complex issues and required many hours of preparation, including extensive document review.

17. Opposing Counsel: Six attorneys from Morgan Lewis, a global law firm familiar with complex ERISA litigation, entered appearances on behalf of Slocum from offices in Philadelphia and Chicago.

18. Experts**:** Slocum retained an expert who provided expert opinion and analysis related to the claims in this case against Slocum. This expert provided a detailed report and was deposed at length related to those opinions in his report by Class Counsel.

19. Summary Judgment: Slocum filed a motion for summary judgment on June 7, 2018. Doc. 306. Class Counsel expended substantial time analyzing Slocum's motion and prepared a detailed response and opposition to same. Doc.322. Slocum's motion for summary judgment was granted in part and denied in part on April 23, 2019. Doc. 372.

20. Trial Preparation: The parties filed witness lists, Docs 411, 415, and Proposed Findings of Fact and Conclusions of Law. Docs 408, 407. Class Counsel and Plaintiffs spent significant time preparing for trial. Class Counsel and Plaintiffs were fully prepared for trial.

21. Settlement: After lengthy discussions over several weeks leading up to trial, and a full mediation in July of 2019, Plaintiffs and Slocum reached a settlement just days before trial. Doc. 421 at 10−11. None of the money paid by Slocum will go back to Slocum under any circumstances. Prior to seeking preliminary approval of the class action settlement, Class Counsel was engaged in the preparation and/or review of

numerous supporting settlement documents, including the class action settlement notices, the motion for preliminary approval, and related proposed orders. Class Counsel will not receive any portion from the interest earned on the common fund while it is deposited in an interest-bearing account; class members will receive the entire benefit of the interest.

22. More time will be spent handling responses from participants who receive notice, preparing for the final approval hearing, and traveling to the final approval hearing. In addition, there will be substantial attorney time spent after the settlement effective date responding to participants.

23. I have examined the records and we have incurred case expenses relating to Slocum totaling $8,199.40.[2]

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

Description	**Total**
Depositions	$4,309.80
Filing, Transcripts, Subpoena Services and Related Costs	$314.60
Mediation and Settlement Costs	$3,575.00
Total	**$8,199.40**

25. The expenses listed above are those for which Schlichter Bogard & Denton, LLP is seeking reimbursement. The firm has incurred other expenses in litigating this case for which it does not seek reimbursement, such as expenses associated with

[2] None of these expenses were included in the Plaintiffs' Motion for Attorney Fees and Costs, and for an Award to the Class Representatives, and Memorandum in Support filed against Banner Defendants. Doc. 478.

meals.

26. Pursuant to the Settlement, Plaintiffs and Slocum retained an independent fiduciary to determine whether the settlement should be approved. Among other things, the independent fiduciary will review Class Counsel's fee request to determine if it is fair to the Class. Class Counsel will respond to the independent fiduciary's inquiries all at no cost to the Class. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on September 24, 2020 in St. Louis, Missouri.

/s/ Heather Lea
Heather Lea