IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GENEVA HENDERSON et al., Plaintiffs, v. EMORY UNIVERSITY et al., Defendants.	Civil Action No. 1:16-cv-02920-CAP

PLAINTIFFS' MEMORANDUM IN SUPPORT OF JOINT MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Plaintiffs brought this action alleging that Defendants breached their duties under the Employee Retirement Income Security Act of 1974 (ERISA) by causing the Emory University Retirement Plan and the Emory Healthcare, Inc. Retirement Savings and Matching Plan (the "Plans") to pay unreasonable administrative and investment management fees, maintaining underperforming investment options, and selecting "retail" mutual funds rather than the lowest cost analogous institutional mutual funds.

After extensive litigation, lengthy discovery, and protracted arm's-length negotiations with the assistance of a national mediator, the Parties have reached a proposed Settlement[1] that provides meaningful monetary and significant non-

[1] The fully executed settlement agreement dated April 28, 2020 ("Settlement") is attached to the Parties' Joint Motion for Preliminary Approval as Exhibit A.

monetary relief to each Class Member. In light of the litigation risks further prosecution of the actions would inevitably entail, Plaintiffs respectfully request that the Court (1) preliminarily approve the proposed Settlement, (2) approve the proposed form and method of notice to the Settlement Class, and (3) schedule a hearing at which the Court will consider final approval of the Settlement.

BACKGROUND

I. Plaintiffs' Claims

Plaintiffs filed their original complaint in *Henderson et al. v. Emory University et al.,* No. 16-02920, on August 11, 2016, and filed an amended complaint on November 21, 2016. Docs. 1, 30. On December 20, 2017, Plaintiffs filed their second amended complaint (Doc. 108), which is the currently operative complaint. Therein, Plaintiffs alleged that Defendants (1) breached their duties of prudence and loyalty under 29 U.S.C. § 1104(a)(1)(A) and (B) by allowing the Plans to be locked into the CREF Stock Account and TIAA recordkeeping (Count I); (2) engaged in transactions prohibited by 29 U.S.C. § 1106(a)(1) by allowing the Plans to be locked into the CREF Stock Account and TIAA recordkeeping (Count II); (3) breached their duties of prudence and loyalty under 29 U.S.C. § 1104(a)(1)(A) and (B) by allowing the Plans' vendors to charge excessive recordkeeping and administrative fees and failing to monitor those fees, failing to

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Capitalized terms herein not otherwise defined are defined in the Settlement.

consolidate recordkeepers, and allowing the vendors to place their expensive proprietary investments into the Plans (Count III); (4) engaged in transactions prohibited by 29 U.S.C. § 1106(a)(1) by allowing the Plans' recordkeepers to collect revenue sharing payments for administrative services (Count IV); (5) breached their duties of prudence and loyalty under 29 U.S.C.§ 1104(a)(1)(A) and (B) by allowing Plan participants to be charged unreasonable investment management fees and unnecessary 12b-1 and mortality and expense risk fees, selecting and retaining among the Plan's investment options poorly performing and expensive mutual funds and variable annuities, and failing to engage in a prudent process for monitoring Plan investments and removing imprudent investments within a reasonable period (Count V); (6) engaged in transactions prohibited by 29 U.S.C. § 1106(a)(1) by selecting investment options managed by TIAA, Fidelity and Vanguard, and causing the Plans to pay fees in connection with these investments (Count VI); and (7) Emory University and Emory Healthcare, Inc. breached their fiduciary duties to monitor their appointees' performance, fiduciary process, and investment monitoring activities, and failed to remove appointees whose performance was inadequate (Count VII).

II. The Status of the Litigation

Since the filing of this case, the Parties have engaged in over three years of hard-fought litigation that included the production of over 500,000 pages of

documents and the depositions of 24 fact witnesses and seven expert witnesses. After lengthy briefing, on May 10, 2017, the Court denied in part and granted in part Defendants' motion to dismiss. Doc. 61. On December 20, 2017, Plaintiffs filed their Second Amended Complaint. Doc. 108. On January 3, 2018, Defendants answered Plaintiffs' Second Amended Complaint, denying any wrongdoing. Doc. 111.

The Court granted class certification on September 13, 2018. Doc. 167. On July 10, 2017, Defendants filed a motion to strike Plaintiffs' jury demand, which the Court granted on February 28, 2018. Docs. 71, 127.

On May 3, 2019, the Parties conducted a full day in-person mediation session before a nationally recognized mediator, however, the Parties did not reach agreement. The Parties exchanged the Rule 26(a)(2) expert reports of four expert witnesses for Plaintiffs and three expert witnesses of Defendants; depositions of each of the seven expert witnesses were concluded by September 13, 2018. The Parties each filed multiple motions to exclude expert testimony, the most recent of which was filed by Plaintiffs on February 27, 2020. Doc. 206.

On March 2, 2020, the Parties jointly moved for a stay of then-current case deadlines, which the Court granted on March 4, 2020. Docs. 210, 211. On April 16, 2020, the Parties filed a joint status report informing the Court that the Parties had reached an agreement in principle to resolve this matter. Doc. 214.

III. The Terms of the Proposed Settlement

In exchange for releases and for the dismissal of the actions and for entry of a judgment as provided for in the proposed Settlement, Defendants will make available to Class Members the benefits described below.

A. Monetary Relief

Defendants will deposit $16,750,000 ("Gross Settlement Amount") in an interest-bearing settlement account (the "Settlement Fund"). The Settlement Fund will be used to pay the recoveries to Class Members, as well as Class Counsel's attorneys' fees and expenses, Administrative Expenses of the Settlement, and the Class Representatives' Compensation as described in the Settlement. All amounts deposited in the Settlement Fund will be distributed in accordance the terms of the proposed Settlement. No residual monies remaining in the Settlement Fund will revert back to any Defendant.

The majority of Class Members will automatically receive distributions directly into their tax-deferred retirement accounts. Those who already left the Plans and no longer have an active account will be given the option to receive their distributions in the form of a check made out to them individually or as a roll-over into another tax-deferred account. As a result, most Class Members will receive their distributions tax-deferred, further enhancing the significant monetary recovery.

B. Additional Terms

In addition to the monetary component of the proposed Settlement, the Settling Parties have agreed to certain non-monetary terms that provide additional value to the Plan and Class Members above and beyond the monetary recovery.

These additional terms include:

(1) There will be a Settlement Period of three years.

(2) 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 information regarding the investment alternatives and fees for those investment alternatives, as well as a copy of the Investment Policy Statement(s) (if any) for the Plans.

(3) If the Plans' fiduciaries have not already done so, within ninety (90) calendar days of the Settlement Effective Date the Plans' fiduciaries shall retain an independent consultant, and work with the consultant to review the Plans' existing investment structure to develop a recommendation for the Plans' investment structure.

(4) Upon receipt of the independent consultant's recommendation regarding the Plans' investment structure, the Plans' fiduciaries shall determine whether to follow that recommendation, whatever it may be. To the extent the Plans' fiduciaries decide not to follow a recommendation of the independent consultant,

the Plans' fiduciaries shall document the reasons for that decision and provide those reasons in writing to Class Counsel along with the consultant's written report(s).

(5) Defendants agree to instruct the recordkeepers of the Plans in writing within ninety (90) calendar days of the Settlement Effective Date that, in performing previously agreed-upon recordkeeping services with respect to the Plans, they must not use information received as a result of providing services to the Plans and/or the Plans' participants to solicit the Plans' 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 Plans and/or the Plans' participants for the purpose of soliciting the Plans' current participants for the purpose of cross-selling non-Plan products and services.

(6) Within one hundred eighty (180) calendar days of the Settlement Effective Date, Defendants shall issue requests for proposals for recordkeeping and

administrative services to at least four qualified service providers for administrative and recordkeeping services for the Plans, each of which shall have experience providing recordkeeping and administrative services to plans of similar size and complexity.

(7) After conducting the request for proposals for recordkeeping services, the independent consultant shall provide a recommendation to the Plans' fiduciaries regarding whether the Plans should use a single recordkeeper or more than one recordkeeper. Upon receipt of the recommendation regarding the Plans' recordkeeping arrangement, the Plans' fiduciaries may decide to keep one or more of their current recordkeepers and/or retain a new recordkeeper based on whatever factors, including cost, value, available services, and quality of services, that the Plans' fiduciaries deem reasonable and appropriate under the circumstances. To the extent the Plans' fiduciaries decide not to follow the independent consultant's recommendation regarding the Plans' recordkeeping arrangement, the Plans' fiduciaries shall, within thirty (30) calendar days of such decision, document the reasons for that decision and provide those reasons in writing to Class Counsel along with the independent consultant's written report(s) and other documentation.

(8) Within thirty (30) calendar days of selecting the recordkeeper(s), the Plans' fiduciaries shall provide to Class Counsel the final bid amounts that were submitted in response to the request for proposals. Defendants agree that the final

agreed-upon contract(s) for recordkeeping services resulting from the requests for proposals shall contractually prohibit the Plans' recordkeeper(s) from using information received as a result of providing services to the Plans and/or the Plans' participants to solicit the Plans' participants for the purpose of cross-selling proprietary non-Plan products and services, unless a request is initiated by a Plan participant. Defendants also shall provide Class Counsel the current recordkeeping contract(s) for the Plans.

(9) To the extent that the Plans' fiduciaries do not follow a recommendation from the independent consultant engaged to provide services identified above, and Class Counsel determines that the Plans' fiduciaries failed to comply with the terms set forth herein when deviating from the independent consultant's recommendation(s), Class Counsel may seek enforcement of those terms in keeping with the negotiated dispute-resolution procedures.

(10) Within eighteen (18) months of the Settlement Effective Date, Defendants shall communicate, in writing, with the Plans' then-current participants and inform them of the recordkeeping and investment structure for the Plans resulting from the process described above. The Plans' participants shall be informed of the investment options available in the approved fund lineup, including any frozen accounts. For periods up through the implementation of the Plans' recordkeeping and investment structure, participants shall be provided with

a link to a webpage containing the fees and the 1-, 5-, and 10-year historical performance of the investment options (including any frozen accounts) that are in the Plans' investment structure. If any accounts are frozen, Defendants shall provide to participants the contact information for the individual or entity that can facilitate a fund transfer for participants who seek to transfer their investments in frozen accounts to another investment in the Plans. The changes to the Plans' recordkeeping and investment structure resulting from the processes described above, if any, may be implemented by the Plans' fiduciaries on a date that is more than eighteen (18) months but less than twenty four (24) months from the Settlement Effective Date.

(11) During the Settlement Period, in considering the Plans' investment alternatives, the Plans' fiduciaries shall consider, among other reasonable and appropriate factors, the cost of different share classes available for any particular investment considered for inclusion in the Plans.

C. Notice and Class Representatives' Compensation

The costs to administer the proposed Settlement, including those associated with providing notice to Class Members, will be paid from the Settlement Fund. Incentive payments in an amount approved by the Court also will be paid from the Settlement Fund.

For the costs associated with the Independent Fiduciary and the Settlement

Administrator, Plaintiffs received proposals from candidates to provide these services. After consideration of the proposed fees and the quality of the services to be provided by each candidate, Gallagher Fiduciary Advisors, LLC was selected as the Independent Fiduciary at a cost of $17,500, and Analytics LLC was selected as the Settlement Administrator at an estimated cost of $65,789.[2]

Plaintiffs will seek incentive awards in the amount of $25,000 for each Class Representative, Geneva Henderson, Rena Guzman, Jacqueline Goldberg, Connie Corpening, Joanne Rackstraw, Joann D. Wright, Deon M. Moore, Cynthia T. James, and Huberta W. Waller. This amount is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery and the risk of alienation from their employers and peers. *E.g., Enter. Energy Corp. v. Columbia Gas Transmission Corp.*, 137 F.R.D. 240, 250 (S.D. Ohio 1991)*; Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016); *Krueger v. Ameriprise Fin., Inc.*, No. 11-02781, 2015 WL 4246879, at *3 (D. Minn. July 13, 2015); *Beesley v.*

[2] The proposed fees for the Settlement Administrator to provide notice to Class Members and other related services to facilitate the settlement is estimated based on information presently available to the parties and is subject to change once the number of Class Members and those with available email addresses is determined.

Int'l Paper Co., No. 06-703, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014). The total award requested for the Class Representatives represents less than 2% of Settlement Fund.

D. Attorneys' Fees and Costs

In the Eleventh Circuit, "attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768, 774 (11th Cir. 1991) *see also Boeing Co. v. VanGemert*, 444 U.S. 472, 478 (1980). In this case, Class Counsel will request attorneys' fees to be paid out of the Settlement Fund in an amount not more than one-third of the Settlement Fund, or $5,583,333.33, as well as reimbursement for costs incurred of no more than $675,000. This Court has regularly approved fee awards of one-third in common fund cases. *See, e.g, George v. Acad. Mortg. Corp.*, 369 F. Supp. 3d 1356, 1382 (N.D. Ga. 2019) (Pannell, J.); *Lunsford v. Woodforest Nat'l Bank*, No. 12-103, 2014 WL 12740375, at *11 (N.D. Ga. May 19, 2014) (Pannell, J.); *McLendon v. PSC Recovery Sys., Inc.*, No. 06-1770, 2009 WL 10668635, at *5 (N.D. Ga. June 2, 2009) (Pannell, J.). In addition, a one-third fee to Class Counsel is provided for in the contract with the Class Representatives. Declaration of Jerome J. Schlichter (Schlichter Decl.) ¶ 4.

Although Class Counsel will not request a fee greater than one-third of the monetary recovery, the additional terms of the proposed Settlement provide

meaningful value in addition to the monetary amount. This results in the requested fee being lower than a one-third award. In addition, Class Counsel will not seek attorneys' fees (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with communicating with Class Members or Defendants during the Settlement Period; and (3) for work required to enforce the proposed Settlement, if necessary.

ARGUMENT

The first step in approving any proposed settlement in a class action is preliminary approval. Manual for Complex Litigation, Fourth, §21.632, at 320–21 (Fed. Jud. Ctr. 2004); *see also Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984) (listing factors for court to consider for final approval of class settlement, after preliminary hearings, notice to the class, and opportunity for objections). "At the preliminary approval stage, the Court's task is to evaluate whether the Settlement is within the 'range of reasonableness.'" *Agnone v. Camden Cty., Georgia*, No. 14-00024, 2018 WL 4937061, at *5 (S.D. Ga. Oct. 10, 2018), *report and recommendation adopted*, No. 14-00024, 2018 WL 4937060 (S.D. Ga. Oct. 11, 2018) (citing 4 Newberg on Class Actions, § 11.26 (4th ed. 2010)). "Preliminary approval is appropriate where the proposed settlement is the result of the parties' good faith negotiations, there are no obvious deficiencies, and the settlement falls within the range of reason." *Agnone*, 2018 WL 4937061, at *5.

Settlement negotiations that involve arm's length, informed bargaining with the aid of experienced counsel support a preliminary finding of fairness. *Id*. (citing Manual for Complex Litigation, § 30.42 (3rd ed. 1995)) ("A presumption of fairness, adequacy, and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery.")

At this stage, the Court reviews the proposed settlement to determine whether it is sufficient to warrant public notice and a hearing. Manual for Complex Litigation, Fourth, §13.14, at 172–73. If so, the final decision on approval is made after a "fairness" hearing. *Id*. The Court is not required at this preliminary stage to make any final determinations:

> The judge must make a preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms and must direct the preparation of notice of the certification, proposed settlement, and date of the final fairness hearing.

Id. §21.632, at 321. The initial assessment can be made on the basis of information already known to the Court and then supplemented by briefs, motions, and an informal presentation from the settling parties. *Id*. at 320.

The Court should preliminarily approve the proposed Settlement because (i) the proposed Settlement is fair, reasonable, and adequate, and within the range of possible approval; (ii) the proposed Settlement has been negotiated in good faith at

arm's length between experienced attorneys familiar with the legal and factual issues of this case; and (iii) with respect to the forms of notice of the material terms of the Settlement to class members for their consideration and reaction, that notice is appropriate and warranted. *See Prather v. Wells Fargo Bank, N.A.*, No. 15-04231, 2017 WL 770132, at *1 (N.D. Ga. Feb. 24, 2017); *Cross v. Wells Fargo Bank, N.A.,* No. 15-01270, 2016 WL 5109533, at *1 (N.D. Ga. Sept. 13, 2016).

I. The Proposed Settlement Is Fair, Reasonable, Adequate, and Within the Range of Possible Approval.

The proposed Settlement is fair, reasonable, and adequate. As set forth above, the Settlement provides a substantial monetary relief component in the amount of $16,750,000. In addition, the Settlement provides substantial and comprehensive non-monetary and additional relief. In the opinion of Class Counsel, the settlement is fair, reasonable, and adequate. Further, independent of Class Counsel's opinion as to the reasonableness of the Settlement, the Settling Parties will submit the Settlement to an Independent Fiduciary, which will provide an opinion on the Settlement's fairness before the final fairness hearing.

The $16,750,000 Settlement represents significant "monetary relief to the class they might not otherwise obtain." *Schaffer v. Litton Loan Servicing, LP*, No. 05-7673, 2012 WL 10274679, at *12 (C.D. Cal. Nov. 13, 2012). The only similar case to be tried resulted in a verdict for defendants on all claims. *Sacerdote v. New*

York Univ., 328 F. Supp. 3d 273, 317 (S.D.N.Y. 2018).

"The policy favoring settlement is especially relevant in class actions and other complex matters, where the inherent costs, delays, and risks of continued litigation might otherwise overwhelm any potential benefit the class could hope to obtain." *Gevaerts v. TD Bank, N.A*., No. 14-20744, 2015 WL 12533121, at *5 (S.D. Fla. Aug. 4, 2015), *accord*, *Columbus Drywall & Insulation, Inc. v. Masco Corp*., No. 04-3066, 2012 WL 12540344, at *6 (N.D. Ga. Oct. 26, 2012). The Settlement appropriately values Plaintiffs' claims given that "continued litigation with its risks and costs are outweighed by the benefits of the settlement." *Ressler v. Jacobson*, 822 F. Supp. 1551, 1553 (M.D. Fla. 1992).

Further, Class Counsel conducted substantial investigation and analysis of over five hundred thousand pages of documents that occurred over a period of over three years. As part of Class Counsel's discovery practice in preparing the case for depositions and summary judgment, the majority of these documents were electronically indexed and sorted, and thereafter individually examined, analyzed, and cataloged by an attorney. Class Counsel also thoroughly reviewed and analyzed voluminous materials provided by the Class Representatives and third-party service providers, and took numerous fact and expert witness depositions. This extensive investigation and discovery strongly weighs in favor of approval of the Settlement. *Greco v. Ginn Dev. Co., LLC*, 635 F. App'x 628, 633 (11th Cir.

2015).

In evaluating class action settlements, the "Court is entitled to rely upon the judgment of experienced counsel for the parties . . . [and] should be hesitant to substitute its own judgment for that of counsel." *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977); *see also In re Motorsports Merch. Antitrust Litig*., 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000) (same). Class Counsel is very experienced in class action litigation generally and, in particular, class litigation arising from breaches of fiduciary duty under ERISA. Class Counsel pioneered this area of litigation in both 401(k) and 403(b) retirement plans, and is intimately familiar with this unique and complex area of law. *See Kruger*, 2016 WL 6769066, at *5 (noting "endorsements from the AARP and the Pension Rights Center" for Class Counsel's efforts in retirement plan litigation); *Ramsey v. Philips N. Am. LLC*, No. 18-1099, Doc. 27 at 7 (S.D. Ill. Oct. 15, 2018) ("Schlichter Bogard & Denton has left an indelible mark on the 401(k) industry by bringing comprehensive changes to fiduciary practices in order to ensure that employees and retirees have the opportunity to save for retirement through prudently administered retirement programs."); *Tussey v. ABB, Inc.*, No. 06-04305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012) ("Plaintiffs' attorneys are clearly experts in ERISA litigation"); *Beesley*, 2014 WL 375432, at *1 (S.D. Ill. Jan. 31, 2014) ("The Court remains impressed with Class Counsel's navigation of the challenging legal issues involved

in this trailblazing litigation and Class Counsel's commitment and perseverance in bringing this case to this resolution."). It is Class Counsel's opinion that the Settlement is fair and reasonable. Schlichter Decl. ¶ 2.

II. The Settlement Has Been Negotiated in Good Faith at Arms-Length Between Experienced Attorneys Familiar with the Legal and Factual Issues of This Case.

There is a strong initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. *Carpenters Health & Welfare Fund v. Coca-Cola Co.,* No. 00-2838, 2008 WL 11336122, at *8 (N.D. Ga. Oct. 20, 2008). As described above, the Settlement is the result of lengthy and complex arm's-length negotiations between the parties. These negotiations continued over an extended period and included the involvement of an experienced, independent mediator. Counsel on both sides are experienced and thoroughly familiar with the factual and legal issues presented. It is recognized that the opinion of experienced and informed counsel supporting the settlement is entitled to considerable weight. *Holmes v. Cont'l Can Co.,* 706 F.2d 1144, 1149 (11th Cir. 1983).

III. The Proposed Notices are Adequate, Appropriate, and Warranted.

Due process and Federal Rule of Civil Procedure 23(e) do not require that each Class Member receive notice, but do require that the class notice be "reasonably calculated, under the circumstances, to apprise interested parties of the

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

The proposed form and method of notice of the proposed Settlement satisfy all due process considerations and meet the requirements under Rule 23(e)(1). Plaintiffs' proposed forms of settlement notices are attached to the Settlement Agreement. The proposed settlement notices will fully apprise Class Members of the existence of the lawsuits, the Settlement, and the information they need to make informed decisions about their rights, including (i) the terms of the Settlement; (ii) the nature and extent of the Release; (iii) the maximum attorneys' fees and expenses that will be sought by Class Counsel; (iv) the procedure and timing for objecting to the Settlement and the right of the Settling Parties to seek limited discovery from objectors; (v) the date and place of the final fairness hearing; and (vi) the website on which the full settlement documents, and any modifications to those documents, will be posted.

The notice plan consists of multiple components designed to reach Class Members. First, the Settlement Notice will be sent by electronic email to all Class Members who have a current email address known to Defendants and/or the Plans'

recordkeeper(s) and by first-class mail to the current or last known address of all Class Members for whom there is no current email address shortly after entry of the Preliminary Approval Order. Addresses of the Class Members are maintained by the Plans' recordkeepers and Defendants, who use this information for, among other things, mailing plan notices and other plan-related information. Class Members include both current and former employees of Emory University and Emory Healthcare, Inc. In addition to the Settlement Notice, Class Counsel will develop a dedicated website solely for the Settlement, and a link to that website will appear on Class Counsel's website (www.uselaws.com). The notice plan also includes a follow-up requirement for the Settlement Administrator to take additional action to reach those Class Members whose notice letters are returned as undeliverable. Thus, the form of notice and proposed procedures for notice satisfy the requirements of due process, and the Court should approve the notice plan as adequate.

CONCLUSION

The Court should grant the parties' Joint Motion for Preliminary Approval of Class Settlement.

Dated: May 29, 2020

/s/ Andrew D. Schlichter

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CERTIFICATE OF COMPLIANCE

Under the Civil Local Rules of Practice for the United States District Court for the Northern District of Georgia, this is to certify that the foregoing document complies with the font and point selections approved by the Court in Local Rule 5.1.C. The foregoing was prepared on computer using Times New Roman font (14 point).

/s/ Andrew D. Schlichter
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 29, 2020, 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/ Andrew D. Schlichter
Attorney for Plaintiffs

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DECLARATION OF JEROME J. SCHLICHTER

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

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle this class action. As illustrated in Plaintiffs' Memorandum in Support of Motion for Preliminary Approval of Class Settlement, all settlement negotiations in this case were conducted at arm's length by adverse, represented parties. The negotiations were extensive and adversarial, and the parties engaged a highly experienced mediator with whom the parties met in person and via telephonic mediation sessions, as well as conducting

calls between the parties to negotiate a settlement. Apart from the monetary amount, these discussions also involved extensive negotiations for non-monetary relief regarding the provisions, oversight, and administration of the Emory University Retirement Plan and the Emory Healthcare, Inc. Retirement Savings and Matching Plan ("Plans") going forward resulting in substantial non-monetary relief. It is my opinion that the proposed settlement is not only "within the range of reasonableness," but also is fair, reasonable, adequate, and in the best interests of the Plans and their participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue.

3. Attached to the parties' Joint Motion for Preliminary Approval of Class Settlement as Exhibit A is a true and accurate copy of the Settlement Agreement between Plaintiffs and Defendants.

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

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on May 28, 2020, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter