Steven. A Schwartz*
steveschwartz@chimicles.com
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
361 West Lancaster Avenue
Haverford, PA 19041
Tel.: 610-642-8500

Neville L. Johnson (SBN 66329)
njohnson@jjllplaw.com
Douglas L. Johnson (SBN 209216)
djohnson@jjllplaw.com
JOHNSON & JOHNSON LLP
439 North Canon Drive, Suite 200
Beverly Hills, California 90210
Tel.: 310-975-1080

Robert J. Kriner, Jr.*
rjk@chimicles.com
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
2711 Centerville Road, Suite 201
Wilmington, DE 19808
Tel.: 302-656-2500

* admitted *pro hac vice*

Edward Siedle*
Law Offices of Edward Siedle
17789 Fieldbrook Circle West
Boca Raton, FL 33496
Tel.: 561-703-5958
esiedle@aol.com

Attorneys for Plaintiffs

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

EDWARD ASNER, et al.,

Plaintiffs,

vs.

THE SAG-AFTRA HEALTH FUND, et al.,

Defendants.

Case No. 2:20-cv-10914-CAS (JEM)

PLAINTIFFS' REPLY IN SUPPORT OF MOTIONS FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT; AND FOR ATTORNEYS' FEES, REIMBURSEMENT OF LITIGATION EXPENSES; AND SERVICE AWARDS

Date: September 11, 2023
Time: 10:00 a.m.
Courtroom: 8D
Judge: Christina A. Snyder

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

I. INTRODUCTION 1
II. THE COURT SHOULD APPROVE THE SETTLEMENT 3
A. The Monetary Recovery is Outstanding 3
B. The Non-Monetary Terms Provide Substantial Value to the Plan and All Participants 6
C. Defendants' Arguments about a Theoretical Reversion are Nonsense 7
III. THE COURT SHOULD APPROVE THE FULL FEE REQUEST 9
A. The Value of the Settlement is at Least $20.6 Million 9
1. The $13.1 Million The Plan Will Pay To Class Members is Real Money and Counts Towards Application of The Percentage Method 9
2. $20.6 Million = $20.6 Million 11
B. Vizcaino Factor #1 - The Relief Obtained for the Class Is an Excellent and Timely Result 12
C. Vizcaino Factor #2 – The Risks Support an Upward Adjustment 14
D. Vizcaino Factor #3 – Class Counsel's Skill 15
E. Vizcaino Factor #4 - Awards in ERISA Cases Demonstrate that the Requested Fee is Reasonable 16
F. Defendants' Other Lodestar Arguments are Wrong 19
IV. CONCLUSION 22

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF AUTHORITIES

CASES

Ahrendsen v. Prudent Fiduciary Sers., LLC,
2023 U.S. Dist. LEXIS 107802 (E.D. Pa. 2023) 19

Castillo v. Metro. Life Ins. Co.,
970 F.3d 1224 (9th Cir. 2020) 10

Churchill Village, L.L.C. v. Gen. Elec.,
361 F.3d 566 (9th Cir. 2004) 13

Cullen v. Whitman Med. Corp.,
197 F.R.D. 136 (E.D. Pa. 2000) 17

Democratic Party of Wash. State v. Reed,
388 F.3d 1281 (9th Cir. 2004) 21

Fernandez v. Victoria Secret Stores, LLC,
2008 WL 8150856 (C.D. Cal. 2008) 17

Fleming v. Impax Lab'ys Inc.,
2022 U.S. Dist. LEXIS 125595 (N.D. Cal. 2022) 13

Garcia v. Gordon Trucking, Inc.,
2012 U.S. Dist. LEXIS 160052 17

In re Apple Inc. Device Performance Litig.,
2021 U.S. Dist. LEXIS 50546 .... 12, 13, 19

In re Bluetooth Headset Prods. Liab. Litig.,
654 F.3d 935 (9th Cir. 2011) 11, 20

In re Easysaver Rewards,
906 F.3d 747 (9th Cir. 2018) 18

In re Online DVD-Rental Antitrust Litig.,
779 F.3d 934 (9th Cir. 2015) 8

Kendall v. Odonate Therapeutics, Inc.,
2022 U.S. Dist. LEXIS 101021 (S.D. Cal. 2022) 19

Linney v. Cellular Alaska P'ship,
151 F.3d 1234 (9th Cir. 1998) 13

Lowery v. Rhapsody Int'l, Inc.,
2023 WL 4933917 (9th Cir. 2023) 11, 20

Moore v. Verizon Communs., Inc.,
2013 U.S. Dist. LEXIS 170027 (C.D. Cal. 2013) 11

Moyle v. Liberty Mut. Ret. Benefit Plan,
823 F.3d 948 (9th Cir. 2016) 10

Staton v. Boeing Co.,
327 F.3d (9th Cir. 2003) 8

Stewart v. Apple Inc.,
2022 U.S. Dist. LEXIS 139222 (N.D. Cal. 2022) 11

United States v. Biotronik, Inc.,
2015 U.S. Dist. LEXIS 35321 (E.D. Cal. 2015) 22

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

I. INTRODUCTION

The Court should approve Plaintiffs' motion for final approval of the Settlement, Service Awards, and fee request.

No Class Member filed an objection.

Moreover, as required by DOL regulations and the Settlement Agreement, Fiduciary Counselors, the Independent Settlement Fiduciary, conducted an extensive evaluation of the Settlement and concluded:

> …the monetary component in the Settlement provides significant benefits for Class members…and Class Counsel obtained a favorable agreement from Defendants…
>
> The $7.5 million payment from the insurers, $7.5 million from the Plan and up to an additional $700,000 for each of the eight years from 2023 through 2030 (for a potential maximum of $5.6 million), along with the non-cash consideration, represent a fair and reasonable settlement for all parties…
>
> Fiduciary Counselors also finds the other terms of the Settlement to be reasonable, including the scope of the release, attorneys' fees, the requested service awards to the Class Representatives and the Plan of Allocation.

Supplemental Schwartz Declaration ("Supp.Decl."), Exhibit 1 ("FC Report") at 10, 14.

These conclusions echo Mediator Robert Meyer' Declaration (¶12) calling the Settlement "a highly successful result for all parties and the Class" that is "particularly fair, adequate and reasonable…because it provides a material recovery for the Class (both monetary and non-monetary…"

Defendants' litigation Counsel are able and esteemed lawyers. They professionally and zealously represented the Individual Defendants in this litigation and the Settlement negotiations. But they also have been Plan Counsel employed by the Individual Defendants to advise the Plan Trustees, including with respect to matters at issue in the litigation. Perhaps this explains why, after no Class Member filed an objection and Fiduciary Counselors opined favorably on the Settlement and Class Counsel's fee request,

they filed an intemperate, self-serving denunciation of the merits of the claims, the Settlement and Class Counsel, under the guise of an Objection to the fee request.

Not surprisingly, the self-serving Objection does not challenge the releases of the Individual Defendants or the $5 million in fees paid to their firms for two years of litigation, some of which, *probably including the cost of drafting the Objection*, was paid ***by the Plan***! *See* Supp.Decl., ¶3.

Defendants and their Counsel use their Objection as a risk-free "after-the-whistle" vehicle in a vain attempt to vindicate themselves at the expense of their litigation adversaries who held them to account. The blustering Objection is not well-taken and devoid of substance.

Defendants denigrate the lawsuit as "ill-fated" and "meritless" with "little chance of success" that they mischaracterize as "a modest benefit" and "very modest result" that "achieved little." Objection at 7-8, 14, 17, 21. They pretend the $20.6 million monetary recovery is only $7.5 million by arguing "payments *from* the Plan really do not constitute relief at all." *Id*. at 10. And they misdescribe the non-monetary relief as "unimpressive" by pretending it represents "non-controversial tinkering" (*id*. at 8), despite resisting those provisions in settlement negotiations. Those remedial provisions were necessary because discovery confirmed that the defendant Trustees hid vital information from Plan participants and non-SAHP trustee Union negotiators about the Plan's funding crisis and their secret plot to balance the books on the backs of senior participants thereby literally tearing apart the SAG-AFTRA Union and costing the Health Plan millions of dollars of funding in the 2019/2020 CBA negotiations. *See* Joliffe Decl., ¶¶5-6, 10-11; Supp.Decl., ¶¶4-5; SA §11.2.4;

In fact, Defendants *never* wanted to compensate Senior Performers who they cruelly kicked off the Plan medical coverage without warning in the middle of the pandemic; *never* wanted to reveal the funding and benefit structure crisis to participants and non-trustee Union negotiators; and *never* wanted to concede anything meaningful to settle this lawsuit.

The unrebutted *evidentiary* record reflects that despite the substantial litigation risks and aggressive opposition by Defendants, Class Counsel secured an outstanding result and recovery (likely better than the recovery that could have been actually *recovered* from a *successful* trial), particularly given the limited insurance available, the insurers' coverage defenses, and the depleted funding status of the Plan due to Defendants' breaches before and after the Merger. *See* FC Report at 14.

The Objection ignores or distorts the unrebutted record facts, including the analysis of Fiduciary Counselors and attestations of Mediator Meyer; contains arguments based on deceptive mischaracterizations; reflects a lack of understanding of class action fee jurisprudence, thereby in several instances inviting reversible error and citing inapposite law in others; makes arguments unsupported by *any* case law; and reeks of "sore-loser syndrome." And since it appears that the Defendants spent up to a half-million dollars of Plan assets to pay defense counsel to draft the Objection and do other unspecified work not compensated by the Plan's insurers – a fact defense Counsel took great pains to keep secret – the Objection appears to represent a possible new fiduciary breach. Supp.Decl., ¶3.

The Settlement is excellent. The requested fee is well deserved and consistent with virtually all recent ERISA fee decisions, most of which involved far less risk. All of the *Vizcaino* factors support a one-third fee based on the true value of the recovery, which is at least $20.6 million, and the lodestar crosscheck confirms the reasonableness of the requested percentage fee. Defendants' arguments are debunked below.

II. THE COURT SHOULD APPROVE THE SETTLEMENT

A. The Monetary Recovery is Outstanding

Defendants triggered this case when, without warning and contrary to their prior statements about the strength and ensured comprehensive benefits of the merged Health Plan, they imprudently hid the Plan's funding crisis from the Union's bargainers and implemented the 2020 Amendments that eliminated coverage for about 12,000 seniors,

while misleadingly blaming the pandemic as the cause of the Plan's funding shortfall and the dramatic benefit cuts.

The measure of *recoverable money* damages for these Senior Performers was the cost to acquire Medicare or Medigap coverage to, in conjunction with Medicare, most-closely replicate the lost Plan coverage. Per the 2020 Amendments, Defendants provided annual HRA allocations of $1,140 for Senior Performers who lost their active (primary) Plan coverage and $240 for the Senior Performers who were already on Medicare but lost their secondary coverage from the Plan. **Defendants vociferously argued that these HRA allocations fully compensated these Senior Performers by providing them apples-to-apples, if not better, coverage for the same cost than they had from the Plan**. *See* ECF 88-1 at 25 (Defendants representing: "many participants came out ahead financially as a result of the benefit changes because they now receive up to $1,140 per participant per year in their Health Reimbursement Account from the Plan to purchase secondary coverage on the Via Benefits Private Medicare Exchange that is comparable or better for them than the secondary coverage they previously had through the Plan"). Thus, their denigration of the *net* minimum recovery of between $400 for those who lost secondary coverage to $4,400 for those who lost primary Plan coverage, conflicts with their own words. Without accounting for the fact that these payments for 2021-2022 damages are top-offs,[1] these amounts are between 1.67 and 3.86 times the amount Defendants said was full compensation.

The Settlement also provides full compensation for Performers impacted by the elimination of the Dollar Sessional Rule from 2023-2030, with *annual* payments from $438 to $4,375, which, despite also being a top-off, are up to 3.8 times more than the $1,140 Defendants said was full compensation.

Thus, the notion that the *net* minimum monetary recovery is anything less than outstanding and a flat-out victory is wrong. As Plaintiffs argued, and Defendant did not

[1] The Plan will continue to make the $240/$1,140 HRA allocations in addition to the Settlement payments.

1 dispute, and Fiduciary Counselors confirmed (FC Report at 5), fiduciary liability
2 insurance policies do not provide coverage for benefits denial or similar claims related to
3 how trustees allocate plan assets amongst plan participants. Thus, the only source of
4 funding to compensate the 12,000 Senior Performers was from the Plan, and Plaintiffs'
5 success forcing the Defendants to allocate that money from the Plan represents a
6 substantial victory in the face of stiff resistance by Defendants, who rejected calls to
7 rescind the 2020 Amendments and vilified participants and Class Counsel who challenged
8 those Amendments.

9 Defendants' argument that the maximum $5.6 million required by the Settlement
10 for 2023-2030 damages should count as a zero recovery for fee-analysis purposes is
11 baseless. This is not an illusory, speculative potential payout that will never occur like the
12 claims-made settlements they cite that were infected by the specter of collusion between
13 defendants who buy a broad release on the cheap by paying class counsel excessive fees
14 at the expense of class members who receive little tangible benefit beyond a claims
15 process designed to minimize claims. The 2021-2022 damages will be paid automatically
16 via HRA allocations or checks. The only requirement for the 2023-2030 HRA allocations
17 is that the Senior Performer have an HRA account, which makes sense, since the payment
18 and damages are intrinsically linked to offset the cost of medical insurance to be sufficient,
19 in combination with Medicare, to approximate the primary coverage previously provided
20 by the Plan. Defendants concede that the minimum and maximum payouts for 2023 is
21 between $450,000 (*i.e.*, for qualifying performers who already have an HRA) and
22 $625,000. Objection at 10. What Defendants' curiously failed to disclose is that the
23 qualifying performers have *until May 2024* to sign up for an HRA to get the allocations.
24 SA ¶10.2.4. So, the $450,000 minimum allocations for 2023 will materially trend upwards
25 toward $625,000 after the enrollment reminders required by the Settlement Agreement
26 are sent. Supp.Decl., ¶6.

27 Defendants' unsupported argument that the Plan might tank into insolvency is rank
28 speculation. Objection at 9-10. If a meaningful probability of insolvency existed,

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

Defendants likely breached their fiduciary duty by not disclosing it to Plan participants and Fiduciary Counselors *and using Plan assets to draft the Objection*.

B. The Non-Monetary Terms Provide Substantial Value to the Plan and All Participants

Mediator Meyer described the non-monetary benefits as "material." Fiduciary Counselors described them "as more beneficial to participants and beneficiaries than an all-cash settlement would have been" that "arguably favors an upward adjustment". FC Report at 15, 11.

Defendants belittle the non-monetary provisions to deflect from their fiduciary breaches. They argue the requirements to make timely disclosures to the SAG-AFTRA National Board and Executive Committee regarding potential benefit changes and funding required to maintain the benefit structure are meaningless because: "there has never been a reluctance to share information on the Plan's financial condition" and the Settlement Agreement acknowledges that these disclosures were already made in previous negotiations." Objection at 11. Hogwash. Defendants cite no evidence or declaration to the contrary, because the undisputed record evidence (Joliffe Decl., ¶¶10-11) and discovery conclusively establish that prior to the Merger, the SAG Health Plan Trustees hid from the participants that they were funding the growing plan deficit by depleting the $200 million Retiree Reserve established to fund Senior's health coverage, despite publicly representing that the Merger would strengthen the Plan and ensure comprehensive benefits for all participants post-merger; and that Defendants and their Counsel knew shortly after the 2017 Merger that a drastic change to the benefit structure would be required without increased employer contributions but, nonetheless, hid the funding crisis from the Union CBA bargainers while secretly plotting to balance the books by targeting coverage for Seniors. Supp.Decl., ¶¶ 4-5. Moreover, they mischaracterize SA §11.2.4, a provision that was heavily-negotiated, where they unambiguously admit they failed to provide detailed information about the funding shortfall to the 2019/2020 Union negotiators. Supp.Decl., ¶7.

Most important, when this litigation caused Defendants to arm the Union negotiators with information about the funding shortfall, the negotiators effectively used that leverage to negotiate far more favorable funding in 2022. Joliffe Decl., ¶¶10-11; https://www.sagaftra.org/sag-aftra-members-ratify-2022-commercials-contracts (quoting current SAG-AFTRA President Fran Dresher stating that the 2022 Commercials contract provides "more contributions to the health plan."). Defendants make unsupported arguments but submit no evidence rebutting Mr. Joliffe's testimony or President Dresher's statements.

Defendants' arguments about the other non-monetary provisions are also baseless and nonsensical. They challenge the provision requiring the Plan to hire a Cost Consultant to find cost savings, arguing the Cost Consultant will "steer clear" of wasting time re-trolling areas where the Plan already exhausted efforts to find savings. Objection at 11, citing SA §11.3. Of course. Plaintiffs demanded a Cost Consultant to find additional cost savings in areas the Defendants previously neglected. That was the point of the provision. Supp.Decl., ¶8. To the extent Defendants suggest they will revert to "old tricks" to ignore or give lip service to the Cost Consultant's recommendations, Class Counsel are prepared to initiate appropriate enforcement proceedings. *Id*.

The other non-monetary provisions regarding properly counting sessional earnings for eligibility and providing participants meaningful guidance how to qualify for coverage would not have been necessary if Defendants and their Counsel had done their jobs properly. They didn't, so Class Counsel demanded and obtained measures to right the ship over significant resistance. Supp.Decl., ¶9.

C. Defendants' Arguments about a Theoretical Reversion are Nonsense

Defendants inexplicably and deceptively try to mischaracterize the Settlement as containing a material reversion of the $15 million fund. The argument is factually inaccurate and reflects ignorance of controlling law.

First, the $400-$4,400 target payments for 2021/2022 damages are minimums subject to *pro rata* enhancement, and Class Counsel, in consultation with the Settlement

1 Administrator, will carefully evaluate the money currently set aside as an administrative-
2 expense cushion to maximize Class Member distributions and minimize, if not eliminate,
3 any potential residual payment to the Plan after the initial and possible second-round
4 distributions. *See* ECF 128-1 at 100; SA §8.5.
5 Second, it is well-established that settlement administration costs count as part of
6 the settlement recovery for purposes of valuing a class settlement and applying the
7 percentage method for fees. *In re Online DVD-Rental Antitrust Litig*., 779 F.3d 934, 953
8 (9th Cir. 2015); *Staton v. Boeing Co*., 327 F.3d at 974-975 (9th Cir. 2003). Per SA §8.5,
9 if Class Counsel and the Settlement Administrator miscalculate, and there is some small
10 residual "after the Settlement Administrator has exhausted reasonable efforts to effect
11 payment, amounts allocable to Class Members who cannot be located, who do not cash
12 their Settlement payment, or who otherwise cannot receive their Settlement payment"
13 (ECF 128-1 at 100), that residual first goes to repay the Plan *for the settlement*
14 *administration services it provided*. Those services (*e.g*., compiling mailing lists,
15 identifying who falls into the $400-$4,400 2021-2022 buckets, who qualifies for the
16 2023-2030 HRA allocations, gathering information that permitted Class Counsel to
17 respond to numerous Class Member inquiries, CAFA notice, etc.), which have been
18 substantial, would typically be performed by the settlement administrator and charged
19 against the settlement recovery, and qualify as proper settlement administration expenses.
20 In negotiations, Class Counsel rejected Defendants' request to have those administrative
21 services paid to the Plan off the top. Supp.Decl., ¶10. It is unlikely there will be any
22 residual payment at all, and the remote possibility of a *de minimis* residual payment to the
23 Plan should not be viewed as a true reversion for purposes of a settlement and fee
24 approval. *Id*.
25 In sum, the Court should reject Defendants' denunciation of the Settlement. The
26 combined value of the monetary and non-monetary relief is no less than $20.6 million.
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

III. THE COURT SHOULD APPROVE THE FULL FEE REQUEST

All of the *Vizcaino* factors support Class Counsel's one-third fee request. Defendants' arguments to the contrary are factually wrong and based on a misconception of governing law. Despite extensive lobbying from defense Counsel (Supp.Decl., ¶11), the Independent Settlement Fiduciary opined: "In our experience, the percentage requested and the lodestar multiplier are within the range of attorney fee awards for ERISA cases…awards equaling one-third of the settlement amount [are] common…Here the complexity of the case and the risk of non-payment favor an upward adjustment." FC Report at 11. This Court should reach the same conclusion. The Settlement provides valuable benefits to the Plan and all participants supporting the amount requested by Class Counsel.

A. The Value of the Settlement is at Least $20.6 Million

The Settlement provides every Senior Performer who lost their primary or secondary coverage from the Plan due to the alleged fiduciary misconduct that led to the 2020 Amendments a net recovery that far exceeds the amounts that Defendants claimed *fully compensates them* for losing their Plan coverage. Notably, Defendants offer no evidence or contrary calculations. Simply put, the Settlement is a win for Plaintiffs. Class Counsel should be compensated for that win.

1. The $13.1 Million The Plan Will Pay To Class Members is Real Money and Counts Towards Application of The Percentage Method

In their self-serving attempt to denigrate the Settlement, Defendants' resort to fake math to argue $20.6 million really equals $7.5 million. Without citing a single case, they claim that in any ERISA class settlement, the only money that counts for a percentage analysis is money paid by insurers. At page 13, Defendants' assert that the $13.1 million the Plan must pay "is not a benefit to the class of Plan participants because it consists of Plan assets that would have been paid for the benefit of Plan participants with or without the Settlement." Under Defendants' theory, Class Counsel should never get credit in a percentage fee analysis based on quantifiable monetary individual relief paid by the Plan

to participants under the terms of a judgement or settlement obtained through litigation of ERISA breach of fiduciary duty claims.

Defendants' argument hinges on the inaccurate predicate that the "the Amended Complaint's objective was to seek monetary relief *for* the Plan" and therefore since "the bulk of this [$13.1 million] monetary relief is coming *from* the Plan itself" it doesn't count. Objection at 8. This argument ignores the scope of relief sought by Plaintiffs on the breach of fiduciary duty claims. Plaintiffs' claims that Defendants' breaches, including misrepresentation and concealment of important information, caused losses to the Plan that led participants to lose Plan coverage. The scope of relief sought specifically *included injunctive relief to, among other things, correct the wrongful changes to the benefit structure and restore lost benefits*. *See* Amended Complaint, ECF 43 ¶92(c) (seeking "such other equitable or remedial relief as the Court may deem appropriate including restoration of SAG-AFTRA health coverage benefits to participants affected by the wrongful Benefit Cuts"); *id*. ¶194D ("to correct and reverse the wrongful changes to the benefit structure alleged herein"). The Settlement forced the Trustees to have the Plan pay $13.1 million to do just that.

Varity v. Howe, cited by Plaintiffs and relied on by the Court in denying the motion to dismiss, held that individual relief to participants, including restoration of benefits, is available equitable relief in an action for ERISA fiduciary breaches. 516 U.S. 489 (1996); *see also Castillo v. Metro. Life Ins. Co*., 970 F.3d 1224, 1229 (9th Cir. 2020); *Moyle v. Liberty Mut. Ret. Benefit Plan*, 823 F.3d 948, 959 (9th Cir. 2016). Plaintiffs here specifically sought such relief, and the Settlement achieved quantifiable monetary components providing such relief. The amount therefore is properly considered for determining a reasonable percentage amount of fees based on the total monetary amount of the benefits achieved in the Settlement, particularly since the full amount of the requested fee will be paid entirely from the insurers' $7.5 million payment and not from the Plan.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

2. $20.6 Million = $20.6 Million

Defendants also misstate the law and cite irrelevant *lodestar* cases to argue that use of the percentage method is prohibited when there is any theoretical uncertainty about that value of the settlement or whether Class Members will take ministerial steps (such as cashing checks or signing up for HRA accounts)[2] to use the money recovered on their behalf. Not so. "Ninth Circuit precedent requires courts to award class counsel fees based on the total benefits made available to class members rather than the actual amount ultimately claimed." *Stewart v. Apple Inc.*, 2022 U.S. Dist. LEXIS 139222, at *15 (N.D. Cal. 2022).

Moreover, in *Moore v. Verizon Communs., Inc.*, 2013 U.S. Dist. LEXIS 170027, (C.D. Cal. 2013), the Court explained that the percentage method can be applied to settlements with an upper cap like this one and that there is no need for exactitude down to the penny: "That the settlement has no maximum payment, however, *is* critical to which method applies because payment caps provide guideposts that allow courts to reach informed projections of settlement values, fulfilling the purpose for which the percentage method is deployed in the first place: to provide a convenient alternative to the time-consuming lodestar calculation while still ensuring that the benefits to the class are "traced with some accuracy." *Id.* at *18, citing *Boeing Co. v. Van Gemert*, 444 U.S. 472, 479, (1980). The *lodestar* cases cited by Defendants, while inapposite, are nonetheless consistent with that analysis. *Lowery v. Rhapsody Int'l, Inc.*, 2023 WL 4933917, at *5 (9th Cir. 2023) (emphasis added) ("courts must consider the actual *or realistically anticipated benefit to the class* …in assessing the value of a class action settlement);" *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 941-42 (9th Cir. 2011)

[2] Defendants disingenuously speculate some class members "cannot be located." Objection at 13. Not so, since every class member entitled to a payment was either receiving Plan coverage and/or providing sessional/residual payments to the Plan.

(percentage-of-recovery method can be applied to settlement recovery that is "easily quantified").[3]

Defendants conflate illusory, much-criticized claims-made settlements riddled with concerns about collusion like *Lowery* and *Bluetooth* with settlements like this one that provide easily-quantifiable benefits that put real money into the pockets of Class Members. Even in those off-point cases, the Ninth Circuit made clear the standard is not mathematical certitude. Moreover, Defendants utterly distort Judge Davila's decision in *Apple Device Performance*. There, the Settlement required Apple to pay a guaranteed minimum of $310 million, and class counsel agreed to only seek a percentage of that guaranteed minimum, so the court had no occasion to evaluate if it could easily quantify the value of the upside claims-made kicker. 2021 U.S. Dist. LEXIS 50546, *21 (N.D. Cal.). But Judge Davila still made an upward adjustment to the benchmark, even though the settlement was a megafund, and awarded a whopping fee over $80 million.[4]

The Settlement is easily quantifiable here to at least $20.6 million by the monetary component alone, and any theoretical discounts (or failure to allocate the full $5.6 million) are readily offset by the value of the non-monetary relief.

B. *Vizcaino* Factor #1 - The Relief Obtained for the Class Is an Excellent and Timely Result

The Settlement payouts to Class Members likely exceed the legally-recoverable out-of-pocket damages for loss of their primary and secondary Plan coverage. That is true even if the Court grants the full one-third fee request and doesn't count the value of the non-monetary relief. Since Defendants cannot challenge and have not challenged that indisputable fact, they resort to straw-man arguments that ignore the facts, the law, and basic math.

[3] Defendants cite to *Staton* is inapposite; the issue there was valuing an injunction.
[4] Unlike this risky case, in *Apple Device Performance*, the list of plaintiffs' counsel who piled on was seventeen pages. *Id.* at *1-17.

1 They argue that Plaintiffs' Rule 26 Initial Disclosures state that damages "likely"
2 exceed $200 million, and that the [sic] $7.5 million recovery is "a small fraction (less than
3 4%)" of $200 million. They then mix apples and oranges by contrasting the recovery in
4 this case to undersigned Class Counsel's $50 million *MacBook* settlement that represented
5 "9% to 28% of total estimated damages." Objection at 16; *id*. at 13- 14 & n, 4, citing *In*
6 *re MacBook Keyboard Litig*., WL 3688452 (N.D. Cal. 2023). Every piece of that argument
7 is wrong.

8 First, the standard for comparing the settlement recovery to the potential maximum
9 trial recovery isn't based on a maximum or aspirational amount listed in Initial Disclosures
10 or even an initial settlement demand. It's based on what can be presented *and recovered*
11 at trial after all pretrial proceedings including expert damages discovery and related
12 *Daubert* motions. *See Churchill Village, L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576 (9th Cir.
13 2004); *Linney v. Cellular Alaska P'ship*, 151 F.3d 1234, 1242 (9th Cir. 1998); *Fleming v.*
14 *Impax Lab'ys Inc*., 2022 U.S. Dist. LEXIS 125595, *26 (N.D. Cal. 2022).

15 Second, while the potential theoretical and aspirational damages (as reflected in the
16 Initial Disclosures) in *Macbook* exceeded $1 billion, the maximum damages that could
17 have been presented and recovered at trial (after fact and expert discovery and pre-trial
18 motions) was far less (between of $178 to $569 million) and undersigned counsel properly
19 presented that lower, recoverable range to Judge Davila, which is what he considered. *See*
20 Supp.Decl., ¶12. So, Defendants' citation to the $200 million figure is irrelevant.
21 Defendants conceded the amount of monetary necessary to compensate Class Members
22 who lost Plan coverage and the Settlement provides them far more money.

23 Third, Class Counsel and Class Members have no interest in pyrrhic victories. Nor
24 does governing jurisprudence. The issue is how much is *recoverable* at trial (*i.e*., actually
25 collected and paid). The Plan's fiduciary insurance policies were limited (just $40 million
26 in four layers) and didn't cover benefit denial claims and, therefore, likely wouldn't cover
27 the cost of compensating participants who lost their Plan health coverage. Moreover,
28 absent a timely Settlement, the vast majority of the policies would have been wasted for

defense counsel's fees long before and final judgment (and that is assuming the insurers did not win their threatened declaratory judgment action). That was the informed assessment of Class Counsel (Supp.Decl., ¶13), Mediator Meyer (Decl. at ¶8), and even Defendants. *See* Rumeld Decl, ECF 149-1, at ¶2. Class Counsel maxed out the money available from the insurers. In that regard, like many cases involving insurance coverage disputes, Defendants had separate coverage counsel and, like Class Counsel, fought hard to maximize the payments from the insurers. Supp.Decl., ¶13. Nothing from the insurance policies was left on the table. *Id.* Moreover, there was little possibility of any meaningful recovery from the personal assets of the Trustees in the event of a final judgment. *Id.*

Finally, Defense counsel's argument flunks basic math. Using the *Macbook* case, they rely upon: 9% x $200 million = $18 million < $21.6 million. Similarly, in *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *8-10, this Court cited decisions awarding one-third fee where the recovery of damages ranged from 10% - 27.6%, and 10% x $ 200 million = $20 million < $20.6 million. Even under their misguided approach, the recovery supports a one-third fee.

C. *Vizcaino* Factor #2 – The Risks Support an Upward Adjustment

The fee motion presented indisputable evidence, backed by the market assessment of at least a dozen prominent firms, that Class Counsel overcame grave and multi-faceted risks in securing the excellent recovery. Notably, defense Counsel shared the assessment about the risks, since they told their clients that Class Counsel were "not ERISA lawyers"[5] and Plaintiffs' claims would be dismissed based on their settlor function defense. Supp.Decl., ¶14.

In the Objection, defense counsel conflate risk with merit and outrageously claim Class Counsel "concede in their motion papers" that they brought "exceedingly-weak

[5] Beyond their stellar track record in securing ground-breaking full-recovery class action settlements *and judgments* in the Ninth Circuit, undersigned counsel have extensive ERISA experience including their successful *Musicians* case against the same defense counsel and the *Davis v. Washington University* settlement where Judge White awarded a one-third fee. Supp.Decl., ¶15.

claims against well-meaning trustees."[6] Objection at 18. The risks were real, but not because the claims lacked merit. As noted above, Defendants and their counsel know that the discovery evidence supports Plaintiffs' claims. Governing ERISA standards presented difficult challenges when applied to these novel claims, where questions are presented whether Trustees were wearing their "settlor" hat or their "fiduciary" hat in the challenged conduct. So too did the insurance coverage conundrum. The reason Class Counsel have earned a one-third upward adjustment is because, unlike their competitors, they took and skillfully navigated those formidable risks to assert fiduciary hat claims and achieved an excellent result.

Defendants' argument that "Class Counsel should not be rewarded for bringing exceedingly weak claims against well-meaning Trustees" is not only false, but it also turns the law on its head. While the Ninth Circuit has rejected large, disproportionate fees for lawyers who bring weak cases that result in marginal recoveries for class members, it has consistently endorsed percentage enhancements for class counsel who secure meaningful recoveries in the face of significant risk. Defendants' conflation of risks and merit, if accepted, invites reversable error. *See Vizcaino*, 290 F.3d at 1048 ("counsel should be encouraged to take cases for the public good on a contingent-fee basis that are not guaranteed wins because, for instance, there is an "absence of supporting precedents") and the Ninth Circuit's *en banc* decision in *Hyundai*, 926 F.3d at 570, 572.

D. *Vizcaino* Factor #3 – Class Counsel's Skill

The Objection ungraciously ignores this factor. As reflected throughout all the proceedings in this case, Class Counsel's litigation skill in the face of esteemed and zealous defense counsel supports an upward adjustment. Mediator Meyer confirmed as much. Decl., ¶¶5, 11-12.

[6] The defendant Trustees hid the fact they secretly planned to cut benefits for several years and then blamed the cuts on the pandemic. Supp.Decl., ¶¶4-5. That conduct can hardly be described as "well meaning," especially for a fiduciary.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

E. *Vizcaino* Factor #4 - Awards in ERISA Cases Demonstrate that the Requested Fee is Reasonable

Plaintiffs' fee motion cites many decisions demonstrating that a one-third fee has been awarded the vast majority of recent ERISA cases. The Independent Settlement Fiduciary, who has evaluated over 100 ERISA settlements, concurs. FC Report at 1, 10. Defendants cite no recent ERISA case awarding a lower percentage or cases where class counsel achieved similarly excellent results in the face of similar levels of risk present here.

Defendants make facile arguments that all the ERISA decisions awarding a one-third fee don't mean what they say and are all somehow distinguishable. Not so.

Foster relied on this Court's decision in *Marshall* and held: "a 33.3% recovery is on par with settlements in other complex ERISA class actions." 2022 U.S. Dist. LEXIS 25071, at *28, citing 2020 U.S. Dist. LEXIS 177056, at *8; *see also* * 5-7 (collecting cases). There's no ambiguity there. As explained in our opening papers, the novel claims in this case presented far more risk than the risk associated with the numerous 401k/403(b) excessive fee cases where courts have approved one-third fee requests.

Defendants argue that some of the dozens of ERISA cases awarding a one-third fee settled at a later stage of the proceedings. That argument proves nothing. Undersigned Counsel have never heard a client complain that they secured an excellent recovery *too quickly*. Indeed, in this case, there was significant pressure to resolve the case quickly, given the risk to aging Class Members who needed funds to pay for much-needed medical coverage. Unfortunately, that risk materialized, as named Plaintiffs Edward Asner and Sondra James Weil have passed away. Moreover, the lodestar crosscheck, which is easily satisfied here, protects against potential windfalls from early settlements.

The *Vizcaino* factors do not include the procedural stage of the case as a relevant consideration or, as discussed below, counsel's lodestar in setting a percentage fee. They include the "risk of and expense to counsel of litigating it," and Class Counsel here did substantial work from before the Complaint was filed that will continue through 2030 to

ensure compliance with the Settlement. Moreover, in *Marshall*, this Court noted that "several courts have awarded attorney fees of one third of a common fund under similar circumstances, and with less time involved" than the time spent by class counsel in *Marshall* and the over 5,000 hours spent by Class Counsel here. 2020 U.S. Dist. LEXIS 177056 at *10-11, citing *Boyd v. Bank of Am. Corp.*, 2014 WL 6473804, at *10 (C.D. Cal. 2014) (3,000 hours); *Fernandez v. Victoria Secret Stores, LLC*, 2008 WL 8150856, at *16 (C.D. Cal. 2008) (thousands of hours); *Garcia v. Gordon Trucking, Inc.*, 2012 U.S. Dist. LEXIS 160052, at *10 (E.D. Cal. 2012 (3,070 hours); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136, 150 (E.D. Pa. 2000) (3,900 hours and just two years of litigation).

Marshall also held that larger recoveries provide *greater* support for an upward adjustment to award one-third fee to class counsel there. 2020 U.S. Dist. LEXIS 177056, *8-9, citing cases awarding a one-third fee with recoveries smaller than $12.375 million recovery there. Here, the $21.6 million recovery is almost double the recovery in *Marshall* and multiples more than the cases cited by *Marshall*. Counsel should be incentivized to get larger recoveries, not rewarded when getting smaller ones.

Defendants' assertion that Class Counsel were only "minimally burdened" by this litigation is spurious and beyond offensive. *See* Objection at 19. Class Counsel spent over 5,000 hours including many nights and weekends. Supp.Decl., ¶16. Those efforts included over 600 hours investigating the claims on a contingent basis and putting together a complaint that others would not pursue and could not figure out how to plead; defeating serial motions on the settlor function defense; identifying and serving subpoenas and negotiating productions with respect to dozens of non-parties; analyzing extensive productions (including hand-written and typed attorney's notes); serving responses and collecting our clients documents in response to Defendants' discovery requests; identifying dozens of deponents and crafting a plan of goals for each; defeating Defendants' repeated attempts to limit deposition and document discovery; carefully analyzing class certification issues, including crafting responses to Defendants' stated challenges to certification and defeating Defendants' attempts to truncate certification

proceedings; comprehensively analyzing all the relevant evidence and legal standards as reflected (in part) in our drafting of what Mediator Meyer described as "two rounds of detailed mediation briefs" that were the product of "hard work that was highly adversarial and complex" by counsel that were "engaged, motivated and highly knowledgeable about the case" and who "fully understood the strengths and weaknesses of their positions;" and tirelessly negotiating and papering what all parties agree is a complex and novel Settlement, while all along engaging in extensive discussions with our clients and other class members. *Id*.

The argument that Class Counsel only incurred about $50,000 in out-of-pocket costs is largely irrelevant beyond reflecting that Class Counsel litigated efficiently, as Class Counsel Ted Siedle, a renowned financial analyst, effectively served as Class Counsel's expert and thereby saved Class Members a massive cost that would have been paid from the Settlement recovery (on top of an fee award).

The notion that this case was a cakewalk is insulting[7] and raises the question: If that were remotely true, what exactly did defense counsel do to run up almost $5 million in charges, particularly since they did far less work than Class Counsel and lost every contested issue presented to the Court?

Defendants' argument that Class Counsel's lodestar somehow requires a lower percentage fee wrong on the facts and the law. The Ninth Circuit requires courts to perform a percentage analysis based on the *Vizcaino* factors independent from a lodestar analysis and prohibits courts from using a lodestar/multiplier analysis to reverse-engineer the appropriate percentage. *In re Easysaver Rewards,* 906 F.3d 747, 758-59 (9th Cir. 2018). With respect to determining the proper percentage fee award, the only role of the lodestar/multiplier analysis is as a crosscheck *after* the percentage has been evaluated and

[7] The argument that Class Counsel worked on other cases besides this one is bizarre and irrelevant. Just because Class Counsel worked on other cases doesn't mean Class Counsel didn't work hard in this case such that it precluded other work. There's only 24 hours in a day, and as pointed out by Defendants, the nature of the work in this case required extensive involvement of two of the four named partners of the Chimicles Schwartz firm.

established pursuant to the *Vizcaino* factors. And the 1.8 multiplier here (which decreases every day) more than confirms the reasonableness of the one-third request.

In any event, courts have recently approved one-third fees in ERISA cases with higher multipliers than the one sought here. *See, e.g.*, *Ahrendsen v. Prudent Fiduciary Sers., LLC*, 2023 U.S. Dist. LEXIS 107802, *20-22 (E.D. Pa. 2023)(2.77 multiplier, which the court held was "an amount consistent with other comparable ERISA cases."); *Lechner*, 2021 U.S. Dist. LEXIS 23742, at *11 (1.88 multiplier); *Kelly*, 2020 U.S. Dist. LEXIS 14772, at *20 (2.45 multiplier); *see also Kendall v. Odonate Therapeutics, Inc.*, 2022 U.S. Dist. LEXIS 101021, at *23-24 (S.D. Cal. 2022) (2.36 multiplier). Defendants ignore those cases.

F. Defendants' Other Lodestar Arguments are Wrong

Unable to rebut the overwhelming authority that reflecting that the 1.8 multiplier that would result from a one-third percentage fee award is well within the range that courts routinely grant confirms the reasonableness of a one-third fee, Defendants make unfounded attacks on Class Counsel's lodestar reported in their sworn declarations. Those attacks are legally and factually baseless and fail to acknowledge that the aim of a lodestar crosscheck is to "do rough justice, not to achieve auditing perfection." *In re Apple Inc. Device Performance Litig.*, 2021 U.S. Dist. LEXIS 50546, *38; citing *In re Toys R Us-Del., Inc. - Fair and Accurate Credit Transactions Act (FACTA) Litig.*, 295 F.R.D. 438, 460 (C.D. Cal. 2014) ("In cases where courts apply the percentage method to calculate fees, they should use a rough calculation of the lodestar as a cross-check to assess the reasonableness of the percentage award.").

As discussed above, Defendants invite legal error by failing to recognize that with respect to percentage fee awards, the only role of the discretionary lodestar multiplier is to crosscheck the reasonableness of the percentage award and protect against windfalls. They compound that mistake by citing notorious cases where courts analyzed fees *pursuant to a lodestar analysis* because the recoveries were so paltry, and the fees represented an excessive multiple of class members' recovery that class counsel could not

1 seek a percentage fee. *See e.g., Lowery,* 2023 U.S. App. LEXIS 19948, *3, where class
2 counsel requested fees that were 30 times the amount the class received; *Bluetooth* 654
3 F.3d at 945, where over 80 % of the recovery went to class counsel, with no direct money
4 to class members. Those cases have no relevance here.

5 The Objection next contends that Class Counsel failed to provide sufficient
6 information about what Class Counsel did to accumulate our lodestar and insultingly
7 suggest Class Counsel "frittered away hours on pointless" tasks that achieved "very little
8 for the class." Objection at 23, quoting *Briseño v. Henderson*, 998 F.3d 1014, 1026 (9th
9 Cir. 2021). Not true.

10 Besides the summary charts, Class Counsel broke down how much time was spent
11 on the pre-complaint investigation and drafting the Complaint (almost $500,000) and
12 provided real-market evidence that one competitor demanded $500,000 to do the same
13 investigation on a non-contingent basis with no guarantee they would actually file any
14 complaint, much less one, like ours, that would plead cognizable ERISA fiduciary breach
15 claims and survive Defendants' settlor function motions. Class Counsel's Declarations
16 provide more than sufficient detail. Moreover, the Court observed Class Counsel's
17 pleadings, briefs, status reports, arguments, and level of preparedness at the various
18 hearings and is well-positioned to evaluate the reasonableness of Class Counsel's hours
19 and work. So did Mediator Meyer, whose declaration attests to Class Counsel's hard work
20 and the quality of work.

21 *Briseño* is another notorious lodestar case (not a percentage/lodestar crosscheck
22 case) riddled with the specter of collusion (including a clear-sailing agreement) where
23 defendants agreed to pay class counsel almost $7 million while the class got less than $1
24 million pursuant to an illusory claims-made settlement. Defendants' reliance on such
25 inapposite cases demonstrates the weakness of their argument.

26 Defendants also attack Class Counsel's rates, even though this Court has approved
27 higher rates of "$895 to $1,295 per hour for partners and counsel, and between $565 and
28 $985 for associates as reasonable within the legal community of Los Angeles for attorneys

1 of similar skill." *Hope Med. Enters.*, 2022 U.S. Dist. LEXIS 49151, at *7. As reflected by
2 the Chimicles Schwartz' firm's stellar class action success in the Ninth Circuit (including
3 the $42 million full-recovery judgment *Rodman v. Safeway* that was affirmed on appeal),
4 the $53 million and $50 million settlements with Apple, the groundbreaking $185 million
5 trial verdict in the *Real Estate Associates* case before the late Judge Dean Pregerson (the
6 first sustained PSLRA verdict) among others, and as reflected by the work in this case,
7 defense counsel's assertion that the Chimicles Schwartz rates aren't reasonable is
8 irresponsible. The Court is also familiar with Neville Johnson's firm and has approved
9 their rates. Johnson Decl., ¶9. And Mr. Siedle's credentials are impeccable.
10 Class Counsel's rates have repeatedly been approved by courts within the Ninth
11 Court and elsewhere, including most recently by Judge Davila in *MacBook*. Defense
12 counsel insult Judge Davila by claiming he didn't conduct a proper evaluation simply
13 because no one challenged Class Counsel's rates in that excellent settlement. They also
14 ignore that Judge Tiger in *Rodman* and Judge Olguin in *Chambers* approved Class
15 Counsel's rates in connection with contested fee proceedings against billion-dollar
16 adversaries, and that hourly-paying clients, including most recently a multi-billion dollar
17 company, have paid Class Counsel's full rates. They also speculate that these courts only
18 thought the rates of some of the firm's lawyers were reasonable. That's not true; there's a
19 massive multi-decade list of decisions approving the rates of the Chimicles Schwartz firm
20 and its lawyers. Supp.Decl., ¶17 & Exhibit 2 (bios of all attorneys who worked on this
21 case).
22 More fundamentally, the reasonableness of Class Counsel's lodestar is confirmed
23 by the fact that defense counsel got paid almost $5 million for their work in this case. The
24 Plan's insurers paid $4.5 million of those fees, and the Plan apparently paid the rest,
25 including the fees charged to draft the baseless Objection, a fact which defense counsel
26 took great pains to hide. *Id.* ¶ 3
27 Courts routinely evaluate class counsel's lodestar in part based on a comparison of
28 defense counsel's lodestar. *Democratic Party of Wash. State v. Reed,* 388 F.3d 1281,

1287-1288 (9th Cir. 2004); *United States v. Biotronik, Inc*., 2015 U.S. Dist. LEXIS 35321, 11-12 (E.D. Cal. 2015). As reflected at the chart attached as Exhibit 3 to the Supp.Decl., it is a mystery how defense counsel's lodestar is over 30% more than Class Counsel's lodestar. Perhaps they should not be casting stones about who "frittered away hours on pointless" tasks that achieved "very little."

IV. CONCLUSION

Defendants suggestion that Class Counsel should only get fees of $1.875 million (25% of $7.5 million) is inconsistent with the facts and governing law. Defendants have no *legitimate* interest in Class Counsel's fees. The only impact of awarding less than a one-third fee is that Class Members will receive slightly larger 2021-2022 damage payments. Defendants caused those damages and have resisted paying those damages at every step of this process and concede those payments will provide full compensation.

Unlike Defendants, Class members have a personal interest in the amount of the fee award. That none objected to the fee request demonstrates their appreciation that Class Counsel stepped up to protect their interests and their understanding of the concept embodied in Ninth Circuit jurisprudence that lawyers who take risks should be rewarded for outstanding results.

Accordingly, Plaintiffs and Class Counsel respectfully request that the Court approve the Settlement, approve the Service Awards, and award a one-third fee ($6,866,667) plus reimbursement of litigation expenses in the amount of $50,954.13, along with any additional reasonable expenses they incur in connection with the Final Approval Hearing.

Dated: August 28, 2023 By:

Steven A. Schwartz*
CHIMICLES SCHWARTZ KRINER & DONALDSON-SMITH LLP
361 West Lancaster Avenue
Haverford, PA 19041

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Tel.: 610-642-8500
Fax: 610-649-3633
SteveSchwartz@chimicles.com

Robert J. Kriner, Jr.*
CHIMICLES SCHWARTZ KRINER
& DONALDSON-SMITH LLP
2711 Centerville Road, Suite 201
Wilmington, DE 19808
rjk@chimicles.com

Neville L. Johnson
Douglas L. Johnson
JOHNSON & JOHNSON LLP
439 N. Canon Drive, Suite 200
Beverly Hills, CA 90210
Tel.: 310-9751080
Fax.:310-975-1095
njohnson@jjllplaw.com
djohnson@jjllplaw.com

Edward Siedle*
Law Offices of Edward Siedle
17789 Fieldbrook Circle West
Boca Raton, FL 33496
Tel.: 561-703-5958
esiedle@aol.com

* admitted *pro hac vice*

Attorneys for Plaintiffs and the Class

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I certify that on August 28, 2023 a copy of the foregoing document, along with all concurrently filed documents, were served via ECF upon all ECF registrants in this action

Dated: August 28, 2023

/s/ Steven A. Schwartz
Steven A. Schwartz

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF COMPLIANCE WITH LOCAL RULE 11-6.2

This brief complies with the word-count limitation of Local Rule 11-6.2 because this brief contains 6,999 words, excluding the cover page, table of contents, table of authorities, signature blocks, and certificates. Counsel relied on the word count feature of Microsoft Word in calculating this number.

Dated: August 28, 2023

/s/ Steven A. Schwartz
Steven A. Schwartz