

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

IN RE: THE AMERICAN NATIONAL RED
CROSS LITIGATION

Plaintiffs,

This Document Relates To: All Actions

Civil Action

Master File No. 1:21-cv-00541-ACR

Class Action

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION
FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF
SETTLEMENT CLASS, AND APPROVAL OF PLAN OF ALLOCATION**

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I. INTRODUCTION

On June 11, 2025, the Court preliminarily approved the Settlement in this Action, which provides for the creation of a \$950,000.00 Settlement Fund. *See* ECF No. 88 (“Preliminary Approval Order”). The Court’s Preliminary Approval Order also, *inter alia*, appointed Plaintiffs David E. Bagenstose, Nitza Juarbe, Stacy M. Moxley, Jason L. Richard, Diana F. Tracy, and Lisa Scaramuzzo as class representatives, Capozzi Adler, P.C. (“Capozzi”) and Berger Montague P.C. (“Berger”) as Class Counsel for the Settlement Class, and Edelson Lechtzin LLP (“Edelson”) as Class Counsel Executive Committee Chair. *Id.* Class Counsel for the Settlement Class and Plaintiffs believe each of these findings in the Preliminary Approval Order should be made final because the proposed Settlement represents an outstanding, prompt recovery that avoids the risks and burdens of further litigation.¹ This Settlement was achieved after months of vigorous arms-length negotiations between counsel experienced in ERISA class actions.

While Defendants do not agree with all averments and statements made in the instant memorandum, Defendants agree that the Court should approve the settlement in this matter. Accordingly, Plaintiffs respectfully request this Court to enter the proposed Final Approval Order and Judgment approving the Settlement.

II. BACKGROUND²

A. Procedural History

¹ The Settlement Agreement, previously submitted to the Court, is being submitted herein as Exhibit 1 to the Declaration of Mark K. Gyandoh (“Gyandoh Decl.”) which is filed contemporaneously with this memorandum. The Settlement Agreement has several exhibits. These exhibits are: A (Long Form Settlement Notice); B (Short Form Settlement Notice); C (Plan of Allocation); D (Preliminary Approval Order); and E (Final Order). Undefined capitalized terms herein have the same meaning as in the Settlement Agreement.

² The full procedural history of this matter is recounted in the Gyandoh Decl., at ¶¶ 3-35.

On March 2, 2021, Plaintiffs Diana F. Tracy, David E. Bagenstose, Jason L. Richard and Stacy M. Moxley filed a class action complaint through Capozzi, and, separately, Plaintiff Scaramuzzo filed her class action complaint on March 8, 2021, through Berger. *See* ECF No. 12, Memorandum of Law in Support of Plaintiffs’ Motion for Entry of [Proposed] Pretrial Order No. 1 Consolidating Cases, Appointing Interim Class Counsel, And Establishing Procedures for Consolidation of Future-Filed Cases, at 3. Both cases concerned substantially similar claims against Defendants in the District of Columbia. *Id.* Capozzi, Berger, and Edelson conducted extensive investigations before filing their respective initial complaints. *Id.*, at 13; *see also* Gyandoh Decl., ¶¶ 3-4; Lesser Decl., ¶ 7; Lechtzin Decl., ¶ 8. On April 1, 2021, Plaintiffs moved to consolidate the cases and appoint Capozzi and Berger as Interim Co-Lead Class Counsel; and appoint Edelson as Interim Class Counsel Executive Committee Chair. *Id.* The Court granted the motion and issued an order granting the consolidation of the cases on April 16, 2021. *See* ECF 19.

On June 15, 2021, Plaintiffs filed their Consolidated Class Action Complaint. *See* ECF No. 20. Defendants filed a Motion to Dismiss the First Amended Complaint on August 16, 2021. *See* ECF No. 23. On September 30, 2021, Plaintiffs filed their First Amended Consolidated Class Action Complaint (ECF No. 26). Defendants filed their Motion to Dismiss First Amended Complaint on November 4, 2021 (ECF No. 28). Plaintiffs filed their Opposition to Defendants’ Motion to Dismiss the First Amended Complaint on January 3, 2022 (ECF No. 33). On March 18, 2021, Defendants filed their Reply Memorandum in Support of their Motion to Dismiss (ECF No. 36). On June 9, 2023, Defendants filed their Renewed Motion to Dismiss First Amended Complaint (ECF No. 54). Plaintiffs filed their Opposition to Defendants’ Renewed Motion to Dismiss First Amended Complaint on July 14, 2023 (ECF No. 57). On August 4, 2023, Defendants filed their Reply in Support of their Motion to Dismiss First Amended Complaint (ECF No. 58).

On November 12, 2021, the Chamber of Commerce of the United States of America filed a Motion for Leave for the Chamber of Commerce of the United States of America to Participate as *Amicus Curiae* in support of Defendants’ pending motion to dismiss (ECF No. 30) (“Chamber’s Motion”). Plaintiffs filed their Opposition to Motion for Leave for the Chamber of Commerce of the United State of America to Participate as *Amicus Curiae* on November 26, 2021. *See* ECF No. 32. On December 7, 2021, the Court denied the Chamber’s Motion.

On January 23, 2024 the Court denied without prejudice, Defendants’ Motion to Dismiss and ordered Defendants to “provide Plaintiffs with narrow, constrained, and efficient discovery regarding (1) the recordkeeping fee change from \$45 per participant to \$31.50 per participant; and (2) the relevant meeting minutes from 2015 through 2020 that relate to the Focus Funds,” and thereafter Plaintiffs were “to either rest on the First Amended Complaint or file a Second Amended Complaint.” *See* Minute Order dated January 23, 2024 (“Narrow Discovery Order”). On March 5, 2024, Defendants substantially complied with the Narrow Discovery Order. *See* ECF No. 66, Joint Motion to File Third Amended Complaint and Extend Briefing Schedule, ¶ 1. Plaintiffs subsequently filed their Second Amended Complaint on May 30, 2024. *Id.* (referring to ECF No. 65). However, on June 13, 2024, Counsel for Defendants identified six additional documents that Defendants had previously collected and intended to produce in March but were inadvertently not included in the set of documents produced in March 2024. *Id.*, ¶ 2. Defendants produced the documents to Plaintiffs the very next day (on June 14, 2024), and the Parties jointly requested a briefing schedule that allowed Plaintiffs to file a Third Amended Complaint. *Id.*, ¶ 2. The Court granted the Parties’ request. *See* Minute Order dated June 26, 2024.

On September 10, 2024, after reviewing the additional discovery provided by Defendants, Plaintiffs filed their Third Amended Consolidated Class Action Complaint (ECF No. 69) (“TAC”).

Defendants filed their Motion to Dismiss the Third Amended Complaint on October 10, 2024 (ECF No. 71). On November 11, 2024, Plaintiffs filed their Opposition to Defendants' Motion to Dismiss (ECF No. 72). Defendants filed their Reply on December 2, 2024 (ECF No. 74).

Throughout this litigation, the Parties collectively submitted 17 notices of supplemental authority and/or responses, with many notices including multiple cases. *See* ECF Nos. 35, 38-41, 43, 46, 51, 59, 61, 73, 76, 77, 79, 80-82.

On March 11, 2025, the Parties filed a Notice of Settlement (ECF No. 84). Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement and exhibits on May 9, 2025 (ECF Nos. 86, 87). The Court granted preliminary approval on June 11, 2025.

B. Discovery

Before the first consolidated complaint was filed, each Plaintiffs' firm separately conducted an extensive pre-filing investigation in relation to their respective original complaints. *See* Gyandoh Decl., ¶ 4; Lesser Decl., ¶ 7. This investigation included engaging consulting experts, gathering documents from the plaintiffs and public sources, and requesting documents from Defendants pursuant to ERISA § 104(b)(4). *Id.* Also, prior to filing the TAC, Defendants provided Plaintiffs with ample discovery relating to their claims in accordance with this Court's Narrow Discovery Order. *See* Gyandoh Decl., ¶ 20, 22; *see also* ECF No. 66.

C. Settlement Negotiations

On June 26, 2024, the Parties represented to the Court that Defendants satisfied the Court's Narrow Discovery Order and intended to explore the possibility of settlement within the next sixty days. *See* ECF No. 66, ¶ 4. On August 23, 2024, Plaintiffs sent Defendants a settlement demand. *See* Gyandoh Decl., ¶ 33. Settlement talks over phone and email intensified in September of 2024,

and continued after Defendants' Motion to Dismiss the Third Amended Complaint was fully briefed. *Id.*, ¶ 34. An agreement in principle was reached on February 24, 2025. *Id.*, ¶ 35.

Throughout negotiations, Plaintiffs, through counsel, consulted with experts regarding the extent of damages the Plan sustained as a result of Defendants' alleged breaches of fiduciary duty. *See Gyandoh Decl.*, ¶ 37. The Parties disagree as to whether Defendants employed prudent processes in administering the Plan, whether the challenged investments were prudent for the Plan, and whether the Plan was paying reasonable fees. *Id.*, ¶¶ 38-39. Defendants contested liability entirely, and argued that even if they were liable, damages would be significantly lower than Plaintiffs' estimated amount. *Id.* Plaintiffs estimated that their claim for excessive recordkeeping costs could have damages as high as \$1.8 million. *Id.*, ¶ 39. Plaintiffs also estimated that their investment underperformance claims could have damages as high as \$11,700,000, but recognized that, at the time of settlement, the investment fund claims have had mixed results at the motion to dismiss stage and beyond. *Id.* Therefore, although the Settlement Amount represents roughly 7.04% of Plaintiffs' best-case scenario, the Settlement Amount more realistically represents a higher percentage of recovery. *Id.*, ¶ 40. Under any scenario, the Settlement Amount represents a 100% recovery in light of Defendants' complete denial of both liability and damages for all claims.

Put succinctly, negotiations took place over six months after substantial informal discovery and numerous liability and damages scenarios were exchanged. The Parties arrived at a settlement in principle, settling this matter for \$950,000.00. The Parties agree that the Settlement Amount and terms are fair, reasonable, adequate and in the Parties respective best interests.

D. The Proposed Settlement

Through arm's length negotiations and discovery, Defendants will pay \$950,000.00 – the Gross Settlement Amount – to be allocated to participants on a pro-rata basis pursuant to the

proposed Plan of Allocation (*see* Exhibit C to Settlement Agreement) in exchange for releases and dismissal of this action, described in Article 7 of the Settlement Agreement. The Gross Settlement Amount will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, and Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Case Contribution Awards if awarded by the Court. *See* Article 6 of the Settlement Agreement. The Settlement Class is defined (as modified by the Court's Preliminary Approval Order) as:

All persons who participated in the American Red Cross Savings Plan at any time from March 2, 2015 through March 31, 2025 ("Class Period"), including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their Beneficiaries.

Preliminary Approval Order, ¶ 1.

III. THE PROPOSED SETTLEMENT SHOULD BE APPROVED

A. Legal Standards

"In evaluating proposed class action settlements under Rule 23(e), courts in this Circuit generally consider the following factors: (1) whether the settlement is the result of arm's-length negotiations; (2) the terms of the settlement in relation to the strength of the plaintiffs' case; (3) the status of the litigation at the time of settlement; (4) the reaction of the class; and (5) the opinion of experienced counsel." *Kinard v. E. Capitol Fam. Rental, L.P.*, 331 F.R.D. 206, 212 (D.D.C. 2019) (listing cases). This Settlement readily satisfies these factors, as well as the "especially strong presumption in favor of voluntary settlements in class actions ... where substantial judicial resources can be conserved by avoiding formal litigation." *Mullins v. Data Management Co.*, No. 20-cv-214, 2021 WL 2820560, *4 (S.D. Ohio June 21, 2021). Indeed, the Settlement Agreement

provides a greater benefit to Class Members than the complexity, expense, and duration of continued litigation.

1. The Settlement negotiations

The proposed Settlement was fairly and honestly negotiated. Each side entered the negotiations with a full understanding of the issues and potential pitfalls related to litigation of the claims. The Settlement agreement was reached after six months of negotiations, years of litigation, and sufficient discovery. *See supra* Section II.C; Gyandoh Decl., ¶¶ 3-35. The settlement was informed by the discovery provided and the guidance of consulting experts. *Id.* The Settlement was reached as a result of circumstances that courts routinely find supports approval. *See In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 369, 376 (D.D.C. 2002) (“experienced counsel on all sides conducted lengthy and adversarial negotiations, involving numerous” phone calls and proposal exchanges, and experts “aid[ed] their evaluation of the potential liability, damages, and fairness of the settlement amounts.”); *In re Domestic Airline Travel Antitrust Litig.*, 378 F. Supp. 3d 10, 19 (D.D.C. 2019) (“‘negotiations between the parties did not necessitate the involvement of a mediator because of the ‘longstanding relationships, both adversarial and collegially’ between counsel” and negotiations “were ‘conducted over almost a four-month period and after two and a half years of hard-fought litigation’ which included motions to dismiss .”). Thus, the proposed Settlement was fairly and honestly negotiated.

2. The Strength of Plaintiffs’ case

For this factor, “[t]he relevant question is whether the structure of the settlement and the substantive relief, including the amount of money provided, are fair and reasonable when compared with the recovery that plaintiffs likely would have realized if their claims were decided through the judicial process.” *In re Black Farmers Discrimination Litig.*, 856 F. Supp. 2d 1, 30

(D.D.C. 2011), *as amended* (Nov. 10, 2011). Plaintiffs are confident in their case, but the reality is that “risk is inherent in any litigation, particularly class actions[,]” and that “risk is even more acute in the complex areas of ERISA law.” *In re Delphi Corp. Securities, Derivative*, 248 F.R.D. 483, 496 (E.D. Mich. 2008). At any stage, “Defendants could prevail with respect to certain legal or factual issues, which could result in the reduction or elimination of Plaintiffs’ potential recoveries.” *Id.*, at 496-97; *see also Diaz v. BTG Int’l Inc.*, No. 19-cv-1664, 2021 WL 2414580, at *6 (E.D. Pa. June 14, 2021) (“Litigating this [ERISA] matter to verdict would have required a finder of fact to make credibility determinations on testimony offered by both fact and expert witnesses.”); *Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-cv-01892, 2021 WL 5991060, at *6 (N.D. Cal. July 12, 2021) (an analogous ERISA case noting that “[e]ven if the Plaintiffs prevailed on the issue of liability, there was a significant risk that they would not have recovered a significant monetary amount.”). Plaintiffs believe that their allegations are materially similar to other upheld breach of fiduciary duty claims, but, as the 17 notices of supplemental authority and this Court’s Narrow Discovery Order demonstrate, success at the first motion to dismiss hurdle is uncertain. After the first hurdle, Plaintiffs would still have to achieve Class Certification, defeat Defendants’ motion for summary judgment, and if successful, prosecute this case through trial and post-trial appeals, all with no guarantee of any recovery. Plaintiffs’ theory of liability and damages has found success in other cases, but so too has Defendants’ defenses.

Importantly, “[t]he fact that this settlement amount is less than the total estimated damages is not surprising and ultimately does not render the terms of the settlement unfair, unreasonable, or inadequate” especially “given the defendants’ denial of liability, monetary recovery certainly cannot be assumed.” *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. at 377 (“All of these factors would operate to reduce the total potentially recoverable damages in this case.”). The

percentage of recovery is further impacted by the “the parties['] disagree[ment] on the amount of potential recovery even if plaintiffs were to prevail on liability[,]” “the point at which (if ever)” a challenged investment “became imprudent[,]” and “what such a [prudent] fiduciary purportedly would have done.” *In re Global Crossing Securities and ERISA Litig.*, 225 F.R.D. 225 F.R.D. 436, 460-61 (S.D.N.Y. 2004) (holding that smaller settlements are justified based on these risks and complexities). The Parties remained cognizant of the risks of litigation while assessing the strengths and weaknesses of their respective sides. Plaintiffs are most confident in their excessive recordkeeping claims, but “excessive recordkeeping fee cases under ERISA, similar to this, have inherent risks that support settlement as a mechanism to resolve a legitimate legal and factual dispute.” *Hawkins v. Cintas Corp.*, No. 19 cv-1062, 2024 WL 3982210, at *7 (S.D. Ohio Aug. 27, 2024) (listing cases); *see also Davis v. Magna Int’l of Am., Inc.*, No. 20-cv 11060, 2025 WL 66052, at *4 (E.D. Mich. Jan. 10, 2025) (same). Plaintiffs’ imprudent investment claim is even riskier at the motion to dismiss stage, and “[e]ven if Plaintiffs established a fiduciary breach, it is ‘difficult’ to measure damages in cases alleging imprudent or otherwise improper investments.” *Karpik v. Huntington Bancshares Inc.*, No. 17-cv-1153, 2021 WL 757123, at *5 (S.D. Ohio Feb. 18, 2021). Defendants disputed that Plaintiffs could even prove liability on the part of Defendants, and contended that Plaintiffs’ purported damages, even under Plaintiffs’ theory of the case, was far lower than Plaintiffs had calculated. Because Plaintiffs’ best-case scenario is not the most likely scenario, the Settlement reflects an amount commensurate with Plaintiffs’ most likely scenario in light of all of Plaintiffs’ strengths and risks of further litigation. However, settlements reflecting a recovery as low as Plaintiffs’ best-case scenario, meaning a 7.04% recovery, are regularly approved in ERISA and comparable securities cases, because of the numerous risks in establishing liability and determining the correct measure of damages. *See, e.g., Johnson v. Fujitsu Tech. &*

Business of America, Inc., No. 16-cv-03698, 2018 WL 2183253, at *6-7 (N.D. Cal. May 11, 2018) (approving an ERISA 401(k) settlement that represented “just under 10% of the Plaintiffs’ most aggressive ‘all in’ measure of damages”); *Foster v. Adams & Assocs., Inc.*, No. 18-cv-02723, 2022 WL 425559, at *5 (N.D. Cal. Feb. 11, 2022) (listing ERISA cases approving settlement amounts ranging from 3.2% to 30% of estimated damages); *Medoff v. CVS Caremark Corp.*, No. 09-cv-554, 2016 WL 632238, at *6 (D.R.I. Feb. 17, 2016) (noting that 5.33% is “well above the median percentage of settlement recoveries in comparable securities class action cases.”); *Kanefsky v. Honeywell Int’l, Inc.*, No. 18-cv-15536, 2022 WL 1320827, at *6 (D.N.J. May 3, 2022) (noting the medium recovery in securities class action cases are between 4.9% and 7.4% of estimated damages); *Hern v. Vida Longevity Fund, LP*, No. 21-cv-402, 2023 WL 3204044, at *6 (D. Del. May 2, 2023) (obtaining “5.4% of those losses without risk” is “in line with recoveries in comparable settlement agreements approved by courts.”). Thus, this factor weighs in favor of final approval.

3. The timing of the Settlement

The stage at which the Settlement was reached is ideal, because the Parties were able to gain an understanding of their respective strengths and weaknesses without expending further time and expenses on discovery and litigation. “Under this factor, courts look to ‘whether counsel had sufficient information, through adequate discovery, to reasonably assess the risks of litigation vis-à-vis the probability of success and range of recovery.’” *Kinard*, 331 F.R.D. at 216 (quoting *Meijer, Inc. v. Warner Chilcott Holdings Co. III*, 565 F. Supp. 2d 49, 57 (D.D.C. 2008)). Like *Kinard*, “this case was filed over three years prior to the Court’s preliminary approval of the settlement agreement and after the parties briefed Defendants’ motion to dismiss and engaged in informal discovery” that provided “sufficient information to accurately assess the relative strengths

of their claims and defenses, and the risks of continuing the litigation.” *Id.* (holding that “the settlement was reached at an appropriate stage”). Indeed, “‘formal discovery is not ... necessarily required even for final approval of a proposed settlement’ if the parties ‘demonstrate to the Court at the final approval stage their sufficient appreciation for the merits of the case.’” *Id.*, at 215 (quoting *Trombley v. Nat’l City Bank*, 759 F. Supp. 2d 20, 26 (D.D.C. 2011)). Here, Capozzi, Berger, and Edelson undertook significant investigations before filing their respective original complaints. *See* Gyandoh Decl., ¶ 4; Lesser Decl., ¶ 7. As the court in *Kruger* explained, pre-filing discovery in ERISA cases are extensive, beginning “months before filing suit [... and] include[s] meeting with the Plans’ participants, obtaining documents from public sources and the Retirement Plus Plan administrator, reviewing and analyzing plan documents and financial statements, building on expertise regarding industry practices, conducting extensive legal research, and fashioning the causes of action.” *Kruger v. Novant Health, Inc.*, No. 14-cv-208, 2016 WL 6769066, *3 (M.D.N.C. Sept. 29, 2016). Plus, Defendants provided Plaintiffs with pertinent discovery before Plaintiffs filed the TAC, therein providing pertinent documents that sufficiently informed Plaintiffs of the strengths of their claims, including insight into Defendants’ fiduciary processes which are at the heart of Plaintiffs’ claims. The consulting experts provided informal expert discovery to further evaluate Plaintiffs’ claims.

Moreover, this litigation began in the spring of 2021, but is still in an early procedural posture. Meaning, without the Settlement it could be years before a trial on the merits. It would not be in the Class’s best interest to delay a resolution that may not result in a greater recovery. An early settlement in an ERISA case is ideal because it “allows a class to achieve substantial savings and be able to invest those savings immediately – enjoying years’ worth of returns that would not otherwise be available.” *Kruger*, 2016 WL 6769066, at *3. This Settlement comes after a fruitful

investigation into the merits and before the expenditure of further resources that do not guarantee a better recovery.

4. The reaction of the Class

It is too soon to gauge the reaction of the Class, so this factor is neutral. The objection deadline is September 5, 2025. *See* Preliminary Approval Order, ¶ 11. In accordance with the Preliminary Approval Order, Plaintiffs will file a supplemental brief in support of the Settlement no later than September 30, 2025. *Id.*, ¶ 12. Plaintiffs will provide the Court with information regarding the effectiveness of the Notice program, whether any objections were received, a response to any potential objections, and the report of the independent fiduciary. However, it is already persuasive that the Class Representatives who have dedicated time and energy to this matter also approve of the Settlement, including the request for attorney’s fees and expense reimbursement. *See* David Bagenstose Decl., ¶ 6-7; Nitza Juarbe Decl. ¶ 6-7; Stacy Moxley Decl., ¶ 6-7; Jason Richard Decl., ¶ 6-7; Diana Tracy Decl., ¶ 6-7; Lisa Scaramuzzo Decl., ¶ 6-7. The approval of six of representatives supports finding that the Settlement fair, reasonable and adequate. *See, e.g., Karpik*, 2021 WL 757123, at *6 (“Moreover, the Class Representatives previously submitted declarations in support of the Settlement. *See* ECF Nos. 67-07 to 67-13. Their support also favors approval.”); *Ganci v. MBF Inspection Services, Inc.*, No. 15-cv-2959, 2019 WL 6485159, at *5 (S.D. Ohio Dec. 3, 2019) (“Class Plaintiff also approves of the settlement, as indicated by his executing the settlement agreement.”); *Delaware Cnty. Emps. Ret. Sys. v. AdaptHealth Corp.*, 739 F. Supp. 3d 270, 282 (E.D. Pa. 2024) (“A court may presume that a fee is reasonable when lead plaintiff approves of the fee request.”); *Hawkins*, 2024 WL 3982210, at *9 (it is compelling that “[t]he Class Representatives who have dedicated time and energy to this matter also find that the Settlement Agreement is fair, reasonable, and adequate.”).

5. The opinion of experienced counsel

“[T]he opinion of experienced counsel ‘should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.’” *Stephens v. US Airways Grp., Inc.*, 102 F. Supp. 3d 222, 229 (D.D.C. 2015) (citations omitted). It is considerable that “[b]oth Plaintiffs’ counsel and Defendants’ counsel are experienced ERISA attorney” and “both sides believe sincerely in their respective positions and their chances of prevailing on the merits[,]” yet “both sets of attorneys have recommended settlement in this case.” *Hawkins*, 2024 WL 3982210, at **7, 10; *see also Davis v. Magna Int’l of Am., Inc.*, No. 20-cv-11060, 2025 WL 66052, at *4 (E.D. Mich. Jan. 10, 2025) (finding it persuasive that, “[w]hile Defendants do not agree with all averments and statements made in the Memorandum supporting the Motion for Final Approval, Defendants agree with the ultimate relief and submit that the Court should approve the Settlement in this matter.”).

In fact, Plaintiffs are represented by multiple firms with vast experience in ERISA and complex litigation, who recommend the Settlement. *See* Gyandoh Decl., ¶¶ 86-96; Lesser Decl., ¶¶ 2-4; Lechtzin Decl., ¶¶ 4-7; *see also Griffin v. Flagstar Bancorp, Inc.*, No. 10-cv-10610, 2013 WL 6511860, at *5 (E.D. Mich. Dec. 12, 2013) (“Class counsel in this case have extensive experience in handling complex ERISA claims, and other complex class action litigation... Class counsel’s recommendation of this settlement is entitled to significant weight.”). As other courts have expressly found, the undersigned is “well-qualified to weigh the risks and benefits of continued litigation as compared to the relief provided by the Settlement.” *Diaz*, 2021 WL 2414580, at *8; *see also Hawkins*, 2024 WL 3982210, at *10; *Davis*, 2025 WL 66052, at *4. Counsel for Defendants, Groom Law Group, are one of the preeminent firms in the country

defending analogous ERISA class actions and do not oppose the Settlement.³ Because counsel for both Parties support this Settlement Agreement, this factor is satisfied.

6. The public interest

Settlement of this case is in the best public interest. In general, “[t]here is a ‘long-standing judicial attitude favoring class action settlements.’” *Abraha v. Colonial Parking, Inc.*, No. 16-cv-680, 2020 WL 4432250, at *7 (D.D.C. July 31, 2020) (quoting *In re Vitamins Antitrust Litig.*, 305 F. Supp. 2d 100, 103 (D.D.C. 2004)). Specifically, regarding ERISA matters, “[p]rotecting retirement funds of workers is of genuine public interest.” *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 381-82 (S.D. Ohio 2006); *see also Karpik*, 2021 WL 757123 at *6 (“Additionally, this ERISA Settlement confers broader public benefits, as ‘the protection of retirement funds is a great public interest.’”). As discussed above, this case involves complex issues and without a settlement would remain in the judicial system for a lengthy duration at the risk of lesser or no relief to Plan Participants. Thus, the public benefit of settling this case, as well as the other factors considered by courts in this District, weigh in favor of finding the settlement fair, reasonable, and adequate.

IV. THE REQUIREMENTS OF FED. R. CIV. P. 23(e)(2) ARE SATISFIED

Under FED.R.CIV.P. 23(e)(2), courts may not grant final approval without evaluating: (1) “the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims”; (2) “the terms of any proposed award of attorney’s fees, including timing of payment”; and (3) whether “the proposal treats class members equitably relative to each other.” FED. R. CIV. P. 23(e)(2)(C)(ii), (C)(iii) and (D).⁴

A. Terms of Proposed Attorneys’ Fees

³ See <https://www.groom.com/services/litigation/retirement-services-litigation/>.

⁴ There are no agreements other than the Settlement Agreement, thus FED. R. CIV. P. 23(e)(2)(c)(iv) is irrelevant.

The Settlement does not excessively compensate Class Counsel. The Settlement is not contingent on Class Counsel receiving a specific amount of fees and any fees they receive will be determined by the Court. This reasonableness of Class Counsel's attorney's fee request is fully discussed in Plaintiffs' accompanying Memorandum of Law in Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and Plaintiffs' Case Contribution Awards. In short, the amount of fees Class Counsel is requesting, a third of the Settlement, is reasonable and consistent with the awards in other ERISA cases. This amount is in line with analogous awards in ERISA class action cases so the requirement of Rule 23(e)(2)(C)(ii) will likely be met. *See, e.g., Kelly v. Johns Hopkins Univ.*, No. 16-cv-2835, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020) ("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."); *Diaz*, 2021 WL 2414580, at *8 (awarding "33 1/3% percent of the \$560,000.00 settlement fund"); *Griffin*, 2013 WL 6511860, at *8 ("This requested fee is consistent with standard fee awards as a percentage of the fund in ERISA actions which typically award between 30% and 33% on a percentage of the fund fee calculation.").⁵

⁵ *See also McFadden v. Sprint Commc'ns, LLC*, No. 22-cv-2464, 2024 WL 3890182, at *6 (D. Kan. Aug. 21, 2024); *Ramos v. Banner Health*, No. 15-cv-2556, 2020 WL 6585849, at **4-5 (D. Colo. Nov. 10, 2020); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 270 (S.D.N.Y. 2020); *Pledger*, 2021 WL 2253497; *Griffin*, 2013 WL 6511860, at *8; *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-cv-22782, 2017 WL 7798110, at *4 (S.D. Fla. Dec. 18, 2017); *Marshall v. Northrop Grumman Corp.*, No. 16-cv-6794, 2020 WL 5668935, at *3 (C.D. Cal. Sep. 18, 2020); *Tussey v. ABB, Inc.*, No. 06-cv-04305, 2019 WL 3859763, at *2 (W.D. Mo. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, No. 15-cv-02062, 2019 WL 4193376 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke Univ.*, No. 16-cv-1044, 2019 WL 2579201 (M.D.N.C. June 24, 2019); *Cates v. Trustees of Columbia Univ.*, No. 16-cv-06524, 2021 WL 4847890 (S.D.N.Y. Oct. 18, 2021); *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 19-cv-05738, 2021 WL 5609864, at *2 (E.D. Pa. June 11, 2021); *Spano v. Boeing Co.*, No. 06-cv-0743, 2016 WL 3791123, at *4 (S.D. Ill. Mar. 31, 2016); *Kruger v. Novant Health, Inc.*, No. 14-cv-208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016).

B. The Plan of Allocation's Equitable Treatment of Class Members

A plan of allocation must also be approved under the same standard as the Settlement. It must be “fair, adequate, and reasonable.” *Stephens*, 102 F. Supp. 3d at 229. The “plan of allocation ‘need not be perfect[,]’” instead “it suffices if the plan has ‘a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.’” *In re Fed. Nat’l Mortg. Ass’n Sec., Derivative, & ‘ERISA’ Litig.*, 4 F. Supp. 3d 94, 108 (D.D.C. 2013) (*In re Giant Interactive Grp., Inc. Sec. Litig.*, 279 F.R.D. 151, 163 (S.D.N.Y.2011)) (approving of a *pro rata* method). Here, the Plan of Allocation and method of distribution should be approved because they are equitable, reasonable, and efficient.

The proposed Plan of Allocation, attached to the Settlement Agreement as Exhibit C, is premised on calculating a Settlement Class member’s distribution on a *pro rata* basis based on account balances, a proxy for the alleged losses. No payment to any Settlement Class member shall be smaller than ten dollars (\$10.00). Any Former Participant whose payment pursuant to Section 1.5.2 of the Plan of Allocation is less than ten dollars (\$10.00) shall not receive a distribution. *Id.*, § 1.5.3. Current Participants, and Beneficiaries or Alternate Payees who have Active Accounts, will not be required to submit a Former Participant Claim Form to receive a settlement payment. *Id.*, §1.6. Former Participant and Beneficiary or Alternate Payees may elect a rollover of their settlement payment to an individual retirement account or other eligible employer plan, if they identify the account with adequate information on the Former Participant Claim Form. *Id.*, §1.7. Otherwise, they will receive their settlement payment directly by check. *Id.*

The *pro rata* allocation method is commonly deemed equitable, particularly in ERISA cases. *See, e.g., Diaz*, 2021 WL 2414580, at *5 n.3 (“Class Members whose injury exceeds \$10.00 will receive a pro rata share after attorneys’ fees, costs and expenses [...] [...] The Allocation Plan

thus is fair, reasonable, and adequate.”); *In re Delphi Corp.*, 248 F.R.D. at 491–93; *Millstein v. Holtz*, No. 21-cv-61179, 2022 WL 18024840, at*7 (S.D. Fla. Dec. 30, 2022). Lastly, the Settlement does not unduly favor the Plaintiffs. While Plaintiffs also intend to request Case Contribution Awards, the Settlement is not contingent on Plaintiffs receiving an award in a specified amount and the amount Plaintiffs intend to request is in line with the awards in other cases as explained in the Fee Motion.

Given the above, Rule 23(e)(2) is satisfied.

V. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS WARRANTED

A. The Proposed Class Meets the Requirements of Rule 23(b)(1) of the Federal

Since entry of the Preliminary Approval Order, nothing has changed in the record to compel the Court to reach a different conclusion with respect to the final approval of the Settlement Class. Indeed, courts across the country have determined breach of fiduciary duty claims under ERISA analogous to those at issue in this action are uniquely appropriate for class treatment.⁶ To

⁶ See, e.g., *Sacerdote v. New York Univ.*, No. 16-cv-6284, 2018 WL 840364, *6 (S.D.N.Y. Feb. 13, 2018) (“Most ERISA class action cases are certified under Rule 23(b)(1).”); *Wachala v. Astella US LLC*, No. 20-cv-3882, 2022 WL 408108, at * 1 (N.D. Ill. Feb. 10, 2022) (certifying claims brought pursuant to ERISA § 502(a)(2)); *Nunez v. B. Braun Medical, Inc.*, No. 20-cv-04195 (E.D. Pa. June 30, 2022) (same); *Stengl v. L3Harris Technologies*, No. 22-cv-572 (M.D. Fla. June 5, 2023) (same); *Pizarro v. Home Depot, Inc.*, No. 18-cv-01566, 2020 WL 6939810 (N.D. Ga. Sept. 21, 2020) (same); *Boley v. Universal Health Servs., Inc.*, 36 F.4th 124 (3d Cir. 2022) (same); *In re Suntrust Banks, Inc. ERISA Litig.*, No. 08-cv-03384, 2016 WL 4377131, at *8 (N.D. Ga. Aug. 17, 2016) (same); *Iannone et al., v. Autozone, Inc., et al.*, No. 19-cv-02779 (W.D. Tenn. Dec. 07, 2022) (same); *Jacobs v. Verizon Communications, Inc. et al.*, No. 16-cv-1082, 2020 WL 5796165 (S.D.N.Y. Sept. 29, 2020) (same); *Karg v. Transamerica Corp.*, 2020 WL 3400199 (N.D. Iowa Mar. 25, 2020) (certifying class alleging defendants breached fiduciary duties by selecting poorly performing investment options); *Vellali v. Yale Univ.*, 33 F.R.D. 10 (D. Conn. 2019) (certifying class in case alleging fiduciaries saddled retirement plan with investment options that charged excessive management fees); *Cunningham v. Cornell Univ.*, No. 16-cv-6525, 2019 WL 275827 (S.D.N.Y. Jan. 22, 2019) (same); *Beach v. JPMorgan Chase Bank, N.A.*, No. 17-cv-563, 2019 WL 2428631 (S.D.N.Y. June 11, 2019) (same); *Cassell v. Vanderbilt Univ.*, No. 16-cv-2086, 2018 WL 5264640 (M.D. Tenn. Oct. 23, 2018) (same).

avoid unnecessary repetition, Plaintiffs incorporate their arguments from their memorandum in support of preliminary approval and request the Court make the same findings it did in the Preliminary Approval Order certifying the following Settlement Class as:

All persons who participated in the American Red Cross Savings Plan at any time from March 2, 2015 through March 31, 2025 (“Class Period”), including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a QDRO who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are Defendants and their Beneficiaries.

Preliminary Approval Order, ¶ 1.

VI. CONCLUSION

For the reasons set forth above, the Settlement meets the standard for final approval under Rule 23. Accordingly, Plaintiffs seek an Order: (1) approving the Class Action Settlement Agreement under FED. R. CIV. P. 23(e); (2) certifying the above-defined Settlement Class; (3) appointing Plaintiffs as Class Representatives and Plaintiffs’ Counsel as Class Counsel under FED. R. CIV. P. 23(g); (4) finding the manner in which the Settlement Class was notified of the Settlement was the best practicable under the circumstances and fair and adequate; and (5) approving the Plan of Allocation.

Dated: August 6, 2025

Respectfully submitted,

CAPOZZI ADLER, P.C.

/s/ Mark K. Gyandoh
Mark K. Gyandoh (*pro hac vice*)
312 Old Lancaster Road
Merion Station, PA 19066
Tel: (610) 890-0200
Email: markg@capozziadler.com

Julie S. Selesnick (DC Bar No. 219439)
BERGER MONTAGUE PC

2001 Pennsylvania Ave., NW, Suite 300
Washington, DC 20006
Tel: (202) 559-9745
Email: jselesnick@bm.net

Natalie Lesser (*pro hac vice*)
BERGER MONTAGUE PC
1818 Market St., Suite 3600
Philadelphia, PA 19103
Tel: (215) 875-3000
Email: nlesser@bm.net

Interim Co-Lead Class Counsel

Eric Lechtzin (Bar No. 62096PA)
EDELSON LECHTZIN LLP
411 S. State Street, Suite N-300
Newtown, PA 18940
Tel: (215) 867-2399
Email: elechtzin@edelson-law.com

Interim Class Counsel Executive Committee Chair

CERTIFICATE OF SERVICE

I hereby certify that on August 6, 2025, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

By: /s/ Mark K. Gyandoh
Mark K. Gyandoh, Esq.