

**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

**DECLARATION OF MARK K. GYANDOH IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF
CLASS ACTION SETTLEMENT AND RELATED RELIEF, AND MOTION FOR AN
AWARD OF ATTORNEYS' FEES AND REIMBURSEMENT OF EXPENSES,
AND FOR PLAINTIFFS' CASE CONTRIBUTION AWARDS**

I, Mark K. Gyandoh, Esquire, as Class Counsel, declare as follows:

1. I am a member in good standing of the bars of the Commonwealth of Pennsylvania and state of New Jersey, and have personal knowledge of the facts set forth below and, if called as a witness, I could and would testify competently thereto.

2. I am a partner and chair of the Fiduciary Practice Group at Capozzi Adler, P.C., and have been the lead attorney for my firm in this litigation representing Plaintiffs and the proposed Settlement Class in the above-captioned action.

Procedural History

3. On November 13, 2020, before filing suit, Capozzi Alder P.C., on behalf of Plaintiffs, Diana Tracy, David Bagenstose, Jason Richard, and Stacy Moxley requested numerous documents and information from Defendants pursuant to Section 104(b)(4) of ERISA.

4. Following several months of investigation, including engaging consulting experts, Plaintiffs, Diana Tracy, David Bagenstose, Jason Richard, and Stacy Moxley, commenced an

action by filing a complaint on March 2, 2021 on behalf of the American Red Cross Savings Plan (“Plan”).

5. On March 8, 2021, Berger Montague PC (“Berger”) on behalf of Plaintiff Lisa Scaramuzzo filed a class action complaint.

6. On April 1, 2021, Plaintiffs, Diana F. Tracy, David E. Bagenstose, Jason L. Richard, and Stacy M. Moxley, and Plaintiff, Lisa Scaramuzzo, *see Lisa Scaramuzzo, v. American National Red Cross, Benefit Plan Committee of the American National Red Cross, and Does 1-20*; Case No. 1:21-cv-00620-EGS, filed 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 (ECF No. 12)]. Specifically, the Plaintiffs moved for (a) the consolidation of the ERISA Actions and any action(s) subsequently filed or transferred to this District asserting claims under ERISA with the same or similar factual allegations in the ERSIA Actions; and (b) the appointment of Capozzi Adler, P.C. and Berger Montague PC as Interim Co-Lead Class Counsel, and Edelson Lechtzin LLP (“Edelson”) as Interim Class Counsel Executive Committee Chair. *Id.*

7. This Court issued an order granting the consolidation of the cases (ECF 19) on April 16, 2021, captioning the consolidated action “*In re The American National Red Cross ERISA Litigation*”, File No. 1:21-cv-00541 (D.D.C.).

8. On June 15, 2021, Plaintiffs, David E. Bagenstose, Nitza Juarbe, Stacy M. Moxley, Jason L. Richard, Diana F. Tracy, and Liza Scaramuzzo (“Plaintiffs”), filed their Consolidated Class Action Complaint (ECF No. 20).

9. Defendants filed a Motion to Dismiss the First Amended Complaint (ECF No. 23) on August 16, 2021.

10. On September 30, 2021, Plaintiffs filed their First Amended Consolidated Class Action Complaint (“ACC”) (ECF No. 26).

11. Defendants filed their Motion to Dismiss First Amended Complaint (ECF No. 28) on November 4, 2021.

12. 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 State of America to Participate as *Amicus Curiae* (ECF. No. 30).

13. Plaintiffs filed their Opposition to Motion for Leave for the Chamber of Commerce of the United State of America to Participate as *Amicus Curiae* (ECF No. 32) on November 26, 2021.

14. On December 7, 2021, the Court denied the Chamber’s Motion.

15. Plaintiffs filed their Opposition to Defendants’ Motion to Dismiss the First Amended Complaint (ECF No. 33) on January 3, 2022.

16. On March 18, 2021, Defendants filed their Reply Memorandum in Support of their Motion to Dismiss (ECF No. 36).

17. On June 9, 2023, Defendants filed their Motion to Dismiss First Amended Complaint (ECF No. 54)

18. Plaintiffs filed their Opposition to Defendants’ Motion to Dismiss First Amended Complaint (ECF No. 57) on July 14, 2023.

19. 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”).

20. 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.

21. Plaintiffs subsequently filed their Second Amended Consolidated Class Action Complaint (ECF No. 65).

22. 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. *See* ECF No. 66, ¶ 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, which the Court granted by minute order. *Id.*

23. On September 10, 2024, Plaintiffs filed their Third Amended Consolidated Class Action Complaint (ECF No. 69).

24. Defendants filed their Motion to Dismiss the Third Amended Complaint (ECF No. 71) on October 10, 2024.

25. On November 11, 2024, Plaintiffs filed their Opposition to Defendants’ Motion to Dismiss the Third Amended Complaint (ECF No. 72).

26. Defendants filed their Reply in Support of their Motion to Dismiss the Third Amended Complaint (ECF No. 74) on December 2, 2024.

27. On March 11, 2025, the Parties filed a Notice of Settlement (ECF No. 84).

28. Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement (ECF No. 86) on May 9, 2025.

29. This Court issued its Order Granting Preliminary Approval (ECF No. 88) on June 11, 2025.

Discovery Practice

30. Before the first consolidated complaint was filed, each Plaintiffs' firm separately conducted an extensive prefiling investigation in relation to their respective original complaints.

31. This prefiling 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.*

32. 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.

Settlement Negotiations and Mediation

33. On August 23, 2024, Plaintiffs sent Defendants a settlement demand.

34. 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.

35. An agreement in principle was reached on February 24, 2025.

36. Attached as Exhibit 1 is the Settlement Agreement and its exhibits.

37. 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.

38. Defendants contested liability entirely, and argued that even if they were liable, damages would be significantly lower than Plaintiffs' estimated amount.

39. Plaintiffs estimated that their claim for excessive recordkeeping costs could have damages as high as \$1.8 million. 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.

40. The Settlement Amount represents roughly 7.04% of Plaintiffs' best-case scenario, but the Settlement Amount more realistically represents a higher percentage of recovery when account for Defendants' total denial of liability and damages and the mixed results that plaintiffs have had bringing similar claims.

The Settlement Terms

41. The Settlement provides that American National Red Cross (or its insurers) 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).

42. 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' Compensation if awarded by the Court.

43. The Class Members include all individuals in the Settlement Class, or:

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.

See Preliminary Approval Order, ¶ 1.

44. 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.

45. No payment to any Former Settlement Class member shall be smaller than ten dollars (\$10.00). Any Settlement Class Member whose payment pursuant to Section D of the Plan of Allocation is less than ten dollars (\$10.00) shall not receive a distribution. *Id.*, § 1.5.3.

46. 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.*

47. Class Counsel intends to seek to recover their attorneys' fees not to exceed \$316,666.67. *See* Settlement Agreement, Section 6.1. Class Counsel also intends to seek to recover reasonable litigation costs and expenses advanced and carried by Class Counsel for the duration of this litigation. Additionally, Class Counsel intends to seek Class Representatives' Case Contribution Awards in an amount not to exceed \$7,500 each for the Class Representatives. *Id.* Defendants will also retain an Independent Fiduciary to approve and authorize the settlement on behalf of the Plan. *See* Settlement Agreement, Section 1.28.

Settlement Notice

48. The Court approved Class Counsel's selection of Analytics LLC ("Analytics") as settlement and notice administrator and duly appointed Analytics as the Settlement Administrator. *See* Preliminary Approval Order, ¶ 8.

49. A dedicated Settlement website has been created, which posts the Long Form Settlement Notice which includes information on participants rights and processes for objections, class counsel's contact information, Analytics' contact information, and other pertinent Settlement details. *See* www.RedCrossERISASettlement.com.

50. The first class mailing of the Short Form Postcard Settlement Notice is scheduled begin by August 8, 2025. *Id.*

51. The deadline to file objections is September 5, 2025. *See* Preliminary Approval Order, ¶ 11.

52. Plaintiffs may file a supplemental brief in support of the Settlement by September 30, 2025. *Id.*, ¶ 11. At that time, Plaintiffs will provide the Court with an update on the success of the mail campaign, notify the Court of any objections, and respond to any objections if lodged.

Class Counsel's Requested Fee and Expense Awards is Fair and Reasonable

53. As detailed in the accompanying Fee Memorandum, Class Counsel believes that Class Counsel's request for attorneys' fees is fair, reasonable, and adequate.

54. This was a vigorously prosecuted case which involved considerable time and resources investigating the Action, reviewing and analyzing documents produced through informal and court-ordered targeted discovery, and negotiating an excellent result for the Settlement Class.

55. Class Counsel undertook this action aware of the possibility they could be left uncompensated for their time and out-of-pocket expenses.

56. The recovery of \$950,000.00 in this case was achieved through the skill, work, dedication, and effective advocacy of Class Counsel who leaned on their decades of experience with complex ERISA class action litigation of this type.

57. As payment for services rendered in achieving such a result, Class Counsel seek an award of attorneys' fees in the amount of \$316,666.67 plus reimbursement of expenses reasonably incurred by Class Counsel. Class Counsel's efforts since the inception of this case has been without compensation of any kind and their fee has been wholly contingent upon the result achieved.

58. In this action, attorneys' fees equaling one third of the Settlement Fund results in a fair and reasonable fee, especially given that the monetary result provides a benefit to the Settlement Class, and society has as interest that the wrongdoing alleged is prevented in the future.

59. As Co-Lead Plaintiffs' attorney, I personally managed, delegated, and supervised the allocation of personnel and expenses employed by my firm in this case. We have aggressively, efficiently, and vigorously prosecuted this case and represented the best interest of the Plaintiffs and the participants and beneficiaries of the Plan. Over the course of the litigation, Capozzi Adler has incurred the following expenses:

Expense Category	Total
FedEx	\$190.61
Court Costs	\$1,036.61
Travel Expenses	\$650.00
Westlaw and other Research	\$4,031.01
Transcript	\$312.00
Total	\$6,220.23

60. The expenses listed above were actually incurred in the litigation of this case as reflected in the books and records of Capozzi Adler. These books and records are prepared from

receipts, expense vouchers, check records, and other documents and are an accurate record of the expenses. These expenses were necessary to the prosecution and settlement of the case, and are of the type that would be billed to hourly clients of the firm.

61. The firm's hours and lodestar devoted to this matter, as of August 4, 2025 are as follows:

Name	Position	Hourly Rate	Hours	Total
Mark K. Gyandoh	Partner	\$915.00	172.4	\$157,746.00
Donald R. Reavey	Partner	\$885.00	133.5	\$118,147.50
James Wells	Partner	\$700.00	5.0	\$3,500.00
Gabrielle P. Kelerchian	Mid-Level Associate	\$550.00	32	\$17,600.00
Brandon Williams	Mid-Level Associate	\$550.00	9.9	\$5,445.00
James Maro	Partner	\$900.00	1.5	\$1,350.00
Linda Gussler	Paralegal	\$350.00	69.8	\$24,430.00
Lauren Phillips	Paralegal	\$335.00	2.3	\$770.50
Tina Scheetz	Paralegal	\$335.00	3.7	\$1,239.50
Giulia Conboy	Associate	\$450.00	112.5	\$50,625.00
Kendall Adams	Legal Assistant	\$250.00	1.7	\$425.00
Thomas Sinclair	Mid-Level Associate	\$550.00	9.6	\$5,280.00
Raashira Ragland	Legal Assistant	\$250.00	7.6	\$1,900.00
Total			561.5	\$388,458.50

62. The above table is based on my firm's contemporaneous time records, and breaks out the hours and rates for each attorney, paralegal and professional staff.

63. Details and material supporting the time records and expenses referenced in this declaration are available upon the request of the Court.

64. I reviewed the time printouts to confirm both the accuracy of the entries on the printouts as well as the necessity for and reasonableness of the time commitment to the litigation. Based on this review, I believe the time reflected in my firm's lodestar calculation is reasonable in amount and was necessary for the effective and efficient prosecution and resolution of the litigation. Capozzi Adler litigated this case on a wholly contingent basis and the hourly rates shown for the attorneys and paraprofessionals at my firm are the current hourly rates for contingent matters. These rates are in line with those charged by other firms in the field of nationwide ERISA class action work and have been approved by courts in numerous cases. Moreover, the rates are reasonable in comparison to the firms that defend nationwide ERISA class action cases.

65. Attached as Exhibit 2 is the Declaration of Natalie Lesser on behalf of Berger, attesting to Berger's lodestar of \$863,930.00 and 1079.50 hours spent litigating this case, as well as Berger's expenses of \$5,683.47. *See* ¶¶ 14, 18.

66. Attached as Exhibit 3 is the Declaration of Eric Lechtzin on behalf of Edelson, attesting to Edelson's lodestar of \$90,253.10 and 79.1 hours spent litigating this case, as well as Edelson's expenses of \$2,488.66. *See* ¶¶ 9, 13-14.

67. In total, Class Counsel and Plaintiffs' Counsel have spent 1,720.1 hours on this case with a corresponding lodestar of \$1,342,641.60. Class Counsel's multiplier in this action is 0.24, meaning a fractional multiplier, well below the range approved in other matters as addressed in the Fee Memorandum. *See In re: Whirlpool Corp. Front-loading Washer Prods. Liab. Litig.*, 2016 WL 5338012, at *23 (N.D. Ohio Sept. 23, 2016) ("[A] fractional multiplier of 0.2—mean[s] that for every \$100 of attorney time invested in this case during the last nine years, Class Counsel now requests \$20 in compensation. [...] [I]t represents a bargain for the class.")

68. Combined expenses for all firms thus far is \$14,392.36.

69. The time entries above do not include future time that will be spent on this case to communicate with class members and monitor Defendants' compliance with the Settlement, among other things. It also does not include time that will be spent on preparation for and the interview with the Independent Fiduciary with respect to its review of the Settlement, or preparation for and attendance at the Fairness Hearing.

70. Without the Action, it is highly unlikely that individual claimants would have had the resources to pursue claims of this magnitude. Protecting the retirement funds of employees, and obtaining recompense when those funds are mismanaged, is in the public interest and supports the fee award sought.

71. As discussed in the accompanying Plaintiffs' Memorandum of Law in Support of Motion for Final Approval of Settlement Agreement and Fee memorandum, as a result of diligent efforts and their skill and expertise, Class Counsel was able to negotiate an excellent Settlement for the Settlement Class.

Capozzi Adler's Hourly Rates Compare Favorably to Their Peers

72. For its contingency practice, Capozzi Adler charges partner rates of \$885 to \$950 per hour; associate and mid-level associate rates of \$450-550 per hour; and paralegal and professional staff rates that range from \$335 to \$350 per hour. More junior support staff are billed at \$250 per hour. These hourly rates are commensurate with the firm's degree of skill, experience, and reputation. Each member of Capozzi Adler's Fiduciary Practice Group has the requisite experience, as described above, to command their hourly rates.

73. In the course of my 20-year nationwide ERISA practice, I have worked with most if not all firms that have a national ERISA class action practice. In my experience, while there are invariably differences in rates between different firms – and even between rates for lawyers within

the same firm with the same number of years of practice – Capozzi Adler’s rates are broadly in line with rates of other firms with nationwide class action practices, that have been the basis for awards of fees in courts around the country.

74. Four of these firms that I have worked for, or with, in the past recently filed declarations in support of a fee petition in *Beach, et al. v. JPMorgan Chase Bank, N.A. et al.*, No. 1:17-cv-00563 (S.D.N.Y.). Like this Action, *Beach* involved allegations that JPMorgan Chase breached its fiduciary duties under ERISA to participants in the JPMorgan Chase retirement plan. *Id.* Plaintiffs’ counsel’s declarations demonstrate attorneys and staff in their offices charge similar rates as Capozzi Adler.

75. My former firm Kessler Topaz Meltzer & Check, LLP (KTMC), a Pennsylvania based firm like Capozzi Adler, charges partner rates that range from \$700 to \$920; associate rates that range from \$400 to \$505; paralegal rates that range from \$250 to \$275; and professional staff rates of \$250. *See* Exhibit 4 (Excerpts of KTMC declaration).

76. Nichols Kaster, PLLP, a Minnesota-based firm with a national ERISA practice, charges partner rates that range from \$775 to \$875; associate rates that range from \$425 to \$575; paralegal and professional staff rates of \$250. *See* Exhibit 5 (Excerpts of Nichols Kaster declaration).

77. Keller Rohrback L.L.P., a Washington State-based firm with a national ERISA practice, charges partner rates that range from \$625 to \$1,060; associate rates that range from \$400 to \$595; and professional staff rates that range from \$241 to \$365. *See* Exhibit 6 (Excerpts of Keller Rohrback declaration).

78. Robbins Geller Rudman & Dowd LLP, a national ERISA practice, charges partner rates that range from \$810 to \$1,375; associate rates that range from \$175 to \$515; paralegal rates

that range from \$325 to \$395; and professional staff rates that range from \$175 to \$400. *See* Exhibit 7 (Excerpts of Robbins Geller declaration).

79. Sanford Heisler Sharp, LLP, a national ERISA practice, charges partner rates that range from \$1,000 to \$1,4000, associate rates that range from \$500 to \$900, and paralegal rates that range from \$275 to \$325. *See* Exhibit 8 (Excerpts of Sanford Heisler declaration).

80. Cohen Milstein Sellers & Toll PLLC, a national ERISA practice with a Boston, Massachusetts office, charges attorney rates that range from \$575 to \$1,025, and paralegal rates that range from \$290 to \$335. *See* Exhibit 9 (Excerpts of Cohen Milstein declaration).

81. Izard Kindall & Raabe LLP, a national ERISA practice, charges attorney rates of \$700 to \$975, and paralegal rates of \$180. *See* Exhibit 10 (Excerpts of Izard Kindall declaration).

82. Motley Rice LLC, a national ERISA practice, charges partner (or “member”) rates that range from \$970 to \$1,315, associate rates that range from \$525 to \$680, and a paralegal rate of \$380. *See* Exhibit 11 (Excerpts of Motley Rice declaration).

83. Additionally, Capozzi Adler’s rates generally compare favorably to the large, sophisticated firms that typically represent defendants in ERISA class actions.

84. The Valeo Report, a report that collected and summarized hourly rates across various firms, shows that among ERISA practice groups within the top 200 law firms in the defense bar, the 2017 hourly rate range for senior partners was \$320-\$1,363 (with an average of \$835), for partners was \$296-\$1,202 (with an average of \$751), and for senior associates was \$238-\$938 (with an average of \$580). *See* Exhibit 12 (Excerpts of Valeo Report).

85. Finally, Capozzi Adler’s rates have been explicitly or implicitly approved by numerous courts while granting requests for fees. *See, e.g., Brown v. MITRE Corp.*, No. 22-cv-10976 (D. Mass. Feb. 20, 2025); *Hawkins v. Cintas Corp.*, No. 19-cv-1062, 2025 WL 523909, at

*4 (S.D. Ohio Feb. 18, 2025); *Davis v. Magna Int'l of Am., Inc.*, No. 20-cv-11060, 2025 WL 732300, at *2 (E.D. Mich. Jan. 27, 2025); *Diaz v. BTG Int'l, Inc.*, No. 19-cv-1664-JMY, 2021 WL 2414580 (E.D. Pa. June 14, 2021); *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 2:19-cv-05738-MAK (ECF No. 93) (E.D. Pa. June 11, 2021); *Gerken et al. v. Mantech Int'l*. No. 1:20-cv-01356-TSE (ECF No. 41) (E.D. Va. May 21, 2021); *Harding et al. v. Southcoast Hosp. Group et al.*, No. 1:20-cv-12216-LTS (ECF. No. 51) (D. Mass. April 25, 2022).

Counsel's Experience

86. I received both my J.D. (2001) and LLM in trial advocacy (2011) from Temple University School of Law. While at Temple, I was the research editor for the Temple International and Comparative Law Journal. After law school I clerked for a year with the late Hon. Dennis Braithwaite of the New Jersey State Appellate Court.

87. I have been litigating ERISA fiduciary breach lawsuits for 19 years, first at my prior firm of KTMC, and currently at Capozzi Adler where, as noted above, I have been a partner and chair of the Fiduciary Practice Group for the last four plus years. Over my career I have been actively involved in many high-profile ERISA class actions. For example, I was one of the lead attorneys for plaintiffs in *Fifth Third Bancorp, et al., v. Dudenhoeffer, et al.*, 573 U.S. 409, 134 S. Ct. 2459 (2014), a seminal Supreme Court decision that clarified the unwavering duties owed by fiduciaries to pension plan participants. See biography at <https://capozziadler.com/mark-kyandoh-esquire/>.

88. Rounding out the ERISA team are other well-qualified attorneys and our support staff which include paralegals and other paraprofessionals who assist in the practice. Additionally, as litigation dictates, the ERISA team avails itself of the services of the other attorneys and staff at the firm.

89. In this case and other recent, analogous ERISA breach of fiduciary duty matters, Capozzi Adler was appointed class counsel. *See, e.g. McCool v. AHS Mgmt. Co., Inc.*, No. 19-cv-01158, 2023 WL 2729161 (M.D. Tenn. Mar. 30, 2023) (appointing Capozzi Adler as Class Counsel); *Sweet v. Advance Auto Stores Co., Inc.*, No. 21-cv-549, 2023 WL 3959779 (W.D. Va. June 9, 2023); *Huang, v. TriNet HR III, Inc.*, No. 20-cv-2293, 2022 WL 13631836 (M.D. FL. Oct. 21, 2022); *Stengl v. L3Harris Techs., Inc.*, No. 22-cv-572, 2023 WL 11932263 (M.D. Fla. June 5, 2023); *Lucas, v. MGM Resorts International*, 20-cv-01750 (D. Nev. Oct. 20, 2022) (ECF 112); *Nunez, v. B. Braun Medical, Inc.*, No. 20-cv-04195 (E.D. Pa. June 30, 2022) (ECF. 69); *Boley v. Universal Health Servs., Inc.*, 337 F.R.D. 626 (E.D. Pa. 2021).

90. Additionally, Capozzi has been appointed interim lead or co-lead class counsel in several analogous ERISA breach of fiduciary duty matters. *See, e.g., Bilello, et al., v. Estee Lauder, Inc., et al.*, No. 1:20-cv-04770-JMF (S.D.N.Y. Aug. 10, 2020) (Doc. 11.) (appointing Capozzi Adler interim lead class counsel); *Covington et al. v. Biogen Inc. et al.*, No. 1:20-cv-11325 (D. Mass. Oct. 6, 2020) (Doc. 24) (appointing Capozzi Adler interim Co-Lead Class Counsel).

91. In the course of prosecuting ERISA class actions such as this, I have supervised the preparation of numerous consolidated pleadings, responses to motions to dismiss, drafting of discovery requests and review of hundreds of thousands of pages of plan-related documents and related documentation, and litigated cases through the summary judgment and trial phases.

92. The firm strives to obtain the best results for class members in every circumstance. We have successfully defeated motions to dismiss similar allegations in numerous actions. *See, e.g., Macias v. Sisters of Charity of Leavenworth Health Sys.*, No. 23-cv-01496 (D. Colo. July 24, 2025) (ECF No. 67); *Stephen v. Trader Joe's Co.*, No. 1:25-cv-10212 (D. Mass. July 22, 2025) (ECF No. 47); *Seibert v. Nokia of Am. Corp.*, No. 21-cv-20478, 2024 WL 2316551 (D.N.J. May

22, 2024); *Brown v. MITRE Corp.*, No. 22-cv-10976, 2023 WL 2383772 (D. Mass. Mar. 6, 2023); *Kendall et al v. Pharmaceutical Product Development, LLC*, No. 7:20-cv-00071, 2021 WL 1231415 (E.D.N.C. March 31, 2021) (upholding allegations that plan fiduciaries selected higher-priced identical share classes and overpaid for recordkeeping); *Stengl v. L3Harris Techs., Inc.*, No. 22-cv-572, 2023 WL 2633333 (M.D. Fla. Mar. 24, 2023); *Parmer v. Land O'Lakes, Inc.*, 518 F. Supp. 3d 1293 (D. Minn. 2021); *Davis v. Magna Int'l of America, Inc.*, No. 20-cv-11060, 2021 WL 1212579 (E.D. Mich. March 31, 2021) (same); *Jones v. Coca-Cola Consolidated, Inc.*, No. 20-cv-00654, 2021 WL 1226551 (W.D.N.C. March 31, 2021) (same); *McCool v. AHS Management Company, Inc.*, No. 19-cv-01158, 2021 WL 826756 (M.D. Tenn. March 4, 2021) (same); *Garnick v. Wake Forest Univ. Baptist Med. Ctr.*, 629 F. Supp. 3d 352 (M.D.N.C. 2022); *In re Medstar ERISA Litig.*, No. 20-cv-1984, 2021 WL 391701 (D. Md. Feb. 4, 2021) (same); *Silva v. Evonik Corp.*, 2020 WL 12574912 (D.N.J. Dec. 30, 2020) (same); *Moore v. Humana, Inc.*, No. 21-cv-232, 2022 WL 20766504, at *3 (W.D. Ky. Dec. 2, 2022); *Pinnell, v. Teva Pharmaceuticals USA, Inc.*, No. 19-cv-5738, 2020 WL 1531870 (E.D.Pa. Mar. 31, 2020); *Peterson v. Insurance Services Office, Inc.*, No. 20-cv-13223, 2021 WL 1382168 (D.N.J. Apr. 13, 2021); *Rosenkrantz, et al., v. Altru Health System, et al.*, 20-cv-168, 2021 WL 5868960 (Dec. 10, 2021).

93. We have also been successful at the appellate level resulting in the reversal and remand of wrongly dismissed actions. *See, e.g., Perkins v. United Surgical Partners Int'l, Inc.*, No. 23-cv-10375, 2024 WL 1574342 (5th Cir. Apr. 11, 2024) (reversing district court dismissal of ERISA excessive fee action); *Kruchten v. Ricoh USA, Inc.*, No. 23-cv-1928, 2024 WL 3518308 (3d Cir. July 24, 2024) (same); *Kong et al. v. Trader Joe's Co.*, No. 20-56415, 2022 WL 1125667 (9th Cir. Apr. 15, 2022) (same); *Davis et al. v. Salesforce.com. Inc. et al.*, No. 21-15867, 2022 WL 1055557 (9th Cir. Apr. 8, 2022) (same). Conversely, we have successfully obtained affirmance of

correctly decided cases. *See, e.g., Hawkins et al. v. Cintas Corp.*, No. 21-3156 (6th Cir. Apr. 27, 2022) (upholding denial of motion to compel arbitration in ERISA case); *Boley v. Universal Health Servs., Inc.*, 36 F.4th 124 (3d Cir. 2022) (upholding the grant of class certification).

94. My firm has also engaged in successful settlement negotiations and mediations in ERISA actions, recovering over a hundred million dollars for its clients and class members to date. *See, e.g., Brown v. MITRE Corp.*, No. 22-cv-10976 (D. Mass. Feb. 20, 2025) (ECF Nos. 113-114) (recovered a \$3,400,000 class settlement); *Hawkins v. Cintas Corp.*, No. 19-cv-1062, 2024 WL 3982210 (S.D. Ohio Aug. 27, 2024) (same); *Peterson v. Insurance Services Office, Inc.*, No. 3:20-cv-13223 (D.N.J. May 22, 2024) (recovered \$4,000,000.00 class settlement); *Garnick v. Wake Forest Univ. Baptist Med. Ctr.*, 21-cv-00454 (M.D.N.C. July 2, 2024) (recovered \$3,800,000.00 class settlement); *McNeilly v. Spectrum Health System*, No. 20-cv-00870 (W.D. Mich. 2023) (recovered \$6,000,000.00 class settlement); *Buescher, v. Brenntag North America, Inc.*, No. 20-cv-00147 (E.D. Pa. 2020) (recovered \$2,300,000.00 class settlement); *Davis v. Magna Int'l of Am., Inc.*, No. 20-cv-11060, 2025 WL 66052, at *1 (E.D. Mich. Jan. 10, 2025) (recovered \$2,900,00 settlement); *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 19-cv-05738-MAK (E.D. Pa. 2019) (settlement in the amount of \$2,550,000.00 after successful mediation); *Dean v. Cumulus Media, Inc.*, No. 22-cv-04956 (N.D. Ga. 2023) (recovered \$1,000,000.00 settlement); *Loomis v. Nextep, Inc.*, No.: 21-cv-00199 (W.D. Okla. 2023) (recovering \$1,100,000.00); *Freck v. Cerner Corp.*, No. 20-cv-00043 (W.D. Mo. 2020) (recovered \$4,050,000.00 class settlement); *Gerken v. ManTech Int'l Corp.*, No. 20-cv-01536 (E.D. Va. 2020) (recovered \$1,200,000.00 class settlement).

95. Capozzi Adler also has the resources and commitment to deploy those resources on behalf of the proposed class. With three office locations, the firm has been successfully serving clients for over 25 years offering a full range of legal services.

96. Given my years of experience in this field of law, including, trying an analogous case to an unfavorable verdict for plaintiffs in *Nunez v. B. Braun Med., Inc.*, 2023 WL 5339620 (E.D. Pa. Aug. 18, 2023), I believe the settlement achieved in this case is adequate and certainly reasonable and fair.

Case Contribution Awards Sought for the Plaintiffs Are Reasonable

97. Plaintiffs seek an award of \$5,000 for each of the three Class Representatives for their contributions to the prosecution and Settlement of the Action. Any such awards will be paid from the Settlement Fund.

98. Each of the Plaintiffs was instrumental in seeking relief on behalf of the Plan and they each have been actively involved in the litigation. These individuals took time away from other obligations in order to fulfill their obligations to the Settlement Class by: (1) engaging counsel, reviewing the Complaint and agreeing to publicly serve as Named Plaintiffs; (2) staying informed of the case and making themselves available at all times to discuss the litigation; (3) providing information and documents; (4) participating in teleconferences concerning the Action; and (5) and reviewing, considering, and ultimately approving the proposed Settlement for presentation to the Court.

99. Attached hereto as Exhibit 13 is Plaintiff Bagenstose's declaration in support of his application for a case contribution award. Plaintiff Juarbe's declaration is attached as Exhibit 14, Plaintiff Moxley's declaration is attached as Exhibit 15. Plaintiff Richard's declaration is attached as Exhibit 16. Plaintiff Tracy's declaration is attached as Exhibit 17. Plaintiff Scaramuzzo's declaration is attached as Exhibit 18.

100. As discussed in the accompanying Fee Memorandum, the requested case contribution awards are supported by ample legal authority in similar cases.

101. Further, to date, no objection to the Case Contribution Awards request has been raised.

Authority Supporting Appropriateness of Class Certification

102. Having litigated almost exclusively ERISA breach of fiduciary duty actions over my career it is my experience that the types of claims asserted in this action are typically certified.

103. Attached hereto as Exhibit 19 is a non-exhaustive list of more than eighty-nine (89) decisions from around the country in which courts certified classes in ERISA breach of fiduciary duty actions, like the instant action, including several decisions certifying classes in “excessive fee” suits.

I declare, pursuant to 28 U.S.C. §1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed this 6th day of August, 2025, in Merion Station, Pennsylvania.

CAPOZZI ADLER, P.C.

/s/ Mark K. Gyandoh
Mark K. Gyandoh, Esquire

Proposed Class Counsel