UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NORTH CAROLINA

WESTERN DIVISION

SARAH CONTE, JOANNE TOUCHBERRY, TEKISHA L. NICHOLSON, TOBY BELIVEAU, ALEXANDER CARLISLE, and EARLENE N. HUNTER, Individually and on Behalf of the WakeMed 403(b) Plan and All Others Similarly Situated, Plaintiffs, vs. WAKEMED, Defendant.	CASE NO. 5:21-CV-00190-D CLASS ACTION MEMORANDUM OF LAW IN SUPPORT OF: (1) PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (2) LEAD COUNSEL'S APPLICATION FOR AN AWARD OF ATTORNEYS' FEES AND EXPENSES AND SERVICE AWARDS FOR PLAINTIFFS

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

II. SETTLEMENT BACKGROUND AND TERMS 3

A. The Proposed Settlement Class 4

B. Monetary Relief 4

C. Non-Monetary Relief 4

D. Release of Claims 5

E. Review by Independent Fiduciary 6

III. THE NOTICE SATISFIED RULE 23 AND DUE PROCESS 6

IV. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL 8

A. The Settlement Is Procedurally Fair: Plaintiffs and Lead Counsel Have Adequately Represented the Settlement Class and Engaged in Arm's-Length Negotiations with Defendant 10

B. The Settlement Is Substantively Fair: The Relief Provided to the Settlement Class Is Adequate and Equitable 12

1. The Costs, Risks, and Delay of Trial and Appeal Support Approval of the Settlement 13

2. The Proposed Method of Distributing Relief to the Settlement Class Will Be Highly Effective and Equitable 15

3. The Terms of the Attorneys' Fee Award Are Fair, Reasonable, and in Line with Other Cases 15

4. The Settling Parties Have No Other Agreements 16

5. Settlement Class Members Are Treated Equitably 16

V. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE 17

VI. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND APPROPRIATE 17

A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases 17

Page

B. Lead Counsel's Fee Request Is Reasonable and Appropriately Compensates and Incentivizes Counsel 18

1. The Time and Labor Expended by Lead Counsel Support the Requested Fee 19

2. The Novelty and Complexity of the Issues Support the Requested Fee 20

3. The Skill Required to Accomplish the Settlement Supports the Requested Fee 21

4. The Contingent Nature of Lead Counsel's Representation Supports the Requested Fee 21

5. The Amount Involved and Result Obtained Support the Requested Fee 22

6. Fee Awards in Similar Cases Support the Requested Fee 23

7. The Reaction of the Settlement Class Supports the Requested Fee 23

VII. COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED 24

VIII. PLAINTIFF AWARDS ARE WARRANTED 25

IX. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS 26

X. CONCLUSION 26

TABLE OF AUTHORITIES

Page

CASES

Barber v. Kimbrell's, Inc.
577 F.2d 216 (4th Cir. 1978) 18-19

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980) 17

Brotherston v. Putnam Invs., LLC,
No. 15-13825-WGY, 2016 WL 1397427
(D. Mass. Apr. 7, 2016) 20

Clark v. Duke Univ.,
No. 1:16-CV-1044, 2019 WL 2579201
(M.D.N.C. June 24, 2019) ..... *passim*

Clark v. Duke Univ.,
No. 1:16-CV-1044, 2019 WL 2588029
(M.D.N.C. June 24, 2019) 14

Eisen v. Carlisle & Jacquelin,
417 U.S. 156 (1974) 7

Greenspun v. Bogan,
492 F.2d 375 (1st Cir. 1974) 7

Hill v. State St. Corp.,
No. 09-12146-GAO, 2015 WL 127728
(D. Mass. Jan. 8, 2015) 7

In re Cabletron Sys., Inc. Sec. Litig.,
239 F.R.D. 30 (D.N.H. 2006) 17

In re Celebrex (Celecoxib) Antitrust Litig.,
No. 2:14-cv-00361, 2018 WL 2382091
(E.D. Va. Apr. 18, 2018) 18

In re Chicken Antitrust Litig. Am. Poultry,
669 F.2d 228 (5th Cir. 1982) 17

In re Combustion, Inc.,
968 F. Supp. 1116 (W.D. La. 1997) 22

Page

In re Domestic Air Transp. Antitrust Litig.,
148 F.R.D. 297 (N.D. Ga. 1993).....22

In re Friedman's, Inc. Sec. Litig.,
No. 1:03-cv-3475, 2009 WL 1456698
(N.D. Ga. May 22, 2019).....21, 22

In re Genworth Fin. Sec. Litig.,
210 F. Supp. 3d 837 (E.D. Va. 2016).....18, 20, 21, 24

In re Genworth Fin. Sec. Litig.,
No. 3:14-cv-682-JAG, 2016 WL 7187290
(E.D. Va. Sept. 26, 2016).....16

In re IMAX Sec. Litig.,
283 F.R.D. 178 (S.D.N.Y. 2012).....17

In re Jiffy Lube Sec. Litig.,
927 F.2d 155 (4th Cir. 1991).....9, 10, 12, 16

In re MicroStrategy, Inc.,
172 F. Supp. 2d 778 (E.D. Va. 2001).....18, 24

In re The Mills Corp. Sec. Litig.,
265 F.R.D. 246 (E.D. Va. 2009).....11

In re NeuStar, Inc. Sec. Litig.,
No. 1:14CV885(JCC/TRJ), 2015 WL 5674798
(E.D. Va. Sept. 23, 2015).....9, 10, 11

In re Sunbeam Sec. Litig.,
176 F. Supp. 2d 1323 (S.D. Fla. 2001).....21

Ingram v. The Coca-Cola Co.,
200 F.R.D. 685 (N.D. Ga. 2001).....25

Johnson v. Ga. Highway Express, Inc.,
488 F.2d 714 (5th Cir. 1974), *abrogated on other grounds by*
Blanchard v. Bergeron, 489 U.S. 87 (1989).....19

KBC Asset Mgmt. NV v. 3D Sys. Corp.,
No. 0:15-cv-02393-MGL, 2018 WL 3105072
(D.S.C. June 25, 2018).....18

Page

Kelly v. Johns Hopkins Univ.,
No. 1:16-CV-2835-GLR, 2020 WL 434473
(D. Md. Jan. 28, 2020) 13, 16

Kruger v. Novant Health, Inc.,
No. 1:14CV208, 2016 WL 6769066
(M.D.N.C. Sept. 29, 2016) 23

LaLonde v. Textron, Inc.,
369 F.3d 1 (1st Cir. 2004) 13

Martin v. Caterpillar, Inc.,
No. 07-CV-1009, 2010 WL 3210448
(C.D. Ill. Aug. 12, 2010) 14

Pinto v. Princess Cruise Lines, Ltd.,
513 F. Supp. 2d 1334 (S.D. Fla. 2007) 22

Ressler v. Jacobson,
149 F.R.D. 651 (M.D. Fla. 1992) 21

Schwartz v. TXU Corp.,
No. 3:02-CV-2243-K, 2005 WL 3148350
(N.D. Tex. Nov. 8, 2005) 17

Sims v. BB&T Corp.,
No. 1:15-CV-732, 2018 WL 3128996
(M.D.N.C. June 26, 2018) 14

Sims v. BB&T Corp.,
No. 1:15-CV-732, 2019 WL 1993519
(M.D.N.C. May 6, 2019) ..... *passim*

Smith v. Krispy Kreme Doughnut Corp.,
No. 1:05CV00187, 2007 WL 119157
(M.D.N.C. Jan. 10, 2007) 14

Stevens v. SEI Invs. Co.,
No. 18-4205, 2020 WL 996418
(E.D. Pa. Feb. 28, 2020) 16

Page

STATUTES, RULES AND REGULATIONS

Federal Rules of Civil Procedure
Rule 23(a).....4, 26
Rule 23(b)(1).....4, 26
Rule 23(b)(3).....6
Rule 23(c)(2)(A).....6
Rule 23(c)(2)(B).....6, 7, 8
Rule 23(e).....8
Rule 23(e)(1).....1, 7
Rule 23(e)(1)(B).....7
Rule 23(e)(2).....8, 9, 16
Rule 23(e)(2)(A).....10, 12
Rule 23(e)(2)(B).....9, 10, 12
Rule 23(e)(2)(C).....12, 13
Rule 23(e)(2)(C)(i).....9, 13, 14
Rule 23(e)(2)(C)(iii).....15
Rule 23(e)(2)(C)(iv).....16
Rule 23(e)(2)(D).....12, 13, 16
Rule 23(e)(3).....9

Plaintiffs Sarah Conte, Joanne Touchberry, Tekisha L. Nicholson, Toby Beliveau, Alexander Carlisle and Earlene N. Hunter ("Plaintiffs") submit this memorandum in support of their motion for: (i) final approval of a proposed Settlement of this class action ("Litigation") brought on behalf of participants in the WakeMed Retirement Savings Plan and other WakeMed defined contribution plans (collectively, the "Plan") from August 25, 2014 to May 4, 2021, the date of preliminary approval ("Settlement Class Period"), alleging claims under the Employee Retirement Income Security Act of 1974 ("ERISA") against WakeMed ("Defendant"), and (ii) approval of the Plan of Allocation.[1] In addition, Lead Counsel submits this memorandum in support of its application for an award of attorneys' fees and expenses and service awards for Plaintiffs.

I. INTRODUCTION

Plaintiffs allege that Defendant WakeMed breached its fiduciary duties and engaged in prohibited transactions in violation of ERISA. After careful research and months of arm's-length negotiations, and with the assistance of an experienced mediator, David Geronemus, the Settling Parties agreed to settle the case for $975,000 and an agreement that WakeMed would implement remedial changes related to the Plan. The Settlement represents over 21% of reasonably recoverable damages and was achieved in the face of significant litigation risks. The non-monetary terms are similarly impressive and specifically tailored to protect existing and future Plan participants from the types of problems alleged by Plaintiffs.

On May 4, 2021, the Court granted preliminary approval of the Settlement under Federal Rule of Civil Procedure 23(e)(1). Order Granting Motion for Preliminary Approval of Class Action Settlement ("Preliminary Approval Order"), ECF No. 12, ¶2. The Court preliminarily found that the

[1] All capitalized terms that are not otherwise defined herein have the same meanings ascribed to them in the Class Action Settlement Agreement, dated April 26, 2021, ECF No. 11-1 ("Settlement Agreement").

Settlement should be approved as it "resulted from extensive arm's-length negotiations." *Id.*, ¶2.A. In addition to preliminarily approving the Settlement, the Court: (i) conditionally certified the proposed Settlement Class; (ii) appointed Analytics Consulting, LLC ("Analytics") as the Settlement Administrator; and (iii) approved the form and content of the Notice to be provided to the Settlement Class. *Id.*, ¶¶1, 4.B, 5.

After having been fully informed of its terms by the Court-approved Notice, to date not a single Settlement Class Member has objected to any aspect of the Settlement. And the Independent Fiduciary, Fiduciary Counselors Inc. ("Fiduciary Counselors"), retained to review the Settlement[2] will issue a report, which Lead Counsel will file prior to the Fairness Hearing for consideration by the Court.

Under the terms of the Settlement, Defendant has caused $975,000 to be deposited into the interest-bearing Qualified Settlement Fund ("Settlement Fund"), which amount, minus certain attorneys' fees, litigation expenses, Plaintiffs' service awards, and administration costs and taxes, will be distributed on a *pro rata* basis among Settlement Class Members who are, or were, participants in the Plan, pursuant to the proposed Plan of Allocation. The Plan of Allocation is designed to fairly and equitably distribute the proceeds of the Settlement to Settlement Class Members, taking into account Plaintiffs' allegations and the losses suffered while they were participants in the Plan.

As compensation for its efforts, Lead Counsel respectfully requests an award of attorneys' fees of one-third of the Settlement Amount and the payment of litigation expenses and charges of

[2] Department of Labor Prohibited Transaction Exemption ("PTE") 2003-39 requires that an independent fiduciary review the settlement where, as here, the plan is releasing claims, and to agree to the settlement only if the independent fiduciary determines the settlement "would have been agreed to by unrelated parties under similar circumstances." 68 Fed. Reg. 75632, at *75635 (Dec. 31, 2003).

$21,909.85, plus interest on both amounts at the same rate and for the same period of time as that earned on the Settlement Fund. Lead Counsel's efforts to date have been without compensation of any kind and the fee has been wholly contingent on the results obtained. The requested fee award is consistent with awards in similar ERISA actions in the Fourth Circuit and throughout the country and is supported by the Plaintiffs.

Since fee awards are designed to encourage counsel to get the best possible result for the class, the amount requested in this case is warranted, if not modest, given the exceptional recovery obtained and the obstacles and risks Lead Counsel faced in bringing and prosecuting this case. While the recovery is more than 21% of estimated damages, the requested fee results in a ***negative*** lodestar multiplier of 0.53x, many times lower than multipliers routinely approved in the Fourth Circuit.

Separately, Plaintiffs respectfully seek awards of $5,000 each in connection with their representation of the Settlement Class. Plaintiffs support their applications with declarations setting forth the basis for the awards, which are lower than awards in recent cases.

II. SETTLEMENT BACKGROUND AND TERMS

The Settlement is the product of extensive negotiations that began well before the action was filed. They were conducted in good faith, at arm's length, between experienced attorneys familiar with the legal and factual issues of this case. The Settling Parties negotiated the Settlement over a five-month period in which they exchanged multiple settlement proposals and attended a formal mediation with Mr. Geronemus before agreeing to resolve the case for $975,000 and structural improvements to the Plan. The Settling Parties executed the Settlement Agreement on April 26, 2021.

A. The Proposed Settlement Class

The Settlement Agreement calls for certification for settlement purposes of the following Settlement Class:

> All persons who participated in the Plan (as defined in the Settlement Agreement, to include all defined contribution plans sponsored by WakeMed) at any time during the Settlement Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Settlement Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Settlement Class Period.
>
> The Settlement Class Period is August 25, 2014 through the date of the entry of this Preliminary Approval Order, May 4, 2021.

Settlement Agreement, ¶¶2.37, 2.39, 11.1.3. The Court certified the Settlement Class pursuant to Rules 23(a) and 23(b)(1) in its Preliminary Approval Order on May 4, 2021 (ECF No. 12, ¶1).

B. Monetary Relief

Under the Settlement, Defendant has deposited $975,000 into the Settlement Fund. The Settlement Administrator will distribute the Net Settlement Amount[3] to Settlement Class Members according to the Plan of Allocation as described in Article 6 of the Settlement Agreement. Under the Plan of Allocation, the Settlement Administrator shall determine each Settlement Class Member's total Settlement payment by calculating each Settlement Class Member's proportionate share of the Net Settlement Amount (*id.*, ¶6.3.4), which will be allocated among eligible Settlement Class Members in proportion to their average end-of-quarter balances. *Id.*, ¶6.3.2.4.

C. Non-Monetary Relief

An important part of the Settlement are the changes to be implemented in an effort to ensure that the Plan retains prudent service providers, avoids paying excess fees, and offers prudent

[3] The Net Settlement Amount is the Settlement Amount less: (a) all Attorneys' Fees and Expenses approved by the Court and paid to Lead Counsel; (b) all Plaintiffs' Compensation as authorized by the Court; (c) all Administrative Expenses; and (d) any appropriate reserves. Settlement Agreement, ¶2.24.

investment options. The Plan fiduciaries will conduct a request for proposals ("RFP") for investment advisory services for the Plan within 18 months of the Settlement Agreement Execution Date, and will initiate RFPs for recordkeeping and administrative services for the Plan on two occasions, the first within 36 months of the Settlement Effective Date, and the second within 72 months of the Settlement Effective Date. All RFPs will be issued to at least three qualified service providers. Through the RFP process the Plan fiduciaries will evaluate and compare available service providers. After each RFP, the Plan fiduciaries may decide to retain their then existing service providers for recordkeeping and administrative services or select different service providers for such services.

D. Release of Claims

In exchange for the relief provided by the Settlement, the members of the Settlement Class and the Plan itself will release Defendant and affiliated persons and entities from all claims:

> 2.27.1 That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Plaintiffs' complaint; or
>
> 2.27.2 That were asserted in any complaint filed in *Nicholson, et al. v. WakeMed, et al.*, No. 5:20-cv-00662, in the United States District Court for the Eastern District of North Carolina, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in any *Nicholson* complaint; or
>
> 2.27.3 That arise out of, relate in any way to, are based on, or have any connection with the Plan's management or administration, including but not limited to: (a) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options or service providers or advisors; (b) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Settlement Class Member; (c) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (d) the investment options offered to the Plan's participants; (e) the compensation received by the Plan's service providers; (f) the selection of service providers or advisors to the Plan; (g) the services provided to the Plan or the costs of those services; (h) the payment of compensation based on a percentage of total assets; (i) the Plan's investment

structure(s); or (j) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or

2.27.4 That would be barred by *res judicata* based on entry of the Final Order; or

2.27.5 That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or

2.27.6 That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

Settlement Agreement, ¶2.27.

E. Review by Independent Fiduciary

To further test the fairness of the Settlement, the terms of the Settlement were provided to the Independent Fiduciary, Fiduciary Counselors. Defendant, in consultation with Lead Counsel, selected and retained Fiduciary Counselors on behalf of the Plan, to review the Settlement to determine whether to approve and authorize Plaintiffs' Released Claims. Settlement Agreement, ¶3.1; *see also* Prohibited Transaction Exemption 2003-39, 68 Fed. Reg. 75632, as amended, 75 Fed. Reg. 33830 ("PTE 2003-39"). The Settling Parties ensured that Fiduciary Counselors had sufficient information to support the review and evaluation, Settlement Agreement, ¶3.1.4, and the Independent Fiduciary will issue its report, which Lead Counsel will file prior to the Fairness Hearing for consideration by the Court. *See id.*, ¶3.1.2.

III. THE NOTICE SATISFIED RULE 23 AND DUE PROCESS

Since the Court certified the Settlement Class under Federal Rule of Civil Procedure ("Rule") 23(b)(1), Plaintiffs were required to provide notice to Settlement Class Members under Rule 23(c)(2)(A). Here, the Notice also met the stricter requirement of Rule 23(c)(2)(B) (applicable only to Rule 23(b)(3) classes) to be "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P.

23(c)(2)(B); *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 173-75 (1974). The Notice further satisfied Rule 23(e)(1), which requires that notice be directed "in a reasonable manner to all class members who would be bound." Fed. R. Civ. P. 23(e)(1)(B).

Overall, the Notice's content and manner of dissemination "'fairly apprise[d] the prospective members of the class of the terms of the proposed settlement and of the options that are open to them.'" *See Hill v. State St. Corp.*, No. 09-12146-GAO, 2015 WL 127728, at *15 (D. Mass. Jan. 8, 2015) (quoting *Greenspun v. Bogan*, 492 F.2d 375, 382 (1st Cir. 1974)).[4] The Notice program was carried out by Analytics, a nationally recognized claims' administration firm with strong experience with ERISA class actions, under the supervision of Lead Counsel. The Notice included: (i) the terms and effect of the Settlement Agreement and of the Settlement; (ii) a description of the Plan of Allocation; (iii) a statement indicating the attorneys' fees and expenses that will be sought; (iv) a description of Settlement Class Members' right to object to the Settlement, the Plan of Allocation, and the requested attorneys' fees and expenses; and (v) the time and place of the Fairness Hearing. Preliminary Approval Order at 11-12; *see also* accompanying Declaration of Jeffrey Mitchell of Analytics Consulting, LLC Regarding Implementation of Notice Program ("Mitchell Decl."), Ex. 1; Fed. R. Civ. P. 23(e)(1)(B); *cf.* Fed. R. Civ. P. 23(c)(2)(B).

In accordance with the Court's Preliminary Approval Order and the Order Granting Joint Motion to Modify the Settlement-Approval Schedule,[5] the Settlement Administrator mailed copies

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[4] Citations are omitted and emphasis is added throughout unless otherwise noted.

[5] As explained in the parties' Joint Motion to Modify the Settlement-Approval Schedule and in the Mitchell Declaration:

> After the initial Notices mailed, Defendant discovered a subset of individuals that were inadvertently excluded from the Settlement Class List. Beginning on or around October 22, 2021, through October 27, 2021, Defendant provided supplemental class data files to Analytics to update the Settlement Class List. Analytics loaded this data

of the Notice by First-Class Mail to 2,328 Settlement Class Members. Mitchel Decl., ¶¶6-12. Analytics re-mailed any Notices that the United States Postal Service returned with updated addresses. *Id.*, ¶13. When Notices were returned undeliverable, Analytics located new addresses through a third-party commercial data source and re-mailed the Notices. *Id.*, ¶14. Analytics also emailed the Notice to 20,675 Settlement Class Members. *Id.*, ¶¶8 and 12. As a result of these efforts, Analytics estimates that Notice was successfully delivered to over 98% of the Settlement Class. *Id.*, ¶15.

In addition, copies of the Notice, Former Participant Claim Form, Settlement Agreement, and other relevant case documents and information were made available on the Settlement website, www.WakeMedERISASettlement.com, on May 25, 2021. *See id.*, ¶16. Analytics also created and maintained a toll-free telephone support line (1-888-845-0364) as a resource for Settlement Class Members seeking information about the Settlement. *Id.*, ¶17.

In sum, the efforts of Lead Counsel and Analytics provided the Settlement Class with "the best notice . . . practicable under the circumstances." Fed. R. Civ. P. 23(c)(2)(B).

IV. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Rule 23(e) of the Federal Rules of Civil Procedure provides that a class action settlement must be presented to the Court for approval. The Rule further directs that the settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2).

Rule 23(e)(2) articulates specific factors for courts to consider when evaluating a settlement for final approval. Specifically, courts are called upon to assess whether:

> to its database and located 1,100 additional Settlement Class Member records ("Added Class Members").

Mitchell Decl., ¶11.

(A) the class representatives and class counsel have adequately represented the class;

(B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

(i) the costs, risks, and delay of trial and appeal;

(ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

(iii) the terms of any proposed award of attorney's fees, including timing of payment; and

(iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). Subsections 23(e)(2)(A)-(B) of the revised Rule focus on the "procedural" fairness of the settlement, while subsections 23(e)(2)(C)-(D) concern the settlement's "substantive" fairness. Advisory Committee Notes to 2018 Amendment to Rule 23(e)(2).

Overlapping with Rule 23(e)(2)(B) (arm's-length negotiation) and Rule 23(e)(2)(C)(i) (adequacy of the settlement based on the costs, risks, and delay of trial and appeal) is the two-level analysis in the Fourth Circuit, *In re Jiffy Lube Sec. Litig.*, 927 F.2d 155, 158-60 (4th Cir. 1991), which "includes an assessment of both the procedural fairness of the settlement negotiations and the substantive adequacy of the settlement itself." *In re NeuStar, Inc. Sec. Litig.*, No. 1:14CV885(JCC/TRJ), 2015 WL 5674798, at *9 (E.D. Va. Sept. 23, 2015). The procedural fairness factor ensures "that the settlement was reached as a result of good-faith bargaining at arm's length, without collusion." *Jiffy Lube*, 927 F.2d at 158-59. The substantive adequacy analysis, on the other hand, "'weigh[s] the likelihood of the plaintiff's recovery on the merits against the amount offered in settlement.'" *NeuStar*, 2015 WL 5674798, at *11. As discussed below, the proposed Settlement satisfies each of the factors identified under Rule 23(e)(2), as well as the Fourth Circuit's "fairness" and "adequacy" analysis.

A. The Settlement Is Procedurally Fair: Plaintiffs and Lead Counsel Have Adequately Represented the Settlement Class and Engaged in Arm's-Length Negotiations with Defendant

Plaintiffs and their counsel have adequately represented the Settlement Class as required by Rule 23(e)(2)(A) by diligently prosecuting this Litigation on their behalf. Among other things, Plaintiffs investigated the relevant factual events, analyzed the disclosure documents provided to Plan participants, the Plan's Summary Plan Description, defined contribution plan documents, Department of Labor filings filed by the Plan, U.S. Securities and Exchange Commission filings filed by WakeMed, media reports about the Company, and the fees and performance of the investment options offered to Plan participants. *See* Declaration of Evan J. Kaufman in Support of Final Approval of Class Action Settlement, Approval of Plan of Allocation, and an Award of Attorneys' Fees, Expenses, and Service Awards ("Kaufman Decl."), ¶6, submitted herewith. Furthermore, Lead Counsel researched the legal issues underlying Plaintiffs' claims, drafted a detailed complaint and participated in extensive settlement negotiations with WakeMed's counsel ("Defense Counsel"), during which the Settling Parties advocated for their respective positions. *Id.*, ¶¶5-14. The result is the Settlement comprised of a $975,000 cash payment and a significant non-monetary commitment by WakeMed.

In addition, the Settling Parties reached a settlement as the result of good faith, arm's-length negotiations by experienced counsel, satisfying Rule 23(e)(2)(B) and the first part of the Fourth Circuit's *Jiffy Lube* analysis. In order to promote judicial and attorney efficiencies, prior to the filing of the Complaint, the Settling Parties engaged in multiple arm's-length settlement negotiations, including a formal mediation with an experienced mediator, over the course of five months. *Id.*, ¶¶7-11.

The Fourth Circuit considers whether the case has progressed far enough to dispel any wariness of "'possible collusion among the settling parties.'" *NeuStar*, 2015 WL 5674798, at *10

(quoting *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 254 (E.D. Va. 2009)). Here, there can be no question the Settlement was the result of arm's-length negotiations in which there is no hint of collusion. As discussed, the Settling Parties engaged in vigorous preliminary discussions for several months before engaging in a Zoom mediation session before a nationally-recognized mediator of complex cases and ERISA class actions, David Geronemus. "These adversarial encounters dispel any apprehension of collusion between the parties." *NeuStar*, 2015 WL 5674798, at *10.

Second, the Fourth Circuit looks at the extent of discovery. "This factor permits the Court to ensure that all parties 'appreciate the full landscape of their case when agreeing to enter into the Settlement.'" *Id.* at *10 (quoting *Mills*, 265 F.R.D. at 254). Here, the Settling Parties engaged in an exchange of a large amount of information prior to discussing settlement. In April 2020, Lead Counsel requested Plan documents from WakeMed pursuant to ERISA §104(b)(4), and received, among other things, certain Plaintiffs' account statements, written instruments governing or pertaining to the Plan, the formal Plan Document, Summary Plan Description, annual reports, fund prospectuses, and summaries of the Plan's investment options. Kaufman Decl., ¶6. The review of these documents, combined with the significant pre-suit negotiations with Defendant, gave Plaintiffs a meaningful understanding of the merits of their factual allegations, and the strengths and weaknesses of their legal claims. Defendant also produced additional documents after the Settlement was reached and provided a detailed Zoom presentation of additional facts, reaffirming Plaintiffs' belief that the Settlement is favorable. Kaufman Decl., ¶¶20-21.

As detailed in the Kaufman Declaration (¶15), Lead Counsel has substantial experience in complex class actions, including ERISA class actions involving 401(k) plans. Lead Counsel has served as lead or co-lead counsel in several class actions and is currently counsel in *In re GE ERISA Litig.*, No. 1:17-cv-12123-IT (D. Mass.). *Id.*, ¶17.

In sum, Lead Counsel brought its extensive experience to bear on the prosecution and settlement of this case. Counsel has zealously represented the Settlement Class and achieved a meaningful settlement after extensive arm's-length negotiations with Defense Counsel. Moreover, Plaintiffs have assisted Lead Counsel throughout this process and adequately represented the Settlement Class. Accordingly, the Settlement satisfies the "procedural" factors outlined in Rule 23(e)(2)(A)-(B) and *Jiffy Lube*.

B. The Settlement Is Substantively Fair: The Relief Provided to the Settlement Class Is Adequate and Equitable

"The relief that the settlement is expected to provide to class members is a central concern" of the analysis under Rules 23(e)(2)(C)-(D). Notes of Advisory Committee on 2018 Amendment to Rule 23(e)(2)(C)-(D). This factor overlaps with the Fourth Circuit's analysis of the substantive adequacy of the Settlement. *Jiffy Lube*, 927 F.2d at 159.

The Settlement Amount represents a significant portion – over 21% – of the total recoverable damages that Plaintiffs have reasonably calculated were caused by Defendant's violations of ERISA. Plaintiffs retained a consultant, MJN Fiduciary, LLC, who calculated the likely total damages at approximately $4.5 million. Kaufman Decl., ¶24. The Settlement Amount is consistent with, if not above, the range found reasonable in other ERISA class action settlements. *See, e.g.*, *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019) (class counsel recovered 19% of total damages in ERISA class action).

Furthermore, the Settlement provides a substantial non-monetary benefit to the Plan and its participants and beneficiaries. Under the terms of the Settlement, WakeMed agrees to take certain actions when retaining service providers, including the evaluation of related costs and services. Settlement Agreement, ¶10. Lead Counsel ultimately ensured that WakeMed would agree to

conduct RFPs periodically for several years to ensure that the Plan was receiving the best deals on investment advisory, recordkeeping, and administrative service providers. *Id.*, ¶¶10.2-10.4.

The Settlement relief was informed, in part, by documents produced by Defendant, including: (1) the Plan's Form 5500s and the annual fee and performance disclosures to Plan participants pursuant to 29 C.F.R. §2550.404a-5 for each year from 2014-2019; and (2) internal documents deemed confidential by WakeMed, including samples of service provider quarterly reports and presentations, service provider fund search reports and analyses, recordkeeper fee disclosures to WakeMed pursuant to 29 C.F.R. §2550.408b-2, a recordkeeper "fee analysis," and other related materials. Kaufman Decl., ¶22. Lead Counsel reviewed those documents and learned additional facts concerning WakeMed's share class selection, process for and involvement in structuring the Plan, and administrative and recordkeeping expenses for the Plan. *Id.*, ¶23.

In addition to providing substantial value to Settlement Class Members, the Settlement meets the other indicia of "substantive" fairness set forth in Rule 23(e)(2)(C)-(D).

1. The Costs, Risks, and Delay of Trial and Appeal Support Approval of the Settlement

The costs, risks and delay associated with taking this case to trial – and, inevitably, appeals – weigh in favor of approval. *See* Fed. R. Civ. P. 23(e)(2)(C)(i). ERISA jurisprudence is an "important and complex area of law." *LaLonde v. Textron, Inc.*, 369 F.3d 1, 6 (1st Cir. 2004). Plaintiffs' ERISA claims are based on breaches of the duties of prudence and loyalty under 29 U.S.C. §§1109 and 1132, respectively, by failing to establish and maintain a prudent process when selecting and monitoring the investment options in the Plan and in evaluating and establishing Plan expenses. Complaint, ¶101. The legal standards relevant to Plaintiffs' claims are still evolving. *See Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020) ("Class Counsel has filed the first cases in history claiming excessive fees in 403(b) plans.").

Excessive fee litigation "entails complicated ERISA claims that are not only dependent on the statute but also on various regulations that implement ERISA" and "[t]hese claims are also relatively unique with limited case authority in support." *Martin v. Caterpillar, Inc.*, No. 07-CV-1009, 2010 WL 3210448, at *2 (C.D. Ill. Aug. 12, 2010); *see also Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) ("ERISA law is a highly complex and quickly-evolving area of the law."). Plaintiffs ultimately bear the burden to prove: "(1) that the defendant was a fiduciary of the ERISA plan; (2) that the defendant breached its fiduciary responsibilities under the plan; and (3) that the plan suffered a loss from the defendant's breach." *See Sims v. BB&T Corp.*, No. 1:15-CV-732, 2018 WL 3128996, at *5 (M.D.N.C. June 26, 2018).

If Plaintiffs were unsuccessful at any stage of the Litigation, this could result in the recovery being significantly delayed, reduced, or lost entirely. *See Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019 WL 2588029, at *6 (M.D.N.C. June 24, 2019) (finding that the "likelihoods that the defendants may either prevail in motions practice or at trial or appeal any recovery" would likely have the effect of "delaying (or foreclosing) any benefit to the class members"). If Plaintiffs' ERISA claims survived the pleading stage, substantial discovery would remain to be taken and significant (and expensive) expert discovery would be required for both sides. Ultimately, any judgment would likely present significant legal questions, which the losing parties would likely appeal, adding further cost, risk and delay to these proceedings.

In sum, the $975,000 cash recovery now, along with WakeMed's non-monetary commitment, viewed in the context of the "costs, risks, and delay of trial and appeal" strongly favor final approval of the Settlement. Fed. R. Civ. P. 23(e)(2)(C)(i).

2. The Proposed Method of Distributing Relief to the Settlement Class Will Be Highly Effective and Equitable

The Plan of Allocation sets forth an effective and equitable method of distributing the Net Settlement Amount to the Settlement Class. These factors also support final approval of the Settlement. *See* Fed. Civ. P. 23(e)(2)(C)(ii) & (e)(2)(D). The Settling Parties have developed a neutral plan to promptly deliver the Settlement proceeds to Settlement Class Members. Under the Plan of Allocation, all eligible Settlement Class Members will receive a proportionate share of the Net Settlement Amount based on their investment selections and their average end-of-quarter balances.

A similar plan of allocation was approved by the court in *Cervantes v. Invesco Holding Company (US), Inc., et al.*, No. 1:18-cv-02551-AT, Order Approving Plan of Allocation, ECF No. 108 (N.D. Ga. Aug. 13, 2020), and *Moreno, et al. v. Deutsche Bank Am. Holding Corp., et al.*, No. 1:15-cv-09936, Settlement Agreement, ECF No. 322-1 at 29-32 (S.D.N.Y. Aug. 14, 2018).

Notably, after having been informed of its terms by virtue of the Court-approved Notice, to date not a single Settlement Class Member has filed an objection to the Settlement or Plan of Allocation.

3. The Terms of the Attorneys' Fee Award Are Fair, Reasonable, and in Line with Other Cases

The terms of the requested attorneys' fees are fair, reasonable, and in line with awards in similar cases. *See* Fed. R. Civ. P. 23(e)(2)(C)(iii). The Notice states that Lead Counsel will apply to the Court for an award of up to one-third of the Settlement Amount in attorneys' fees, plus its litigation expenses in an amount not to exceed $40,000. The proposed attorneys' fee award compares favorably to similar ERISA cases, in which courts routinely award one-third of the settlement amount. *E.g.*, *Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019 WL 2579201, at *3-*4

(M.D.N.C. June 24, 2019) (awarding one-third of $10.65 million recovery); *Sims*, 2019 WL 1993519, at *2-*3 (awarding one-third of $24 million recovery and finding that "'[a] one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects a customary fee for like work'"); *Cervantes v. Invesco Holding Company (US), Inc., et al.*, No. 1:18-cv-02551-AT, Order Awarding Attorneys' Fees and Expenses, ECF No. 110 (N.D. Ga. Aug. 13, 2020) (awarding one-third of $3,470,000); *Stevens v. SEI Invs. Co.*, No. 18-4205, 2020 WL 996418 (E.D. Pa. Feb. 28, 2020) (awarding one-third of $6.8 million recovery); *Kelly*, 2020 WL 434473, at *3 (awarding one-third of $4,666,667 as "the market rate").[6]

4. The Settling Parties Have No Other Agreements

Rule 23(e)(2)(C)(iv) requires the disclosure of any other agreements. The Settling Parties have entered into no other agreements here.

5. Settlement Class Members Are Treated Equitably

The final factor under Rule 23(e)(2) is whether Settlement Class Members are treated equitably. Fed. R. Civ. P. 23(e)(2)(D). As reflected in the Plan of Allocation set forth in the Settlement Agreement, ¶6, and Notice (at 4-5), the Settlement treats Settlement Class Members equitably relative to each other by providing that they shall receive their *pro rata* share of the Net Settlement Amount based on their average monthly account balances during the Settlement Class Period.

Thus, each factor identified under Rule 23(e)(2) and *Jiffy Lube* is satisfied. For all of the foregoing reasons, and for each of the reasons set forth in the Court's Preliminary Approval Order,

[6] With respect to the timing of payment, the Settlement Agreement (¶7.1) provides that such fees and expenses awarded by the Court shall be paid immediately upon execution of the order awarding fees and expenses. *See In re Genworth Fin. Sec. Litig.*, No. 3:14-cv-682-JAG, 2016 WL 7187290, at *2 (E.D. Va. Sept. 26, 2016) (ordering that "attorneys' fees and Litigation Expenses awarded above may be paid to Lead Counsel immediately upon entry of this Order").

the Court should find that the Settlement is fair, adequate and reasonable, and in Settlement Class Members' best interests.

V. THE PLAN OF ALLOCATION IS FAIR, REASONABLE AND ADEQUATE

A plan of allocation, like the settlement itself, should be approved if it is fair, reasonable, and adequate. *See In re Chicken Antitrust Litig. Am. Poultry*, 669 F.2d 228, 238 (5th Cir. 1982).

A plan of allocation that reimburses class members based on the extent of their injuries is generally reasonable, but the plan "'need not necessarily treat all class members equally.'" *Schwartz v. TXU Corp.*, No. 3:02-CV-2243-K, 2005 WL 3148350, at *23 (N.D. Tex. Nov. 8, 2005). A reasonable plan of allocation "'may consider the relative strength and values of different categories of claims.'" *In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012); *see also In re Cabletron Sys., Inc. Sec. Litig.*, 239 F.R.D. 30, 35 (D.N.H. 2006) (approving plan of allocation that accounted for "the strengths and weaknesses of the claims of the various types of class members").

As discussed in §IV.B.2, above, under the Plan of Allocation, each Settlement Class Member is treated equitably – each will receive his, her or its *pro rata* share of the Net Settlement Amount calculated based on their average end-of-quarter balances. It is entirely neutral and treats all Settlement Class Members fairly.

VI. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE AND APPROPRIATE

A. A Reasonable Percentage of the Fund Recovered Is the Appropriate Method for Awarding Attorneys' Fees in Common Fund Cases

As is typical in these cases, Lead Counsel seeks a percentage of the fund recovered as attorneys' fees. It is well settled that attorneys who achieve a common settlement fund for the benefit of a class are "entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also Clark*, 2019 WL 2579201, at *2 ("In a common

fund case such as this, 'a reasonable fee is based on a percentage of the fund bestowed on the class.'").

Determining the appropriate percentage fee is case specific, but as discussed above, §IV.B.3, courts in similar ERISA actions have awarded fees of one-third of the recovery. In addition, district courts in the Fourth Circuit have awarded similar attorneys' fees in recent and similar class actions. *See, e.g.*, *In re Celebrex (Celecoxib) Antitrust Litig.*, No. 2:14-cv-00361, 2018 WL 2382091 (E.D. Va. Apr. 18, 2018) (awarding 33% of the $94 million settlement fund); *KBC Asset Mgmt. NV v. 3D Sys. Corp.*, No. 0:15-cv-02393-MGL, 2018 WL 3105072 (D.S.C. June 25, 2018) (awarding 30% of the $50 million settlement fund). To ensure the reasonableness of the percentage fee awarded, district courts in the Fourth Circuit do a lodestar "cross-check," and, in doing so, have recognized that a fee percentage that results in a 2-3 times lodestar multiplier ("2-3x") is reasonable. *See, e.g.*, *In re Genworth Fin. Sec. Litig.*, 210 F. Supp. 3d 837, 845 (E.D. Va. 2016) (noting 2-3x multipliers were commonly approved); *see also In re MicroStrategy, Inc.*, 172 F. Supp. 2d 778, 789 (E.D. Va. 2001) (percentage awarded resulted in a 2.6x multiplier). Here, the one-third fee request is within the range of percentage fees approved by courts, and the reasonableness of the percentage is confirmed by the resulting ***negative*** lodestar multiplier of 0.53x, well below the 2-3x commonly approved.

B. Lead Counsel's Fee Request Is Reasonable and Appropriately Compensates and Incentivizes Counsel

Courts in this Circuit consider the following factors identified in *Barber v. Kimbrell's, Inc.* to determine the reasonableness of fee awards in ERISA class actions:

> (1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in

> controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys' fees awards in similar cases.

577 F.2d 216, 226 & n.28 (4th Cir. 1978) (adopting factors from *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717-19 (5th Cir. 1974), *abrogated on other grounds by Blanchard v. Bergeron*, 489 U.S. 87, 92-93 (1989)); *accord Clark*, 2019 WL 2579201, at *2; *Sims*, 2019 WL 1993519, at *1.

Lead Counsel's requested one-third fee, resulting in a 0.53x lodestar multiplier, satisfies each of the *Barber* factors, is approved and endorsed by the Plaintiffs, and therefore, should be awarded as fair and reasonable in this case.

1. The Time and Labor Expended by Lead Counsel Support the Requested Fee

The time and diligent effort expended by Lead Counsel to achieve the Settlement supports the requested fee. Lead Counsel has been investigating, litigating and negotiating with Defendants in this case since December 2019. During that time, Plaintiffs' counsel and their paraprofessionals have expended more than 890 hours in the prosecution of this Litigation. Lead Counsel has committed extensive resources to investigating Plaintiffs' claims both before and after commencement of the Litigation, performing complex analyses related to the Plan, researching and drafting complex and detailed pleadings and memoranda of law, developing the challenging aspects of Plaintiffs' claims and drafting a second amended complaint that would overcome Defendant's anticipated motion to dismiss. Kaufman Decl., ¶¶10, 14.

Plaintiffs' counsel's lodestar is approximately $602,671, resulting in a 0.53x multiplier to Plaintiffs' counsel's lodestar based on their one-third fee request. *See* Declaration of Evan J. Kaufman Filed on Behalf of Robbins Geller Rudman & Dowd LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Robbins Geller Decl."), ¶4; Declaration of Mark K.

Gyandoh Filed on Behalf of Capozzi Adler, P.C. in Support of Application for Award of Attorneys' Fees and Expenses ("Capozzi Adler Decl."), ¶12; Declaration of Brian L. Kinsley Filed on Behalf of Crumley Roberts, LLP in Support of Application for Award of Attorneys' Fees and Expenses ("Crumley Roberts Decl."), ¶4. "District courts within the Fourth Circuit have regularly approved attorneys' fees awards with 2-3 times lodestar multipliers." *Genworth*, 210 F. Supp. 3d at 845 & n.5 (citing cases approving lodestar multipliers of 2.6x to 2.9x). The negative lodestar multiplier here confirms the reasonableness of the requested one-third fee award, as it is well below the range of reasonableness.

2. The Novelty and Complexity of the Issues Support the Requested Fee

ERISA actions by their very nature are factually complex. *Brotherston v. Putnam Invs., LLC*, No. 15-13825-WGY, 2016 WL 1397427, at *1 (D. Mass. Apr. 7, 2016).

This Litigation has been no exception. For example, Plaintiffs allege that Defendant breached its fiduciary duties of prudence and loyalty to the detriment of the Plan and its participants and beneficiaries by, among other things, failing to establish and maintain a prudent process when selecting and monitoring the investment options in the Plan and in evaluating and establishing Plan expenses. These claims required Lead Counsel to closely examine the following: (a) the Plan disclosure documents sent to Plan participants detailing fees and expenses and the investment performance of each Plan option relative to investment benchmarks; (b) Department of Labor filings from the Plan; (c) Securities and Exchange Commission filings entered by the Plan's investment options and Defendant and its affiliates; (d) the investment structure and fees paid by the Plan in comparison with other types of investments and fees generally; and (e) investment performance analytics. Kaufman Decl., ¶6. The novelty and complexity of the issues in the Litigation further support the requested fee.

3. The Skill Required to Accomplish the Settlement Supports the Requested Fee

Another *Barber* factor courts consider is "the skill required to properly perform the legal services rendered." *Sims*, 2019 WL 1993519, at *1. The recovery obtained for the Settlement Class is the result of the efforts of Lead Counsel, whose diligence and skill enabled it to thoroughly investigate the facts underlying their claims and to negotiate a favorable recovery for the Settlement Class under challenging circumstances. *See Genworth*, 210 F. Supp. 3d at 844 (noting the "skill required in complex cases such as this involving massive discovery efforts and complicated issues of fact and law" weighed in favor of awarding 28% fee). Lead Counsel showed skill by "litigat[ing] the action and obtain[ing] this excellent settlement without the benefit of any active assistance from any governmental agency." *Ressler v. Jacobson*, 149 F.R.D. 651, 654 (M.D. Fla. 1992).

Additionally, the "quality of the opposition the plaintiffs' attorneys faced" during the action is an important consideration in evaluating Lead Counsel's skill. *In re Sunbeam Sec. Litig.*, 176 F. Supp. 2d 1323, 1334 (S.D. Fla. 2001). Defense Counsel in this Litigation, Morgan, Lewis & Bockius LLP, is nationally recognized for its experience in defending ERISA and other class action litigation and has been a formidable opponent for Lead Counsel. The ability of Lead Counsel to obtain such a favorable result despite Defense Counsel's impressive qualifications confirms the quality of Lead Counsel's representation.

4. The Contingent Nature of Lead Counsel's Representation Supports the Requested Fee

"[T]he 'significant risk of nonpayment' in ERISA matters generally, [citation omitted] tend to indicate that recovery requires navigating novel issues and applying specialized skills." *Sims*, 2019 WL 1993519, at *2; *see also In re Friedman's, Inc. Sec. Litig.*, No. 1:03-cv-3475, 2009 WL 1456698, at *3 (N.D. Ga. May 22, 2019) ("The contingent nature of fees in this case should be given

substantial weight in assessing the requested fee award."). The "'underlying premise'" of giving such weight to this factor "'is the existence of risk – the contingent risk of nonpayment.'" *Id.* (quoting *In re Combustion, Inc.*, 968 F. Supp. 1116, 1132 (W.D. La. 1997) (noting that risk of nonrecovery justified "higher payment due under a contingency fee")).

Lead Counsel litigated this action entirely on a contingent fee basis. Plaintiffs' counsel have expended over 890 hours of attorney and professional time, resulting in a lodestar of $602,671,[7] to prosecute and settle the Litigation with no guarantee of recovery and where the risk of collection was very speculative. Lead Counsel dedicated many hours to investigating and formulating Plaintiffs' claims in the Complaint, including retaining the services of a consultant in connection with that effort, MJN Fiduciary, LLC, notwithstanding the very real risk that Lead Counsel might not be compensated for those expenses. "A one-third fee reflects a reasonable attorney's fee in this matter for the attorneys who did assume this risk, diligently advocated on behalf of the class, and obtained significant recovery." *Sims*, 2019 WL 1993519, at *3.

5. The Amount Involved and Result Obtained Support the Requested Fee

"The result achieved is a major factor to consider in making a fee award." *Pinto v. Princess Cruise Lines, Ltd.*, 513 F. Supp. 2d 1334, 1342 (S.D. Fla. 2007); *Friedman's*, 2009 WL 1456698, at *3 ("'It is [also] well-settled that one of the primary determinants of the quality of the work performed is the result obtained.'"); *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 351 (N.D. Ga. 1993) ("The most important element in determining the appropriate fee to be awarded class counsel out of a common fund is the result obtained for the class through the efforts of such counsel.").

[7] *See* Robbins Geller Decl., ¶4; Capozzi Adler Decl., ¶12; Crumley Roberts Decl., ¶4.

Here, the $975,000 cash recovery is a very good result for the Settlement Class by any measure. According to the damages estimate prepared by Lead Counsel's damages consultant, the Settlement would recover over 21% of the total estimated damages. Kaufman Decl., ¶24. The recovery is certain and has been obtained through the considerable efforts of Lead Counsel without the expense, delay, and uncertainty of continued litigation. *See* §IV.B.1, above. In the end, the Settlement Class cares most about getting a great result. This outstanding result obtained for the Settlement Class supports Lead Counsel's fee request and merits an appropriate fee that encourages counsel to seek excellent results.

6. Fee Awards in Similar Cases Support the Requested Fee

The next *Barber* factor is the "attorneys' fees awards in similar cases." *Sims*, 2019 WL 1993519, at *1. As discussed above (§IV.B.3), Lead Counsel's requested one-third fee is consistent with awards approved in similar ERISA class actions. *Clark*, 2019 WL 2579201, at *3-*4 (awarding one-third of $10.65 million recovery); *Sims*, 2019 WL 1993519, at *2-*3 (awarding one-third of $24 million recovery). Further, the *Sims* court found that "'[a] one-third fee is consistent with the market rate' in complex ERISA [matters] such as this" and reflects a customary fee for like work. *See also Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (collecting cases).

7. The Reaction of the Settlement Class Supports the Requested Fee

The reaction of the Settlement Class to date also supports the appropriateness of the requested fee. Pursuant to the Preliminary Approval Order, the Settlement Administrator e-mailed over 20,600 copies of the Notice and Former Participant Claim Form, and over 2,300 copies via First-Class Mail, to Settlement Class Members and posted the Settlement Agreement, Notice, Preliminary Approval Order, and other relevant case documents to the Settlement website,

www.WakeMedERISASettlement.com. Mitchell Decl., ¶¶8-9, 16. The Notice informed recipients that Lead Counsel would ask the Court for attorneys' fees not to exceed one-third of the Settlement Amount, plus their litigation expenses to be paid from the Settlement Fund. Although the deadline for filing objections is December 30, 2021, thus far, Lead Counsel has not received a single objection to the requested fee or expense award or the awards for Plaintiffs.

VII. COUNSEL'S LITIGATION EXPENSES ARE REASONABLE AND WERE NECESSARILY INCURRED

Payment of reasonable litigation expenses to counsel who create a common fund is both necessary and routine. *Genworth*, 210 F. Supp. 3d at 845; *MicroStrategy*, 172 F. Supp. 2d at 791 ("There is no doubt that costs, if reasonable in nature and amount, may appropriately be reimbursed from the common fund."). Plaintiffs' counsel's expenses and charges here are $21,909.85 and are set forth in the accompanying Plaintiffs' counsel Declarations.[8] These expenses and charges are modest and were reasonable and necessary to the prosecution of the claims and achieving the Settlement. In fact, Lead Counsel reached out to WakeMed prior to filing the Complaint in an effort to minimize expenses that would ultimately be borne by the Settlement Class upon a successful result in the Litigation.

The expenses sought here – such as mediation fees, service fees, and charges for photocopies, research, telephone services, delivery services, and transcripts and videography – are precisely the type of expenses which have been awarded in other ERISA class actions in the Fourth Circuit. *See Sims*, 2019 WL 1993519, at *4 ("Reimbursable expenses include expert fees, travel, long-distance and conference telephone, postage, delivery services, settlement costs, and computerized legal research."); *Clark*, 2019 WL 2579201, at *4 (same). The Settlement Notice advised Settlement Class Members that Lead Counsel would seek an award of up to $40,000 in expenses (*see* Mitchell

[8] *See* Robbins Geller Decl., ¶5; Capozzi Adler Decl., ¶13; Crumley Roberts Decl., ¶5.

Decl., Ex. 1 at 5), and there have been no objections to date. Lead Counsel respectfully requests payment of these reasonable litigation expenses.

VIII. PLAINTIFF AWARDS ARE WARRANTED

Plaintiffs Conte, Touchberry, Nicholson, Beliveau, Carlisle, and Hunter respectfully request service awards of $5,000 each for the time and effort they devoted to the prosecution of the Litigation and their representation of the Settlement Class. "'Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks they incurred during the course of the class action litigation.'" *Ingram v. The Coca-Cola Co.*, 200 F.R.D. 685, 694 (N.D. Ga. 2001).

Plaintiffs devoted considerable time and energy to the prosecution of the Litigation, including communicating regularly with Plaintiffs' counsel, assisting with counsel's investigation of the Plan, reviewing and approving certain court filings, and consulting with Plaintiffs' counsel regarding settlement negotiations and terms. Declaration of Sarah Conte, ¶¶4-5; Declaration of Joanne Touchberry, ¶¶4-5; Declaration of Tekisha L. Nicholson, ¶¶4-5; Declaration of Toby Beliveau, ¶¶4-5; Declaration of Alexander Carlisle, ¶¶4-5; Declaration of Earlene N. Hunter, ¶¶4-5. Importantly, Plaintiffs stepped forward to represent the other Plan participants and beneficiaries against a former employer in an industry in which they continue to work or may at some point seek to become re-employed.

To date, Lead Counsel has not received a single objection from the Settlement Class to this request. Thus, Plaintiffs should be awarded $5,000 each from the Settlement Fund. *See, e.g.*, *Clark*, 2019 WL 2579201, at *5 (awarding named plaintiffs $25,000 and $30,000); *Sims*, 2019 WL 1993519, at *4 (awarding plaintiffs $20,000 each).

IX. THE COURT SHOULD GRANT FINAL CERTIFICATION OF THE SETTLEMENT CLASS

In its Preliminary Approval Order, the Court certified the Settlement Class for settlement purposes, thereby recognizing that Plaintiffs had satisfied the requirements of Rules 23(a) and 23(b)(1). Preliminary Approval Order, ECF No. 12, ¶1. Since the Court's Preliminary Approval Order, nothing has changed to disturb the Court's conclusion that class treatment is appropriate, and there is good reason and just cause to finally certify the Settlement Class, for settlement purposes, under Rules 23(a) and 23(b)(1).

X. CONCLUSION

Plaintiffs respectfully request that the Court enter an order granting final approval of the Settlement, approving the Plan of Allocation, finally certifying the Settlement Class, and awarding attorneys' fees of one-third of the Settlement Amount and expenses of $21,909.85 and awards to Plaintiffs of $5,000 each.

DATED: December 1, 2021

Respectfully submitted,

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Pursuant to Local Rule 7.2, the undersigned counsel certifies that the foregoing brief was prepared on a computer using Microsoft Word. A proportionally spaced typeface was used as follows:

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DATED: December 1, 2021

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