UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA STAPLETON, et al., Plaintiffs, v. ADVOCATE HEALTH CARE NETWORK AND SUBSIDIARIES, et al., Defendants.	Civil Action No. 1:14-cv-01873 Hon. Edmond E. Chang

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

Plaintiffs Maria Stapleton, now known as Maria Punda, Judith Lukas, Sharon Roberts, and Antwain[1] Fox ("Named Plaintiffs"), by and through their attorneys, respectfully move the Court for an Order: (1) granting final approval of the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") described herein and preliminarily approved by the Court on February 26, 2018 (Dkt. #159);[2] and (2) granting final certification of the proposed Settlement Class pursuant to Federal Rule of Civil Procedure 23(b)(1) and/or 23(b)(2).[3] Defendants do not oppose the relief sought herein.

For the reasons set forth in the accompanying Memorandum in Support of Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class, Plaintiffs respectfully request that the Court GRANT the Motion and enter the Proposed Order, filed herewith, concluding this case.

[1] Antwain Fox was inadvertently named in the Complaint as "Antoine Fox."
[2] A true copy of the Settlement Agreement is attached to the Memorandum in support hereof as Exhibit A. All references to "Exhibit" or "Ex." are to the exhibits attached to the Memorandum and filed concurrently herewith.
[3] Plaintiffs file the instant Motion contemporaneously with their Motion for Award of Attorneys' Fees and Expenses, and Incentive Awards to the Named Plaintiffs.

Dated: May 11, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 11, 2018, I electronically filed the above with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

Dated: May 11, 2018

/s/ Christopher Graver
Christopher Graver

4846-9957-9748, v. 1

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

MARIA STAPLETON, et al.,	)	
	)	
Plaintiffs,	)	
	)	Civil Action No. 1:14-cv-01873
v.	)	
	)	Hon. Edmond E. Chang
ADVOCATE HEALTH CARE NETWORK AND SUBSIDIARIES, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM IN SUPPORT OF PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND CERTIFICATION OF SETTLEMENT CLASS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Pages**

Statutes

Rules

Other Authorities

Plaintiffs Maria Stapleton, now known as Maria Punda, Judith Lukas, Sharon Roberts, and Antwain[1] Fox ("Plaintiffs" or "Named Plaintiffs"), by and through their attorneys, respectfully submit this Memorandum in Support of Plaintiffs' Unopposed[2] Motion for Final Approval of Class Action Settlement and Certification of Settlement Class[3] (the "Final Approval Motion").

I. INTRODUCTION

This Settlement resolves the claims of Plaintiffs in this case against all Defendants on favorable terms that provide material benefits to the Settlement Class. The Complaint alleges that the non-profit healthcare system Advocate Health Care Network ("Advocate") denied ERISA[4] protections to the participants and beneficiaries of the Advocate Health Care Network Pension Plan (the "Advocate Plan" or the "Plan") by claiming that the Plan qualifies as an ERISA-exempt "church plan." *See* 29 U.S.C. § 1002(33); Compl., ECF No. 1. Defendants deny these claims.

This Settlement was reached by the Parties after vigorous arm's-length negotiations by experienced counsel with the assistance of a third-party mediator who has had significant experience mediating ERISA and church plan cases. The Settlement represents a good result for the proposed Settlement Class of participants and beneficiaries of the Plan.

Under the Settlement, [5] Advocate guarantees to the Settlement Class, who are the participants and beneficiaries of the Advocate Plan, for a period of ten (10) years beginning on January 10, 2018, that the Plan's Trust will have sufficient funds to pay the Settlement Class the level of benefits stated in the Plan, as it is amended from time to time. Should a corporate transaction occur where the Plan's assets and liabilities covering Settlement Class members

[1] Antwain Fox was inadvertently named in the Complaint as "Antoine Fox."
[2] While Defendants do not oppose the relief sought in the Final Approval Motion, they do not agree with all averments stated in the Final Approval Motion or this Memorandum.
[3] Along with their Final Approval Motion, Plaintiffs are contemporaneously filing Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs.
[4] "ERISA" is a reference to the Employee Retirement Income Security Act of 1974, as amended. 29 U.S.C. § 1001 *et seq.*
[5] *See* Class Action Settlement Agreement dated February 16, 2018 ("Settlement Agreement") (attached hereto as Exhibit A).

transfer to a successor, Advocate will cause the successor to honor this guarantee commitment. During that ten-year period, even if Advocate amends, freezes, or terminates the Plan, the amendment, freeze, or termination will not result in a reduction of a Settlement Class member's Accrued Benefit. Ex. A §§ 7.1.2 - 3, 8.2.

The Settlement also enhances the retirement security of the members of the Settlement Class during the ten-year period through a commitment to provide information to Class members. This includes Advocate's commitment to provide access to retirement benefit information, including calculation of accrued benefits and vested or non-vested account balances; name a Plan fiduciary; provide for allocation of administrative responsibilities and the manner of making Plan amendments; provide a joint and survivor annuity; maintain a funding policy; and provide a claims review procedure. These protections are comparable to some of ERISA's key provisions and will ensure Plan participants and beneficiaries receive important notices and disclosures concerning the Plan and their benefits. *Id.* § 8.4.

In addition, the Settlement provides a separate form of cash relief to certain former participants whose benefits are not vested under the terms of the Plan because they were employed by Advocate for more than three (3) but less than five (5) years. These former participants will not have vested rights in the Plan, but the Settlement provides for a one-time payment of three hundred dollars ($300) each to former participants in the Plan who terminated employment on or after January 1, 2013, and on or before September 1, 2017, and completed at least three (3) but less than five (5) years of vesting service (the "Former Participant Vesting Claimants"). *Id.* § 7.1.4.

The Parties have complied with the terms of the Order Preliminarily Approving the Settlement, Certifying the Class, Approving Notice to the Class, and Scheduling Final Approval Hearing ("Preliminary Approval Order" or "Prelim. Approval Order"), ECF No. 159, including providing notice of the Settlement to the Settlement Class[6] and mailing the Class Action Fairness

[6] *See* Affidavit of Jennifer Mills for Rust Consulting ("Rust Affidavit") ¶¶ 10-12 (attached hereto as Exhibit B).

Act ("CAFA") notices to the requisite officials pursuant to the CAFA statute.[7] 28 U.S.C. § 1715. Under the governing standards for evaluating class action settlements in this Circuit and pursuant to Federal Rule of Civil Procedure 23(e)(2), this Settlement is fair, reasonable, and adequate, and Plaintiffs respectfully request that the Court approve it.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Procedural History and Settlement Negotiations.

Plaintiffs' counsel Keller Rohrback L.L.P. and Cohen Milstein Sellers & Toll, PLLC (collectively, "Class Counsel"), discovered and developed this area of the law and dedicated several years to developing the legal theory challenging whether non-church entities could properly maintain their pension plans as "church plans" which are exempt from ERISA. See Joint Decl.[8] ¶¶ 10-12. They devoted many hours to researching the definition of a "church plan" found in both ERISA and the Internal Revenue Code, 29 U.S.C. § 1002(33) and 26 U.S.C. § 414(e), including analyzing the statutory text, its interaction with other provisions in the United States Code, the legislative history of the statute, and agency and court interpretations of the statute. *Id.* ¶¶ 13-15. Ultimately, Class Counsel began challenging the exemption claimed by a number of hospitals around the country that maintained pension plans which the hospitals claimed were exempt from ERISA. *Id.* ¶¶ 16-17. This case arose from that investigation.

Prior to filing this action, Class Counsel, along with Local Counsel, Stephan Zouras LLP, worked with the Plaintiffs to investigate the facts, circumstances, and legal issues associated with the allegations and defenses in the action. *Id.* ¶ 18. This investigation included, inter alia, (a) inspecting, reviewing, and analyzing documents produced by or otherwise relating to Defendants, the Plan, and the administration and funding of the Plan; (b) researching the applicable law with respect to the claims asserted in this case and the possible defenses thereto;

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[7] *Id.* ¶¶ 6-7. Copies of the CAFA notices are attached as Exhibit 2 to the Rust Affidavit.

[8] The Joint Declaration of Lynn Lincoln Sarko and Karen L. Handorf in Support of (1) Plaintiffs' Unopposed Motion for Final Approval of Settlement and Certification of Settlement Class; and (2) Plaintiffs' Unopposed Motion for Award of Attorneys' Fees and Reimbursement of Expenses, and for Incentive Awards to Named Plaintiffs ("Joint Declaration" or "Joint Decl.") is attached hereto as Exhibit C.

and (c) researching and analyzing governmental documents, bond offerings, and other publicly-available sources concerning the Defendants, the Plan, and the industry. *Id.*

On March 17, 2014, Plaintiffs Maria Stapleton, Judith Lukas, Sharon Roberts, and Antwain Fox, participants or former participants in the Advocate Plan, filed a putative class action complaint in this Court against Advocate, various other corporate defendants, and an individual defendant, alleging violations of ERISA. *Id.* ¶ 19; Compl., ECF No. 1. The Complaint alleges that Defendants denied ERISA protections to the participants and beneficiaries of the defined benefit pension plan sponsored by Advocate by claiming that the Plan qualifies as an ERISA-exempt "church plan." The Complaint further alleges that asserting this exemption caused Defendants to deny the Plan's participants the protections of ERISA. These include, among other alleged violations: inadequately funding the Plan; failing to furnish Plaintiffs or any member of the class with a Pension Benefit Statement, Summary Annual Reports, Notification of Failure to Meet Minimum Funding, or Funding Notices in compliance with ERISA; failing to provide for funding benefits under the Plan in case the Plan was terminated without adequate funding; and requiring participants to complete excessive years of service before participants became vested in their accrued benefits. Compl. ¶¶ 124-216.

Defendants moved to dismiss the Complaint, ECF No. 34, and on December 31, 2014, the Court denied Defendants' Motion to Dismiss, ruling as a matter of law that an ERISA-exempt "church plan" must be established by a church. *See* Mem. Op. and Order, ECF No. 64; *see also* Ex. C ¶¶ 20-21. On January 21, 2015, the Court granted Defendants leave to file an interlocutory appeal of that ruling and stayed this case pending the appeal. Minute Entry, ECF No. 76. The Seventh Circuit Court of Appeals affirmed the District Court's decision on March 17, 2016; however, the Supreme Court then accepted review of the Seventh Circuit's decision. After oral argument on March 27, 2017, the Supreme Court issued its decision on June 5, 2017, holding that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans, though they still had to satisfy other conditions. *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017) (Advocate). The Supreme Court did not

decide Plaintiffs' other theories of liability. While Plaintiffs advanced other strong arguments and theories not decided by the Supreme Court's opinion, it nevertheless is true that Plaintiffs' case was negatively impacted by that decision.

Following the Advocate decision, on July 13, 2017, the Parties reported to the Court at a status conference that they were prepared to resume active litigation. Minute Entry, ECF No. 125. Subsequently, before returning to litigation, the Parties agreed to attempt to settle the case through mediation. On August 23, 2017, the Court continued further proceedings in the case for 60 days to allow for mediation, ECF No. 134, and the Parties proceeded to mediation on September 15, 2017, with the assistance of an experienced JAMS mediator, in hopes of resolving the case. Ex. C ¶¶ 23-24. The Parties appeared before nationally-renowned mediator Robert Meyer, Esq., of JAMS in Chicago, Illinois. *Id*. Mr. Meyer has substantial experience mediating cases involving ERISA and retirement plan issues, including cases involving the church plan exemption. *Id.*; *see also* Ex. A §§ 2.7, 10.1.1. The matter was not resolved at the September 15, 2017 mediation, but the Parties agreed to continue settlement discussions, and the Court, at the Parties' request, continued proceedings until early January 2018 to allow for further settlement discussions. Ex. C ¶ 25; Minute Entry, ECF No. 144. The Court simultaneously set a schedule for answering the Complaint and proceeding with discovery should settlement not be reached. *Id*.

After further negotiations with the assistance of Mr. Meyer, the Parties met for an additional mediation session in New York on December 13, 2017, and in January, the Parties finally accepted a mediator's proposal and reached an agreement in principle to settle the case. *Id.* ¶ 26. On January 10, 2018, the Parties signed a term sheet containing the preliminary terms resolving this matter. *Id*. ¶ 27. The Settlement Agreement now before the Court, Ex. A, is a comprehensive agreement based on the term sheet. Ex. C ¶ 29. It was executed by all Parties on February 16, 2018. Id. Class Counsel continued to work with the Named Plaintiffs throughout the negotiation and settlement process. *Id*. ¶ 36. The Settlement is the result of lengthy arm's-length negotiations between the Parties. *Id*. ¶ 29. The process was thorough, adversarial, and

professional. *Id*. The Court preliminarily approved the Settlement on February 26, 2018. Prelim. Approval Order, ECF No. 159.

B. Overview of the Settlement Agreement.

The following summarizes the principal terms of the Settlement. *See* Ex. A.

C. Settlement Consideration.

Under the Settlement, Advocate guarantees to the Settlement Class, for a period of ten (10) years beginning on January 10, 2018, that the Plan's Trust will have sufficient funds to pay the Settlement Class the level of benefits stated in the Plan, as it is amended from time to time. *Id.* § 7.1.2. While Advocate will retain the right to amend, freeze, or terminate the Plan, for a period of ten (10) years no amendment or termination will result in a reduction of a Settlement Class member's Accrued Benefit. *Id*. § 8.2. Should a corporate transaction occur where the Plan's assets and liabilities covering Settlement Class members transfer to a successor, Advocate will cause the successor to honor this commitment. *Id.* § 7.1.3.

The Settlement also provides a different form of relief to certain former participants whose benefits are not vested under the terms of the Plan because they were not employed by Advocate for at least five years. These former participants will not have vested rights under the Settlement, but the Settlement provides for a one-time cash payment of three hundred dollars ($300) each to former participants in the Plan who terminated employment on or after January 1, 2013, and completed at least three (3) but less than five (5) years of vesting service (the "Former Participant Vesting Claimants"). *Id.* § 7.1.4.

1. Additional Non-Monetary Equitable Consideration.

The Settlement establishes equitable provisions that are analogous to certain provisions of ERISA concerning plan administration, summary plan descriptions, notices, and the Plan's claim review procedure. *Id.* § 8.4. For a period of ten (10) years, Plan participants will have access to information about the retirement benefits that they have accrued. *Id.* Advocate will name a Plan fiduciary, *id*. § 8.4.1; provide a description of how administrative responsibilities

are allocated and Plan amendments are made, *id.*; describe the calculation of benefits, *id.*; provide a joint and survivor annuity, *id.*; maintain a funding policy, *id.* § 8.4.2; and make available for the Plan's participants information about the Plan, *id.* § 8.4.3, their vested or non-vested account balances, *id.* § 8.4.4, and a claims review procedure, *id.* § 8.4.5.

Under the terms of the Settlement Agreement, Advocate also guarantees that, for a period of ten (10) years, if the Plan is merged or consolidated with another plan, participants and beneficiaries who are Settlement Class members will be entitled to the same or a greater Accrued Benefit post-merger or after a consolidation event as they enjoyed before the merger or consolidation. *Id.* § 8.1. Likewise, for the next ten (10) years, no amendment or termination of the Plan will result in a reduction of a Settlement Class member's Accrued Benefit. *Id.* § 8.2.

2. Certification of a Rule 23 Class.

The Settlement contemplates that the Court will certify a non-opt-out class under Federal Rule of Civil Procedure 23(b)(1) or (b)(2). *Id.* § 3.2. The Settlement Class is defined as: "All persons who, as of the Settlement Date, are or were Plan participants, whether vested or non-vested, and their beneficiaries." *Id.* § 1.26. The "Settlement Date" is the date on which the Settlement has been approved by a Final Order of this Court. *Id.* § 1.27.

3. Released Claims.

The Settlement Agreement provides for releases by and among Plaintiffs, Defendants, and certain other non-parties related to the litigation. *Id.* § 3.1 - 4. The persons to be released by Plaintiffs are defined as the "Releasees" and are enumerated at section 1.24 of the Settlement Agreement. The Releasees will be released from the "Released Claims," which generally include all claims that could have been asserted by Plaintiffs, arising under federal or state law, related to the sponsorship, funding, maintenance, operation or termination of, or distributions from, the Plan; provided that Plaintiffs will retain their rights under state law to pursue claims for individual benefits. *Id.* § 3.1. Named Plaintiffs, the Settlement Class, and Class Counsel will be released from claims relating to the institution and prosecution of this case. *Id.* § 3.4.

4. Notice.

The Settlement Agreement and the Preliminary Approval Order provide for the following notices: (a) a mailed Class Notice, to be mailed to the last known address of members of the Settlement Class; and (b) internet publication of the Settlement Agreement and Class Notice at http://www.kellersettlements.com and www.cohenmilstein.com/advocate-settlement. *See* Ex. A § 2.2.3 - 4; Prelim. Approval Order at 5, ECF No. 159. Advocate paid the cost of notice to the Settlement Class, which was mailed on March 28, 2018, to 61,642 Class members.[9] *See* Ex. B ¶ 5; *see also* Ex. A § 2.2.3. As required by the Preliminary Approval Order, Class Counsel published the Settlement Agreement and the Class Notice to the two websites listed above prior to the March 28, 2018, mailing. *See* Prelim. Approval Order at 5, ECF No. 159; Ex. C ¶¶ 39-41.

On or about March 29, 2018, Advocate discovered that, through an inadvertent error, approximately 1,015 Class members had not been served with the Class Notice and supplemented the list provided to the Settlement Administrator, Rust Consulting ("Rust"). Ex. B ¶ 10. Then, on or about April 4, 2018, Advocate again informed Rust that an additional 2,985 Class members were not included in the mailing and had not been served. *Id.* On April 4, 2018, Class Notice was mailed to the additional 1,015 Class members so identified on or about March 29, 2018, and on April 12, 2018, Class Notice was mailed to the additional 2,985 Class members so identified on or about April 4, 2018. *Id.* ¶ 12. The Class Notice was thus mailed to the additional 1,015 Class members 84 days before the June 27, 2018, Final Approval Hearing, and 56 days before the May 30, 2018, deadline for filing objections to the Settlement; and the Class Notice was mailed to the additional 2,985 Class members 76 days before the Final Approval Hearing, and 48 days before the deadline to object to the Settlement.[10]

[9] A copy of the Class Notice is attached as Exhibit 1 to the Rust Affidavit, and is also attached hereto as Exhibit H.

[10] As of May 10, 2018, 3,664 Class Notices have been returned to Rust as undeliverable. Of the 3,664 Class Notices returned to Rust as undeliverable, Rust performed address traces on 3,348 of them. The address trace utilizes the Class member's name and previous address for locating a current address. Of the 3,348 traces performed, 2,652 more current addresses were obtained, and Class Notices were promptly re-mailed to those Class members via First Class mail. Of the 3,348 traces performed, Rust did not obtain updated addresses for 696 undeliverable Class Notices. Ex. B ¶ 13.

The short delays in identifying and mailing notice to 4,000 Class members—approximately 6% of the total—did not result in any prejudice to those Class members. Plaintiffs sought in their motion for preliminary approval to ensure that all Class members were mailed notice no later than 60 days prior to the Fairness Hearing. *See* Mem. in Supp. of Pls.' Unopposed Mot. for Prelim. Approval of Settlement Agreement at 20, ECF No. 152-2. While the Preliminary Approval Order set March 28, 2018, as the date for the mailing, Prelim. Approval Order at 6, ECF No. 159, that date was calculated as 30 days after the *entry* of the Preliminary Approval Order, and it was in fact *90* days before the Fairness Hearing. The substantial cushion built into the mailing date allowed for just the kind of inadvertent delay that is present here. Since even the latest mailing gave 76 days' notice of the Fairness Hearing, and 48 days in which to object, the notice program accomplished exactly what applicable law requires—that it be "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

5. Attorneys' Fees, Expenses, and Incentive Awards.

By separate application, Class Counsel seek an award of reasonable out-of-pocket expenses and attorneys' fees for Class Counsel and Local Counsel, as well as Incentive Awards to Named Plaintiffs. The Settlement Class was notified of these details in the Class Notice. *See* Ex. H at 4, 8. Any award of attorneys' fees, expenses, and Incentive Awards will be paid by Advocate ***in addition to*** the other monetary terms set forth in the Settlement Agreement. Additional support for these requests is set forth in the attached time and expense reports from Class Counsel and declarations from Local Counsel and the Named Plaintiffs. Ex. C ¶¶ 48-83; Keller Rohrback fees and expenses (attached hereto as Exhibit C-3); Cohen Milstein fees and expenses (attached hereto as Exhibit C-4); Declaration of James B. Zouras in Support of Plaintiff's Motion for Award of Attorneys' Fees and Reimbursement of Expenses (attached hereto as Exhibit C-5); Declaration of Maria Punda, Formerly Known as Maria Stapleton, in

Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses ¶¶ 9-15 (attached hereto as Exhibit D); Declaration of Judith Lukas in Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses ¶¶ 9-12 (attached hereto as Exhibit E); Declaration of Sharon Roberts in Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses ¶¶ 9-12 (attached hereto as Exhibit F); Declaration of Antwain Fox in Support of Plaintiffs' Motion for Award of Attorneys' Fees and Reimbursement of Expenses ¶¶ 9-12 (attached hereto as Exhibit G).

D. Reasons for the Settlement.

Plaintiffs have entered into the Settlement with an understanding of the strengths and weaknesses of their claims. This understanding is based on: (1) the dialogue in mediation sessions and other settlement discussions; (2) investigation and research; (3) the likelihood that Plaintiffs would prevail at trial; (4) the range of possible recovery; and (5) the substantial complexity, expense, and duration of litigation necessary to prosecute this action through trial, post-trial motions, and likely appeal, and the significant uncertainties in predicting the outcome of this complex litigation. *See* Ex. C ¶¶ 33-36. Having undertaken this analysis, Class Counsel and Plaintiffs have concluded that the Settlement is fair, reasonable, and adequate and should be presented to the Court for approval. *Id*. ¶ 84.

III. THE PROPOSED SETTLEMENT WARRANTS FINAL APPROVAL

Under Rule 23(e) of the Federal Rules of Civil Procedure, the Settlement should be approved if the Court finds it "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2); *see also Williams v. Rohm & Haas Pension Plan*, 658 F.3d 629, 634 (7th Cir. 2011) (quoting Fed R. Civ. P. 23(e)(2)); *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996). In general, federal courts favor settlement of class action litigation. *Isby*, 75 F.3d at 1196; *EEOC v. Hiram Walker & Sons, Inc.*, 768 F.2d 884, 888-89 (7th Cir. 1985).

> In the class action context in particu-lar [sic], there is an overriding public interest in favor of settlement. Settlement of the complex disputes often involved in class actions

> minimizes the litigation expenses of both parties and also reduces the strain such litigation imposes upon already scarce judicial resources.

In re Sears, Roebuck & Co. Front-Loading Washer Prods. Liab. Litig., No. 06 C 7023, 2016 WL 772785, at *6 (N.D. Ill. Feb 29, 2016) (quoting *Armstrong v. Bd. of Sch. Dirs.*, 616 F.2d 305, 313 (7th Cir. 1980).

As a result, "[c]ourts do not easily disturb settlement agreements[.]" *Merrill Lynch, Pierce, Fenner & Smith, Inc., v. Adcock*, 176 F.R.D. 539, 544 (N.D. Ill. 1997); *see also Miksis v. Evanston Twp. High Sch. Dist. # 202*, 235 F. Supp. 3d 960, 987 (N.D. Ill. 2017), *as amended* (Feb. 2, 2017) (approving a settlement agreement and noting that "the Court also cannot ignore the strong federal policy favoring the voluntary resolution of disputes"); *Cannon v. Burge*, 752 F.3d 1079, 1104 (7th Cir. 2014) ("Public policy in Illinois favors settlements[.]") (citation omitted).

A. The Settlement was Reached after Arm's-Length Negotiations with the Assistance of an Experienced Mediator and is Procedurally Fair.

"A strong initial presumption of fairness attaches to the proposed settlement when it is shown to be the result of [an arm's-length] negotiating process." *Hispanics United v. Vill. of Addison,* 988 F. Supp. 1130, 1150 n.6 (N.D. Ill. 1997). The Settlement here is entitled to this strong presumption of fairness because the settling Parties in this action are represented by counsel experienced in litigating the ERISA "church plan" exemption; the Settlement was the result of arm's-length negotiations before an experienced mediator; and the settling Parties understood the strengths and weakness of the claims and defenses before settlement was reached. Ex. C ¶¶ 9-18, 24-29, 33, 50, 59, 84. As described in detail above and in the Joint Declaration, Ex. C, through the development of the case, Class Counsel conducted extensive research concerning Defendants' business structure, financial condition, and Plan administration. *Id.* ¶¶ 18, 34-35. Class Counsel also researched and analyzed applicable law and potential defenses as they argued these same issues before the Supreme Court.

Based on this analysis, Class Counsel concluded that the Settlement reached here is the best result that could be obtained under the circumstances. *Id.* ¶ 33.

B. Application of the *Synfuel* Factors Supports Approval of the Settlement as Fair, Reasonable, and Adequate.

Now that this Court has preliminarily approved the settlement and caused notice to issue to Settlement Class members consistent with Federal Rule of Civil Procedure 23(e)(1), the Court must decide whether final approval is warranted. While Seventh Circuit standards require that a court closely scrutinize class counsel's fiduciary duties to obtain the best settlement for the class, "[t]he purpose of a fairness hearing is not to resolve the merits of the case, but to determine whether the settlement is fair, reasonable, and adequate when viewed in its entirety, and not a product of collusion." *Williams v. Quinn*, 748 F. Supp. 2d 892, 897 (N.D. Ill. 2010) (citing *Mirfasihi v. Fleet Mortg. Corp.*, 450 F.3d 745, 748 (7th Cir. 2006)).

Courts in the Seventh Circuit consider five factors (the "*Synfuel* factors") to evaluate whether a class action settlement meets this fairness requirement:

a. "the strength of plaintiffs' case compared to the amount of defendants' settlement offer";

b. "as assessment of the likely complexity, length and expense of the litigation";

c. "an evaluation of the amount of opposition to settlement among affected parties";

d. "the opinion of competent counsel"; and

e. "the stage of the proceedings and the amount of discovery completed at the time of settlement."

Synfuel Techs., Inc. v. DHL Express (USA), Inc., 463 F.3d 646, 653 (7th Cir. 2006) (*Synfuel*) (citation omitted).

In reviewing these factors, courts view the facts "in the light most favorable to the settlement." *Isby*, 75 F.3d at 1199 (citation omitted). As discussed in detail below, each of these factors strongly favors approval of the Settlement.

1. The Strength of Plaintiffs' Case Compared to the Amount of Settlement, As Well As the Complexity, Expense, and Likely Duration of the Litigation, Support Approval of the Settlement.

The "most important factor relevant to the fairness of a class action settlement" is "the strength of plaintiff's case on the merits balanced against the amount offered in the settlement." *In re AT&T Mobility Wireless Data Servs. Sales Tax Litig.*, 789 F. Supp. 2d 935, 958 (N.D. Ill. 2011) (citation omitted). For this factor, courts consider whether the proposed settlement is reasonable in light of the risks of proceeding with the litigation. *Id.* at 959, 961-63. Plaintiffs' case is strong and they have pursued it vigorously, but the litigation is not without risk or uncertainty—particularly because the legal landscape of the "church plan" exemption has changed significantly since Plaintiffs first brought this case. In early June 2017, the Supreme Court issued its ruling in *Advocate*, 137 S. Ct. 1652 (2017). That case involved an interlocutory appeal of the ruling of the Seventh Circuit in this case, consolidated with appeals from similar rulings by the Third and Ninth Circuits, all of which had determined that, in order to qualify as a "church plan" under the ERISA church plan exemption, a retirement plan needed to be established by a church. The Supreme Court reversed those holdings, finding that a retirement plan may still be able to satisfy the exemption if it was established by an entity other than a church. *Id.* at 1663.

The Supreme Court's ruling did not resolve all the issues in this litigation, and it was remanded back to this Court for further proceedings. If the Settlement had not been reached, the Parties would still need to litigate how the Supreme Court's ruling applies to the facts of this case, and the Parties would still need to proceed with class certification and summary judgment briefing, trial preparation and presentation, and anticipated appeals of any judgment (whether for Plaintiffs or Defendants). Furthermore, the expense of taking this case through trial would be considerable. It would require, among other things, a substantial amount of formal discovery (including document discovery and many depositions), and extensive motion practice. *See* Ex. C ¶¶ 59, 69. Trial preparation would require great effort, both by the Parties and the Court. *See id.*

Though Class Counsel remain confident in the merits of Plaintiffs' claims, there is significant risk in light of the Supreme Court's decision, which arguably negatively impacted Plaintiffs' case.[11] Additionally, Defendants would undoubtedly otherwise continue to defend their actions vigorously through trial, and on appeal if necessary. This Settlement is therefore particularly favorable for the proposed class in light of this uncertain and high-stakes backdrop. Moreover, the Settlement, for a period of ten (10) years, establishes equitable provisions that are comparable to certain provisions of ERISA. Ex. A § 8.4. For instance, Plan participants will have access to information about the Plan, including a Plan Summary and their vested or non-vested account balances. *Id.* § 8.4.3 - 4. Advocate is also required by the Settlement to maintain a Plan funding policy. *Id.* § 8.4.2.

2. An Evaluation of the Amount of Opposition to the Settlement among Affected Parties Supports Approval of the Settlement.

The reaction of Class members to the Settlement strongly favors approval. First, the Settlement has the full support of Named Plaintiffs Stapleton, Lukas, Roberts, and Fox, all of whom provided documents during the investigation phase, kept abreast of the different phases of litigation (including the progression of appeals through the Supreme Court), kept abreast of mediation and settlement negotiations, and supervised Class Counsel's decision-making throughout the litigation and settlement process. Ex. C ¶ 81; Ex. D ¶¶ 1-10; Ex. E ¶¶ 1-8; Ex. F ¶¶ 1-8; Ex. G ¶¶ 1-8. After analyzing the agreement, all Named Plaintiffs came to the conclusion that this Settlement provides the best outcome that the Class was likely to achieve. Ex. D ¶ 11; Ex. E ¶ 8; Ex. F ¶ 8; Ex. G ¶ 8.

Moreover, in this Circuit, where only a relatively small number of class members (or, as here, none) object, it suggests that Class members deem the settlement to be fair. *In re Mex.*

[11] In addition, late last year the Tenth Circuit Court of Appeals decided *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017), which rejected several other theories of ERISA liability in a different "church plan" case. *Medina* was decided on different facts than those before this Court; Plaintiffs believe its legal analysis was flawed; and in any event it is not binding on this Court in this case. It does, however, illustrate the litigation risk that this Settlement avoids.

Money Transfer Litig., 164 F. Supp. 2d 1002, 1020-21 (N.D. Ill. 2000). Pursuant to the Preliminary Approval Order, ECF No. 159, Rust began mailing copies of the Class Notice to Class members on March 28, 2018. Ex. B ¶ 12. As of today, over 65,642 copies of the Class Notice have been disseminated. *Id.* The Class Notice set out the terms of the Settlement and informed Class members where they could find all relevant preliminary approval documents. It also explained how to object to the settlement. Ex. H at 2, 8-9. The deadline to object to the Settlement is May 30, 2018. Prelim. Approval Order at 7-9, ECF No. 159; Ex. H at 3. Here, despite targeted notice of the Settlement, no Class member objects. Ex. B ¶ 15; Ex. C ¶ 45. This reaction of the Class to date strongly supports approval of the Settlement.

Finally, pursuant to the Settlement, Rust also served the CAFA notices upon the Attorney General for each state in which a Class member resides, and the Attorney General of the United States on March 19, 2018, more than 90 days prior to the Fairness Hearing. Ex. B ¶ 6. No objections from any of these officials have been received in response to the CAFA notice, which further indicates the reasonableness and adequacy of the Settlement. *Id.* ¶ 15; Ex. C ¶ 45. *Noll v. eBay, Inc.*, 309 F.R.D. 593, 608 (N.D. Cal. 2015) (no response to CAFA notice "indicate[es] that such officials [] do not object to the Settlement. . . .Thus, this factor favors the settlement.") (citation omitted).

3. The Stage of the Proceedings Supports Approval of the Settlement, and the Opinion of Class Counsel Is That the Settlement Is Fair and Reasonable.

That Class Counsel, who are primarily responsible for the development of this area of ERISA law, strongly endorse the Settlement as fair and reasonable also supports final approval. *See, e.g.*, *Isby*, 75 F.3d at 1200; *In re Mex. Money Transfer Litig.*, 164 F. Supp. 2d at 1020. This case has been litigated by experienced and well-respected counsel on both sides, all of whom specialize in the area of ERISA litigation—and, more specifically, in litigation concerning ERISA's "church plan" exemption. Ex. C ¶¶ 10-17. Class Counsel are well known for their success in complex ERISA class action litigation and have many years of experience in litigating

church plan cases. *See id.* ¶¶ 10-17, 48 (referencing Exhibits C-1 and C-2, firm résumés of Class Counsel).

As a result of this expertise, Class Counsel were able to craft a Settlement that took into account the active status of the Plan, the Plan's funding level, the financial condition of Advocate, and the desire of Plan participants for both security and transparency with respect to their interests in the Plan. For the next ten (10) years, Advocate guarantees that there will be sufficient funds to pay the level of benefits stated in the Plan. Ex. A § 7.1.2. Participants' Accrued Benefits cannot be reduced, *id.* § 8.2, and Plan participants will have access to information about the Plan, *id.* § 8.4.3, and their vested or non-vested account balances, *id.* § 8.4.4. These provisions are comparable to information required by ERISA and are designed to assist participants in planning for retirement. Ex. C ¶ 32. Absent these guarantees, Plan participants may have been unaware of the benefits they had accrued or the likelihood that there would be resources to pay them.

In negotiating the Settlement, Class Counsel was concerned with the Plan's funding level, which Advocate has demonstrated currently is sufficient to pay actuarially estimated liabilities. Ex. C ¶ 30 n.6. Nevertheless, if within the next ten (10) years the Plan's funding level drops to where the Plan would not be able to fund accrued liabilities, Advocate guarantees that, whatever that shortfall may be, the Plan will have adequate funding to pay those accrued liabilities. Ex. A § 7.1.2. This guarantee functions as a type of insurance that may not otherwise be available. Ex. C ¶ 5.

These Settlement terms provide significant value to the Class because of the protection they offer that the Plan will remain sufficiently funded, and Accrued Benefits will not be reduced for at least the next ten (10) years. In Class Counsel's opinion, especially given the Supreme Court's decision in *Advocate*, this Settlement represents a particularly strong result for the Class. *Id.* ¶ 33.

Based on their extensive experience and expertise, and for all of the reasons articulated herein, Class Counsel believe the Settlement is in the best interests of the Class and recommend

its approval. This opinion should be granted substantial weight, as the recommendations of experienced and qualified counsel favor approval of a settlement. *In re Mex. Money Transfer Litig.*, 164 F. Supp. 2d at 1020 ("The court places significant weight on the unanimously strong endorsement of these settlements by Plaintiffs' well-respected attorneys."); *see also* 5 James Wm. Moore, *Moore's Federal Practice* § 23.164[4] (Matthew Bender 3d ed.) ("The more experience that class counsel possesses, the greater weight a court tends to attach to counsel's opinions on fairness, reasonableness, and adequacy.").

Moreover, Class Counsel's intensive investigation before filing suit and during the negotiation process strongly favors approval of the Settlement because it demonstrates that the Settlement was derived only after Plaintiffs procured the information that Class Counsel needed to intelligently evaluate the risks and benefits of continued litigation, drawing from their extensive experience and best judgment. For all of these reasons, the Settlement is in all respects fair, reasonable, and adequate, and should be approved.

IV. NOTICE TO THE CLASS SATISFIED THE REQUIREMENTS OF RULE 23 AND DUE PROCESS

The Class Notice provided to the Class satisfied the requirements of Rule 23(c)(2)(B), which requires "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). The Class Notice also satisfied Rule 23(e)(1), which requires that notice of a settlement be "reasonable." Fed. R. Civ. P. 23(e)(1). Notice of a settlement is reasonable if it:

> [F]airly and adequately advises the class of the terms of the proposed settlement and the process available to class members to obtain monetary relief provided by the settlement, the rights of class members to object to the settlement and/or to opt-out of the monetary relief provided by the settlement, and the rights of class members to appear before the Court at the Final Fairness Hearing.

Tucker v. Walgreen Co., Nos. 05-440-GPM, 07-172-GPM, 2007 WL 2915578, at *4 (S.D. Ill. Oct. 5, 2007).

Both the substance of the Class Notice and the method of its dissemination to potential Class members satisfied these standards. Class Notice also defined the Class and the Class claims, issues, or defenses, and appointed Class Counsel, as required by Rule 23(c)(2)(B). *See* Ex. H.

In accordance with the Preliminary Approval Order, Rust has disseminated 65,642 copies of the Notice to Class members.[12] Ex. B ¶¶ 10, 12. The combination of individual mail to all Class members and two dedicated settlement websites containing all of the relevant settlement documents constitutes the least costly and "best notice that is practicable under the circumstances." It therefore satisfied the requirements of due process and Rule 23. Fed. R. Civ. P. 23(c)(2)(B). *See, e.g.*, *CE Design v. Beaty Constr., Inc.*, No 07 C 3340, 2009 WL 192481, at *10 (N.D. Ill. Jan. 26, 2009) ("The Federal Rules, however, require the best notice that is 'practicable' not perfect notice.").

V. THE REQUIREMENTS FOR CLASS CERTIFICATION HAVE BEEN MET AND THE CLASS SHOULD BE CERTIFIED

Named Plaintiffs also respectfully request that the Class be finally certified for purposes of settlement. The Seventh Circuit has long acknowledged the propriety of certifying a class solely for purposes of a class action settlement. "Federal courts naturally favor the settlement of class action litigation" and certification of a settlement class is a necessary part of approving a class action settlement. *Isby*, 75 F.3d at 1196. Indeed, the certification of a settlement class "has been recognized throughout the country as the best, most practical way to effectuate settlements involving large numbers of claims by relatively small claimants." *In re Prudential Sec. Inc. Ltd. P'ships Litig.*, 163 F.R.D. 200, 205 (S.D.N.Y. 1995). "[S]ettlement classes are favored when there is little or no likelihood of abuse, and the settlement is fair and reasonable and under the scrutiny of the trial judge." *Id.* (quoting *In re Beef Indus. Antitrust Litig.*, 607 F.3d 167, 174

[12] As noted at Section II.C.4, *supra*, due to an inadvertent error, 4,000 of these notices—about 6% of the total—were mailed somewhat later than the initial set of notices. However, all notices were mailed so that even these Class members had at least 76 days' notice of the Final Hearing, and at least 48 days' notice of the deadline for filing objections.

(5th Cir. 1979). A settlement class, like other certified classes, must satisfy all the requirements of Rule 23(a) and (b). Here, those requirements are easily met.

A. The Settlement Class Meets the Requirements of Rule 23(a).

Numerosity. Rule 23(a)(1) requires that the class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Defendants have identified, and the Class Notice has been sent to 65,642 members of the Settlement Class. Ex. B ¶¶ 10, 12. Thus, the element of numerosity is met. *See, e.g.*, *Jackson v. Sheriff of Cook Cty*. No. 06 C 0493, 2006 WL 3718041, at *3 (N.D. Ill. Dec. 14, 2006) ("While there is no set minimum number of plaintiffs required for class certification, Courts have generally recognized that joinder is impracticable where a class contains more than 40 members"); *Lukas v. Advocate Health Care Network & Subsidiaries,* No. 1:14-cv-2740, 2015 WL 5006019, at *4 (N.D. Ill. Aug. 19, 2015) (certifying an ERISA class of 282 members); *cf. Gaspar v. Linvatec Corp.*, 167 F.R.D. 51, 56 (N.D. Ill. 1996) (certifying an ERISA class of 18 members).

Commonality. Rule 23(a)(2) requires that there be "questions of law or fact common to the class," and "'[a] common nucleus of operative fact is usually enough to satisfy'" this requirement. *Keele v. Wexler*, 149 F.3d 589, 594 (7th Cir. 1998) (quoting *Rosario v. Livaditis*, 963 F.2d 1013, 1018 (7th Cir. 1992)). In the instant case, members of the Settlement Class share multiple issues of law and fact, such as whether the Plan is exempt from ERISA as a church plan, and, if not, whether the fiduciaries of the Plan failed to administer and fund the Plan in accordance with ERISA. The core questions and issues are common to the Settlement Class. Commonality is thus satisfied.

Typicality. The typicality element broadly requires "that the claims or defenses of the representative part[y] [be] typical of the claims or defenses of the class." *Muro v. Target Corp.*, 580 F.3d 485, 492 (7th Cir. 2009) (alterations in original) (citation omitted). "A claim is typical if it 'arises from the same event or practice or course of conduct that gives rise to the claims of other class members and . . . [the] claims are based on the same legal theory.'" *Oshana v. Coca-*

Cola Co., 472 F.3d 506, 514 (7th Cir. 2006) (citation omitted). Here, Plaintiffs' claims arise from the same course of events as the claims of the Settlement Class—Defendants' alleged failure to operate the Plan in accordance with ERISA. Typicality is satisfied.

Adequacy. Rule 23(a)(4) requires that "the representative parties will fairly and adequately protect the interests of the class," which "serves to uncover conflicts of interest between named parties and the class they seek to represent." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 607 n.11, 625 (1997). The "adequacy" test is also easily met here. The claims and interests of the Named Plaintiffs are congruent with those of the other members of the Settlement Class; all seek to enhance their retirement security under this pension plan. There can be no question that the Named Plaintiffs' interests are aligned with those of the Settlement Class and that they have retained qualified counsel with extensive experience representing plaintiffs in class litigation, including ERISA cases and church plan cases specifically. Ex. C ¶¶ 10-29; Exs. C-1, C-2. Accordingly, this class action satisfies all the requirements of Rule 23(a).

B. The Settlement Class Satisfies the Requirements of Rule 23(b)(1) and (b)(2).

1. Individual Actions Would Create Inconsistent Adjudications or Be Dispositive of the Interests of Absent Members.

A class may be certified under Rule 23(b)(1) if, in addition to meeting the requirements of Rule 23(a), the prosecution of separate actions by individual class members would create the risk of inconsistent adjudications, which would create incompatible standards of conduct for the defendant, or would as a practical matter be dispositive of the interest of absent members. Fed. R. Civ. P. 23(b)(1)(A), (B).

There is a clear risk of inconsistent adjudication and incompatible standards here: in the absence of certification, two participants could bring identical actions and achieve different results, with one court holding that the Plan is ERISA-regulated, and the other holding that it is not. *See, e.g.*, *Neil v. Zell*, 275 F.R.D. 256, 267 (N.D. Ill. 2011) ("ERISA class actions are commonly certified under either or both subsections of [Rule] 23(b)(1) because recovery for a breach of the fiduciary duty owed to an ERISA plan, as is the predominant claim here, will inure

to the plan as a whole, and because defendant-fiduciaries are entitled to consistent rulings regarding operation of the plan."); *see also Brieger v. Tellabs, Inc.*, 245 F.R.D. 345, 357 (N.D. Ill. 2007) (certifying a Rule 23(b)(1) class in an ERISA case alleging breach of fiduciary duty for imprudent investment decisions); *Loomis v. Exelon Corp.*, No. 06 C 4900, 2007 WL 2060799, at *2, 5 (N.D. Ill. June 26, 2007) (certifying a Rule 23(b)(1) class alleging breach of fiduciary duty for charging excessive fees and making imprudent investment decisions); *Baker v. Kingsley*, No. 03 C 1750, 2007 WL 1597654, at *5 (N.D. Ill. May 31, 2007) ("Because the relief sought by plaintiffs involves the recovery and distribution of plan assets, separate actions by individual plaintiffs would impair the ability of other class members to protect their interests. Plaintiffs therefore meet the requirements of Rule 23(b)[(1)]."); *Smith v. Aon Corp.*, 238 F.R.D. 609, 618 (N.D. Ill. 2006) (certifying ESOP class action under Rule 23(b)(1)). Certification of the proposed class under Rule 23(b)(1) is appropriate in this ERISA action.

2. Defendants Have Acted on Grounds Generally Applicable to the Class, and Relief for the Class as a Whole Is Appropriate.

A class may be certified under Rule 23(b)(2) if "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Here, Plaintiffs allege that Defendants failed to comply with ERISA on a Plan-wide basis and seek declaratory relief that the Plan is not a church plan, as well as injunctive relief requiring that the Plan comply with ERISA. The available remedies include monetary relief and remedial equitable relief to the Plan as a whole. ERISA § 502(a)(2), (3), 29 U.S.C. § 1132(a)(2), (3).

Remedies under ERISA section 502(a)(3), 29 U.S.C. § 1132(a)(3), are by definition plan-wide—a classic example of equitable relief. *See Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 140-41 (1985). While the Settlement includes consideration to the Plan, that consideration is "incidental" to, and flows directly from, Plaintiffs' prayer for injunctive and declaratory relief. *See Berger v. Xerox Corp. Ret. Income Guarantee Plan*, 338 F.3d 755, 763-64 (7th Cir. 2003).

"The operational meaning of 'incidental' damages in this setting is that the computation of damages is mechanical, 'without the need for individual calculation,' so that a separate damages suit by individual class members would be a waste of resources." *In re Allstate Ins. Co.*, 400 F.3d 505, 507 (7th Cir. 2005) (quoting *Manual for Complex Litigation (Fourth)* § 21.221 (2004)). As courts in this District have found, "[m]onetary relief in a plan-wide action brought under ERISA section 502 is incidental, and flows from relief to the plan." *Aon Corp.*, 238 F.R.D. at 618.

For this reason, courts in this Circuit have frequently found that ERISA classes seeking relief for the Plan as a whole, like the proposed class here, are certifiable under Rule 23(b)(2). *See, e.g.*, *Berger*, 338 F.3d at 763-64 (ERISA class certified under Rule 23(b)(2)); *Neil*, 275 F.R.D. at 267, 268-69 (ERISA class certifiable under Rule 23(b)(2)); *George v. Kraft Foods Glob., Inc.*, 251 F.R.D. 338, 352-53 (N.D. Ill. 2008) (ERISA class certifiable under Rule 23(b)(2) and certified under Rule 23(b)(1) and (b)(2)); *Aon Corp.*, 238 F.R.D. at 617-18 (ERISA class certifiable under Rule 23(b)(2) and certified under Rule 23(b)(1) and (b)(2)).

C. Class Counsel Meets the Requirements of Rule 23(g).

Rule 23(g) requires the Court to examine the capabilities and resources of Class Counsel. Class Counsel have detailed the claims brought in this action, and the time and effort already expended in connection with this litigation. *See* Section II, *supra*. Moreover, Class Counsel are among the leading ERISA plaintiffs' firms, and possess unparalleled expertise in the specific types of 'church plan' ERISA claims brought in this lawsuit. Ex. C ¶¶ 10-29, 69; Exs. C-1, C-2. Class Counsel thus satisfy the requirements of Rule 23(g).

A proposed form of Final Judgment is attached hereto as Exhibit I.

VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court: (a) grant final approval of the Settlement because it is a fair and reasonable result when viewed in the light of the governing standard; (b) grant final certification of the Settlement Class because it meets all

the requirements of Rule 23; and (c) grant such other and further relief as the Court deems appropriate.

Dated: May 16, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2018, I electronically filed the above with the Clerk of the Court using the CM/ECF system, which in turn sent notice to all counsel of record.

Dated: May 16, 2018

/s/ Christopher Graver
Christopher Graver