

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

Yvonne Becker, Christopher Nobles, Rosa  
Ramirez, Valerie Seyler, and Jannien  
Weiner,

Plaintiffs,

v.

Wells Fargo & Co.; Employee Benefit  
Review Committee; Wells Fargo Bank,  
National Association, and John and  
Jane Does, 1-20,

Defendants.

Case No. 0:20-cv-02016 (KMM/BRT)

**CLASS ACTION**

**DECLARATION OF MICHELLE C. YAU IN SUPPORT OF PLAINTIFFS'  
MOTION FOR FINAL APPROVAL OF SETTLEMENT AND PLAINTIFFS'  
MOTION FOR ATTORNEYS' FEES, EXPENSE REIMBURSEMENT,  
SETTLEMENT ADMINISTRATION EXPENSES, AND CLASS  
CONTRIBUTION AWARDS**

I, Michelle C. Yau, respectfully submit this Declaration in Support of: (1) Plaintiffs' Motion for Final Approval of Class Action Settlement; and (2) Plaintiffs' Motion for Attorneys' Fees, Expense Reimbursements, Settlement Administration Expenses, and Class Contribution Awards. This Settlement,<sup>1</sup> if approved by the Court, will resolve this class action in its entirety. Pursuant to 28 U.S.C. § 1746, I declare as follows:

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<sup>1</sup> Capitalized terms not otherwise defined in this Declaration shall have the same meaning ascribed to them in the Settlement Agreement. (ECF No. 248-1).

## I. INTRODUCTION

1. I am a partner in the law firm of Cohen Milstein Sellers & Toll, PLLC (“Cohen Milstein”), one of the three firms preliminarily approved as Class Counsel for the Settlement Class preliminarily certified by the Court.<sup>2</sup> I am a member in good standing of the Bars of Massachusetts and the District of Columbia and am admitted *pro hac vice* in the District of Minnesota for this Action. I have led the prosecution of this Action on behalf of the (then putative) class since it was filed in March 2020. I have acted as lead counsel throughout the litigation. I have personal knowledge of the facts set forth below and, if called as a witness, I could and would testify competently thereto.

2. Under the Settlement Agreement, Defendants will pay \$32,500,000 in cash to settle this Action. This Settlement was reached only after substantial fact discovery, and arm’s-length negotiations with Defendants mediated by JAMS mediator, Robert A. Meyer. I have litigated several class action ERISA cases similar to this one. Based on that experience, I believe strongly that this Settlement is fair and reasonable, and should be approved.

3. Throughout the litigation, my team extensively researched and developed the legal theories and factual bases for the claims asserted against Defendants.

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<sup>2</sup> See Order Preliminary Approving Class Action Settlement ¶¶ 3-4, ECF No. 256.

## II. BACKGROUND

### A. Pre-suit Investigation and Litigation History

4. Prior to the case being filed, Cohen Milstein’s team engaged in a thorough pre-suit investigation. We obtained and reviewed a wide range of documents, from a number of regulatory bodies such as the Department of Labor and the Securities and Exchange Commission. We also obtained documents on our client, Yvonne Becker’s behalf from financial databases such as Bloomberg, and from Wells Fargo pursuant to ERISA’s statutory disclosure requirements,

5. As part of the pre-suit investigation, we conducted an in-depth financial analysis of the Wells Fargo proprietary funds in which the fiduciary Defendants invested the Plan’s assets. This included quantitative analyses of the fees and performance of the Wells Fargo proprietary funds compared to objective benchmarks and other available non-proprietary fund options. I led the financial investigation into the Wells Fargo proprietary funds (in the Settlement referred to as the “Challenged Funds”). I have a degree in Mathematics and worked as a financial analyst on Wall Street before attending law school. My quantitative skills and experience have been heavily utilized in this Action and in others like that I have led. In addition my team carefully reviewed the relevant case law.

6. On March 13, 2020, Cohen Milstein on behalf of Plaintiff Becker filed this action in the Northern District of California. Plaintiff Becker resides in Northern California and her multi-decade employment with Wells Fargo occurred in California. ECF No. 1 ¶¶ 12-13. Wells Fargo’s headquarters are in San Francisco, CA. *Id.* ¶ 6

7. Defendants filed a motion to transfer the Action to the District of Minnesota on May 8, 2020. ECF No. 41. Plaintiff Becker opposed that motion. ECF No. 47 (Pl.'s Opp'n to Defs.' Mot. to Transfer Venue). In her Opposition, Plaintiff Becker explained that ERISA expressly states in its declaration of policy that Congress sought to provide retirement participants "ready access to Federal courts." *Id.* at 1, 6-11 (citing 29 U.S.C. § 1001) (ERISA's policy declaration). Ms. Becker further explained that Defendants' requested transfer to Minnesota (which is almost 2,000 miles from her home and current job) would cause her substantial inconvenience and difficulty because she lives and continues to work in Northern California. *Id.* at 13.

8. The motion to transfer was fully briefed on July 3, 2020. ECF No. 50. On September 21, 2020, Judge Tigar granted Defendants' motion to transfer this Action to the District of Minnesota. ECF No. 59.

9. Plaintiff Becker filed a petition for a writ of mandamus on September 22, 2020. Thereafter, on October 13, 2020, the Ninth Circuit called for a response from Defendants on the writ of mandamus, which in my understanding is a rare outcome as many writs are denied without briefing. *See In re Becker*, No. 20-72805, ECF No. 6.

10. Defendants filed the requested response to the writ and Plaintiff Becker filed a reply brief on November 2, 2020. On April 1, 2021, the Ninth Circuit denied the writ of mandamus. *In re Becker*, No. 20-72805, 2021 WL 1219745 (9th Cir. Apr. 1, 2021).

11. On February 4, 2021, while the mandamus petition was pending, Defendants moved to dismiss the original complaint in the District of Minnesota. (ECF

No. 97). My team and I drafted the motion to dismiss opposition, which was filed on April 2, 2021. ECF No. 120. We analyzed and developed a strategy for successfully responding to Defendants' motion to dismiss. The Court held oral argument on April 16, 2021. I argued the motion to dismiss for Plaintiff Becker. ECF No. 127. Shortly thereafter, on May 12, 2021, the Court issued an opinion denying Defendants' Motion to Dismiss. (ECF No. 134).

12. Since the Action had been filed, Cohen Milstein attorneys have spoken with other retirement participants who expressed interest in acting as a Settlement Class representative if to do so would benefit the Class.

13. On June 2, 2021, we filed an Amended Class Action Complaint which named Plaintiff Becker, and Christopher Nobles and Rosa Ramirez. (ECF No. 143). On September 28, 2021, Plaintiffs Becker, Nobles and Ramirez, joined by Valerie Seyler and Jannien Weiner, also participants in the Plan, filed the Second Amended Class Action Complaint (the "Complaint"). (ECF No. 178).

**B. Discovery Undertaken**

14. During the last 17 months, the Parties have conducted extensive discovery. Class Counsel has prepared and served forty-nine (49) requests for the production of documents pursuant to Rule 34, thirty-five (35) interrogatories pursuant to Rule 33, and forty-nine (49) requests for admission pursuant to Rule 36. Many of these requests were amended based on agreements made among counsel during meet and confers.

15. As part of discovery, Class Counsel served ten (10) third party subpoenas for documents and one third party deposition subpoena.

16. Class Counsel met and conferred at least twenty-five (25) times with counsel for the subpoenaed third parties in an effort to resolve their objections without motion practice.

17. Class Counsel met and conferred with Defendants over sixty (60) times in an attempt to resolve disputes without motion practice. The topics of meet and confer, included but are not limited to: custodians and search terms; Defendants' initial disclosures; Defendants' discovery responses; Defendants' Affirmative Defenses; Defendants' privilege logs; the scope of the Rule 30(b)(6) depositions and fact depositions.

18. Many of the issues discussed in meet and confer were resolved without motion practice. Magistrate Judge Thorson has commended the lawyers in the Action for their ability to craft numerous compromises to avoid motion practice and to manage a complex ERISA class action.

19. As a result of the discovery requests and counsel negotiations during meet and confer, Plaintiffs received from Defendants and third parties, over one hundred thousand documents (spanning 1.5 million pages), which totaled 338 gigabytes. By comparison, in a similar case that my firm prosecuted as Class Counsel, *Feinberg v. T Rowe Price*, No. 17-cv-00427 (D. Md.), the document discovery totaled 15.81 GB. *Id.* Here, the total document discovery was 21 times the volume as in the *Feinberg* case. This illustrates the substantial amount of time and effort necessary for Class Counsel to expend on document discovery.

20. Class Counsel used three (3) full time attorneys to manage, organize, review and code documents produced in discovery.

21. On behalf of our clients, Yvonne Becker, Rosa Ramirez, Chris Nobles, Valerie Seyler and Jannien Weiner, Class Counsel responded to thirty-eight (38) requests for production of documents and twenty-seven (27) interrogatories served by Defendants on them.

22. Class Counsel regularly communicated with each of the Named Plaintiffs in discovery and throughout the course of the case.

23. Class Counsel took several depositions of defense fact witnesses and prepared and defended the depositions of all five Named Plaintiffs.

24. Class Counsel had prepared to take five (5) depositions on January 13, 14, 18, 26 and 28, 2022. In addition, two (2) depositions that Class Counsel had prepared to take in December were reset to early February due to COVID-19 infections, close to the date of the depositions. Finally, to resolve a discovery dispute, the parties had agreed to resume the deposition of a witness who had previously been deposed in October of 2021.

25. In connection with discovery, my team drafted and filed a motion to compel additional document custodians, which was successful. I argued that motion. We also filed a motion to compel Defendants to provide a more complete responses to certain interrogatories, which was also successful. My colleague Ryan Wheeler argued that motion.

26. Class Counsel participated in twelve (12) status conferences and/or hearings before Magistrate Judge Becky Thorson: October 21, 2020, December 16, 2020,

March 12, 2021, May 10, 2021, June 10, 2021, July 2, 2021, July 30, 2021, October 5, 2021, October 18, 2021, October 21, 2021, December 13, 2021, and February 15, 2022.

27. At the time that the Settlement was reached, Class Counsel was preparing to file several motions before the Honorable Magistrate Judge Becky R. Thorson.

28. In addition, Class Counsel had prepared a brief and related papers in support of Plaintiffs' motion for class certification (which was due the day after the case ultimately resolved). Thereafter, expert discovery would have proceeded and involved four to six expert witnesses offering expert and rebuttal reports, the production of substantial work papers, the depositions of all expert witnesses, and likely *Daubert* motions.

29. Throughout the case Class Counsel consulted extensively with prospective and experts that were ultimately retained to opine on damages and fiduciary process. Class Counsel had begun work with their expert witnesses for the reports that were due in 2022.

30. For example, Plaintiffs hired a damages expert to estimate and quantify the damages associated with their claims. To calculate the fee damages suffered by the Class, the damages expert calculated the amount of fees paid by the Plan on a quarterly basis for each Challenged Fund and then assumed that fee was reinvested in the Challenged Funds (meaning if the fees were not charged those Plan assets would grow based on the historical returns of each Challenged Fund). This methodology resulted in total fee damages of approximately \$81 million. The proposed Settlement recovery of \$32.5 million recovers 40% of all fee damages estimated by Plaintiffs' damages expert.

Plaintiffs' damages expert also measured the damages for each Challenged Fund by comparing the Fund's performance (i.e., investment returns) to the performance of the benchmark reported to Plan participants. Under this methodology, some Funds outperformed their benchmark and other Funds underperformed. Depending on whether excess performance of some Challenged Funds were netted against underperformance of others, the total performance damages were between \$11 million and \$136 million. The midpoint between \$11 and \$136 million is \$74 million and thus comparable in relative value to the \$81 million of damages using the fee methodology.

31. During litigation Defendants argued that the process by which the fiduciary Defendants selected and maintained the Challenged Funds was prudent and non-conflicted. Defendants pointed to the involvement of an independent co-fiduciary (Rocaton) who attended every EBRC meeting and provided independent advice concerning the Challenged Funds.

32. Defendants produced hundreds of thousands of pages of reports created for the EBRC as part of its ongoing monitoring of the Plan's investments.

33. In addition, through their discovery responses, Defendants indicated that for the Wells Fargo sponsored CITs, all fees charged to the Plan were paid to third parties and not kept by Wells Fargo. For the Stable Value Fund, Defendants indicated that all fees associated with this fund were paid directly by Wells Fargo and not paid by the Plan at all. Thus, Defendants contend that there are no fee damages for the Wells Fargo State Street Target CITs, Wells Fargo Causeway CIT, Wells Fargo Federated CIT, and Stable Value Fund.

34. With respect to the Wells Fargo Emerging Growth and Wells Fargo 100% Treasury Money Market Fund fees, Defendants argue that if Plaintiffs prevailed on their claims, Plaintiffs would only be entitled to the profits Wells Fargo obtained from these fees, not the entire fee. If both these arguments were credited, then the value of the fee damages would be approximately \$15 million.

35. The proposed Settlement recovery of \$32.5 million is substantial not only in the aggregate, but also as a percentage of the value of claims—as it recovers 40% of the total fee damages estimated by Plaintiffs’ damages expert.

36. After expert discovery closed, the parties would have briefed, and the Court would have decided cross motions for summary judgment. Thereafter, the parties would have ultimately prepared for and conducted a bench trial, should the case make it that far.

### **C. Settlement Negotiations**

37. In November of 2021, the Parties held their first mediation session with Robert A Meyer, an experienced and well-respected mediator, who has successfully resolved numerous ERISA cases and other class actions. Class Counsel prepared a confidential mediation analysis including detailed liability and loss analyses based on several meetings with Plaintiffs’ damages expert. Class Counsel also prepared a power point presentation for Mr. Meyer and had several pre-mediation meetings and calls with him.

38. The Parties were unable to resolve the case during the November 4, 2021 mediation. As a result, discovery continued apace.

39. On January 5, 2022, the Parties engaged in a second all-day mediation supervised by Robert A. Meyer, after which the Parties reached an arm's length, class-wide resolution of the matter (subject to this Court's approval). The principal terms of the Settlement were memorialized in a term sheet executed late in the evening of January 5, 2022. Thereafter, the Parties negotiated the comprehensive Settlement Agreement ECF No. 248-1 (Settlement Agreement)

40. Plaintiffs did not discount the amount of the Settlement based on Defendants' ability to pay, given that Wells Fargo was likely able to pay more than the Settlement achieved here based on assets alone.

**D. Settlement Administration**

41. Class Counsel have undertaken considerable work in connection with the Settlement and settlement administration.

42. This has included: (a) drafting and negotiation of the Settlement and exhibits thereto; (b) drafting, discussing with Defense Counsel, and revising the Plan of Allocation to ensure that it reflected a fair and administrable methodology for calculating the settlement recovery for Settlement Class members; (c) evaluating the data necessary to effectuate the Plan of Allocation and developing a process for updating the data during the settlement administration process; (d) drafting and filing Plaintiffs' Preliminary Approval Motion papers; (e) soliciting and reviewing eight detailed proposals/bids from potential settlement administrators including Angeion, AB Data, Rust, Analytics, JND, Epiq, KCC and CPT; (f) conducting extensive negotiations with the top three candidates to ensure that the settlement administration expenses were reasonable and known in

advance; (g) drafting, editing and reviewing the final drafts of the long form Class Notice, the Summary Class Notice for publication, and Former Participant Rollover Form, and ensuring that they were timely disseminated; (h) working with the Settlement Administrator to create a settlement website and telephone support line for Settlement Class members; (i) communicating with Settlement Class members and Analytics about settlement administration issues; (j) communicating with the Independent Fiduciary and providing it with information in connection with its review of the proposed release on behalf of the Plan; and (k) preparing the Final Approval motion and all related papers.

43. Class Counsel's work on this matter remains ongoing. Class Counsel will: (a) draft and file the last Court submission concerning the Settlement due on July 31, 2022; (b) continue to respond to questions from Settlement Class members; (c) attend the Fairness Hearing on August 10, 2022 and address any objections or questions from the Court; and (d) if final approval is granted, supervise the distribution of payments to Settlement Class members. In addition, Class Counsel will continue to take any other actions necessary to support the Settlement until it is Final.

### **III. PRELIMINARY APPROVAL, NOTICE TO THE CLASS, AND INDEPENDENT FIDUCIARY REPORT**

44. The Plan Administrator for the Plan retained Gallagher Fiduciary Advisors to act as the Independent Fiduciary to review the Settlement on or about March 8, 2022. The Settlement requires that the Plan Administrator retain an Independent Fiduciary to evaluate and approve the Settlement's terms in accordance with Prohibited Transaction Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with

Litigation,” issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended by 75 Fed. Reg. 33,830. In accordance with this requirement, the Plan Administrator for the Wells Fargo Plan retained Gallagher Fiduciary Advisors to act as the Independent Fiduciary to review the Settlement on or about March 8, 2022.

45. Thereafter, a team from Gallagher Fiduciary Advisors reviewed the Settlement including (i) the scope of the release of claims, (ii) the Settlement recovery and the amount of any attorneys’ fee award or any other sums to be paid from such recovery, and (iii) the Plan of Allocation, (iv) whether the Settlement terms are reasonable, and (v) whether the Settlement complied with all relevant requirements set forth in Prohibited Transaction Exemption 2003-39 (“PTE 2003-39”). 68 Fed. Reg. 75,632. PTE 2003-39 generally requires that a settlement be “reasonable in light of the Plan’s likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone.” *Id.* at 75,635.

46. Among other things, the team from Gallagher Fiduciary Advisors conducted a Zoom interview with Erin Riley and me. During that interview, we spoke at length about the litigation, the parties’ legal and factual contentions, and the proposed Settlement, among other things.

47. Gallagher asked whether Class Counsel would allow Gallagher to speak directly with the JAMS mediator, Robert Meyer, who was involved in the resolution of the case. Class Counsel agreed and I understand that Defense Counsel also agreed to this

request. My understanding is that Gallagher did speak with the mediator, Mr. Meyer about the Settlement.

48. A true and correct copy of Gallagher's report dated June 9, 2022 is attached hereto as Exhibit 1.

#### **IV. ATTORNEYS' FEES AND COST EXPENDED TO LITIGATE CASE**

##### **A. Work Performed by Cohen Milstein**

49. The work summarized above required the efforts of numerous attorneys and professional staff ("Timekeepers") from Cohen Milstein. I supervised all the work completed by Cohen Milstein attorneys on this case and I reviewed the fee and expense records that support this Declaration in order to ensure their accuracy. The below table reflects the lodestar expended by each timekeeper from the beginning of the investigation (November 25, 2019) until June 27, 2022. I believe that the time billed by the following timekeepers are for the type of work that would normally be charged to a fee-paying client.

Name	Title	Hours	Rate	Lodestar
Michelle C. Yau	Partner	1,933.90	\$ 830.00	\$ 1,605,137
Scott M. Lempert	Of Counsel	982.15	\$ 840.00	\$ 825,006
Julie S. Selesnick	Of Counsel	241.75	\$ 775.00	\$ 187,356
Kai Richter	Of Counsel	14.40	\$ 830.00	\$ 11,952
Ryan A. Wheeler	Associate	326.95	\$ 500.00	\$ 163,475
Jamie L. Bowers	Associate	805.75	\$ 585.00	\$ 471,364
Daniel Sutter	Associate	287.60	\$ 575.00	\$ 165,370
Steven J. Toll	Partner	15.60	\$ 1,150.00	\$ 17,940
Mary J. Bortscheller	Partner	85.30	\$ 700.00	\$ 59,710
Richard A. Koffman	Partner	82.85	\$ 975.00	\$ 80,779
Julie G. Reiser	Partner	33.25	\$ 910.00	\$ 30,258
Josh Prince	Disc. Counsel	1.75	\$ 515.00	\$ 901
Jennifer Davidson	Law Fellow	135.00	\$ 395.00	\$ 53,325
Ciara O'Neill	Paralegal	879.85	\$ 335.00	\$ 294,750
Norma Canas Mejia	Paralegal	383.00	\$ 325.00	\$ 124,475
Sydney Greenman	Paralegal	9.50	\$ 335.00	\$ 3,183
Doron Hadar	Paralegal	23.75	\$ 335.00	\$ 7,956
<b>TOTAL</b>		<b>6,242.35</b>		<b>\$4,102,936.00</b>

50. As reflected in the above summary, Cohen Milstein attorneys and paralegals have expended 6,242.35 hours and \$ 4,102,936 in lodestar pursuing this matter through June 27, 2022. In reviewing the time entries for accuracy, I removed some of them based on billing judgment.

51. The hourly rates for the Timekeepers listed above are their standard rates.<sup>3</sup> Our firms' hourly rates are largely based upon a combination of the title, cost to the firm,

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<sup>3</sup> The rates reflected in the above chart are Cohen Milstein's 2022 rates. However, if a timekeeper left the firm, the rate shown is the historic rate as of the individual's departure date.

and the specific years of experience for each attorney, as well as market rates for practitioners in the field. These hourly rates are the same as, or comparable to, rates submitted by Cohen Milstein in other ERISA class actions and have been approved by courts reviewing the motion for attorneys' fees in connection with settlements or judgments won in favor of Cohen Milstein's class clients.

52. Courts have reviewed the reasonableness of Cohen Milstein's billing rates for purposes of "cross-checking" lodestar against a proposed fee based on the percentage of the fund method, as well as determining a reasonable fee under the lodestar method. Courts have found that the hourly rates used to calculate Cohen Milstein's lodestar were "reasonable given Class Counsel's experience." *See, e.g., Baird v. BlackRock Inst'l Tr. Co., N.A.*, 2021 WL 5113030, at \*7 (N.D. Cal. Nov. 3, 2021).

53. In my professional opinion, and based on my personal knowledge of the work that was performed and the requirements of this case and similar cases, the lodestar expended on this litigation by Cohen Milstein's attorneys and paralegals was reasonable and necessary.<sup>4</sup>

54. The retainer agreements that my firm entered into with the Named Plaintiffs in this case are substantially similar. In all of them, the Named Plaintiffs agreed that my firm could seek reasonable attorneys' fees up to one-third of any common fund recovery we achieved on behalf of the Class.

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<sup>4</sup> Details supporting the time records referenced in this Declaration are available upon the request of the Court.

55. The contingency fee retainer agreements between my firm and the Named Plaintiffs are consistent with the retainers that I have entered into similar ERISA class actions. Most individual employee-retirees who have ERISA claims cannot afford to pay an attorney who focuses on ERISA litigation on an hourly basis. For this reason, an individual employee-retiree will often choose a contingency fee arrangement.

56. At the time that we originally agreed to represent Yvonne Becker in this litigation, we were aware, based on our prior experience handling ERISA class action litigation, that it could be expensive, hard-fought, and lengthy. Also, given the risky nature of ERISA class action litigation in general, I was aware that there was a significant likelihood that, after having invested a substantial amount of time and expense, Class Counsel might recover nothing or a fraction of the attorneys' fees they expended in this Action. Until the parties reached a settlement in principle (on January 5 of this year and after two days of mediation) I understood that there was a significant likelihood that this case could be unsuccessful and that the Class could recover nothing.

57. Before representing Named Plaintiffs in this action, neither I nor my firm had any prior relationship with any of them. We do not represent them in any other matters, and do not anticipate that we will in the future.

58. As illustrated by the table above, which shows that Cohen Milstein invested over 6,200 hours of work and \$4 million of lodestar in this Action, this substantial investment of time prevented me and others on my team from working on other matters.

59. After the date of this Declaration, I and Cohen Milstein's team expect to perform additional work on behalf of the Settlement Class, including the preparation

responses to objections (if any) to the Settlement; responding to questions of Settlement Class members; attending the Fairness Hearing; and, if final approval is granted, supervising the distribution of payments to Settlement Class members.

60. Attached hereto are declarations setting forth the lodestar and expenses expended by Keller Rohrback (Exhibit 3) and Zimmerman Reed (Exhibit 4) who have been appointed Class Counsel alongside Cohen Milstein.

61. Attached hereto are also declarations setting forth the lodestar and expenses expended by California counsel, related primarily to when the case was pending in the Northern District of California. *See* Exhibit 5 (Declaration of Nina Wasow of Feinberg Jackson Wasow and Worthman) and Exhibit 6 (Declaration of Peter K. Stris of Stris and Maher, LLP).

**B. Cohen Milstein's Litigation Costs**

62. From the start of the investigation (November 25, 2019) in until June 27, 2022, Cohen Milstein has advanced \$155,155.93 in out-of-pocket expenses. The below table summarizes the amount of expenses advanced by Cohen Milstein (grouped by category). I believe that the expenses set forth in the above table are the type and amount that would normally be charged to a fee-paying client.

Description of Expense	Amount	
Document Copying and Audio/Video Duplication Services	\$ 2,378.31	
Phone and conferencing costs	\$ 77.41	
Postage/Air Courier/Local Courier	\$ 2,314.04	
Court Fees	\$ 1,926.00	
Process Server Fees	\$ 1,889.75	
Deposition related fees and costs	\$ 17,959.35	
Westlaw, Lexis, Pacer and other online research	\$ 10,067.65	
Travel (airfare, ground travel, meals, lodging)	\$ 7,666.33	
Database hosting and processing/vendor costs	\$ 66,755.72	*
Overtime meals + local travel	\$ 58.50	
Expert witness and consulting fees and reimbursed expenses	\$ 20,317.35	
Mediation fees	\$ 23,466.00	
Government Reports	\$ 66.00	
Supplies	\$ 213.52	
	<b>\$ 155,155.93</b>	

\* The amount for database hosting costs includes hosting costs that are billed on July 1, 2022.

63. The largest expense outlay in this case were e-discovery costs related to database hosting and processing. Once it became clear that the volume of documents Defendants had produced was likely to be 10 times (or more) the volume received in other similar cases, I negotiated a reduced hosting rate with our e-discovery vendor. I was able to obtain an \$8 per GB rate which was less than half our previous rate of \$20 GB. This saved tens of thousands of dollars in hosting costs because the production of Defendants and third parties ended up being 21 times the volume of documents obtained in similar cases. Specifically, the volume of produced documents in this Action totaled 337.38 GB, whereas similar cases involved just 15.81 GB. By negotiating a \$8 per GB

rate instead of the default \$20 per GB rate, I reduced approximately \$30,000 in hosting costs. Because my firm agreed to handle this case on a contingent basis, we have not yet received reimbursement for any of these expenses.

64. These expenses do not include expenses of settlement administration, which are broken out separately below.

65. In my professional opinion, and based on my experience prosecuting this litigation and similar ERISA class actions litigation, these expenses detailed in Exhibit 3 were reasonable and necessarily incurred in connection with this case.<sup>5</sup> Indeed, as described above, if anything the expenses incurred were lower than similar cases because I negotiated reduced rates for e-discovery hosting charges.

### **C. Settlement Administration Expenses**

#### **1. Settlement Administrator (Analytics)**

66. Analytics Consulting LLC (“Analytics”) was appointed to serve as the Settlement Administrator in this matter. *See* Preliminary Approval Order ¶ 11 (ECF No. 256). Analytics has extensive experience administering class action settlements, including several ERISA settlements.<sup>6</sup> During the bidding process and based on my request for a “cost cap,” Analytics agreed to “cap” its fees and costs at \$400,000 for administration of the Settlement. This covers all work required of the Settlement

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<sup>5</sup> Details supporting Class Counsels’ expense reimbursement request are available upon request of the Court.

<sup>6</sup> *See* Declaration of Richard W. Simmons of Analytics Consulting filed in support of preliminary approval of settlement (ECF No. 249) detailing the qualifications of Analytics.

Administrator under the Settlement Agreement, including (1) reviewing the Settlement Class member information provided by Defendants; (2) preparing and emailing/ mailing the Settlement Notices; (3) searching for valid addresses for any Settlement Class members whose Notices were returned as undeliverable; (4) reviewing and processing Former Participant Rollover Forms; (5) establishing a telephone support line for Class members; (6) creating and maintaining the Settlement website; and (7) managing the project and communicating with the parties regarding the status of settlement administration. In addition, upon final approval of the Settlement, Analytics will facilitate delivery of settlement payments to Class members as provided by the Settlement.

## **2. Escrow Agent (Eagle Bank)**

67. After the consideration of several potential escrow agents, Class Counsel selected EagleBank to serve as the Escrow Agent for the Settlement. Thereafter, EagleBank was appointed by the Court as the Escrow Account for the Qualified Settlement Fund. On May 10, 2022, EagleBank set up a secure and insured Escrow Account and confirmed receipt of \$32.5 million from Wells Fargo into the Qualified Settlement Fund. The fee for EagleBank's escrow services are \$500 a year. Prior to selecting EagleBank I sought a comparative bid and reviewed the amount escrow costs previously approved by courts in similar cases. Based on my research, it appears that comparative banks charged a flat fee of between \$1200 to \$2500 for the same service, which is likely to be substantially more than the \$1000 estimated costs for EagleBank's escrow services here.

**3. Independent Fiduciary (Gallagher)**

68. Settlement Administration Expenses were also incurred relating to the review of the proposed release on behalf of the Plan by the Independent Fiduciary appointed pursuant to Prohibited Transaction Exemption 2003-39 and Paragraph 3.4 of the Settlement Agreement. Under the Settlement Agreement, the Plan Administrator was responsible for arranging the required review by the Independent Fiduciary, and the expense is a Settlement Administration Expense that may be paid from the Settlement Fund up to \$25,000. Defendants engaged Gallagher Fiduciary Advisors to perform the role of the Independent Fiduciary, and the invoice for its services is \$15,000. This is well below the amount allowed by the Settlement Agreement and in line with what courts have approved for similar settlements.

**D. Class Representatives**

69. Class Counsel have consulted with the Class Representatives throughout the litigation. For example, attorneys on my team spent substantial time gathering documents from our clients in response Defendants' discovery requests, reviewing those documents for privilege, preparing them for our clients for depositions, answering questions, providing updates on the status of the litigation, and discussing the Settlement with them.

70. The Class Representatives also have worked to advance the interests of the Class. Among other things, the Class Representatives: (a) reviewed the allegations in the Complaints bearing their names; (b) provided information to counsel in connection with the lawsuit; (c) responded to discovery; (d) were deposed; (e) communicated with

counsel regarding the litigation and Settlement; and (f) reviewed the Settlement Agreement.

71. The declarations of the five (5) Class Representatives/Named Plaintiffs, Yvonne Becker, Christopher Nobles, Rosa Ramirez, Valerie Seyler, and Jannien Weiner in support of the Final Approval of Settlement and Award of Attorneys' Fees, Expense Reimbursement, and Case Contribution Awards, are being filed contemporaneously herewith.

#### **V. COHEN MILSTEIN'S EXPERIENCE**

72. My firm—Cohen Milstein—is a national leader in class action litigation, and has a dedicated ERISA practice that is nationally recognized. Cohen Milstein has been named as one of the ten “Most Feared Plaintiffs Firms” by Law360, and its dedicated group of ERISA class action specialists has been named Employee Benefits Practice Group of the Year two of the last three years. In numerous cases, Cohen Milstein has achieved excellent results for its clients. A copy of Cohen Milstein's firm resume was previously filed as ECF No. 248-3.

73. I am the Chair of Cohen Milstein's ERISA practice group and was named a MVP in the area of Employee Benefits by Law360. *See* Exhibit 2 attached hereto which is a true and correct copy of a Law360 article entitled “MVP: Cohen Milstein's Michelle Yau.” After law school, I joined the Department of Labor as an Honors attorney and have specialized in ERISA fiduciary breach cases involving complex financial transactions or investments for the last two decades. I am a frequent speaker on ERISA issues, appearing on panels for the American Bar Association, the Practising Law Institute, and others.

74. I have litigated and/or settled many similar ERISA class actions, including *In re SunTrust*, No. 08-cv-03384 (N.D. Ga.), *Baird v. BlackRock*, 2021 WL 5113030 No. 17-cv-01892 (N.D. Cal. 2021), *Feinberg v. T Rowe Price*, No. 17-cv-00427 (D. Md.).

## **VI. OBJECTIONS AND RESPONSE OF CLASS TO DATE**

75. Shortly after the \$32.5 million settlement became public, on April 1, 2022, Class Counsel began receiving inquiries from members of the Settlement Class (or individuals who believed they were part of the Settlement Class).

76. To date Class Counsel has received 20 inquiries directly by email, phone, and postal mail. We have also reviewed and responded to the filings on the docket for inquiries received by the Court.

77. Several individuals wanted to ensure that the settlement administrator had the correct contact information to ensure timely payment from the Settlement. Others wanted to confirm whether they were part of the Settlement Class. Some Class members had questions and wanted to gain a clearer understanding about the lawsuit and the Settlement. In all events, I responded to the inquiry directly or asked a member of my team to respond to the inquiry. My practice is to maintain a tracking sheet of all individuals who have inquired about the Settlement. For this case, this tracking sheet lists the name, contact information, date of inquiry, nature of the inquiry, response from Class Counsel and a notation as to whether my team believed that the inquiry had been fully addressed. Based on my review of the tracking sheet, all twenty inquiries received directly by Class Counsel were responded to and addressed.

78. To date, no objections to the Settlement or the requested distributions have been received. Based on my understanding of the documentation of the inquiries Class Counsel has received, no member of the Settlement Class has articulated concerns or negative views of the Settlement or the requested attorneys' fees, expense reimbursement, settlement administration expenses, or class contribution awards.

## VII. CONCLUSION

79. Plaintiffs' Motion for Attorneys' Fees, Expense Reimbursement, Settlement Administration Expenses, and Case Contribution Awards and supporting papers, as well as the instant motion and memorandum of law will be posted to the website [www.WellsFargoERISASettlement.com](http://www.WellsFargoERISASettlement.com) on June 30, 2022.

80. For the reasons discussed herein, Class Counsel has concluded that the Settlement is a fair, reasonable, and adequate resolution of the claims against Defendants in this ERISA class action. The requested attorneys' fees, expense reimbursement, settlement administration expenses, and case contribution awards to the Named Plaintiffs are warranted as well.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 30th day of June, 2022 in Washington, D.C.

By: /s/ Michelle C. Yau  
Michelle C. Yau