IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **DEKALB COUNTY SCHOOL DISTRICT, et al.,** **Defendants.**	**CIVIL ACTION FILE NO. 11-CV-3657-5**

MOTION FOR FINAL APPROVAL OF SETTLEMENT AND BRIEF IN SUPPORT THEREOF AND RESPONSE TO OBJECTION

Plaintiffs Elaine Ann Gold, Amy Jacobson Shaye, Heather Hunter, and Roderick Benson ("Plaintiffs"), through undersigned counsel ("Class Counsel"), hereby move for Final Approval of the Settlement, and respond to the single objection received.

I. STATEMENT OF THE CASE.

After over nine years of litigation and four appellate decisions, this case has settled for $117,500,000 (117.5 million dollars) which will be paid into a settlement fund in agreed installments following final approval by this Court. The

Settlement Agreement preliminarily approved by the Court provides for payment to class members in five annual installments of their proportional share of the settlement fund net of attorney's fees, expenses and court-approved incentive awards to the Class Representatives.[1]

II. PROCEDURAL HISTORY – A LONG FIGHT.

The procedural history of this case demonstrates that the settlement is fair and adequate to the class members. In fact, it demonstrates that the settlement is an extremely good result for absent class members. The case was meticulously researched, thoroughly discovered and vigorously litigated to an advantageous outcome.

[1] The Settlement Agreement authorized Plaintiffs to apply for (a) attorney's fees of 33.0 percent of the common fund; (b) reimbursement of expenses incurred by Class Counsel in an amount to be set by the Court; and (c) an incentive award for the Class Representatives in the amount of $25,000 each to compensate them for their time and efforts spent on behalf of the Class. Application for those amounts was made by separate motion and brief filed with this Court on August 3, 2020. The settlement fund is to be paid in five annual installments. The attorney's fees and Class Counsel expenses will be split in the same way and paid out proportionally with each annual payment. Both expense reimbursements and fees to Class Counsel will thus be paid out in the same time frame and the same proportions as the settlement payments to Class Members. The incentive awards will be fully paid to the Class Representatives out of the first such settlement payment. The first settlement payment is slightly larger than the other installment payments to allow for payment of the representative awards, notice costs and costs of settlement administration. All of these payments are usual and customary, for a class action like this, in type and in amount.

A. Investigation and Preparation of the Complaint.

In 2010, Class Counsel (initially Barnes Law Group ("BLG")) began an investigation into potential claims brought to the attention of BLG by Amy Shaye and Elaine Gold. That investigation led to the claims at issue in this lawsuit. BLG conducted in-depth investigative analysis and research of publicly available documents, including Board meeting minutes and Board Resolutions and Policies. This investigation included meetings with the clients, both over the phone and in person. Because Shaye and Gold were interested in seeking a remedy that would benefit their co-employees who had been impacted similarly to them, this investigation also assessed the suitability of the potential case theories for potential class certification as well as the fit between the individual plaintiff's situation and that of a potential class. *See* Affidavit of John Salter, filed August 3, 2020 ("Salter Aff.") ¶ 8.

Beginning with the initial filing of the first Complaint and Petition on March 21, 2011, this putative action sought to represent a plaintiff class of similarly-situated persons. Salter Aff. ¶ 9. The purpose of this lawsuit was to challenge an across-the-board cessation in the funding of contributions from the District for the benefit of the Class under the TSA Plan.

B. Motion to Dismiss and "*Gold I.*"

Defendants filed a motion to dismiss the lawsuit. Amongst other arguments, the Motion to Dismiss sought complete dismissal of the Plaintiffs' Complaint on the ground that it was barred entirely by sovereign immunity. Class Counsel reviewed and analyzed Defendants' briefing and evaluated whether to amend their Complaint. Plaintiffs amended their Complaint for the first time on June 16, 2011. This was the first of several amendments, culminating in the Third Amended Complaint, filed on June 30, 2015.

Although their Motion to Dismiss was denied by the trial court, Defendants obtained a certificate of immediate review and filed an appeal. By Opinion of November 20, 2012, the Court of Appeals affirmed in part and reversed in part, substantially holding that Plaintiffs stated a valid claim for breach of a written contract based upon the two-year notice language contained in the Board Policies, and dismissing other claims. *DeKalb Cty. School Dist. v. Gold*, 318 Ga. App. 633 (2012) ("*Gold I*"). *Gold I* was the first of four different appellate opinions issued in this case over the ensuing years. Defendants petitioned for a writ of *certiorari* from the Supreme Court for review of *Gold I*. Class Counsel responded. The petition was denied and the matter was remanded to the trial court.

C. Discovery and "*Gold II*."

Upon returning to the trial court after *Gold I*, the Plaintiffs pursued discovery to support their claims and in preparation to seek certification of a class. Class Counsel investigated the case further, identifying witnesses and obtaining documents from the Defendants through formal discovery and from other sources as well. Salter Aff. ¶ 13. Several depositions were taken, including of key management personnel for the Defendant District and former Board members of the District's Board of Education. In addition, Plaintiffs Amy Shaye and Elaine Gold sat for depositions lasting several hours each. They were prepared by Class Counsel for these depositions.

The Plaintiffs filed their first Motion for Class Certification on April 23, 2013. On May 2, 2013, Plaintiffs filed their first Motion for Partial Summary Judgment as to Liability. Defendants responded to these motions and, further, filed their own Motion for Summary Judgment on September 11, 2013. Over October 14 and 15 of 2013, the trial court conducted a two-day evidentiary hearing and oral argument. In early 2014, the trial court denied Plaintiffs' Motion for Class Certification.

This presented Plaintiffs and Class Counsel the dilemma of either quitting their quest for legal relief or persisting. The denial of class certification made the case, from a matter of the economics of litigation, a challenge. And given the

deferential standard of review (abuse of discretion), overturning or reversing the trial court's denial of class certification on appeal made success far from assured. Despite the formidable obstacles, the Plaintiffs filed an appeal. To aid them, Plaintiffs sought and obtained the assistance of additional attorneys: with the law firm of Bondurant Mixson and Elmore, LLP ("BME"). BME joined this case when a potentially fatal denial of class certification could have effectively ended the case if not revived on appeal (because the cost of pursuing purely individual claims for small amounts was a negative-value proposition). *See* Salter Aff. ¶ 17.

This appeal from the denial of class certification resulted in an opinion wherein one of the judges wrote that, "[i]f ever there was a question that ought to be resolved once and for all, it is whether this school district shortchanged these teachers unlawfully." *Gold v. DeKalb County School District* ("*Gold II*"), Georgia Court of Appeals Case No. A14A1557, March 30, 2015 (Concurring Op. of Judges McFadden and Phipps at 1). Reviving the Plaintiffs' hopes, in *Gold II* the Court of Appeals expressed that Plaintiffs might address some of the issues that had led to the denial of class certification with either subclasses or additional named plaintiffs. On remand, Class Counsel sought to add subclasses, additional named plaintiffs, and renew motions for class certification and summary judgment. Plaintiffs investigated the practicality of finding new plaintiffs to ensure adequate representation and filed a renewed motion for class certification. Class Counsel

interviewed a series of prospective representatives to assess their suitability and personal willingness to act as a steward protecting the best interests of their fellow, similarly-situated co-workers.

D. Addition of Plaintiffs Hunter and Benson.

By motion filed on June 4, 2015, Plaintiffs moved to add two new Plaintiffs as prospective additional Class Representatives: Heather Hunter and Roderick Benson. In 2016, both sat for depositions wherein they submitted to extensive cross-examination by the defense as to their fitness or suitability as Class Representatives.

E. Extensive Additional Discovery on Class Wide Damages Methodology.

In furtherance of a second motion for class certification, Plaintiffs devoted months to a deeper investigation of the facts pertinent to class certification, with a special focus on issues such as: (1) how the District stored employee personnel and payroll data; (2) how that data was maintained by Fidelity Investments (the designated recordkeeper for the benefits plan at issue); and (3) how to combine, collate and reconcile voluminous data from various data-sets to calculate damages fairly and properly for all potential class members.

Extensive formal discovery ensued, including sometimes contentious motions practice. The intensity of the controversies over discovery and other issues

caused the trial court to appoint Hon. Keegan Federal as a special master so that these disputes could be timely addressed. *See* Order Appointing Special Master (May 11, 2015). *See* Affidavit of R. Keegan Federal, Jr. ("Federal Aff.") ¶12. The Affidavit of R. Keegan Federal, Jr. is attached hereto as Exhibit A. Many additional depositions were taken, including those of key management personnel for the Defendant District and former Board Members of the District's Board of Education, and (eventually) expert witnesses.

Much of this investigation and discovery required Plaintiffs' counsel, by advancing substantial expenses, to inspect or gain access to Defendants' databases storing employee compensation and payroll data. *See, e.g.*, August 14, 2015 Order. To obtain such discovery required Plaintiffs to overcome determined resistance from the defense. *See, e.g.*, Defendants' Motion for Limited Protective Order (Nov. 12, 2015). By persistent effort the Plaintiffs amassed evidence in the form of testimony, voluminous data and expert opinion that they could hope to carry the burden of showing this case satisfied the prerequisites for class certification. Salter Aff. ⁋ 23. Upon seeking class certification a second time, Plaintiffs relied on the testimony of numerous additional witnesses deposed during 2015-2016 after *Gold II*, including Nefretiria Williams, Brenda Randolph, Brenda Hudgins, Rhonda Kelly, Tekshia Ward-Smith, Jim Redovian, Jay Cunningham, and Eugene Walker.

F. Another Adverse Decision, More Appellate Briefing and *Gold III*/*Gold IV*.

On June 1, 2017, Plaintiffs filed a second Motion for Class Certification together with a Motion for Partial Summary Judgment as to Liability for Breach of Written Contract. An Appendix that aggregated various relevant expert reports, deposition excerpts, affidavits, etc., contained 63 separate items. *See* Plaintiffs' Appendix (Jan. 1, 2017); *see also* Plaintiffs' Second Supplemental Appendix (reflecting a total of 95 items). On that same day, Defendants renewed their previous motion seeking summary judgment on liability and damages.

Given the complex nature of the litigation and the extraordinary amount of data regarding payroll, employment status, and investment vehicles, proving that class wide damages could be calculated for all class members under a fair and reasonable methodology required extensive reliance on experts integrating multiple data-sets. Salter Aff. ¶ 27. Taking and defending the data-specific depositions of Plaintiffs' and Defendants' experts required intense preparation and ongoing coordination among the litigation team to ensure an effective examination. In addition to the class certification and summary judgment motions, the parties also contested the admissibility and suitability of expert opinions that were submitted on various class-certification and summary judgment issues, filing and briefing multiple exclusionary motions. *See, e.g.*, Defendants' Motion to Exclude Plaintiffs'

Expert Karen Fortune (Jan. 11, 2017); *see also* Plaintiffs' Response in Opposition to Defendants' Motion to Exclude Plaintiffs' Expert Karen Fortune (Feb. 6, 2017).

Throughout the course of discovery, Class Counsel diligently reviewed and analyzed voluminous documents, as well as massive data-sets extracted from multiple custodians that were produced by Defendants and their contractors and vendors. Defendants made numerous, separate productions. A detailed review and analysis of the document production was crucial for Plaintiffs to understand and prove their claims and to understand the almost three-decade history relevant to this particular case. Without a firm understanding of the documents and data-sets—both of which were voluminous and required substantial costs to obtain and properly analyze—Plaintiffs would have been unable to successfully prosecute this action. Salter Aff. ¶ 28.

Over two days in the spring of 2017, the parties argued these motions regarding evidentiary rulings, dispositive motions and class-certification. In an Order entered June 26, 2017, the trial court granted summary judgment to the Defendants, a potentially fatal blow to the cause for the Plaintiffs and the Class. The trial court also denied Plaintiffs' Motion for Partial Summary Judgment (as to liability for contractual breach) and denied Plaintiffs' Motion for Class Certification. Plaintiffs persisted, and commenced yet another appeal, setting the stage for what would become *Gold III* and *Gold IV*.

Plaintiffs had to appeal (a) the denial of class certification; (b) the grant of the Defendants' Motion for Summary Judgment and (c) the denial of the Plaintiffs' Motion for Partial Summary Judgment. After extensive briefing and oral argument, the Court of Appeals decided the two-year notice requirement applied to all District employees equally and, accordingly, reversed the trial court's decision and awarded partial summary judgment on liability to the Plaintiffs, and vacated the denial of class certification. *Gold v. DeKalb Cty. Sch. Dist.*, 346 Ga. App. 108 (2018) ("*Gold III*"). However, the Defendants sought *certiorari.* Class Counsel briefed the petition for *certiorari, w*hich was ultimately granted by the Supreme Court. Again, the entire case was potentially imperiled. Class Counsel briefed the case extensively, and orally argued it in the Supreme Court. The Supreme Court agreed with the Court of Appeals, albeit for different reasons. *DeKalb Cty. Sch. Dist. v. Gold*, 307 Ga. 330 (2019) ("*Gold IV*"). The case was remanded to the trial court, still with no class certified.

G. Extensive Attempts at Negotiated Resolution.

The parties engaged in multiple efforts—informal and formal—to attempt a mutual resolution of this case. In April of 2016, the parties engaged Hon. Susan Forsling to assist them in a formal mediation. This was personally attended by all four of the putative Class Representatives: Gold, Shaye, Hunter and Benson. Salter Aff. ¶ 31. The parties did not reach agreement.

After the publication of *Gold III*, the parties engaged in another effort at a negotiated resolution, this time facilitated by renowned neutral Michael Loeb. On September 17, 2018, all four of the putative Class Representatives participated fully and in-person at the mediation at JAMS Mediation Service in Atlanta. The parties remained far apart, and did not reach an agreement during the mediation session. *See* Affidavit of Michael J. Loeb ("Loeb Aff.") ¶ 8. The Affidavit of Michael J. Loeb is attached hereto as Exhibit B.

After the oral argument in the Supreme Court of Georgia (but before publication of the ultimate decision in October of 2019), the parties re-engaged in active negotiations in hopes of reaching a mutual settlement between the District and the putative Class. Between July and October of 2019, Class Counsel and the Plaintiffs engaged in many telephonic conferences and email communications internally, with Mr. Loeb as mediator, and with opposing counsel. These negotiations came close to yielding an agreement, manifested by many different drafts of a settlement agreement being exchanged by and between counsel. However, by October of 2019, the Plaintiffs and Defendants could not reach a mutual agreement. Salter Aff. ⁋ 33; Loeb Aff. ¶ 10. Plaintiffs and Class Counsel decided to await publication of the Opinion from the Supreme Court of Georgia that would become *Gold IV*.

H. *Gold IV* and Class Certification.

After *Gold IV* was published, the Defendants unsuccessfully sought reconsideration, which was denied by the Supreme Court after briefing by the parties. On remand to the trial court, the Plaintiffs renewed their Motion for Class Certification. With the permission of the trial court, the parties submitted supplemental briefs on the issue of class certification and the remaining pending motions. Another day of oral argument was held. The parties also prepared proposed orders for consideration by the Court. On March 26, 2020, this Court entered an order granting Plaintiffs' Motion for Class Certification.

I. Renewed Negotiations and Eventual Class Settlement.

In March of 2020, the parties resumed negotiations with the renewed aid of Michael Loeb as mediator. Over the next three months, the parties negotiated by correspondence and telephone in efforts to resolve the matter on a class wide basis. Again, the Plaintiffs fully participated in multiple phone calls with Class Counsel to discuss terms, offers and counter-offers. The parties' negotiations were protracted and at times contentious. At least ten different cycles of drafts of a potential Settlement Agreement were exchanged, marked up in redline, and returned again. Due to the COVID-19 pandemic, the parties met via several Zoom-facilitated calls including Mr. Loeb in an attempt to resolve issues regarding the potential settlement. After multiple discussions and conferences, the parties

reached an agreement on all terms in May and June of 2020. Salter Aff. ⁋ 35. Thus, the settlement in this case was the product of literally months of arms-lengths negotiations, and multiple days of mediations with two professional mediators. Affidavit of Michael B. Terry, filed August 3, 2020 (Terry Aff.) ⁋ 10; Loeb Aff. ¶ 15. Prior to seeking preliminary approval of the class action settlement, Class Counsel engaged in the preparation of numerous supporting settlement documents, including the class action notices, claim forms, distribution plans and their motion for preliminary approval. These required coordination with the Defendants, and at times required the intercession of Mr. Loeb. Loeb Aff. ¶¶ 11-13. Further, Class Counsel have coordinated the settlement with settlement administrators who are integral to the facilitation of the settlement, including drafting and revising "frequently asked questions" and answers thereto for the use of the settlement administrators, and reviewing and revising the settlement administration website. Salter Aff. ⁋ 36.

III. THE TERMS OF THE SETTLEMENT.

As noted above, this case settled for $117,500,000 (117.5 million dollars) which will be paid into a settlement fund following final approval by this Court. The Settlement Agreement preliminarily approved by the Court provides for payment to class members in five annual installments of their proportional share of

the settlement fund net of attorney's fees, expenses and court-approved incentive awards to the Class Representatives (Net Class Member Funds).

The funds will be paid proportionally based on the contributions lost by each Class Member as a result of the cessation in the funding of contributions from the District for the benefit of the Class under the TSA Plan. Lost contributions are calculated from the cessation of payments on July 29, 2009 through January 29, 2016. Lost contributions from July 1, 2012 through January 29, 2016 are weighted at one-third of those lost contributions from July 29, 2009 through June 30, 2012. That differential weighting is the result of the much higher likelihood of prevailing on the Class's entitlement to those earlier damages.

This differential in likelihood of success for the two time periods was argued vehemently by the District in its pleadings and in settlement negotiations. In light of this vigorous opposition, Class Counsel recognized the risks were materially higher of losing the claim for the later damages, as well as additional costs and delay that would be incurred by trying to recover those damages. The percentage discount for the later damages was derived from a review of the pleadings filed by the District, an analysis of the likelihood of success concurred in by all of Class Counsel in consultation with mediator Loeb, and a reasonable compromise to address such risks. Loeb Aff. ¶ 13. Indeed, the last brief filed by the District in this case before settlement renewed this very argument. *See* Feb. 18, 2020 Defendants'

Supplemental Brief Opposing Class Certification at 4 ("the only reasonable view of *Gold III* and *Gold IV*, based on their language and Georgia law, is that they contemplated a two year liability period as alleged in Count One of Plaintiffs' Third Amended Complaint."). The proposed Order filed by the District that day (at 3) seeks summary judgment on those claims:

> Defendants' motion for summary judgment is GRANTED as to Counts Two and Three of Plaintiffs' Third Amended Complaint—breach of contract for lost contributions from July 30, 2011, through June 30, 2012, and breach of contract for lost contributions from July 1, 2012, through the present, respectively. Plaintiffs cannot establish liability for lost contributions beyond two years as a matter of law.

The next order of business in the case, if it were not settled, would have been the District's appeal on this issue. Thus, there would be material risk of class members losing damages for the later time period.

The distribution of settlement proceeds is set forth in a distribution plan previously filed with the Court and made available to class members. The Distribution Plan Provides:

> Each Class Member who remains in the Class will receive their pro rata share of the settlement proceeds, taking into account the value of the alleged general damages for breach of contract. Specifically, pursuant to Paragraph 7 of the Settlement Agreement, Net Class Member Funds resulting from the Settlement will be distributed to each Class Member in accordance with that Class Members' calculated Pro Rata Percentage of the alleged damages. As specified in the Settlement Agreement, that percentage will be applied to the Net Class Member Funds before each of the five Class Member Payment Dates to arrive at the appropriate payment amount for each class member.

After the opt-out process is complete, for each Class Member who remains in the settlement, we will calculate his or her Pro Rata Percentage as follows:

(a) Estimate the total dollar amount of his or her interest and TSA contributions between July 29, 2009 and June 30, 2012 ("Period 1 Individual Damages").

(b) Calculate one third of the estimated total dollar amount of his or her interest and all TSA contributions between July 1, 2012, and January 29, 2016 (i.e. [the total estimated dollar amount of these contributions and damages] / 3) ("Period 2 Individual Damages").

(c) "Individual Damages" shall be the sum of these two amounts (i.e. [Period 1 Individual Damages] + [Period 2 Individual Damages]).

1. Calculate the Total Class Wide Damages by calculating the total dollar amount of all Individual Damages (i.e. [Total Period 1 Individual Damages] + [Total Period 2 Individual Damages] = [Total Class Wide Damages]).

2. Calculate Each Class Member's Pro Rata Percentage of the Settlement by dividing each Class Member's Individual Damages by the Total Class Wide Damages (i.e. [Individual Damages] / [Total Class Wide Damages]).

With respect to the Period 2 Damages, the one-third discount reflects the relative litigation risk associated with the different categories of damages. The January 29, 2016, cut-off date is the date through which the District has provided payroll data. Given the litigation risk associated with damages after this date, and the fact that this cut off will not impact on the total amount of Class recovery, the benefit of collecting additional data would not be worth the significant delay and potential cost to the Class.

IV. THE NOTICE PLAN WAS EXECUTED SUCCESSFULLY.

The parties spent months deriving and checking the list of class members. On August 7, 2020, the court-approved Settlement Administrator mailed 11,060 class notices via First Class Mail. Some were returned as undeliverable. For those returned as undeliverable, the Settlement Administrator undertook an updated address check, and re-mailed all notices for which a new address could be located. Only 220 out of 11,060 (less than2 percent), were ultimately undeliverable. The Administrator estimates 98.1 percent successful notice.

Further, on August 3, 2020, the District emailed the court-approved notice to the email addresses on file for all of its current and former employees. The Settlement Administrator set up a settlement website, https://www.goldshayeclassaction.com/, which contained the notice, pertinent pleadings, deadlines, court orders and answers to Frequently Asked Questions. When the Motion for an Award of Attorneys' Fees, Expenses, and Incentive Award and Brief in Support thereof was filed, it was immediately posted on the website as directed by the Court. This notice program was adequate and consistent with Rule 23 and the standards of due process. *See In re Skechers Toning Shoe Prod. Liab. Litig.*, No. 3:11-MD-2308-TBR, 2013 WL 2010702, at *2 (W.D. Ky. May 13, 2013) (84-89 percent successful notice is "adequate and consistent with Federal Rule of Civil Procedure 23 and the standards of due process."

V. REACTION OF THE CLASS TO THE SETTLEMENT.

Out of 11,060 class members, there have been zero opt-outs and one (1) objection to the settlement. The reaction of the Class to the settlement is overwhelmingly positive. Only one out of 11,060 class members do not approve.

VI. ARGUMENT AND CITATION OF AUTHORITY

> "In reviewing the validity of a class action settlement, a district court's decision will be overturned only upon a clear showing of abuse of discretion." *Holmes v. Cont'l Can Co*., 706 F.2d 1144, 1147 (11th Cir. 1983). The district court reviews a class action settlement for fairness, reasonableness, and adequacy. *In re CP Ships Ltd. Sec. Litig*., 578 F.3d at 1314–15 (*citing Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984)). We have instructed the district court to consider the following factors: (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the range of possible recovery at which a settlement is fair, adequate, and reasonable; (4) the anticipated complexity, expense, and duration of litigation; (5) the opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved. *Id*. at 1315.

Faught v. American Home Shield Corp., 668 F.3d 1233, 1240 (11th Cir. 2011). All of those factors weigh in favor of approving this settlement, which is fair, reasonable and adequate.

A. Likelihood of Success.

Given the prior rulings in this and other courts, Plaintiffs believe that the chances of success at trial and on appeal for the claims for contributions made through June 30, 2012 were quite favorable though not certain. An appeal from certification of the class was still available to the District, and the District also

contended that it had merits defenses for a portion of that claim – those damages from July 30, 2011 through June 30, 2012. As to the damages from July 1, 2012 onward, the chances of success for the class raised additional questions, as discussed in greater detail above.

But success on the merits in the context of this case is not limited to the court outcome. Although Plaintiffs might have eventually received a judgment for more than the settlement amount, the collectability of such a higher judgment was inherently risky. It is not success to obtain a judgment that the defendant cannot pay. Given that risk, the settlement appears even more reasonable.

B. The Range of Possible Recovery.

Although even this was disputed, the total of all missed contributions for all relevant time periods was estimated by Class Counsel as approximately $160 million. Disputed claims for missed investment return as an alternative to interest potentially could have pushed that to approximately $200 million. As described above, there were many hurdles to be overcome to win all of those claims on a class wide basis, the certainty of more appeals (plus years of delay), and the risk of uncollectibility. On the lower end, the potential recovery was, of course, zero. Plaintiffs assert that this settlement fairly reflects the potential recoveries for the class.

C. Range of Fair Settlements.

Settlement is by its very nature a matter of compromise. The late Judge Anthony Alaimo (Southern District of Georgia) was fond of saying, "A good settlement is one that leaves a bitter taste in both sides' mouths." Plaintiffs assert that the Settlement here reflects a very good recovery for the respective class members with the certainty and timeliness that can only be gained by settlement. Based on the reactions of the Class, the almost complete absence of objections and absolute absence of opt-outs indicates the class members also accept this settlement as a fair compromise.

D. Complexity, Expense and Duration of Continued Litigation.

The claims asserted on behalf of over 11,000 class members are complex and would have required thousands of hours of more work and years of additional litigation if the case had proceeded through the next interlocutory appeal as of right from class certification (and the denial of the District's renewed motion for summary judgment), trial and appeal. Class Counsel estimated approximately five *more* years to a final adjudicated resolution. Settlement now is a major benefit to the members of the classes.

E. The Lack of Opposition.

One Class Member out of 11,060 objected to the terms of the settlement. No class member opted out of the settlement.

F. Stage of Settlement.

This is in no way a quick settlement. It occurred after ten years of intense litigation, including multiple appeals, multiple cross motions for summary judgment, and multiple motions for class certification. The parties were far along in the litigation process. The settlement itself was negotiated at arm's length, over multiple years, with multiple mediators. This is not the type of "quick hit" or "file and settle" class action that should engender greater scrutiny or suspicion.

VII. RESPONSE TO OBJECTION

Out of 11,060 class members, none opted out of the settlement and only one submitted an objection. While undoubtedly motivated by good faith concerns, the one objection is legally insufficient and based on incorrect factual assumptions. It should be overruled. The 11,059 class members who both chose to stay in the class and not to object should not lose the benefit of the Settlement based on the objection that the single dissenter has raised.

The single objection is based upon the factual premise that the settlement amount is too high and thus beyond the capacity of the District to fund. In fact, the amount of the settlement was determined in part based upon calculations and discussions with the District about what it could afford to pay. That concern is the reason that the settlement amount is spread over five annual installments - a concession the District sought to allow it to manage its budgetary concerns. As the

District announced when the settlement was publicly disclosed, quoted in the attachment to the objection, "[t]his class-wide settlement represents a fair resolution for the District's employees while giving the District flexibility in payment with the hope of minimal budgetary disruption." In other words, the settlement was intentionally structured to make it **more likely** that the District would be able to pay it in full.

Further, even if the District turned out to be unable to completely fund the settlement payments, continuing the litigation is a worse option than settling. First, the District has been spending millions of dollars a year to fund the litigation. Continuing the litigation would only worsen the District's financial situation, leaving even less money for the class. Second, if Plaintiffs continued the litigation and won a bigger verdict than the settlement amount, the District would be facing a single, lump-sum judgment bigger than the amount it is now able to pay over five years. Third, if the litigation went forward and plaintiffs lost, all members of the class would be much worse off.

The objector nonetheless argues that class members are worse off if the settlement is approved. The District announced furlough days (days off without pay) for class members who remain employed by the district and others to address COVID-19 and recession issues shortly before it approved the settlement. The current plan, as set forth in the exhibits to the objection, now calls for one furlough

day over the current school year. The supposition of the objection apparently is that the furlough day (a) was adopted not for the COVID-19-related reasons stated by the Board when voting on it, but by the anticipated (but not yet consummated) settlement; and (b) the furlough day allegedly violates the contracts of the teachers; and (c) hopefully the furlough day would be restored if the Settlement is not approved.[2] Even if all of this supposition were taken as fact, even if the District had misstated its reasons for the initially planned furlough days, the objection assumes that class members would rather give up a settlement which will pay an average of over $6000 per class member in order to avoid having to take a single day off without pay. This stark choice explains why no other class member objected.

The objector objects to the requested attorney's fees on the grounds that class counsel "performed poorly" and that the lawsuit took so many years and was so expensive because of unidentified "mistakes" by Class Counsel which allegedly resulted in the need to take multiple appeals. Of course, as this Court is aware, the case involved novel and complex issues and the need for multiple appeals was not due to errors of Class Counsel.

[2] The sequence of events was that the District voted on a budget with five furlough days in one meeting (June 8, 2020) expressly based on COVID and an anticipated recession; voted on approving the settlement at the next meeting (June 9, 2020); then reduced the furlough days to one furlough day over the next year in the next meeting (July 24, 2020).

The Objection misconstrues the length of this litigation as somehow evidence of poor legal performance. In actuality, overcoming setbacks in the pursuit of justice for the Class members is a virtue to be rewarded, not a vice to be punished. Here is what this Court already held in this case:

> There is no dispute that Plaintiffs' Counsel are experienced and competent. Ample evidence in the record demonstrates their experience in the field of class action litigation.…They have pursued this cause since February 2011. Counsel and the Plaintiffs have persevered, and prevailed, through multiple appeals. They have achieved substantial success, achieving favorable rulings in *Gold III* and *Gold IV* that the two-year notice requirement applied, by its terms, to all District employees equally. Such sustained professional effort is evidence of counsel's dedication to the cause of the Plaintiffs and the Class-members. The Court thus finds that Plaintiffs' Counsel, Roy Barnes and John Salter of the Barnes Law Group, and Michael Terry, Jason Carter and Naveen Ramachandrappa of Bondurant, Mixson & Elmore are more than adequate class counsel.

Order Granting Plaintiffs' Motion for Class Certification at 34-35. The Court's opinion of Class Counsel's perseverance is supported by other knowledgeable persons, who vouch for the skill and dedication in testimony under oath.

Former Judge, the Honorable R. Keegan Federal, Jr. served as the Special Master in this case, and observed the work of class counsel first-hand and referred to it as a "high quality of professional and meticulous legal work…."

> In my opinion, the amount of fees that Class Counsel are seeking in this matter—33.0 per cent of the $117,500,000 common fund—is reasonable and fair compensation based upon the following factors: (1)

> **the high quality of professional and meticulous legal work that I personally observed** as a special master appointed to this case; (2) the prevailing and customary arrangements for reasonable attorney compensation in the Atlanta and DeKalb County market; (3) the successful results the attorneys obtained for the benefit of each member of the Class they represented; (4) the fact that they **achieved such success** against well-funded and motivated defense counsel; (5) their persistence in pursuing these claims for their clients through apparent setbacks and multiple appeals; and (6) the substantial risk—both in duration of the case and the amount of attorney time, energy, effort, and expense invested—that was assumed and borne by Class Counsel during the many years of the pendency of this litigation.

Federal Aff. ¶ 17 (emphasis added). Nationally-renowned class mediator and experienced employment lawyer Michael Loeb who spent years mediating this case opined that "Class Counsel demonstrated skill, prudence and care in their representation of the Class…. As advocates for all of the class members, Class Counsel approached these issues with care and skill…." Loeb Aff. ¶¶ 12-13.

> In the several hundred class action cases I have mediated to date which have settled, the vast majority have resulted in an allowance of one-third of the class fund to attorneys' fees…. It is my opinion that a fee award 33.0 per cent of the settlement amount is a reasonable attorneys' fee under the circumstances, considering especially the **skill and preparation of Class Counsel, the complexity and novelty of the case theory** and the difficult questions presented; the substantial time and labor demanded over the long lifespan of this nine-year litigation; the risk shouldered by Class Counsel; counsel's advancement of substantial expenses; and **the favorable result achieved for the benefit of the Class.**

See id. ¶¶ 16-18 (emphasis added). Multiple witnesses, qualified as experts, and also with personal knowledge of the work, have all opined that the work was done

well and professionally, and that the resulting settlement is "favorable" and a "success" for the class.

Finally, the settlement fund is to be paid in five annual installments. The attorney's fees and Class Counsel expenses will be split in the same way and paid out proportionally with each annual payment. Both expense reimbursements and fees to Class Counsel will thus be paid out in the same time frame and the same proportions as the settlement payments to Class Members. Class Counsel are taking precisely the same risk of the inability of the District to pay as are the class members. Class Counsel thus had every incentive to reach a settlement that, as the District put it, would allow the District to proceed with "minimal budgetary disruption."

The objection should be overruled.

CONCLUSION

This Court should approve the settlement, including the expenses, fees, and incentive payment to the class representatives. A proposed order is attached hereto as Exhibit C.[3]

[3] Defendants have received and reviewed the proposed Order and have no opposition. As the parties informed the Court earlier today, the parties are attempting to resolve the dispute over the language of paragraph 17 of the proposed Order, and will inform the Court of their progress on that issue. Thus, there is a blank in paragraph 17 of the proposed Order attached hereto.

Respectfully submitted this 8th day of September, 2020.

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Georgia Bar No. 039000
John F. Salter
Georgia Bar No. 623325
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Marietta, GA 30060
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/s/ Michael B. Terry
Michael B. Terry
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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on this day, I have electronically filed the foregoing MOTION FOR FINAL APPROVAL OF SETTLEMENT AND BRIEF IN SUPPORT THEREOF AND RESPONSE TO OBJECTIONS via Odyssey eFfileGA and have caused to be served a copy to the below listed counsel of record in the case by email and first class mail addressed as follows:

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Thomas R. Bundy, III
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Fulton, MD 20759
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This 8th day of September, 2020.

/s/ Michael B. Terry
Michael B. Terry

EXHIBIT A

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

DEKALB COUNTY SCHOOL DISTRICT and DEKALB COUNTY BOARD OF EDUCATION,

Defendants.

CIVIL ACTION FILE
NO. 11-CV-3657-5

AFFIDAVIT OF R. KEEGAN FEDERAL JR.

NOW COMES the undersigned, R. Keegan Federal Jr., who, after being duly sworn, on oath deposes and swears as follows:

1. My name is R. Keegan Federal Jr., and I am *sui juris* and competent to attest to the matters contained in this affidavit.

2. I have personal knowledge of the facts contained in this Affidavit. I submit this Affidavit in support of final approval of the class-wide settlement of this case. I have not received any compensation for providing this Affidavit. The only compensation I have received was for my service as a court-appointed special master in this case, which expense (pursuant to court order) was shared equally by the parties.

3. I was appointed by the Court, Hon. Mark Anthony Scott, in 2015, to serve as

Special Master in this action. As discussed in more detail below, my service in this capacity involved receiving briefs, conducting hearings, and making rulings predominantly regarding contested discovery issues, including requests for the production of documents and deposition practice, predominantly regarding issues that were likely to impact class certification issues.

4. I received my undergraduate degree and my law degree (with honors) from the Emory University School of Law. Shortly after graduating from law school in 1966, I practiced law with the Atlanta firm of Shoob McLain & Jessee for two years, and was called to active duty and commissioned a lieutenant in the U.S. Army in July 1968. I was assigned as a Signal Corps officer in Vietnam from 1969 to 1970, receiving commendations and service medals including the Bronze Star.

5. In 1970, I returned to Atlanta to practice law, and was employed by the firm of Nall, Miller, & Cadenhead where I was privileged to begin a broad trial practice. In 1972, I started my own law firm, Orr & Federal, in Decatur, Georgia, representing individuals and small-to-medium companies in various disputes. In 1976, I was elected as a judge of the Superior Court of the Stone Mountain Judicial Circuit (which then included DeKalb and Rockdale counties).I served eight (8) years on the bench, and chose not to run for a third term. From 1984 through 1987, I was the partner in charge of litigation in the Atlanta office of the firm of Dow Lohnes & Albertson where I primarily

represented The Atlanta Journal and Constitution newspapers, and WSB Television and Radio stations and other Cox Communications and Cox Enterprises entities. In 1987, I resigned that partnership to re-open my own firm in Atlanta of five to ten lawyers specializing in litigation, which I managed and operated until downsizing to two lawyers in 2014. Since then, I have continued a part-time law practice and I am still engaged in practice with an attorney in Atlanta, and I opened my new office location in St. Mary's, Georgia, in 2019.

6. Throughout my professional life, I have been active in community, philanthropic, and professional organizations such as the Brain Injury Family Assistance Center, American Red Cross, Brain Injury Association of Georgia, The Shepherd Center, Atlanta Lawyers Club, Georgia Trial Lawyers Association, American Trial Lawyers Association, Atlanta Justice Center for Dispute Resolution, and Leadership Atlanta (Class of 1974, Program Chair, Board Member, etc.), the Carter Center Board of Councillors, etc.

7. First admitted to the bar in 1966, I have been a member of the State Bar of Georgia for fifty-four (54) years.

8. After returning to private practice from the bench in 1984, I maintained an active and broad trial practice. I have represented clients in hundreds of cases in the areas of business contracts, First Amendment cases, defamation actions, Open Records and Open Meetings cases, attorney malpractice, accountants malpractice, medical negligence, securities violations, employment

discrimination, sexual harassment, fraud, copyright, personal injury, wrongful death, premises liability, sales commissions, executive compensation, dram shop, environmental, aviation (notably including most of the wrongful death claims resulting from the ValuJet crash), insurance coverage, riparian rights, boundary line disputes, construction defects, brokerage and securities claims, roadway accidents, design defects, products liability, professional misconduct, high-end divorces, law firm dissolutions, fee disputes, and many others.

9. For many years, my law practice has included mediation and arbitration as alternative dispute resolution methodologies. I was the Advisory Board Chair of the Neighborhood Justice Center in the 1980's, and I was one of three former judges recruited by Judge Jack Etheridge to open the Atlanta office of JAMS around 1989. Over the span of my career, I have mediated and arbitrated a broad array of disputes in federal and state courts.

10. I have been honored by frequent recognition by my peers as a Super Lawyer in the years 2004-2018.

11. I was a co-author of the textbook "Legal Aspects of Private Security" and the founder and executive editor of the "Private Security Case Law Reporter." I was also an Adjunct Professor of Litigation at Emory Law School (1978-1984).

12. Beginning with my appointment as Special Master in the above case in 2015, I was deeply involved in a series of hard-fought and complex discovery disputes between the parties. On a weekly basis, I received and reviewed numerous

emails containing discovery requests, objections, arguments, motions, briefs, responses, etc., regarding the disputed issues in the case, and I conducted regular, almost weekly meetings or hearings either in-person or via teleconference.

13. I worked closely with the attorneys representing both the putative class representatives and those representing the defendant school district. In this capacity, I had occasion to evaluate their work ethic, level of preparation, attention to detail, and the quality of their work product as attorneys. This case had already been to the appellate court twice before I became involved; it was extremely complex and involved numerous potentially dispositive legal issues. Essentially every issue was hotly contested by well-prepared lawyers on both sides.

14. Having worked as an active attorney or judge for over 50 years in and around Atlanta and especially in DeKalb County, I am familiar with the customary and usual arrangements for legal representation in these areas.

15. In my experience, attorneys representing a plaintiff on a contingent basis in a case such as this traditionally charge one-third or more of the gross amount recovered as their compensation. In addition, such cases warrant consideration of the substantial expenses which the plaintiffs' attorneys themselves funded from their own pockets in order to pursue the case, the enormous amount of time that they had to invest in the case, and the tremendous risk they had to assume and accept in hopes that they would be not only repaid but also

rewarded for undertaking such expense, investment, and risk – without which, of course, the result obtained by the attorneys would never have been achieved, the plaintiffs would not have been able to pursue their claims, and justice would have been thwarted.

16. I understand that Class Counsel in this case are petitioning this Court for approval of a fair and reasonable award of attorneys' fees, and reimbursement of the expenses the attorneys had to fund in the prosecution of this nine-year litigation. It is further my understanding that Class Counsel will ask the Court to approve as fair a percentage of the common fund created by the Settlement.

17. In my opinion, the amount of fees that Class Counsel are seeking in this matter—33.0 per cent of the $117,500,000 common fund—is reasonable and fair compensation based upon the following factors: (1) the high quality of professional and meticulous legal work that I personally observed as a special master appointed to this case; (2) the prevailing and customary arrangements for reasonable attorney compensation in the Atlanta and DeKalb County market; (3) the successful results the attorneys obtained for the benefit of each member of the Class they represented; (4) the fact that they achieved such success against well-funded and motivated defense counsel; (5) their persistence in pursuing these claims for their clients through apparent setbacks and multiple appeals; and (6) the substantial risk—both in duration of the case and the amount of attorney time, energy, effort, and expense invested—that was assumed and borne by Class Counsel during the many

years of the pendency of this litigation.

18. I declare under penalty of perjury that the foregoing facts, to the best of my knowledge, are true and correct.

This 13 day of August, 2020.

R. KEEGAN FEDERAL, JR.

THE FEDERAL FIRM, LLC
314 Osborne Street
St. Mary's, Georgia 31558
keegan@fedfirm.com
912-319-5505

Sworn to and Subscribed before me,
this the 13 day of August, 2020.

Notary Public

My Commission expires:

1.23.2023

TAMMY LEIGH BARNES
NOTARY PUBLIC
My Commission Expires
January 23, 2023
PAULDING COUNTY, GEORGIA

EXHIBIT B

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated,

CIVIL ACTION FILE
NO. 11-CV-3657-5

Plaintiffs,

v.

DEKALB COUNTY SCHOOL DISTRICT and DEKALB COUNTY BOARD OF EDUCATION,

Defendants.

AFFIDAVIT OF MICHAEL J. LOEB

I, Michael J. Loeb, hereby testify as follows:

1. My name is Michael J. Loeb and I was retained by the parties to this action to serve as mediator. I submit this Affidavit in support of Class Counsel's motion for final approval and attorneys' fees and reimbursement of expenses. I have not received any compensation for providing this Affidavit. The only compensation I have received is for my service as a mediator in this case through JAMS Alternative Dispute Resolution, which expense was shared equally by the parties.

2. I received by B.A. from Cornell University and my Juris Doctor from the University of California (Order of the Coif). First admitted to the bar in 1974, I have practiced law continuously for over forty-five (45) years. Before joining JAMS in 2006, I served as lead trial counsel in hundreds of cases, specializing

in the area of labor and employment law and was the Chair of the Labor Law and Employment Practice Group of a major California-based law firm, McCutchen, Doyle, Brown & Enersen LLP. Over the span of my career, I have mediated, litigated, and arbitrated virtually every type of labor, employment and employment benefits dispute in federal and state courts (including wage and hour class actions and ERISA class actions), wrongful termination, discrimination, harassment and retaliation cases, employment contract disputes, and misappropriation of trade secret cases.

3. Since 1991, my legal practice increasingly focused on serving as a neutral in the mediation and arbitration of such disputes. Since April 2006, I have worked exclusively as a mediator and arbitrator through JAMS. My principal office is in San Francisco, California, but my practice as a neutral extends to cases across the United States. I have mediated more than 2,000 cases and more than 500 class actions.

4. I have been honored by frequent recognition by my peers as a Northern California Super Lawyer in the ADR Category in the years 2005-2009, 2011-2019

5. For thirty years, I have served as a Board member (and as Chair for 15 years), of the East Bay Community Law Center, the University of California Berkeley Law School clinical program and the largest provider of indigent legal services in Alameda County, with over 20 staff lawyers serving more than 4,000 clients per year.

6. I was retained as a mediation neutral by the parties in this putative class action and for the purpose of facilitating settlement negotiations. Beginning first in September of 2018 and lasting until May of 2020, I worked closely with the attorney-teams for the defendant school district and the attorneys representing the plaintiffs and putative class in search of a negotiated resolution. It was while serving in this capacity as neutral that I had occasion to work with Class Counsel: Roy E. Barnes and John F. Salter of the Barnes Law Group LLC and Michael B. Terry and Jason Carter of Bondurant Mixson and Elmore LLP.

7. The overall duration of this case makes it one of the longest-running matters in which I have served as a neutral. There were at least two instances where negotiations reached an impasse.

8. The mediation began in September of 2018, when I traveled to Atlanta in order to meet personally with the parties at Atlanta's JAMS offices for a full day of mediation on September 17, 2018. Although initially planned as a potential two-day mediation over September 17 and 18, the parties remained substantially apart and the mediation session did not continue into the planned second day.

9. I continually followed up with the parties in 2018 and 2019 to settle this case. The intensity of the efforts increased in July of 2019, leading to a sustained exchange of calls and emails between the parties. This renewed active phase of negotiations lasted over the following weeks and months and into the fall of

that year. However, despite multiple, facilitated negotiations by email and telephone conference, the parties remained substantially apart and reached an impasse in October of 2019.

10. In March of 2020, I was asked by the parties to resume facilitating active negotiations between them. Although these negotiations were virtual (i.e. facilitated via telephone and/or Zoom due to the COVID-19 pandemic), they were intense and wide-ranging, requiring weeks of conferences, phone calls and negotiations with the parties' legal representatives. I held two, full-day mediations with all counsel in April and May 2020.

11. I reviewed numerous emails regarding the disputed issues in the negotiations. In the process, I reviewed numerous draft settlement agreements exchanged and re-exchanged by and between the parties. Over many weeks, I discussed with the parties various points of disagreement and possible solutions.

12. During these negotiations, it was my observation that Class Counsel demonstrated skill, prudence and care in their representation of the Class. The parties were far apart in their assessments of the merits of future appeals and the gravity of the Defendants' exposure to an award of potential damages. Even after the grant of class certification in March of 2020, uncertainty lingered as to the class certification order and to the extent to which this could be altered (or defeated) on appeal, which the District claimed a right to pursue.

13. Additionally, Defendants insisted (as they had throughout), that Plaintiffs were barred from recovering any damages whatsoever after the time period

approximating the two-year period after the July 2009 breach. Plaintiffs disputed this, advocating for a substantially longer recoverable period. Despite "*Gold IV*" establishing a contractual breach in Plaintiffs' favor, because of the novelty of this challenging case significant legal uncertainty remained as to the scope of damages that were recoverable. As advocates for all of the class members, Class Counsel approached these issues with care and skill, choosing to categorize the damages accordingly and then applying a discount to reflect the different litigation risk. This solution became reflected in the Settlement Agreement and a Distribution Plan.

14. At last, the mediation reached a mutual settlement in principle in May of 2020 under terms that later were subsequently and formally approved by the DeKalb County Board of Education and the Plaintiffs.

15. The Settlement Agreement ultimately reached by the parties is the product of extensive and arms-length negotiations, sometimes hard fought. And at no time did I observe or suspect any collusion or anything less than zealous representation on behalf of the Class and/or parties.

16. In the several hundred class action cases I have mediated to date which have settled, the vast majority have resulted in an allowance of one-third of the class fund to attorneys' fees. The remaining common fund cases have had fee awards as high as 40% of the fund and a smaller percentage at 25% based on established court guidelines for awards in the United States District Courts.

17. The amount of fees that Class Counsel seek in this matter—33.0 per cent of

the $117,500,000 common fund, is consistent with the results of other class and collective action settlements I have mediated throughout the country, including in Georgia.

18. It is my opinion that a fee award 33.0 per cent of the settlement amount is a reasonable attorneys' fee under the circumstances, considering especially the skill and preparation of Class Counsel, the complexity and novelty of the case theory and the difficult questions presented; the substantial time and labor demanded over the long lifespan of this nine-year litigation; the risk shouldered by Class Counsel; counsel's advancement of substantial expenses; and the favorable result achieved for the benefit of the Class.

19. I declare under penalty of perjury that the foregoing facts, to the best of my knowledge, are true and correct.

FURTHER AFFIANT SAYETH NOT.

This 17th day of August, 2020.

MICHAEL J. LOEB

Sworn to and subscribed before me

This 17th day of August, 2020.

NOTARY PUBLIC

TAMMY LEIGH BARNES
My Commission Expires
NOTARY PUBLIC
January 23, 2023
PAULDING COUNTY, GEORGIA

EXHIBIT C

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **DEKALB COUNTY SCHOOL DISTRICT, et al.,** **Defendants.**	**CIVIL ACTION FILE NO. 11-CV-3657-5**

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL

On July 9, 2020, this Court granted preliminary approval of the settlement of this class action set forth in the Stipulation and Agreement of Class Action Settlement, dated June 10, 2020 (the "Settlement Agreement"). Due and adequate notice was provided to the Class pursuant to that Order, including notice of the opportunity to opt out or object. This matter now comes before the Court on the application of the parties for final approval of the Settlement. The Court has considered all papers filed and proceedings had herein and otherwise being duly informed in the premises and good cause appearing therefore, it is this ___ day of _____, 2020, ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties to this litigation, including all members of the Class.

2. The mailing of individual notice to each individual class member as specified in this Court's prior orders satisfies O.C.G.A. § 9-11-23, any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the Final Approval Hearing and the rights of all Class Members have been provided to all people, powers, and entities, entitled thereto.

3. As to the Class, ____ class members filed a formal objection to the Settlement and ____ class members appeared at the hearing to object to the Settlement.

4. Members of the Class had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

5. Each and every Objection to the settlement is overruled with prejudice.

6. The motion for final approval of the Settlement Agreement is hereby GRANTED, the settlement of the Class Action is APPROVED as fair, reasonable and adequate, and the parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

7. The Court hereby approves the Settlement set forth in the Settlement Agreement and the Plaintiffs' Class Member Payment Formula, and finds that said Settlement, Settlement Agreement and Payment Formula are in all respects, fair, reasonable and adequate to all members of the Settlement Class, which is defined in the Court's prior orders and includes:

Annual Contract Subclass

Each person – or his or her properly-designated beneficiary or beneficiaries – who was actively employed by the DeKalb County School District or DeKalb County Board of Education before July 27, 2009 on an annual contract basis and who did not receive TSA contributions after July 31, 2009 as a result of the July 27, 2009 elimination of TSA contributions.

At-Will Contract Subclass

Each person – or his or her properly-designated beneficiary or beneficiaries – who was actively employed by the DeKalb County School District or DeKalb County Board of Education before July 27, 2009 on an at-will contract basis or any basis other than an annual contract basis and who did not receive TSA contributions after July 31, 2009 as a result of the District's suspension of TSA contributions.[1]

[1] For purposes of these class definitions, an employee will be considered to have been "actively employed before July 27, 2009" if either (a) they were already a participant in the Board TSA Plan as of that date; **or** (b) according to the District's records, they have a Continuous Service Date before that date; **or** (c) they are in the specified group of employees who demonstrated during the notice period that they began their employment prior to July 27, 2009 and received a paycheck in August, and they have been expressly added to the class list maintained by the Class Administrator. An employee will be considered to have "not receive[d] TSA contributions after July 31, 2009 as a result of the District's suspension of TSA contributions," if, according to the District's records, they were (a) in the category of employees subject to the suspension; (b) otherwise eligible for the Board TSA, **and** (c) received full time pay from the district between July 29, 2009, and January 31, 2016, without receiving their expected contributions.

8. The Lead Plaintiffs and members of the Settlement Class are hereby deemed conclusively to fully, finally, and forever discharge and release all claims, demands, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever that have been or could have been asserted, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, accrued or unaccrued, that have been, could have been or in the future can or might be asserted in the Action or in any court, tribunal, administrative agency or proceeding by or on behalf of any of the Lead Plaintiffs and any members of the Settlement Class who did not timely elect to opt out of the Settlement (whether for themselves and for their beneficiaries, assigns, agents, representatives, attorneys, heirs, executors, administrators, and privies), against the School District and its affiliates, agents, employees, officers, directors, attorneys, representatives, advisors, administrators, or anyone acting on thier behalf, which (a) arise out of, are based on, or relate in any way to any of the allegations, acts, transactions, facts, events, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to, in the Action, or which could have been alleged in the Action; (b) arise out of, are based on, or relate to or pertain to the School District's

July 2009 decision to suspend certain employees' contributions to the Board TSA Plan; (c) arise out of, are based on, or relate to or pertain to the School District's payment and/or distribution of the Settlement Amount, including specifically any claims for contributions to the Teachers Retirement System of Georgia ("TRS") or the Employees' Retirement System of Georgia ("ERS") and any claims against TRS and ERS for failure to demand contribution from the School District. The release shall not, however, include claims to enforce this Settlement.

9. Pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties.

10. The application by Class Counsel for reimbursement of expenses and reasonable attorneys' fees is granted. Class counsel's request for fees and expenses are hereby found to be reasonable. Class Counsel shall be reimbursed for expenses in the amount of $856,303.06. Class Counsel shall further recover fees in the amount of 33.0% of the Settlement Amount. Class Counsel shall recover such fees and expenses from the Settlement Fund as and in the manner described in the Settlement Agreement, such that from the First Settlement Payment, Class Counsel shall recover expenses in

the amount $200,411.35 and fees in the amount of $9,075,000, and from each of the subsequent Settlement Payments, expenses in the amount of $163,972.92 and fees in the amount of $7,425,000.

11. The Court orders that $25,000 shall be paid to each of the named Plaintiffs and Class Representatives as an incentive award for their efforts in prosecuting this case. These awards shall be paid from the Settlement Fund as and in the manner described in the Settlement Agreement.

12. Pursuant to the Settlement Agreement, the Settlement Funds shall bear all notice costs, costs associated with payment of the settlement proceeds, Settlement Administrator fees, Class Counsel's attorneys' fees and expenses, and incentive awards to the named Plaintiffs in each Class.

13. The Settlement Administrator, in consultation with Class Counsel and in accordance with the Settlement Agreement and the Class Member Payment Formula, shall have final authority to determine the share of the Net Class Member Funds to be allocated to each Class Member who did not make a valid and timely request for exclusion from the Class.

14. This entire action is hereby dismissed with prejudice as to the Class Members, and without taxable costs to the parties.

15. The Court reserves jurisdiction, without affecting the finality of this Judgment, over:

(a) Implementation of the Settlement;

(b) Disposition of the Settlement Funds; and

(c) Enforcing and administering the Settlement Agreement.

16. Upon entry of this Order, all Class Members who did not make a valid and timely request for exclusion from their respective Classes shall be bound by the Settlement Agreement and by this Final Order.

17. Any funds remaining in the Settlement Fund as described in paragraph 7(e) of the Settlement Agreement ("Remaining Funds"), will be distributed as follows:

_____

_____

IT IS SO ORDERED, this the ____ day of _____, 2020.

_____
Honorable Gregory A. Adams
Superior Court Judge
DeKalb County Georgia

PREPARED BY:

/s/ Michael B. Terry
Michael B. Terry
Georgia Bar No. 702582
Jason J. Carter
Georgia Bar No. 141669
Naveen Ramachandrappa

Georgia Bar No. 422036
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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

DEKALB COUNTY SCHOOL DISTRICT and DEKALB COUNTY BOARD OF EDUCATION,

Defendants.

CIVIL ACTION FILE
NO. 11-CV-3657-5

AFFIDAVIT OF R. KEEGAN FEDERAL JR.

NOW COMES the undersigned, R. Keegan Federal Jr., who, after being duly sworn, on oath deposes and swears as follows:

1. My name is R. Keegan Federal Jr., and I am *sui juris* and competent to attest to the matters contained in this affidavit.

2. I have personal knowledge of the facts contained in this Affidavit. I submit this Affidavit in support of final approval of the class-wide settlement of this case. I have not received any compensation for providing this Affidavit. The only compensation I have received was for my service as a court-appointed special master in this case, which expense (pursuant to court order) was shared equally by the parties.

3. I was appointed by the Court, Hon. Mark Anthony Scott, in 2015, to serve as

Special Master in this action. As discussed in more detail below, my service in this capacity involved receiving briefs, conducting hearings, and making rulings predominantly regarding contested discovery issues, including requests for the production of documents and deposition practice, predominantly regarding issues that were likely to impact class certification issues.

4. I received my undergraduate degree and my law degree (with honors) from the Emory University School of Law. Shortly after graduating from law school in 1966, I practiced law with the Atlanta firm of Shoob McLain & Jessee for two years, and was called to active duty and commissioned a lieutenant in the U.S. Army in July 1968. I was assigned as a Signal Corps officer in Vietnam from 1969 to 1970, receiving commendations and service medals including the Bronze Star.

5. In 1970, I returned to Atlanta to practice law, and was employed by the firm of Nall, Miller, & Cadenhead where I was privileged to begin a broad trial practice. In 1972, I started my own law firm, Orr & Federal, in Decatur, Georgia, representing individuals and small-to-medium companies in various disputes. In 1976, I was elected as a judge of the Superior Court of the Stone Mountain Judicial Circuit (which then included DeKalb and Rockdale counties).I served eight (8) years on the bench, and chose not to run for a third term. From 1984 through 1987, I was the partner in charge of litigation in the Atlanta office of the firm of Dow Lohnes & Albertson where I primarily

represented The Atlanta Journal and Constitution newspapers, and WSB Television and Radio stations and other Cox Communications and Cox Enterprises entities. In 1987, I resigned that partnership to re-open my own firm in Atlanta of five to ten lawyers specializing in litigation, which I managed and operated until downsizing to two lawyers in 2014. Since then, I have continued a part-time law practice and I am still engaged in practice with an attorney in Atlanta, and I opened my new office location in St. Mary's, Georgia, in 2019.

6. Throughout my professional life, I have been active in community, philanthropic, and professional organizations such as the Brain Injury Family Assistance Center, American Red Cross, Brain Injury Association of Georgia, The Shepherd Center, Atlanta Lawyers Club, Georgia Trial Lawyers Association, American Trial Lawyers Association, Atlanta Justice Center for Dispute Resolution, and Leadership Atlanta (Class of 1974, Program Chair, Board Member, etc.), the Carter Center Board of Councillors, etc.

7. First admitted to the bar in 1966, I have been a member of the State Bar of Georgia for fifty-four (54) years.

8. After returning to private practice from the bench in 1984, I maintained an active and broad trial practice. I have represented clients in hundreds of cases in the areas of business contracts, First Amendment cases, defamation actions, Open Records and Open Meetings cases, attorney malpractice, accountants malpractice, medical negligence, securities violations, employment

discrimination, sexual harassment, fraud, copyright, personal injury, wrongful death, premises liability, sales commissions, executive compensation, dram shop, environmental, aviation (notably including most of the wrongful death claims resulting from the ValuJet crash), insurance coverage, riparian rights, boundary line disputes, construction defects, brokerage and securities claims, roadway accidents, design defects, products liability, professional misconduct, high-end divorces, law firm dissolutions, fee disputes, and many others.

9. For many years, my law practice has included mediation and arbitration as alternative dispute resolution methodologies. I was the Advisory Board Chair of the Neighborhood Justice Center in the 1980's, and I was one of three former judges recruited by Judge Jack Etheridge to open the Atlanta office of JAMS around 1989. Over the span of my career, I have mediated and arbitrated a broad array of disputes in federal and state courts.

10. I have been honored by frequent recognition by my peers as a Super Lawyer in the years 2004-2018.

11. I was a co-author of the textbook "Legal Aspects of Private Security" and the founder and executive editor of the "Private Security Case Law Reporter." I was also an Adjunct Professor of Litigation at Emory Law School (1978-1984).

12. Beginning with my appointment as Special Master in the above case in 2015, I was deeply involved in a series of hard-fought and complex discovery disputes between the parties. On a weekly basis, I received and reviewed numerous

emails containing discovery requests, objections, arguments, motions, briefs, responses, etc., regarding the disputed issues in the case, and I conducted regular, almost weekly meetings or hearings either in-person or via teleconference.

13. I worked closely with the attorneys representing both the putative class representatives and those representing the defendant school district. In this capacity, I had occasion to evaluate their work ethic, level of preparation, attention to detail, and the quality of their work product as attorneys. This case had already been to the appellate court twice before I became involved; it was extremely complex and involved numerous potentially dispositive legal issues. Essentially every issue was hotly contested by well-prepared lawyers on both sides.

14. Having worked as an active attorney or judge for over 50 years in and around Atlanta and especially in DeKalb County, I am familiar with the customary and usual arrangements for legal representation in these areas.

15. In my experience, attorneys representing a plaintiff on a contingent basis in a case such as this traditionally charge one-third or more of the gross amount recovered as their compensation. In addition, such cases warrant consideration of the substantial expenses which the plaintiffs' attorneys themselves funded from their own pockets in order to pursue the case, the enormous amount of time that they had to invest in the case, and the tremendous risk they had to assume and accept in hopes that they would be not only repaid but also

rewarded for undertaking such expense, investment, and risk – without which, of course, the result obtained by the attorneys would never have been achieved, the plaintiffs would not have been able to pursue their claims, and justice would have been thwarted.

16. I understand that Class Counsel in this case are petitioning this Court for approval of a fair and reasonable award of attorneys' fees, and reimbursement of the expenses the attorneys had to fund in the prosecution of this nine-year litigation. It is further my understanding that Class Counsel will ask the Court to approve as fair a percentage of the common fund created by the Settlement.

17. In my opinion, the amount of fees that Class Counsel are seeking in this matter—33.0 per cent of the $117,500,000 common fund—is reasonable and fair compensation based upon the following factors: (1) the high quality of professional and meticulous legal work that I personally observed as a special master appointed to this case; (2) the prevailing and customary arrangements for reasonable attorney compensation in the Atlanta and DeKalb County market; (3) the successful results the attorneys obtained for the benefit of each member of the Class they represented; (4) the fact that they achieved such success against well-funded and motivated defense counsel; (5) their persistence in pursuing these claims for their clients through apparent setbacks and multiple appeals; and (6) the substantial risk—both in duration of the case and the amount of attorney time, energy, effort, and expense invested—that was assumed and borne by Class Counsel during the many

years of the pendency of this litigation.

18. I declare under penalty of perjury that the foregoing facts, to the best of my knowledge, are true and correct.

This 13 day of August, 2020.

R. KEEGAN FEDERAL, JR.

THE FEDERAL FIRM, LLC
314 Osborne Street
St. Mary's, Georgia 31558
keegan@fedfirm.com
912-319-5505

Sworn to and Subscribed before me,
this the 13 day of August, 2020.

Notary Public

My Commission expires:

1.23.2023

TAMMY LEIGH BARNES
NOTARY PUBLIC
My Commission Expires
January 23, 2023
PAULDING COUNTY, GEORGIA

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated,

CIVIL ACTION FILE
NO. 11-CV-3657-5

Plaintiffs,

v.

DEKALB COUNTY SCHOOL DISTRICT and DEKALB COUNTY BOARD OF EDUCATION,

Defendants.

AFFIDAVIT OF MICHAEL J. LOEB

I, Michael J. Loeb, hereby testify as follows:

1. My name is Michael J. Loeb and I was retained by the parties to this action to serve as mediator. I submit this Affidavit in support of Class Counsel's motion for final approval and attorneys' fees and reimbursement of expenses. I have not received any compensation for providing this Affidavit. The only compensation I have received is for my service as a mediator in this case through JAMS Alternative Dispute Resolution, which expense was shared equally by the parties.

2. I received by B.A. from Cornell University and my Juris Doctor from the University of California (Order of the Coif). First admitted to the bar in 1974, I have practiced law continuously for over forty-five (45) years. Before joining JAMS in 2006, I served as lead trial counsel in hundreds of cases, specializing

in the area of labor and employment law and was the Chair of the Labor Law and Employment Practice Group of a major California-based law firm, McCutchen, Doyle, Brown & Enersen LLP. Over the span of my career, I have mediated, litigated, and arbitrated virtually every type of labor, employment and employment benefits dispute in federal and state courts (including wage and hour class actions and ERISA class actions), wrongful termination, discrimination, harassment and retaliation cases, employment contract disputes, and misappropriation of trade secret cases.

3. Since 1991, my legal practice increasingly focused on serving as a neutral in the mediation and arbitration of such disputes. Since April 2006, I have worked exclusively as a mediator and arbitrator through JAMS. My principal office is in San Francisco, California, but my practice as a neutral extends to cases across the United States. I have mediated more than 2,000 cases and more than 500 class actions.

4. I have been honored by frequent recognition by my peers as a Northern California Super Lawyer in the ADR Category in the years 2005-2009, 2011-2019

5. For thirty years, I have served as a Board member (and as Chair for 15 years), of the East Bay Community Law Center, the University of California Berkeley Law School clinical program and the largest provider of indigent legal services in Alameda County, with over 20 staff lawyers serving more than 4,000 clients per year.

6. I was retained as a mediation neutral by the parties in this putative class action and for the purpose of facilitating settlement negotiations. Beginning first in September of 2018 and lasting until May of 2020, I worked closely with the attorney-teams for the defendant school district and the attorneys representing the plaintiffs and putative class in search of a negotiated resolution. It was while serving in this capacity as neutral that I had occasion to work with Class Counsel: Roy E. Barnes and John F. Salter of the Barnes Law Group LLC and Michael B. Terry and Jason Carter of Bondurant Mixson and Elmore LLP.

7. The overall duration of this case makes it one of the longest-running matters in which I have served as a neutral. There were at least two instances where negotiations reached an impasse.

8. The mediation began in September of 2018, when I traveled to Atlanta in order to meet personally with the parties at Atlanta's JAMS offices for a full day of mediation on September 17, 2018. Although initially planned as a potential two-day mediation over September 17 and 18, the parties remained substantially apart and the mediation session did not continue into the planned second day.

9. I continually followed up with the parties in 2018 and 2019 to settle this case. The intensity of the efforts increased in July of 2019, leading to a sustained exchange of calls and emails between the parties. This renewed active phase of negotiations lasted over the following weeks and months and into the fall of

that year. However, despite multiple, facilitated negotiations by email and telephone conference, the parties remained substantially apart and reached an impasse in October of 2019.

10. In March of 2020, I was asked by the parties to resume facilitating active negotiations between them. Although these negotiations were virtual (i.e. facilitated via telephone and/or Zoom due to the COVID-19 pandemic), they were intense and wide-ranging, requiring weeks of conferences, phone calls and negotiations with the parties' legal representatives. I held two, full-day mediations with all counsel in April and May 2020.

11. I reviewed numerous emails regarding the disputed issues in the negotiations. In the process, I reviewed numerous draft settlement agreements exchanged and re-exchanged by and between the parties. Over many weeks, I discussed with the parties various points of disagreement and possible solutions.

12. During these negotiations, it was my observation that Class Counsel demonstrated skill, prudence and care in their representation of the Class. The parties were far apart in their assessments of the merits of future appeals and the gravity of the Defendants' exposure to an award of potential damages. Even after the grant of class certification in March of 2020, uncertainty lingered as to the class certification order and to the extent to which this could be altered (or defeated) on appeal, which the District claimed a right to pursue.

13. Additionally, Defendants insisted (as they had throughout), that Plaintiffs were barred from recovering any damages whatsoever after the time period

approximating the two-year period after the July 2009 breach. Plaintiffs disputed this, advocating for a substantially longer recoverable period. Despite "*Gold IV*" establishing a contractual breach in Plaintiffs' favor, because of the novelty of this challenging case significant legal uncertainty remained as to the scope of damages that were recoverable. As advocates for all of the class members, Class Counsel approached these issues with care and skill, choosing to categorize the damages accordingly and then applying a discount to reflect the different litigation risk. This solution became reflected in the Settlement Agreement and a Distribution Plan.

14. At last, the mediation reached a mutual settlement in principle in May of 2020 under terms that later were subsequently and formally approved by the DeKalb County Board of Education and the Plaintiffs.

15. The Settlement Agreement ultimately reached by the parties is the product of extensive and arms-length negotiations, sometimes hard fought. And at no time did I observe or suspect any collusion or anything less than zealous representation on behalf of the Class and/or parties.

16. In the several hundred class action cases I have mediated to date which have settled, the vast majority have resulted in an allowance of one-third of the class fund to attorneys' fees. The remaining common fund cases have had fee awards as high as 40% of the fund and a smaller percentage at 25% based on established court guidelines for awards in the United States District Courts.

17. The amount of fees that Class Counsel seek in this matter—33.0 per cent of

the $117,500,000 common fund, is consistent with the results of other class and collective action settlements I have mediated throughout the country, including in Georgia.

18. It is my opinion that a fee award 33.0 per cent of the settlement amount is a reasonable attorneys' fee under the circumstances, considering especially the skill and preparation of Class Counsel, the complexity and novelty of the case theory and the difficult questions presented; the substantial time and labor demanded over the long lifespan of this nine-year litigation; the risk shouldered by Class Counsel; counsel's advancement of substantial expenses; and the favorable result achieved for the benefit of the Class.

19. I declare under penalty of perjury that the foregoing facts, to the best of my knowledge, are true and correct.

FURTHER AFFIANT SAYETH NOT.

This 17th day of August, 2020.

MICHAEL J. LOEB

Sworn to and subscribed before me

This 17th day of August, 2020.

NOTARY PUBLIC

TAMMY LEIGH BARNES
My Commission Expires
NOTARY PUBLIC
January 23, 2023
PAULDING COUNTY, GEORGIA

IN THE SUPERIOR COURT OF DEKALB COUNTY
STATE OF GEORGIA

ELAINE ANN GOLD, AMY JACOBSON SHAYE, HEATHER HUNTER, and RODERICK BENSON, on behalf of themselves and all others similarly situated, **Plaintiffs,** **v.** **DEKALB COUNTY SCHOOL DISTRICT, et al.,** **Defendants.**	**CIVIL ACTION FILE NO. 11-CV-3657-5**

[PROPOSED] FINAL JUDGMENT AND ORDER OF DISMISSAL

On July 9, 2020, this Court granted preliminary approval of the settlement of this class action set forth in the Stipulation and Agreement of Class Action Settlement, dated June 10, 2020 (the "Settlement Agreement"). Due and adequate notice was provided to the Class pursuant to that Order, including notice of the opportunity to opt out or object. This matter now comes before the Court on the application of the parties for final approval of the Settlement. The Court has considered all papers filed and proceedings had herein and otherwise being duly informed in the premises and good cause appearing therefore, it is this ___ day of _____, 2020, ORDERED, ADJUDGED AND DECREED THAT:

1. This Court has jurisdiction over the subject matter of this litigation and over all parties to this litigation, including all members of the Class.

2. The mailing of individual notice to each individual class member as specified in this Court's prior orders satisfies O.C.G.A. § 9-11-23, any other applicable law, and due process, and constituted the best notice practicable under the circumstances; and due and sufficient notices of the Final Approval Hearing and the rights of all Class Members have been provided to all people, powers, and entities, entitled thereto.

3. As to the Class, ____ class members filed a formal objection to the Settlement and ____ class members appeared at the hearing to object to the Settlement.

4. Members of the Class had the opportunity to be heard on all issues regarding the resolution and release of their claims by submitting objections to the Settlement Agreement to the Court.

5. Each and every Objection to the settlement is overruled with prejudice.

6. The motion for final approval of the Settlement Agreement is hereby GRANTED, the settlement of the Class Action is APPROVED as fair, reasonable and adequate, and the parties are hereby directed to take the necessary steps to effectuate the terms of the Settlement Agreement.

7. The Court hereby approves the Settlement set forth in the Settlement Agreement and the Plaintiffs' Class Member Payment Formula, and finds that said Settlement, Settlement Agreement and Payment Formula are in all respects, fair, reasonable and adequate to all members of the Settlement Class, which is defined in the Court's prior orders and includes:

Annual Contract Subclass

Each person – or his or her properly-designated beneficiary or beneficiaries – who was actively employed by the DeKalb County School District or DeKalb County Board of Education before July 27, 2009 on an annual contract basis and who did not receive TSA contributions after July 31, 2009 as a result of the July 27, 2009 elimination of TSA contributions.

At-Will Contract Subclass

Each person – or his or her properly-designated beneficiary or beneficiaries – who was actively employed by the DeKalb County School District or DeKalb County Board of Education before July 27, 2009 on an at-will contract basis or any basis other than an annual contract basis and who did not receive TSA contributions after July 31, 2009 as a result of the District's suspension of TSA contributions.[1]

[1] For purposes of these class definitions, an employee will be considered to have been "actively employed before July 27, 2009" if either (a) they were already a participant in the Board TSA Plan as of that date; **or** (b) according to the District's records, they have a Continuous Service Date before that date; **or** (c) they are in the specified group of employees who demonstrated during the notice period that they began their employment prior to July 27, 2009 and received a paycheck in August, and they have been expressly added to the class list maintained by the Class Administrator. An employee will be considered to have "not receive[d] TSA contributions after July 31, 2009 as a result of the District's suspension of TSA contributions," if, according to the District's records, they were (a) in the category of employees subject to the suspension; (b) otherwise eligible for the Board TSA, **and** (c) received full time pay from the district between July 29, 2009, and January 31, 2016, without receiving their expected contributions.

8. The Lead Plaintiffs and members of the Settlement Class are hereby deemed conclusively to fully, finally, and forever discharge and release all claims, demands, actions or causes of action, rights, liabilities, damages, losses, obligations, judgments, suits, fees, expenses, costs, matters and issues of any kind or nature whatsoever that have been or could have been asserted, whether known or unknown, contingent or absolute, suspected or unsuspected, disclosed or undisclosed, matured or unmatured, accrued or unaccrued, that have been, could have been or in the future can or might be asserted in the Action or in any court, tribunal, administrative agency or proceeding by or on behalf of any of the Lead Plaintiffs and any members of the Settlement Class who did not timely elect to opt out of the Settlement (whether for themselves and for their beneficiaries, assigns, agents, representatives, attorneys, heirs, executors, administrators, and privies), against the School District and its affiliates, agents, employees, officers, directors, attorneys, representatives, advisors, administrators, or anyone acting on thier behalf, which (a) arise out of, are based on, or relate in any way to any of the allegations, acts, transactions, facts, events, matters, occurrences, representations, or omissions involved, set forth, alleged, or referred to, in the Action, or which could have been alleged in the Action; (b) arise out of, are based on, or relate to or pertain to the School District's

July 2009 decision to suspend certain employees' contributions to the Board TSA Plan; (c) arise out of, are based on, or relate to or pertain to the School District's payment and/or distribution of the Settlement Amount, including specifically any claims for contributions to the Teachers Retirement System of Georgia ("TRS") or the Employees' Retirement System of Georgia ("ERS") and any claims against TRS and ERS for failure to demand contribution from the School District. The release shall not, however, include claims to enforce this Settlement.

9. Pending final determination of whether the Settlement Agreement should be approved, no Class Member may directly, through representatives, or in any other capacity, commence any action or proceeding in any court or tribunal asserting any of the Released Claims against the Released Parties.

10. The application by Class Counsel for reimbursement of expenses and reasonable attorneys' fees is granted. Class counsel's request for fees and expenses are hereby found to be reasonable. Class Counsel shall be reimbursed for expenses in the amount of $856,303.06. Class Counsel shall further recover fees in the amount of 33.0% of the Settlement Amount. Class Counsel shall recover such fees and expenses from the Settlement Fund as and in the manner described in the Settlement Agreement, such that from the First Settlement Payment, Class Counsel shall recover expenses in

the amount $200,411.35 and fees in the amount of $9,075,000, and from each of the subsequent Settlement Payments, expenses in the amount of $163,972.92 and fees in the amount of $7,425,000.

11. The Court orders that $25,000 shall be paid to each of the named Plaintiffs and Class Representatives as an incentive award for their efforts in prosecuting this case. These awards shall be paid from the Settlement Fund as and in the manner described in the Settlement Agreement.

12. Pursuant to the Settlement Agreement, the Settlement Funds shall bear all notice costs, costs associated with payment of the settlement proceeds, Settlement Administrator fees, Class Counsel's attorneys' fees and expenses, and incentive awards to the named Plaintiffs in each Class.

13. The Settlement Administrator, in consultation with Class Counsel and in accordance with the Settlement Agreement and the Class Member Payment Formula, shall have final authority to determine the share of the Net Class Member Funds to be allocated to each Class Member who did not make a valid and timely request for exclusion from the Class.

14. This entire action is hereby dismissed with prejudice as to the Class Members, and without taxable costs to the parties.

15. The Court reserves jurisdiction, without affecting the finality of this Judgment, over:

(a) Implementation of the Settlement;

(b) Disposition of the Settlement Funds; and

(c) Enforcing and administering the Settlement Agreement.

16. Upon entry of this Order, all Class Members who did not make a valid and timely request for exclusion from their respective Classes shall be bound by the Settlement Agreement and by this Final Order.

17. Any funds remaining in the Settlement Fund as described in paragraph 7(e) of the Settlement Agreement ("Remaining Funds"), will be distributed as follows:

_____

_____

IT IS SO ORDERED, this the ____ day of _____, 2020.

_____
Honorable Gregory A. Adams
Superior Court Judge
DeKalb County Georgia

PREPARED BY:

/s/ Michael B. Terry
Michael B. Terry
Georgia Bar No. 702582
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Georgia Bar No. 141669
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Attorneys for Plaintiffs

Julie M. Brown

From: efilingmail@tylerhost.net
Sent: Tuesday, September 8, 2020 8:22 PM
To: Julie M. Brown
Subject: Filing Submitted for Case: 11CV3657; ELAINE ANN GOLD, AMY JACOBSON SHAYE,HEATHER HUNTER, RODERICK BENSON, et al,AppellantVDEKALB COUNTY SCHOOL DISTRICT,and DEKALB COUNTY BOARD OF EDUCATION,Appellee; Envelope Number: 6174973

Filing Submitted

Envelope Number: 6174973
Case Number: 11CV3657
Case Style: ELAINE ANN GOLD, AMY JACOBSON SHAYE,HEATHER HUNTER, RODERICK BENSON, et al,AppellantVDEKALB COUNTY SCHOOL DISTRICT,and DEKALB COUNTY BOARD OF EDUCATION,Appellee

The filing below has been submitted to the clerk's office for review. Please allow 24 - 48 hours for clerk office processing.

Filing Details	
Court	Dekalb County - Superior Court
Date/Time Submitted	9/8/2020 8:20 PM EST
Filing Type	Motion to Declare
Filing Description	Plaintiffs' Motion for Final Approval of Settlement and Brief in Support Thereof and Response to Objection
Type of Filing	EFileAndServe
Filed By	Julie Brown
Filing Attorney	Michael Terry

Fee Details

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Case Fee Information	$0.00
Motion to Declare	$0.00

Exhibits	$0.00
Exhibits	$0.00
Exhibits	$0.00
Total:$0.00 (The envelope still has pending filings and the fees are subject to change)	

Document Details	
Lead Document	2020-09-08 Plaintiffs' Brief iso Motion and Motion for Final Approval of Settlement.pdf
Lead Document Page Count	30
File Copy	Download Document
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Filing Details	
Court	Dekalb County - Superior Court
Date/Time Submitted	9/8/2020 8:20 PM EST
Filing Type	Exhibits
Filing Description	Ex. A - Affidavit of Keegan Federal
Type of Filing	EFileAndServe
Filed By	Julie Brown
Filing Attorney	Michael Terry

Fee Details

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Total:$0.00 (The envelope still has pending filings and the fees are subject to change)	

Document Details	
Lead Document	2020-09-08 Ex. A - Affidavit of Keegan Federal - 2020-08-13.pdf
Lead Document Page Count	7
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Filing Submitted

Envelope Number: 6174973
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Filing Details	
Court	Dekalb County - Superior Court
Date/Time Submitted	9/8/2020 8:20 PM EST
Filing Type	Exhibits
Filing Description	Ex. B - Affidavit of Michael Loeb
Type of Filing	EFileAndServe
Filed By	Julie Brown
Filing Attorney	Michael Terry

Fee Details

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Motion to Declare	$0.00
Exhibits	$0.00

Exhibits	$0.00
Exhibits	$0.00
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Document Details	
Lead Document	2020-09-08 Ex. B - Affidavit of Michael Loeb - 2020-08-17.pdf
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Filing Details	
Court	Dekalb County - Superior Court
Date/Time Submitted	9/8/2020 8:20 PM EST
Filing Type	Exhibits
Filing Description	Ex. C - Proposed Order
Type of Filing	EFileAndServe
Filed By	Julie Brown
Filing Attorney	Michael Terry

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Total:$0.00 (The envelope still has pending filings and the fees are subject to change)	

Document Details	
Lead Document	2020-09-08 Proposed Order.pdf
Lead Document Page Count	8
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