

**IN UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID K. SEALY, KERRY CARTER and  
HARVEY L. DAVIS on behalf of the Old  
Dominion 401(k) Retirement Plan, and all  
others similarly situated,

Plaintiffs,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

**Case No. 1:23-cv-819-TDS-LPA**

**PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF UNOPPOSED  
MOTION FOR ATTORNEYS' FEES, COSTS, AND  
CASE CONTRIBUTION AWARDS**

## TABLE OF CONTENTS

I.	INTRODUCTION .....	1
II.	BACKGROUND .....	2
	A. Description of the Action .....	2
	B. Recordkeeping Compensation.....	2
	C. Share Class Costs .....	2
	D. Procedural Background .....	3
	E. Discovery.....	3
	F. Settlement Negotiations.....	4
	G. Settlement Agreement .....	5
	H. Work Related to Settlement Approval and Administration .....	8
III.	THE FEES REQUESTED ARE FAIR AND REASONABLE AND SHOULD BE APPROVED.....	9
	A. The Percentage of Recovery Method with a Lodestar Cross-Check is Appropriate for Evaluating an Attorneys’ Fees Request in this Case.....	9
	B. Each of the Seven Factors Supports the Fee Request .....	10
	1. The Results Obtained for the Class .....	10
	2. The Quality, Skill, and Efficiency of the Attorneys Involved .....	12
	3. The Risk of Nonpayment .....	16
	4. Lack of Objections by Class Members to the Settlement Terms, Fees or Expenses Requested by Counsel, or Proposed Service Awards .....	15
	5. Awards in Similar Cases .....	18
	6. The Complexity and Duration of the Case.....	19
	7. Public Policy .....	19
	C. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees.....	20
IV.	CLASS COUNSEL’S OUT-OF-POCKET LITIGATION EXPENSES SHOULD BE REIMBURSED.....	20
V.	CASE CONTRIBUTION AWARDS SHOULD BE GRANTED TO THE CLASS REPRESENTATIVES .....	22
VI.	CONCLUSION .....	23

David K. Sealy, Kerry Carter, and Harvey L. Davis (“Plaintiffs”), individually and on behalf of all others similarly situated (“Settlement Class”), file this Motion and Memorandum of Law seeking approval of attorneys’ fees, costs, and case contribution awards.

**I. INTRODUCTION**

Plaintiffs and Old Dominion Freight Line, Inc. (“Defendant”), entered into a Class Action Settlement (the “Settlement”) to resolve their claims under the Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (“ERISA”). Defendant agreed to pay \$1,900,000 in cash to resolve Plaintiffs’ claims. This amount represents roughly 38% of the potential monetary recovery.

This excellent result was achieved as a result of the extensive time and effort of Class Counsel who spent over two years on the case, worked 1,143.9 hours without any compensation, and expended \$34,853.46 in unreimbursed costs reasonably incurred in successfully prosecuting the case. (*See* Exhibit A, McKay Decl. ¶¶ 24-26; Exhibit B, Hill Decl. ¶¶ 9-11; Exhibit C, Edelman Decl. ¶¶ 9-11.) The Plaintiffs also spent considerable time representing the Class, including meeting with counsel, producing documents, reviewing drafts of pleadings and briefs, and monitoring the progress of the litigation. (*See* McKay Decl. ¶ 19.)

Plaintiffs now file this Motion seeking \$633,333.33 in attorneys' fees, which represents one-third of the \$1,900,000 settlement amount. In addition, Plaintiffs seek \$34,853.46 in reimbursement of litigation costs. Plaintiffs also seek case contribution awards in the amount of \$5,000 to each of the Plaintiffs.

## **II. BACKGROUND**

### **A. Description of the Action**

On September 27, 2023, Plaintiffs commenced this action by filing a class action complaint. (ECF No. 1.) Plaintiffs are participants in the Old Dominion 401(k) Retirement Plan (the "Plan"). (*Id.*) As of December 31, 2022, the Plan had \$1,791,772,000 (almost \$1.8 billion) in assets and 26,874 participants with account balances. (*Id.*, ¶ 20.) Defendant is fiduciary of the Plan and had responsibility for selecting and regularly monitoring the Plan's investments and expenses. (*Id.*, ¶¶ 32-33.)

### **B. Excessive Recordkeeping Compensation**

Plaintiffs allege Defendant failed to monitor the Plan's recordkeeping expenses. (*Id.*, ¶¶ 61-110.) As a result, the Plan's recordkeeping expenses were excessive and unreasonable. (*Id.*) Plaintiffs further allege the total cost of recordkeeping on a per-participant basis annually was over \$150 when it should have been \$25 or less. (*Id.*, ¶ 46.) Defendant denied these allegations.

### **C. Excessive Share Class Costs**

Plaintiffs also allege Defendant imprudently selected high-cost share classes of investments for the Plan instead of identical lower-cost share classes. The Complaint

identifies nine (9) of the Plan’s funds that were allegedly available in a lower-cost share class, which were identical to the in-Plan funds in every way except for their lower cost and better performance. (*Id.*, ¶ 120.) Defendant contends that the higher-cost share classes enabled the Plan to defray administrative costs. But Plaintiffs allege that the value of such administrative cost defrayments did not outweigh the excessive fees associated with the higher-cost share classes. (*Id.*) Defendant denied these allegations too.

**D. Procedural Background**

On December 8, 2023, Defendant filed a motion to dismiss. (ECF No. 13.) After the motion was fully briefed, on April 22, 2024, the Court heard oral argument and later denied the motion. (ECF No. 24.) Thereafter, the parties participated in a Rule 26(f) planning meeting and on July 18, 2024, submitted a report regarding the same. (ECF No. 28.) On January 30, 2025, the parties filed a joint motion to stay (ECF No. 36) asking the Court to stay all litigation so the parties could try to resolve this matter with the assistance of mediator Robert A. Meyer from JAMS. (*Id.*) The Court granted that joint motion and gave the parties until May 21, 2025, to mediate and until May 28, 2025, to submit a notice informing the Court whether mediation was successful. (ECF No. 37.)

The parties participated in a full-day, in-person mediation in Los Angeles, California, on May 21, 2025; the parties mediated in good faith but were unable to reach an agreement; ultimately, Mr. Robert A. Meyer made a mediator’s proposal that was agreed to by both parties. (*See* Exhibit A, Declaration of Michael C. McKay (“McKay Decl.”), ¶

14); (*see also* ECF No. 38.) On May 28, 2025, the parties filed with the Court a joint notice of settlement. (ECF No. 38.)

**E. Discovery**

Following the filing of Defendant's Answer on June 13, 2024, both sides propounded extensive written discovery, including interrogatories, requests for production, and requests for admission. (McKay Decl. ¶ 10.) Defendant provided Plaintiffs with tens of thousands of pages of relevant documents. (*Id.*) In addition, Plaintiffs gathered and reviewed tens of thousands of publicly available documents as well – including thousands of pages of documents that relate to other plans and the prudent administration of retirement plans in general so those materials could be presented in this case to show the Plan here was not administered as a plan of its similar size and characteristics should have been administered. (*Id.*) This was a herculean undertaking. In addition, Plaintiffs retained expert witnesses who also meticulously reviewed the gathered materials, opined on the plan's administration, and calculated Plan damages. (*Id.*)

**F. Settlement Negotiations**

Before seeking the assistance of a mediator, the parties' counsel first engaged in good faith preliminary settlement negotiations, but no meaningful progress was reached. (*Id.* ¶ 12.) The parties' counsel agreed a mediator might be useful under the circumstances. (*Id.*) They also agreed that Robert A. Meyer of JAMS was the best choice to serve as a mediator in this case because Mr. Meyer has an excellent track record in ERISA breach of fiduciary duty cases like this one. (*Id.*) Before participating in the mediation, the parties

prepared and exchanged detailed mediation statements, which included arguments and analyses of the strengths and weaknesses of their respective positions. (*Id.*) Then the parties participated in a lengthy in-person mediation on May 21, 2025, in Los Angeles, California. Again, after nearly a full day of mediating the parties were unable to reach an agreement, both sides were entrenched; just before all was lost, Mr. Meyer made a blind mediator's proposal that was eventually accepted by both parties. (*Id.* at ¶ 14.) The parties then filed a joint notice of settlement. (ECF No. 38.)

**G. The Settlement Agreement**

**1. Settlement Amount**

The Settlement Agreement establishes a Gross Settlement Amount of \$1,900,000 to be paid to the Plan. It is important to emphasize Plaintiffs' claims were brought on behalf of the Plan and the money will be paid to the Plan. The \$1,900,000 recovery represents about 38% of the total potential Plan recovery. After the \$1,900,000 is paid to the Plan, it will be allocated to Plan participants consistent with the Plan of Allocation – as discussed below and as is typical in settlements like this one.

The Gross Settlement Amount (\$1,900,000) will first be used to cover all administrative costs associated with implementing the Settlement; attorney's fees and costs as approved by the Court; any Case Contribution Awards as approved by the Court; the Independent Fiduciary's fees (capped at \$25,000); and the Claim Administrator's fees. (ECF No. 44-2, Settlement Agreement, ¶¶ 5.1, 5.2.) The Net Settlement Amount (anticipated to be about \$1,200,000) will then be distributed according to the Plan of

Allocation. (*Id.* ¶ 5.3.) The Settlement Administrator will be responsible for calculating the amounts payable to Settlement Class members pursuant to the Plan of Allocation. (*Id.*, ¶¶ 5.3, 8.2.1., 8.2.2.)

## **2. Retention of an Independent Fiduciary**

Fiduciary Counselors, Inc. is serving as an Independent Fiduciary to review and consider the Settlement on behalf of the Plan and determine if the Settlement is reasonable and fair for the Plan. (*Id.* ¶ 2.1.) The Independent Fiduciary shall notify the parties of its determination, no later than 10 calendar days after Class Counsel file this motion. (*Id.* ¶ 2.1.2.) The Independent Fiduciary will also opine on the fairness of Class Counsel's motion for fees and costs. (*Id.*) A copy of the Independent Fiduciary's determination report shall be provided to the parties' counsel and will be filed by Class Counsel with the Court immediately upon receipt. (*Id.* ¶ 2.1.6.)

## **3. Attorneys' Fees, Costs, and Case Contribution Awards**

Class Counsel is seeking \$633,333.33 in attorneys' fees, which represents one-third of the \$1,900,000 of the Gross Settlement Amount, plus reasonable litigation costs. Class Counsel is also seeking a Case Contribution Award not to exceed \$5,000 per plaintiff in recognition of the service of the Plaintiffs.

## **4. Release of Claims**

The Settlement requires the Plaintiffs, the Plan, and Class Members to release any and all claims against Defendant for breach of ERISA's fiduciary duties, including all claims asserted or claims that could have been asserted in this action. (ECF No. 44-2,

Settlement Agreement, ¶¶ 1.37, 7.1.) The scope of the release is typical in ERISA settlements like this one and will be scrutinized and opined on by the Independent Fiduciary.

#### **5. CAFA Compliance**

As required by the Settlement Agreement (ECF No. 44-2, § 2.5), Defendant prepared and sent notices to the Attorney General of the United States and to the Attorneys General of all states in which Class Members reside, in accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 (“CAFA”). None of the government actors objected to the Settlement.

#### **6. The Court Approved Notice Plan Was Implemented**

The Settlement Agreement provides for notice to Settlement Class members consistent with due process and provides an opportunity for Settlement Class members to object to final approval of the Settlement. The Settlement notice procedure included mailing the Settlement notice to the last known address of each Settlement Class member. Additionally, notice was also provided via e-mail (in addition to U.S. Mail) to those Class Members whose email addresses are known. These methods were particularly effective here because most Settlement Class members regularly receive documents from Defendant via mail and/or email about their individual accounts in the Plan.

On September 23, 2025, the Settlement Administrator created a mailing list of 44,036 records containing Settlement Class members’ names, addresses, Social Security numbers, and account information. (Exhibit D, ALC Decl. ¶ 3.) After removing duplicates,

the Settlement Administrator identified 44,012 unique Settlement Class members. The Settlement Administrator then used multiple tools to ensure address accuracy, including the USPS National Change of Address system, skip-tracing, and manual updates from class members. (*Id.*)

On October 29, 2025, the Settlement Administrator mailed Court-approved notices of the Settlement to all 44,012 Settlement Class members, and also emailed the notice to 30,239 members, with 29,775 emails successfully delivered. (*Id.* ¶ at 4.) It then handled all returned mail, updating addresses where provided by USPS and re-mailing those Notices, while conducting additional address searches for items returned without forwarding information. (*Id.* ¶ at 4.) Of the 44,012 Notices originally mailed, 2,228 were returned, 1,980 were re-mailed to updated addresses, 97 of those re-mailed notices were returned again, and 345 notices were ultimately deemed undeliverable. (*Id.* ¶ at 5.) Overall, the Settlement Administrator delivered 99.22% of all notices, reflecting a comprehensive and diligent noticing effort. (*Id.* ¶ at 6.) The Settlement Administrator also published the website [www.olddominionerisasettlement.com](http://www.olddominionerisasettlement.com) where the notice, more information about the case, and an array of case documents were available to Settlement Class members.

## 7. The Class Members' Reactions to the Settlement

The deadline for Settlement Class members to object to the Settlement is December 26, 2025. (*Id.* at ¶ 8.) To date, no objections have been made to the Settlement. (*Id.* at ¶ 8.) The opposite is true. Class Counsel spoke with several hundred Settlement Class members who received the notice, visited the settlement website, and telephoned Class

Counsel with questions about the Settlement, all of the Settlement Class Members with whom Class Counsel spoke with enthusiastically supported the Settlement. (McKay Decl. ¶ 21.) Such a positive reaction from more than 44,000 Settlement Class members weighs heavily in support of the Settlement.

#### **H. Work Related to Settlement Approval and Administration**

Class Counsel have spent considerable time in the Settlement approval process, including drafting briefs and supporting documents for the preliminary and final approval motions. (McKay Decl. ¶ 21.)

Class Counsel have also already spent considerable time related to Settlement administration even though the Settlement has only been preliminarily approved. (*Id.* ¶ 21.) They worked and continue to work closely with the Settlement Administrator to effectuate the notice of the Settlement to the Settlement Class. (*Id.* ¶ 22.)

After the notice was sent to the Settlement Class, Class Counsel received and responded to hundreds of telephone calls from Settlement Class members concerning the Settlement. (*Id.* ¶ 23.) Class Counsel expect to continue assisting Settlement Class members with inquiries going forward. Class Counsel will also prepare for and attend the final approval hearing. This time is not included in Class Counsel's current lodestar.

### **III. THE COURT SHOULD AWARD THE REQUESTED FEES AND COSTS**

#### **A. The Percentage of Recovery Method with a Lodestar Cross-Check is Appropriate for Evaluating an Attorneys' Fees Request in this Case.**

In a case such as this where a common fund has been created, district courts in this Circuit generally employ the percentage-of-recovery method with a lodestar cross-check.

*See Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 681 & n. 6 (D. Md. 2013) (“[u]sing the percentage method, cross-checked by the lodestar method reduces the risk that the amount of the fee award either overcompensates counsel in relation to the class benefits obtained or undercompensates counsel for their work” (internal quotation marks and citations omitted)); *Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473 (D. Md. Jan. 28, 2020) (applying percentage-of-recovery method and lodestar cross-check in similar ERISA class action brought on behalf of defined contribution plan participants).

District courts have analyzed the following seven factors to determine the reasonableness of a percentage-of-recovery fee request:

the results obtained for the class; (2) the quality, skill, and efficiency of the attorneys involved; (3) the risk of nonpayment; (4) objections by members of the class to the settlement terms and/or fees requested by counsel; (5) awards in similar cases; (6) the complexity and duration of the case; and (7) public policy.<sup>1</sup>

“Importantly, fee award reasonableness factors need not be applied in a formulaic way because each case is different, and in certain cases, one factor may outweigh the rest.”

*Singleton*, 976 F. Supp. 2d at 682.

---

<sup>1</sup> *Singleton*, 976 F. Supp. 2d at 682 (citations and quotation omitted); and *Hutton v. Nat'l Bd. of Exam'rs in Hutton v. Nat'l Bd. of Exam'rs in Optometry, Inc.*, No. CV JKB-16-3025, 2019 WL 3183651 (D. Md. July 15, 2019) (applying seven factors to evaluate attorneys' fees request in a Rule 23 case).

**B. Each of the Seven Factors Supports the Fee Request**

**1. The Results Obtained for the Settlement Class**

The results obtained for the Settlement Class are excellent under the circumstances. If this case went to trial, Defendant would have attempted to demonstrate that it maintained an objectively prudent process for selecting and monitoring the Plans' investment options and recordkeeping expenses. Defendant would likely argue that it prudently relied upon the advice of advisors, that it met regularly to consider the Plan's administration, and that it complied with the Plan's investment policy statements. Defendant would also likely argue that the Plan offered a diversified portfolio of investment options. With respect to Defendant's decision to offer investment options that had higher cost share classes than investment options with lower cost share classes, Defendant would likely have argued that a portion of the high-cost share class fees were credited back to the Plan and used to pay for Plan administrative services. In light of such credits, Defendant would have attempted to show that the net expense of the investments with high-cost share classes were actually lower than low-cost share class investment options. This would have been a difficult and complex argument for both parties to present to the Court.

With respect to Plaintiffs' allegations of excessive recordkeeping fees, Defendant would likely have argued that recordkeeping fees decreased during the Class Period, which reflects a prudent monitoring process. Furthermore, Defendant would have argued that the Plans' fees were not excessive in relation to the specific services provided to the Plans.

Both sides would have presented expert witness testimony in support of their respective positions.

Plaintiffs faced a risk that they would be unable to establish the Defendant's liability, and, even if able to do so, they faced the further risk that a trier of fact would find no Plan losses, or losses suffered by the Plan were less than the \$1,900,00 achieved by the Settlement.

The Settlement is also a product of a mediator's proposal. As noted above, the parties participated in a full-day, in-person mediation in Los Angeles, California, on May 21, 2025, with Mr. Robert A. Meyer with Jams serving as a mediator. Mr. Meyer is one of the most experienced mediators in the country concerning ERISA actions like this one. He has served as a mediator in hundreds of similar ERISA actions, including by way of one example, the recent \$61 million court-approved settlement in *In re GE ERISA Litig.*, Master File No. 1:17-cv-12123-IT (Dist. Ma.). Mr. Meyer endorsed the Settlement after reviewing case documents, evidence, and spending a full-day mediating with the parties.

Settlement Class members do not have to make a claim. Settlement Class members who have active Plan accounts will have their Settlement proceeds deposited directly into their Plan accounts. That is, the money will be paid to Plan participants' tax deferred retirement accounts, which is another benefit to the Settlement Class. *See Kelly*, 2020 WL 434473, at \*5 (noting the benefit to current participants who will receive their distributions into their tax deferred retirement plan accounts and citing with approval present value estimates of tax deferral by The Investment Company Institute). The Investment Company

Institute estimates that the benefit of the present value of tax deferral for 20 years is an additional 18.6%.<sup>2</sup> This factor also supports the requested attorneys' fees.

## **2. The Quality, Skill, and Efficiency of the Attorneys Involved**

“It is well-established that complex ERISA litigation, such as this, requires special expertise....” *Kelly*, 2020 WL 434473 (internal quotation marks omitted). Where “an opponent...is a sophisticated corporation with sophisticated counsel, such as here, additional skill is necessary.” *Id.* at \*10 (internal quotation marks omitted).

Here, the quality, skill, and efficiency of Class Counsel also supports the requested fee award. Class Counsel include some of the most experienced, successful, and active attorneys in the area of complex ERISA class actions and complex class actions generally.

Michael McKay, the founder of McKay Law LLC, has been class counsel in more than 50 ERISA class action lawsuits across the country. (McKay Decl. ¶¶ 3-4.) The following is a sample of ERISA class actions where Mr. McKay has served as class counsel: *Bilewicz v. Fidelity Investments*, (2015) (ERISA breach of fiduciary duty claims, \$9 million class settlement); *Kramer v. Aegon Companies Pension Plan*, No. 13-cv-5492 (W.D. Ky. 2016) (ERISA breach of fiduciary duty claims, \$4 million class settlement); *Whitley v. JP Morgan*, (S.D.N.Y. 2017) (ERISA breach of fiduciary duty claims, \$75 million class settlement); *Daugherty v. University of Chicago*, No. 17-cv-3736 (N.D. Ill.

---

<sup>2</sup> See Peter Brady, *Marginal Tax Rates and the Benefits of Tax Deferral*, Investment Company Institute (Sept. 17, 2013), available at: [http://www.ici.org/viewpoints/view\\_13\\_marginal\\_tax\\_and\\_deferral](http://www.ici.org/viewpoints/view_13_marginal_tax_and_deferral); see also *Abbott v. Lockheed Martin Corp.*, No. 06-701, Doc. 497 at 37 (ECF 47) (S.D. Ill. Apr. 14, 2015) (Report of the special master (citing ICI report)).

2018) (\$6.5 million class settlement); *Pease v. Jackson National*, (ERISA breach of fiduciary duty claims, \$4.6 million class settlement) (2018); *Short v. Brown University*, No. 17-cv-0318 WES (D.R.I. 2019) (\$3.5 million class settlement); *Cannarozzo v. Nemours*, 3:23-cv-00136-BJD-LLL (M.D. Fla. 2025) (motion for preliminary approval pending seeking approval of \$2.275 million class settlement); *Santiago, et al., v. University of Miami*, 1:20-cv-21784-DPG (S.D. Fla. 2021) (\$1.85 million class settlement); *Rzepakoski v. Nova Southeastern University, Inc.*, No. 0:22-cv-61147-WPD (S.D. Fla. 2024) (\$1.5 million class settlement), and *Moon v. E.I. du Pont de Nemours and Company*, No. 1:19-cv-1856-SB (D. Del. 2023) (\$7 million class settlement); Reid v. Sanghi, (breach of fiduciary duty, \$4 million class settlement) (2023); *Thompson v. NCL Corporation*, (breach of fiduciary duty, \$615,000 settlement) (2024); *Gotta v. Stantec Consulting Services, Incorporated*, (breach of fiduciary duty, \$2 million settlement) (2024); *Moler v. University of Maryland Medical System*, (breach of fiduciary duty, \$3.15 million settlement) (2024); *Rzepakoski v. Nova Southeastern University*, (breach of fiduciary duty, \$1.5 million settlement) (2025); *Cevasco v. Allegiant Travel Co.*, (breach of fiduciary duty, \$1.7 million settlement) (2025); *Hagins v. Knight-Swift Transportation Holdings, Inc.*, (breach of fiduciary duty, \$3 million settlement) (2025); *Cannarozzo v. The Nemours Foundation*, (breach of fiduciary duty, \$2.275 million settlement) (2025); *Molla v. Gerdau Ameristeel US, Inc.*, (breach of fiduciary duty, \$1.5 million settlement) (2025).

Brandon J. Hill, a partner at Wenzel Fenton Cabassa, P.A. has been class counsel in more than 40 class action lawsuits across the country. (Hill Decl. ¶ 6.) He has been lead

counsel, or co-counsel, in more than 700 federal lawsuits nationwide. (*Id.* ¶ 5.) The following is are recent ERISA breach of fiduciary class action cases, like this, where Mr. Hill has served as class counsel: *Colon, et al. v. Johnson, et al.*, 8:22-cv-888-TPB-TGW (M.D. Fla. 2024) (\$19 million dollar class settlement); *Cannarozzo v. Nemours*, 3:23-cv-00136-BJD-LLL (M.D. Fla. 2025) (motion for preliminary approval pending seeking approval of \$2.275 million class settlement); *Santiago, et al., v. University of Miami*, 1:20-cv-21784-DPG (S.D. Fla. 2021) (\$1.85 million class settlement); *Molla v. Gerdau Ameristeel US., Inc.*, No. 8:22-cv-02094-VMC (M.D. Fla. 2025) (\$1.5 million class settlement); *Rzepakoski v. Nova Southeastern University, Inc.*, No. 0:22-cv-61147-WPD (ECF No. 108) (\$1.5 million class settlement). (*Id.* ¶ 6.)

Marc Edelman, a partner at Morgan & Morgan, P.A., has been class counsel in more than 20 class actions nationwide. (Edelman Decl. ¶ 5.) He has over 30 years of experience practicing law. (*Id.* ¶ 3.) He has litigated dozens of complex and national class action cases throughout the country, resulting in millions of dollars in recovery for consumers. (*Id.* ¶ 5.) He regularly serves as class counsel in class actions against some of the country's largest and most sophisticated companies, including in the following matters: *Grice v. Pepsi Beverages Company*, No. 1:17-cv-08853-JPO (S.D.N.Y. May 23, 2018); *Hargrett v. Amazon.com DEDC LLC*, No. 8:15-cv-2456-T-26EAJ (M.D. Fla. July 24, 2018); *Gross v. Advanced Disposal Services, Inc.*, No. 8:17-cv-1920-T-36TGW (M.D. Fla. Dec. 10, 2018); *Bulgajewski v. R.T.G. Furniture Corporation (Rooms To Go)*, No. 18-CA-007000 (Fla. 13th Cir.); *Silberstein v. PetSmart, Inc.*, No. 8:19-cv-02800-SCB-AAS (M.D. Fla. Aug. 27,

2020); *Betty Morris, et al., v. US Foods, Inc.*, No. 8:20-cv-105-SDM-CPT (M.D. Fla. July 14, 2021); *Tweedie v. Waste Pro USA, Inc.*, No. 8:19-cv-01827-TPB-AEP (M.D. Fla. Aug. 5, 2021); and *Mendiola v. Home Depot U.S.A., Inc.*, No. 1:20-cv-04027 (N.D. Ga. Oct. 7, 2021). (*Id.*)

While Class Counsel have actively litigated this case, Class Counsel have also been efficient. They employed electronic database technology to facilitate the speedy review of tens of thousands of pages of documents reviewed in this case. Rather than engaging in protracted and risky litigation, Class Counsel – with the assistance of expert witnesses – analyzed the strengths and weaknesses of the Plaintiffs’ claims and Defendant’s defenses and reached a Settlement that will provide immediate benefits to the Plan. Thus, Class Counsel’s time spent in litigating this case is significantly less than would have likely been spent by other less experienced counsel. *See Krueger v. Ameriprise Fin., Inc.*, No. 11-CV-02781 SRN/JSM, 2015 WL 4246879, at \*2 (D. Minn. July 13, 2015) (noting class counsel spent 27,991 hours of attorney time spent litigating ERISA proprietary fund class action).

### **3. The Risk of Nonpayment**

The risk of nonpayment in this complex area of the law is tremendous, particularly in light of multiple adverse precedents in similar excessive fee lawsuits. *Kelly v. Johns Hopkins Univ.*, No. 1:16-CV-2835-GLR, 2020 WL 434473, at \*5 (D. Md. Jan. 28, 2020). Notwithstanding such risks, Class Counsel undertook this case on a wholly contingent basis and took the risk from the outset that they might spend significant time and money pursuing this case, receive no compensation, and be out of pocket for significant expenses if the case

ultimately failed.

In the face of this substantial risk of nonpayment, Class Counsel devoted significant time and resources to litigating this case. By spending time on this case, Class Counsel also necessarily had to forego working on other cases. This factor also supports the requested fees.

4. **Lack of Objections by Class Members to the Settlement Terms, Fees or Expenses Requested by Counsel, or Proposed Service Awards**

Here, the deadline for Class member objections to the proposed Settlement is December 26, 2025. (ALC Decl. ¶ 8). To date, Class Counsel has not received any objections, and none have been filed; the Settlement Administrator has not received any objections either. This factor also supports approval of the attorneys' fees and expenses sought here. *See Feinberg v. T. Rowe Price Grp., Inc.*, 610 F. Supp. 3d 758, 769 (D. Md. 2022) (the fact that no class members objected supported the court's finding that the settlement was adequate); *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 461 (D. Md. 2014) (same).

In addition, the Independent Fiduciary is reviewing the proposed Settlement, including Class Counsel's requested fees and expenses. Class Counsel will file the Independent Fiduciary's report as further support for Plaintiffs' fee application. *See In re United States Sugar, Corp. Litig.*, No. 08-80101-CIV, 2010 WL 11505541, at \*6 (S.D. Fla. Jan. 8, 2010) (granting final approval of ERISA class action settlement where the

independent fiduciary had “no objection to the final approval of the Settlement, nor the attorney’s fees requested”).

## 5. Awards in Similar Cases

A typical fee percentage awarded in ERISA class actions involving defined contribution plans is one-third of the common fund. *See Kelly*, 2020 WL 434473, at \*3 (stating that awarding one-third fee is “common in this circuit” and collecting “excessive fee” ERISA class action cases in string cite); *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1993519, at \*2 (M.D.N.C. May 6, 2019) (awarding attorneys’ fees of one-third of common fund, holding that “[a] one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects a customary fee for like work”); *Clark v. Duke University*, No. 1:16-cv-01044, 2019 WL 2579201, at \*3 (M.D.N.C. June 24, 2019) (M.D.N.C. Jun 24, 2019) (“[a] one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects a customary fee for like work.”); *see also In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litigation*, No. 1:11-cv-784 (N. D. Ga.) (ECF No. 302 ¶21) (awarding as attorney’s fees one third of the settlement fund); *Krueger*, 2015 WL 4246879, at \*1 (awarding a one-third fee and finding that “ERISA is a complex field that involves difficult and novel legal theories and often leads to lengthy litigation”); *Abbott v. Lockheed Martin Corp.*, 2015WL 4398475, at \*2 (S.D. Ill. July 17, 2015) (concluding in ERISA fiduciary breach case, that “[a] one-third fee is consistent with the market rate in settlements concerning this particularly complex area of law”). Thus, this factor thus supports the fees requested.

## 6. The Complexity and Duration of the Case

Courts have recognized that ERISA class actions involving retirement plans are inherently complex, frequently involve novel questions of law, and require devotion of significant resources by Plaintiffs' counsel as well as a high degree of skill. *See Kelly*, 2020 WL 434473, at \*4 (“The size and complexity of the issues before the Court, and the novelty of the litigated claims involving a 403(b) plan, are more than sufficient reasons to support a one-third contingent fee.”); *In re Wachovia Corp. ERISA Litig.*, No. 3:09CV262, 2011 WL 5037183, at \*4 (W.D.N.C. Oct. 24, 2011) (“ERISA litigation of the type presented here is a rapidly evolving and demanding area of the law. New precedents are frequently issued, and the demands on counsel and the Court are complex and require the devotion of significant resources.”) This case is no exception. This factor also unquestionably supports the fees requested.

## 7. Public Policy

Courts have noted that “Congress intended that private individuals would play an important role in enforcing ERISA’s fiduciary duties....” *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 598 (8th Cir. 2009) (quotation marks omitted). Accordingly, there is a strong public policy interest in encouraging skilled attorneys to bring suits enforcing ERISA’s fiduciary requirements. *In re The Mills Corp. Sec. Litig.*, 265 F.R.D. 246, 263 (E.D. Va. 2009) (“The public benefits when capable and seasoned counsel undertake private action to enforce [federal] laws.”).

This factor thus supports the fees requested. *See In re Tyco Int'l, Ltd. Multidistrict Litig.*, 535 F. Supp. 2d 249, 270 (D.N.H. 2007) (citing *In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 359 (S.D.N.Y. 2005) (“[w]ithout a fee that reflects the risk and effort involved in this litigation, future plaintiffs’ attorneys might hesitate to be similarly aggressive and persistent....”).

**B. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees**

“Given that courts in this Circuit approve of the percentage-of-fund method for awarding fees in common fund cases, “[i]t is not necessary for the Court to conduct a lodestar analysis[.]” *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at \*4 (M.D.N.C. Sept. 29, 2016) (quoting *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at \*3 (M.D.N.C. Jan. 10, 2007)). However, courts frequently perform “a lodestar cross-check to confirm that the percentage award is fair and reasonable by determining the hours reasonably expended and then multiplying that amount by the reasonable hourly rate.” *Kelly*, 2020 WL 434473, at \*6.

The lodestar cross-check confirms the reasonableness of Class Counsel’s fee request. To date, Class Counsel has spent a total of 1,143.9 hours developing and prosecuting this case, as is summarized in the table below:

<b>Plaintiffs' Counsel Lodestar</b>		
<b>Firm</b>	<b>Hours</b>	<b>Lodestar</b>
<b>McKay Law, LLC</b>	648.6	\$305,985
<b>Wenzel Fenton Cabassa, P.A.</b>	315.3	\$197,405
<b>Morgan &amp; Morgan, P.A.</b>	180	\$153,000
<b>Totals</b>	<b>1,143.9</b>	<b>\$656,390</b>

(See McKay Decl. ¶¶ 24-25; Hill Decl. ¶¶ 9-11; Edelman Decl. ¶ 9-11.)

When the lodestar method is used only as a cross-check, a court may rely on summaries and need not “exhaustively scrutinize[]” the hours documented by counsel, and “the reasonableness of the claimed lodestar can be tested by the court’s familiarity with the case.” *Kelly*, 2020 WL 434473, at \*6; *Goldberger v. Integrated Res., Inc.*, 209 F.3d 43, 50 (2d Cir. 2000).

With respect to hourly rates, “courts have repeatedly recognized [that] complex ERISA class action litigation, such as this, involves a national market.” *Kelly*, 2020 WL 434473, at \*6; *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1993519, at \*2 (M.D.N.C. May 6, 2019) (“national market rate is appropriate for matters involving complex issues requiring specialized expertise, such as ERISA class actions”). Class Counsel’s then-current rates have been approved by federal courts around the country. The reasonableness of Class Counsel’s present hourly rates is further evidenced by similar ERISA fiduciary breach cases approving similar rates, including one court in this district. *See, e.g., Kelly*, 2020 WL 434473, at \*6 (approving hourly rates from \$650 an hour to \$1,060); *Sims*, 2019 WL 1993519, at \*3 (same).

Accordingly, the lodestar cross-check further confirms the reasonableness of the fees requested, especially given the facts here – as the requested fee represents a negative multiplier. *See, e.g., Kelly*, 2020 WL 434473, at \*7 (approving fees representing a lodestar multiplier of 2.45 and noting that this multiplier is “well within the range routinely approved in this Circuit”); *Kruger*, 2015 WL 6769066, at \*5 (approving 3.69 lodestar multiplier in similar ERISA case and noting that courts have routinely approved multipliers of 4.5 or higher); *Singleton v. Domino's Pizza, LLC*, 976 F. Supp. 2d 665, 689 (D. Md. 2013) (noting that lodestar multipliers “on large and complicated class actions have ranged from at least 2.26 to 4.5”).

#### **IV. CLASS COUNSEL’S OUT-OF-POCKET LITIGATION EXPENSES SHOULD BE REIMBURSED**

“Under Rule 23(h), a trial court may award nontaxable costs that are authorized by law or the parties’ agreement.” *Kelly*, 2020 WL 434473, at \*7; *Sims*, 2019 WL 1993519, at \*4 (same). “Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine.” *Savani v. URS Pro. Sols. LLC*, 121 F. Supp. 3d 564, 576 (D.S.C. 2015). Here, an expense reimbursement award is authorized by the common fund doctrine and permitted by the Parties’ agreement. *Kruger*, 2016 WL 6769066, at \*6; ECF No. 83 ¶¶ 5.2.1, 6.1, 6.2. “Reimbursable expenses include court costs, transcripts, travel, contractual personnel, document duplication, expert witness fees, photocopying, long distance telephone charges, postal fees, and expert witness fees.” *Kelly*, 2020 WL 434473, at \*7 (citation omitted).

As summarized below, Class Counsel request reimbursement of \$34,853.46 in costs and expenses incurred in connection with the litigation. (See McKay Decl. ¶¶ 25-26; Hill Decl. ¶¶ 10-11; Edelman Decl. ¶¶ 10-11.) The submitted expenses were all reasonable, necessary, and directly related to the prosecution of this action. *Id.* They include standard litigation-related costs and expenses such as costs for mediation, Plaintiffs' expert, court filing fees, copying and postage, and mediation. *Id.* They including the following:

- For the McKay firm a total of \$20,602.33 in costs is sought, specifically: \$12,850.00 in expert witness costs; \$4,833.33 in mediation costs; and \$2,919.00 for travel costs.
- For the Wenzel firm a total of \$7,210.80 is sought in costs, specifically: \$402 for the filing fee and \$75.00 service of process fee; \$4,833.33 in mediation costs and; and \$1,900.47 for travel costs.
- For the Morgan firm a total of \$7,040.33 is sought in costs, specifically \$4,833.33 for mediation costs and \$2,207 for travel costs.

Here, Class Counsel were motivated to, and did, keep expenditures low since there was a risk they would not be reimbursed. The costs incurred are significantly lower than those in similar ERISA class actions. *See, e.g., Spano v. Boeing Co.*, No. 06-CV-743-NJR-DGW, 2016 WL 3791123, at \*1, 4 (S.D. Ill. Mar. 31, 2016) (approving \$1.8 million in expenses); *Abbott v. Lockheed Martin Corp.*, No. 06-CV-701-MJR-DGW, 2015 WL 4398475, at \*1, 4 (S.D. Ill. July 17, 2015) (approving \$1.6 million in expenses); *Beesley v. Int'l Paper Co.*, 2014WL 375432, at \*1, 3 (S.D. Ill. Jan. 31, 2014) (approving \$1.6 million in expenses); *George v. Kraft Foods Glob., Inc.*, No. 1:07-CV-1713, 2012 WL 13089487, at \*1, 4 (N.D. Ill. June 26, 2012) (approving \$1.5 million in expenses).

Class Counsel's request for reimbursement of expenses should be granted.

V. **CASE CONTRIBUTION AWARDS SHOULD BE GRANTED TO THE CLASS REPRESENTATIVES**

At the conclusion of a successful class action case, it is common for courts, exercising their discretion, to award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the Class. *Kelly*, 2020 WL 434473, at \*7. “A substantial incentive award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiffs’] efforts.” *Savani*, 121 F. Supp. 3d at 577. Such awards are also warranted because the Class Representatives risked their reputation and alienation from employers or peers “in bringing an action against a prominent company in their community.” *Kruger*, 2016 WL 6769066, at \*6. Further, Plaintiffs who undertake litigation against sophisticated defendants also “undert[ake] substantial risk ... that [the defendant might] pursue[] cost-shifting remedies had a settlement not been reached or Plaintiff[s] not prevailed.” *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1259 (S.D. Fla. 2016).

Plaintiffs made significant contributions and spent significant time, admirably representing the Settlement Class in this litigation. They searched for and produced personal documents, reviewed and approved drafts of pleadings and briefs, and they conferred with Class Counsel at every stage of this litigation. (*See McKay Decl.* ¶ 19.) All also exposed themselves to the risk of adverse career consequences by being involved in a suit against their former or current employer. Accordingly, Plaintiffs seek service awards for each of them in the amount of \$5,000. The requested amount comports with and is less

than the amounts which courts have awarded in similar cases. *See, e.g., Kelly*, 2020 WL 434473, at \*7 (approving \$20,000 service awards to each of eight class representatives in similar ERISA class action); *Sims*, 2019 WL 1993519, at \*4 (approving \$20,000 service awards to each of ten class representatives in similar ERISA proprietary fund class action); *Krueger*, 2015 WL 4246879, at \*3–4 (approving incentive awards of \$25,000).

## **VI. CONCLUSION**

For the foregoing reasons, Plaintiffs respectfully request that the Court grant this Motion and enter the proposed Order granting the Settlement Agreement, including as to the attorneys' fees and costs, and contribution awards sought in this Motion.

Dated: December 12, 2025.

Respectfully submitted,

/s/ Matthew Norris

Matthew Norris (NC Bar No. 37206)

**NORRIS LAW FIRM, PLLC**

1776 Heritage Center Drive, Suite 204

Wake Forest, North Carolina 27687

Telephone: (919) 981-4475

Facsimile: (919) 926-1676

Email: matt@lemonlawnc.com

Brandon J. Hill (special appearance)

Luis A. Cabassa (special appearance)

Amanda E. Heystek (special appearance)

**WENZEL FENTON CABASSA, P.A.**

1110 North Florida Avenue, Suite 300

Tampa, Florida 33602

Telephone: (813) 224-0431

Email: bhill@wfclaw.com

Email: lcabassa@wfclaw.com

Email: aheystek@wfclaw.com

Michael McKay (special appearance)  
**MCKAY LAW, LLC**  
5635 North Scottsdale Road, Suite 170  
Scottsdale, Arizona 85258  
Email: mmckay@mckaylaw.us

Marc R. Edelman (special appearance)  
**MORGAN & MORGAN, P.A.**  
201 North Franklin Street, Suite 700  
Tampa, Florida 33602  
Telephone: (813) 223-5505  
Email: medelman@forthepeople.com

*Attorneys for Plaintiffs and the Class*

**CERTIFICATE OF WORD COUNT**

I certify that this Memorandum of Law contains less than 6,250 words.

*/s/ Matthew Norris* \_\_\_\_\_  
Matthew Norris

**CERTIFICATE OF SERVICE**

I certify that on December 12, 2025, the foregoing was electronically filed with the Clerk of the Court via the CM/ECF system, which will send a notice to all counsel of record.

*/s/ Matthew Norris* \_\_\_\_\_  
Matthew Norris

# **EXHIBIT A**

## **MICHAEL MCKAY DECLARATION**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID K. SEALY, KERRY CARTER and  
HARVEY L. DAVIS on behalf of the Old  
Dominion 401(k) Retirement Plan, and all  
others similarly situated,

Plaintiffs,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

**Case No. 1:23-cv-819-TDS-LPA**

**DECLARATION OF MICHAEL MCKAY IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION FOR FINAL APPROVAL, AND UNOPPOSED MOTION  
FOR ATTORNEYS’ FEES AND COSTS AND CASE CONTRIBUTION AWARDS**

I, Michael McKay, declare:

1. I am an attorney duly licensed to practice in the State of Arizona. I am admitted *pro hac vice* in this case. I am counsel for Plaintiffs David K. Sealy, Kerry Carter, and Harvey L. Davis. I make this declaration in support of Plaintiffs’ Motion for Final Approval of the Parties’ Class Action Settlement Agreement. I have personal knowledge of the matters stated herein and, if called as a witness, I could and would competently testify thereto.

2. I founded McKay Law, LLC in 2018. Before founding McKay Law, I was a managing partner in a law firm with offices in San Francisco, Los Angeles, Scottsdale, Houston, Charlotte, and San Juan (Puerto Rico). At my former firm, I focused my practice

on representing individuals in class action lawsuits, often involving ERISA breach of fiduciary duty claims – similar to the claims in this case. I have acted as class counsel in over fifty class action lawsuits. I have represented plaintiffs and certified classes in United States District Courts across the country. I have argued at the Ninth Circuit Court of Appeals. I am admitted to practice before the United States Supreme Court. I have helped to recover over \$1 billion in class action litigation for my clients over the past 20 years.

3. I have extensive experience successfully litigating ERISA class actions. The following is a *sample* of ERISA class actions within the past 10 years where I was class counsel and cases that were resolved via court-approved class settlements: *Bilewicz v. Fidelity Investments*, (ERISA breach of fiduciary duty claims, \$9 million class settlement) (2015); *Kramer v. Aegon*, (ERISA breach of fiduciary duty claims, \$4 million class settlement) (2016); *Whitley v. JP Morgan*, (ERISA breach of fiduciary duty claims, \$75 million class settlement) (2017); *Daugherty v. University of Chicago*, (ERISA breach of ERISA fiduciary duty claims, class settlement \$6.5 million) (2018); *Pease v. Jackson National*, (ERISA breach of fiduciary duty claims, \$4.6 million class settlement) (2018); *Short v. Brown University*, (ERISA breach of duty claims, \$3.5 million class settlement) (2019); *Santiago v. University of Miami*, (ERISA breach of duty claims, \$1.8 million class settlement) (2022); *Moon v. E.I. du Pont de Nemours and Company*, (ERISA breach of fiduciary duty claims, \$7 million class settlement) (2023); *Angelo v. NCL Corporations LTD*, (ERISA breach of fiduciary duty claims, \$615,000 class settlement) (2024); *Gotta v. Stantec*, (ERISA breach of fiduciary duty claims, \$2 million class settlement) (2024);

*Moler v. University of Maryland Medical System*, (ERISA breach of fiduciary duty claims, \$3.25 million class settlement) (2024); *Rzepkoski v. Nova Southeastern Univ.*, (ERISA breach of fiduciary duty claims, \$1.5 million class settlement) (2025); *Cevasco v. Allegiant Travel Co.*, (ERISA breach of fiduciary duty claims, \$1.9 million class settlement) (2025); *Molla v. Gerdau Ameristeel US, Inc.*, (\$1.5 million class settlement) (2025); *Hagins v. Knight-Swift Transportation Holdings, Inc.*, (breach of fiduciary duty, \$3 million settlement) (2025); *Cannarozzo v. The Nemours Foundation*, (breach of fiduciary duty, \$2.275 million settlement) (2025); *Molla v. Gerdau Ameristeel US, Inc.*, (breach of fiduciary duty, \$1.5 million settlement) (2025).

4. The following are representative consumer class action lawsuits where I was counsel of record and settled on a court approved class wide basis: *In re Conseco Life Ins. Co. Cost of Ins. Litig.*, (cost of insurance class action, \$400 million settlement) (2008); *In re: Ins. Brokerage Antitrust Litig.*, (cost of insurance class action, \$121 million settlement) (2009); “Senior Annuity” cases, (class actions against insurance companies for deceptive annuity sales practices, class settlements in the aggregate value between \$552 million and \$1.2 billion) (2010); “Kitec” cases, (consumer protection class actions against plumbing fitting manufacturer and home builders, settlements in the aggregate valued between \$125 million and \$160 million) (2012); *Theirot v. Celtic Ins.*, (cost of insurance class action, class settlement valued at \$1 million) (2013); “Automobile financing and repossession” cases, (consumer protection class actions in Arizona, Idaho, and North Carolina against automobile finance companies for over charging for credit

insurance and unlawful repossession practices, settlements valued in the aggregate at \$22 million) (2015); “Uber airport fees” cases, (consumer protection class actions against Uber for charging riders airport fees for pick up or drop off service at airports when no such fees were charged by airports, settlement valued at approximately \$2 million) (2016).

5. Along with my co-counsel, I first began investigating the claims in this case in 2022. I want to emphasize the important role my co-counsel played in this case. We have worked cooperatively and efficiently to handle all work in this case. We have been mindful to avoid duplicating work but have collaborated at every stage to ensure the work required to best advocate for the Plaintiffs and the Plan was accomplished with the utmost skill and proficiency. The work performed in this case since 2022 was extensive and laborious. Before filing this case, my co-counsel and I conducted significant, in-depth analysis into Plaintiffs’ claims, the administration of the Plan (investments and expenses), along with the administration of similar plans (which Defendants always demand Plaintiffs identify as comparators in pleadings, ostensibly to satisfy Rule 12(b)(6) pleading requirements.) This work required the review and analysis of tens of thousands of pages of documents and extensive consultations with industry experts. This was all done before a complaint was even drafted.

6. By way of further information, my co-counsel and I carefully scrutinized all of the available Plan documents and information relating to the Plan’s investments, fees, and general administration, including thousands of pages of documents. We

compared this information with other similar retirement plans. We conducted extensive legal research to ensure that our information and findings comported with the seemingly ever shifting pleading requirements of courts across the country. Even before drafting the initial complaint, we retained and sought the assistance of industry experts to corroborate our findings and to assist us in crafting the complaint, and to develop a litigation strategy to best serve the Plaintiffs, Plan and Plan participants.

7. On September 27, 2023, Plaintiffs commenced this action by filing a class action complaint. (ECF No. 1). Plaintiffs alleged Defendant breached its ERISA fiduciary duties relating to the management, operation, and administration of the Plan, and sought to recover all alleged losses resulting from each breach of duty under 29 U.S.C. § 1109(a), and other equitable relief. (*Id.*)

8. On December 8, 2023, Defendant filed a Motion to Dismiss the Complaint. (ECF No. 13). After the motion was fully briefed, on April 22, 2024, the Court heard oral argument on Defendant's Motion to Dismiss. I traveled to North Carolina from Arizona to argue on behalf of Plaintiffs at the hearing. The Court was gracious and allowed counsel for both sides to present unfettered oral argument in support of their respective positions.

9. Following oral argument, on May 16, 2024, the Court denied Defendant's Motion to Dismiss. (ECF No. 24). Thereafter, the parties participated in a Rule 26(f) planning meeting and on July 18, 2024 and thereafter submitted a report regarding the same. (ECF No. 28).

10. On June 13, 2024, both sides propounded extensive written discovery, including interrogatories, requests for production, and requests for admission. Defendant provided Plaintiffs with tens of thousands of pages of important documents. My co-counsel and I gathered and reviewed tens of thousands of publicly available documents as well. I shared those documents with one of Plaintiffs' expert witnesses who meticulously reviewed the materials, provided valuable insight and analysis, and calculated the Plan's losses.

11. I conferred with Defendant's counsel, Mr. Howard Shapiro, about Plaintiff's anticipated motion for class certification in an effort to reach good faith agreements amongst the parties about class certification. On October 23, 2024, the parties filed a stipulation regarding class certification. In essence, the parties stipulated to class certification. However, the Court informed the parties it would not act on the stipulation and instructed the parties to file a motion for class certification. (ECF No. 35, p. 2).

12. I engaged in very broad preliminary settlement negotiations with Mr. Howard Shapiro, counsel for Defendant. The parties could not reach agreement and determined that a mediator might be useful under the circumstances. We also agreed that Robert A. Meyer of JAMS was the best choice to serve as a mediator in this case because Mr. Meyer has an excellent track record of serving as a mediator in ERISA breach of fiduciary duty cases like this one. Before participating in the mediation, the parties prepared and exchanged detailed mediation statements, which included arguments and analyses of the strengths and weaknesses of their respective positions.

13. On January 30, 2025, the parties filed a joint motion to stay (ECF No. 36) asking the Court to stay all litigation so the parties could try to resolve this matter on a class basis with the assistance of mediator, Robert A. Meyer, from JAMS. The Court granted that motion and gave the parties until May 21, 2025, to mediate and until May 28, 2025, to submit a notice informing the Court whether mediation was successful. (ECF No. 37).

14. The parties mediated this case in Los Angeles, California, on May 21, 2025. Mr. Robert A. Meyer with JAMS served as the mediator. I have mediated several ERISA breach of fiduciary duty cases with Mr. Meyer serving as the mediator. In my professional experience, Mr. Meyer is possibly the most qualified and most effective mediator in the country concerning ERISA breach of fiduciary duty claims. He is forceful and effective. The parties spent the better part of a full day mediating in good faith but no agreement was reached. At the end of the day, Mr. Meyers ultimately made a blind mediator's proposal that was accepted by both parties, resulting in the instant proposed Settlement. On May 28, 2025, the parties filed with the Court a joint notice of settlement. (ECF 38).

15. The Settlement consists of a gross settlement amount of \$1,900,000. The Settlement provides an immediate benefit to the Settlement Class in the form of a large cash payment.

16. I estimate the potential reasonable total monetary recovery for the Class in this case is roughly \$5 million. The \$1,900,000 monetary recovery represents about 38% of the potential monetary recovery. In my experience this is an excellent recovery.

17. I believe that Plaintiffs' claims are strong, but I also recognize that those claims are subject to potential defenses and counterarguments. I considered the risks and delays potentially caused by the legal and factual defenses asserted by Defendant. I also considered the fact that this case raises certain issues that have an unpredictable outcome. There is also the possibility of appeals and a significantly delayed resolution no matter who prevails at trial.

18. My co-counsel and I have the resources to continue to vigorously litigate this case on behalf of the Class and we are committed to continuing to do so. I have never been found by any court to lack the qualifications or ability to serve as class counsel.

19. I believe the Plaintiffs are adequate Class representatives. They have at all relevant times sought to protect the interests of the Class in this action. I am not aware of any conflicts of interest the Plaintiffs may have with any Class Member. They each spent considerable time representing the Class, including producing documents, reviewing drafts of pleadings and briefs, and monitoring the progress of the litigation.

20. I am of the opinion that the proposed settlement is fair, reasonable, adequate, and is in the best interest of the class in light of all known facts and circumstances.

21. I have spent substantial time guiding this settlement through the approval process, including significant work drafting the briefs and supporting papers for both the preliminary and final approval motions.

22. I worked with the Settlement Administrator, American Legal Claim Services, LLC (“American Legal”) to ensure that Class Members received the Court-approved Notice of Settlement.) American Legal has provided periodic updates to me of expenditures made in connection with administration of the Settlement, and it has provided any and all information that was requested by the parties or their counsel.

23. I fielded hundreds of telephone calls and emails from hundreds of Class Members who received the Notice of Settlement and wanted to discuss the Settlement. All of the Class Members I spoke to were pleased with the Settlement and provided positive feedback. I am not aware of any Class Members who objected to the Settlement. I also independently confirmed that as of the date of this declaration, American Legal has not received any objections either.

24. Below is a summary of time spent by my firm on this case through December 1, 2025. The hourly rates used in the lodestar calculation are consistent with my firm’s actual billing rates. The time reflected below was time actually spent in the prosecution of this case. I, and others at my firm, were careful not to expend unnecessary hours and not to duplicate work.

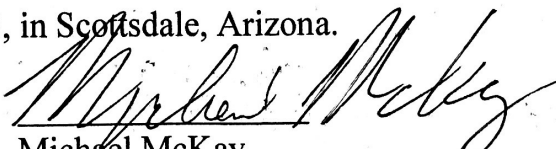
**Hours and Lodestar**  
Inception through December 12, 2025

<b>Timekeeper</b>	<b>Professional Status and Law School Graduation year</b>	<b>Hours</b>	<b>Rate</b>	<b>Total Lodestar</b>
McKay, Michael	Partner (2004)	391.7	\$650	\$254,605
Moysh, Kelly	Paralegal	192.5	\$200	\$38,500
Venieris, George	Paralegal	64.4	\$200	\$12,880
<b>Grand Total</b>				<b>\$305,985</b>

25. My firm advanced substantial costs to prosecute this case on behalf of the Class. If there had been no recovery, my firm would not have recovered any of the advanced costs. The expenses incurred pertaining to this case are reflected in the books and records of my firm. All of the expenses incurred were reasonable and necessary to the prosecution of this case.

26. The expenses that my firm seeks to recover are the same types of expenses that my firm charges hourly fee-paying clients. They include: expert witness fees (\$12,850.00); mediation costs (\$4,833.33); travel costs (\$2,919.00). The costs my firm is seeking total \$20,602.33.

I declare under the penalty of perjury and the laws of the United States of America and the State of Arizona that the foregoing is true and correct and that this declaration was executed on the December 12, 2025, in Scottsdale, Arizona.

  
 Michael McKay

# **EXHIBIT B**

**AMERICAN LEGAL CLAIMS, LLC  
DECLARATION**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID K. SEALY, KERRY CARTER and  
HARVEY L. DAVIS on behalf of the Old  
Dominion 401(k) Retirement Plan, and all  
others similarly situated,

Plaintiffs,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

Case No. 1:23-cv-819-TDS-LPA

---

**DECLARATION OF AMERICAN LEGAL CLAIM SERVICES, LLC  
REGARDING DUE DILIGENCE IN NOTICING**

I, Mark Unkefer, declare as follows:

1. I am a competent adult, over the age of eighteen, and this declaration is based on my personal knowledge.
2. I am a Case Manager for American Legal Claim Services, LLC (“ALCS”).
3. **Class List Receipt and Processing:** On or about September 23, 2025, ALCS processed the data file to produce the mailing list (“Class List”) containing 44,036 records with names, addresses, SSN, and account information. ALCS reviewed and processed the data. The files represented 44,012 class members after duplicates were merged for Noticing purposes. Throughout the noticing process, ALCS utilized several means of ensuring the most accurate mailing addresses for class members. These methods included National Change of Address through the USPS, skip-tracing, and manual updates from class members.
4. **Initial Class Notice:** On October 29, 2025, ALCS mailed the Notice of Settlement (“Notice”), substantially in the form approved by the Court (attached hereto as Exhibit A), to 44,012 class members. On October 29, 2025, ALCS also emailed the Notice to 30,239 class members. 29,775 emails were deemed to be successfully delivered.
5. **Returned Mail Handling:** ALCS processed all Notices returned by USPS. A minority of the return mail included an updated address provided by USPS. For these, the class member addresses were updated, and the Notice was re-mailed to the updated address provided. The remainder of the mail returned by USPS did not contain an updated address (“UAA”). For these, ALCS conducted address searches using a nationally recognized location service to attempt to locate new addresses for these class members. Of the 44,012 Initial Notices mailed, 2,228 were returned by USPS as of the date of this declaration. Of those 2,228 returned, 1,980 were remailed to updated addresses. 97 of those remails were returned by USPS. 345 Notices have been deemed undeliverable.

6. **Noticing Campaign Summary:** The following is a summary of the noticing, as of the date of this Declaration:
- Total Class Members: 44,012
  - Initial Notices mailed via USPS: 44,012
  - Initial Notices returned by USPS: 2,228
  - Notices remailed via USPS: 1,980
  - Rемаiled Notices returned by USPS: 97
  - Notices deemed undeliverable: 345
  - Percentage of Notices deemed delivered: **99.22%**
7. **Exclusions:** This class was preliminarily certified as a mandatory class.
8. **Objections:** The Notice instructed those who wish to object to the proposed settlement to send a written objection to the Court Clerk, Plaintiff's Counsel, and Defendant's Counsel. It further states that objections must be postmarked by December 26, 2025. As of the date of this declaration, ALCS is not aware of any objections to the proposed settlement.
9. **Website:** ALCS created a case website [www.OldDominionERISASettlement.com](http://www.OldDominionERISASettlement.com) that provided further information as stated in the Notice. The website contained sections for important Court documents, key dates, and answers to frequently asked questions. Class members also had an opportunity to update their address.
10. **Toll-Free Telephone:** ALCS established a toll-free telephone line (800-687-0139) for Class members to contact for additional information about the settlement.

I declare under penalty of perjury pursuant to the laws of the State of Florida that the foregoing is true and correct to the best of my knowledge. Executed on December 3, 2025, in Jacksonville, Florida.

  
Mark Unkefer

# Exhibit A



<b>YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT</b>	
<b>You can do nothing.</b> (No action is necessary to receive a payment.)	If the Settlement is approved by the Court and you are a Member of the Settlement Class entitled to a payment under the Plan of Allocation, you need not do anything to receive a payment.
<b>You can submit an objection.</b> (It must be postmarked by December 26, 2025.)	If you wish to object to any part of the Settlement, you may write to the Court and Counsel and explain why. For more information and where to send your objection, see Question 13, below.
<b>You can appear at the Final Fairness Hearing on January 27, 2026.</b>	If you submit a written objection to the Settlement before the Court-Approved Deadline, you may (but do not have to) speak in Court about the fairness of the Settlement.

These rights and options—**and the deadlines to exercise them**—are explained in this Notice. Information concerning your individual share of the Net Settlement Amount will not be available for a number of months *after* the Court grants Final Approval of the Settlement and any appeals are resolved. Thank you for your patience.

### SUMMARY OF CASE

As described in more detail below, Plaintiffs’ Class Action Complaint (ECF No. 1) alleges that Defendant breached fiduciary duties owed to participants in and beneficiaries of the Old Dominion 401(k) Retirement Plan, and each of its predecessor plans or successor plans, individually and collectively, and any trust created and attendant to all such plans (collectively, the “Plan”) during the Class Period. Defendant denies these allegations. Copies of the Settlement Agreement and many other documents related to the Settlement are available at [www.OldDominionERISASettlement.com](http://www.OldDominionERISASettlement.com).

### SUMMARY OF SETTLEMENT

The Settlement Agreement provides that Defendant will pay \$1,900,000.00, which will be deposited into an account called the Qualified Settlement Fund. After payment of attorneys’ fees and litigation costs, and any expenses related to administration of the Settlement, the amount remaining in the Qualified Settlement Fund shall constitute the Net Settlement Amount and will be allocated among Members of the Settlement Class according to a Plan of Allocation to be approved by the Court.

### STATEMENT OF POTENTIAL OUTCOME OF THE ACTION

Class Counsel believe that the claims against Defendant are well-grounded in law and fact and that breaches of fiduciary duty under ERISA occurred in this case. However, as with any litigated case, Members of the Settlement Class would face an uncertain outcome if the Action were to continue against Defendant. Continued litigation of the Action could result in a range of possible recoveries, including a judgment or verdict greater or less than the recovery under the Settlement Agreement, or no recovery at all.

Class Counsel believe that this Settlement reflects a reasonable compromise considering the range of possible outcomes. Class Counsel believes that the Settlement is preferable to continued litigation and is in the best interest of the Members of the Settlement Class because the Settlement provides certainty with respect to the amount of recovery and results in a prompter recovery.

Throughout this litigation, Defendant has denied and continues to deny the claims and contentions alleged by Plaintiffs. Defendant has strong defenses. Nevertheless, Defendant has concluded that it is desirable for the Action to be fully and finally settled as to it and the other Releasees on the terms and conditions set forth in the Settlement Agreement.

The Court has not ruled in favor of either side. Both sides agreed to the Settlement to ensure a resolution and avoid the cost and risk of further litigation.

### **STATEMENT OF FEES AND EXPENSES INCURRED BY AN INDEPENDENT FIDUCIARY AND THE SETTLEMENT ADMINISTRATOR**

An Independent Fiduciary is evaluating the Settlement and will be asked to authorize the Settlement on behalf of the Plan. The fees and expenses incurred by the Independent Fiduciary (including fees and expenses incurred by consultants, attorneys, and other professionals retained or employed by the Independent Fiduciary) in evaluating the Settlement on behalf of the Plan, up to \$25,000, will be deducted from the Gross Settlement Amount.

A Settlement Administrator has been engaged to mail the notice to the Members of the Settlement Class, administer the Settlement, and allocate the Net Settlement Amount among Members of the Settlement Class. The fees and expenses for the Settlement Administrator will be paid from the Gross Settlement Amount.

### **STATEMENT OF ATTORNEY’S FEES AND EXPENSES SOUGHT IN THE ACTION**

Class Counsel will submit a fee petition to the Court in which they will ask the Court to award them attorneys’ fees in an amount not to exceed 33% of the Gross Settlement Amount, plus reimbursement of out-of-pocket costs and expenses advanced by Class Counsel and reasonably incurred in prosecuting the Action.

### **QUESTIONS AND ANSWERS**

#### **1. Why did I receive a notice in the mail?**

You received this Notice because you or someone in your family is or may have been a participant in or a beneficiary of the Plan at some time between October 1, 2016 through December 31, 2025.

The Court ordered this notice to be sent to you because you have a right to know about the Settlement and all the options available to you regarding the Settlement before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any objections and appeals are resolved, the Net Settlement Amount will be allocated among Members of the Settlement Class according to a Court-approved Plan of Allocation.

The Court in charge of this case is the United States District Court for the Middle District of North Carolina. The individuals who sued are called the “Plaintiffs,” and the party they sued is called the “Defendant.” The legal action that is the subject of this notice and the Settlement is titled *Sealy, et al., v. Old Dominion Freight Line, Inc.*, Case No. 1:23-cv-819-TDS-LPA.

#### **2. What is the Action about?**

The Action claims that the Defendant was a fiduciary to the Plan and violated fiduciary duties of prudence under ERISA that it owed to the Plan’s participants and beneficiaries. Plaintiff alleges Defendant breached certain fiduciary duties by causing the Plan to incur higher administrative fees and expenses than reasonable and necessary. Plaintiffs also allege Defendant breached certain fiduciary duties by selecting and continuing to offer certain investment options to the Plan participants under the Plan’s investment lineups. In the Complaint, Plaintiffs have asserted causes of action for losses they contend were suffered by the Plan as the result of these alleged breaches of fiduciary duty by Defendant.

Defendant denies each and every allegation of wrongdoing made in the Complaint and contends that it has no liability in the Action. Defendant specifically denies the allegations that it breached any fiduciary duty or any other provisions of ERISA in connection with the administrative fees or expenses incurred by the Plan, or the investments in the Plan, and further denies that it in any way failed to act prudently or loyally with respect to the Plan’s participants and beneficiaries.

### 3. Why is this case a class action?

In a class action, one or more plaintiffs called “Class Representatives” sue on behalf of a large number of people who have similar claims. All the individuals on whose behalf the Class Representatives are suing are “Class Members.” One court resolves the issues for all Class Members. In its order setting the Final Fairness Hearing, the Court preliminarily certified the Settlement Class in the Action.

The Class Representatives in this Action, David K. Sealy, Harvey L. Davis, and Kerry Carter, were participants in the Plan during the Class Period and are referred to as the “Plaintiffs.”

### 4. Why is there a settlement?

The Court has not reached any final decision in connection with Plaintiffs’ claims against the Defendant. Instead, Plaintiffs and Defendant have agreed to the Settlement. In reaching the Settlement, they have avoided the cost, risks, time, and disruption of prolonged litigation and trial.

Class Counsel believe that the Settlement is the best option for the Settlement Class Members, as described above in the section entitled “Statement of Potential Outcome of the Action.”

### 5. How do I know whether I am part of the Settlement Class?

The Court has conditionally certified the Settlement allowing it to proceed on behalf of everyone within the following description:

All persons who were participants in or beneficiaries of the Plan from October 1, 2016 through December 31, 2025 (the “Class Period”).

The “Class Period” is defined as October 1, 2016 through December 31, 2025. A person was a participant in or beneficiary of the Plan during the Class Period if they had an account balance in the Plan during such period.

## THE SETTLEMENT BENEFITS

### 6. What does the Settlement provide?

The Settlement provides that Defendant will pay \$1,900,000.00 (the “Gross Settlement Amount”) into an account at a financial institution identified by Class Counsel and/or the Settlement Administrator. The net amount of the Gross Settlement Amount, after payment of Court-approved attorneys’ fees and costs, Case Contribution Awards to the Class Representatives, and any expenses incurred administering the Settlement, will be allocated to the Members of the Settlement Class according to a Plan of Allocation to be approved by the Court if and when the Court enters an order finally approving the Settlement.

### 7. How much will I receive as my payment?

If you qualify, you will receive a *pro rata* share of the Net Settlement Amount. Class Counsel will file a detailed Plan of Allocation in advance of the Final Fairness Hearing. The Plan of Allocation will describe the manner in which the Net Settlement Amount will be distributed to Members of the Settlement Class. In general terms, the Plan of Allocation will provide that each Settlement Class Member’s share of the Net Settlement Amount will be calculated as follows:

A. The Settlement Administrator will calculate an average account balance for each Settlement Class Member based on his or her total annual-ending account balance invested in the Plan for the Class Period (“Average Account Balance”).

B. The Settlement Administrator will sum the Average Account Balances for all Settlement Class Members.

C. The Settlement Administrator will then determine the total settlement payment available to each Settlement Class Member by calculating each such person's pro-rata share of the Net Settlement Amount based on his or her Average Account Balance compared to the sum of the Average Account Balances for all Settlement Class Members.

D. If the dollar amount of the settlement payment to a Settlement Class Member is calculated by the Settlement Administrator to be less than \$50.00, then that Settlement Class Member's payment or pro rata share shall be zero for all purposes.

E. The Settlement Administrator's calculations regarding settlement payments will be final and binding under the Court-approved Plan of Allocation.

F. For Class Members with current, Active Account Balances in the Plan at the time settlement payments are distributed, who are eligible to receive a settlement payment, their payments will be distributed through their Plan accounts.

G. For Former Plan Participants who do not have current, Active Account balances in the Plan at the time settlement payments are distributed, who are eligible to receive a settlement payment, their payments will be distributed by checks written from the Settlement Administrator.

#### 8. How can I get a payment?

If the Settlement is given final approval, you will **not** have to do anything to get a payment from the Settlement if you are entitled to one under the Plan of Allocation.

#### 9. When will I get my payment?

The balance of the Net Settlement Amount will be allocated to Members of the Settlement Class pursuant to the Plan of Allocation after final approval has been obtained for the Settlement, including any appeals. Any appeal of the final approval may take a year or more. Please be patient.

**There will be no payments if the Settlement is terminated.**

The Settlement may be terminated on several grounds, which are described in the Settlement Agreement. In the event any of these conditions occur, there will be no Settlement payment made, and the litigation will resume.

#### 10. Can I opt out of the Settlement?

No. In some class actions, class members have the opportunity to exclude themselves from the Settlement. This is sometimes referred to as "opting out" of the Settlement. Because of the legal issues involved in the Action, however, the class of participants affected by this Settlement has been preliminarily certified as a mandatory class. This means you cannot opt out of the benefits of the Settlement in order to pursue your own claims or for any other reason. **Therefore, you will be bound by any judgments or orders that are entered in this Action, and if the Settlement is approved, you will be deemed to have released Defendant from any and all claims that were or could have been asserted in this case on your behalf or on behalf of the Plan or that are otherwise included in the release in the Settlement, other than your right to obtain the relief provided to you, if any, by the Settlement. This is true whether or not you receive any relief under the Settlement.**

Although you cannot opt out of the Settlement, you can object to the Settlement and ask the Court not to approve the Settlement, as described below.

#### THE LAWYERS REPRESENTING YOU

#### 11. Do I have a lawyer in the Action?

The Court has preliminarily designated the Norris Law Firm, PLLC, McKay Law, LLC, Wenzel Fenton Cabassa,

P.A., and Morgan & Morgan, P.A., as Class Counsel for the Settlement Class. If you want to be represented by your own lawyer, you may hire one at your own expense.

### 12. How will the lawyers be paid?

Class Counsel will file a petition for an award of attorneys' fees and expenses by December 12, 2025, after which a copy will be posted on the settlement website. This petition will be considered at the Final Fairness Hearing. Class Counsel have agreed to limit their application for an award of attorneys' fees to not more than 33% of the Settlement Amount, plus out-of-pocket costs.

You have the right to object to this aspect of the Settlement even if you approve of the other aspects of the Settlement.

### OBJECTING TO THE SETTLEMENT OR THE ATTORNEYS' FEES

You can tell the Court that you do not agree with the Settlement or some part of it.

### 13. How do I tell the Court that I object to the Settlement?

If you are a Member of the Settlement Class, you can object to the Settlement if you disagree with any part of it. You can give reasons why you think the Court should not approve the Settlement. The Court will consider your views. To object, you must send a letter or other written filing saying that you object to the Settlement. Be sure to include the following case caption and notation of: *Sealy, et al., v. Old Dominion Freight Line, Inc.*, Case No. 1:23-cv-819-TDS-LPA (M.D.N.C.) In addition, your objection must also include your name, address, telephone number, signature, and the reasons why you object to the Settlement. Any objection must be signed by the Settlement Class member even if an attorney is retained by the Settlement Class member. **Mail the objection to each of the addresses listed below, postmarked no later than December 26, 2025. You must mail your objection by this date. If you fail to do so, the Court will not consider your objections.** If you plan to speak at the Fairness Hearing, you must send a Notice of Intention to Appear along with your objection, as described below:

<b>COURT CLERK</b>	<b>PLAINTIFFS' COUNSEL</b>	<b>DEFENDANT'S COUNSEL</b>
Clerk of the Court Judge Thomas D. Schroeder U.S. District Court Hiram H. Ward Federal Building 251 N. Main Street Winston-Salem, NC 27101	Wenzel Fenton Cabassa, P.A. 1110 N. Florida Avenue Suite 300 Tampa, Florida 33602	Howard Shapiro Jackson Lewis P.C. 601 Poydras St. Suite 1400 New Orleans, LA 70130

### THE COURT'S FAIRNESS HEARING

The Court will hold a hearing to decide whether to approve the Settlement. You may attend and you may ask to speak, but it is not necessary.

### 14. When and where will the Court decide whether to approve the Settlement?

The Court will hold a Final Fairness Hearing to decide whether to approve the Settlement as fair, reasonable, and adequate. You may attend the Final Fairness Hearing, and you may ask to speak, but you are not required to attend. The Court will hold the Final Fairness Hearing on January 27, 2026, at 10:00 a.m. in Courtroom 2, at the U.S. District Court, Hiram H. Ward Federal Building, 251 N. Main Street, Winston-Salem, NC 27101. In its sole

discretion, the Court reserves the right to continue or reschedule the Final Fairness Hearing or may hold the hearing in person or using videoconference technology. At that hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. If there are objections, the Court will consider them. After the Final Fairness Hearing, the Court will decide whether to approve the Settlement. The Court will also rule on the motions for attorney's fees and expenses and Case Contribution Awards to the Class Representatives.

#### **15. Do I have to come to the hearing?**

No, but you are welcome to come at your own expense. If you send an objection, you are not required to attend the Fairness Hearing and voice your objection in person. If you mail your written objection on time, the Court will consider it when determining whether to approve the Settlement as fair, reasonable, and adequate. You also may pay your own lawyer to attend the Fairness Hearing, but attendance is not necessary.

#### **16. May I speak at the hearing?**

Only if you have previously filed an objection to the Settlement may you ask the Court for permission to speak at the Final Fairness Hearing. To do so, you must send a letter, or other paper called a "Notice of Intention to Appear at Final Fairness Hearing," in *Sealy, et al., v. Old Dominion Freight Line, Inc.*, Case No. 1:23-cv-819-TDS-LPA (M.D.N.C.) Be sure to include your name, address, telephone number, and signature. Your Notice of Intention to Appear must be postmarked no later than January 9, 2026 and be sent to the Clerk of the Court, Class Counsel, and Defendant's counsel at the addresses listed above.

### **IF YOU DO NOTHING**

#### **17. What happens if I do nothing at all?**

If you do nothing and you are a Member of the Settlement Class and the Settlement is approved, you will participate in the Settlement of the Action as described in this notice.

### **GETTING MORE INFORMATION**

#### **18. Are there more details about the Settlement?**

This notice summarizes the proposed Settlement. The complete Settlement is set forth in the Settlement of Class Action Settlement Agreement. You may obtain a copy of the Settlement Agreement on the settlement website, [www.OldDominionERISASettlement.com](http://www.OldDominionERISASettlement.com), or you may request that one be mailed to you by contacting the Settlement Administrator by email at [info@OldDominionERISASettlement.com](mailto:info@OldDominionERISASettlement.com) or by telephone (800) 687-0139.

#### **19. How do I get more information?**

Class Counsel may be reached at: Brandon J. Hill, Wenzel Fenton Cabassa, P.A., 1110 N. Florida Avenue, Suite 300, Tampa, Florida 33602; telephone: (813) 224-0431, email: [bhill@wfcclaw.com](mailto:bhill@wfcclaw.com); or Michael McKay, McKay Law, LLC, 5635 N. Scottsdale Road, Suite 170, Scottsdale, Arizona 85250, telephone: (480) 681-7000. You may also contact the Settlement Administrator at (800) 687-0139 or by email at [info@OldDominionERISASettlement.com](mailto:info@OldDominionERISASettlement.com), or see [www.OldDominionERISASettlement.com](http://www.OldDominionERISASettlement.com). Documents are also available at the office of the Clerk located at the U.S. District Court Courthouse, U.S. District Court, Hiram H. Ward Federal Building, 251 N. Main Street Winston-Salem, NC 27101.

# EXHIBIT C

BRANDON J. HILL DECLARATION

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID K. SEALY, KERRY CARTER and  
HARVEY L. DAVIS on behalf of the Old  
Dominion 401(k) Retirement Plan, and all  
others similarly situated,

Plaintiffs,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

**Case No. 1:23-cv-819-TDS-LPA**

**DECLARATION OF BRANDON J. HILL IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR FINAL APPROVAL, AND UNOPPOSED MOTION  
FOR ATTORNEYS' FEES AND COSTS AND CASE CONTRIBUTION AWARDS**

I, Brandon J. Hill, declare under penalty of perjury as follows:

1. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I make this declaration in support of Plaintiffs' Motion for Final Approval of the Parties' Class Action Settlement Agreement and Motion for Approval of Fees and Costs. I have personal knowledge of the matters stated herein and if called as a witness, I could and would competently testify thereto.

2. I am a partner at Wenzel Fenton & Cabassa, P.A., and counsel in the above-styled case.

3. I have been a member of the Florida Bar since April of 2007, the Illinois Bar since 2010, and District of Columbia Bar since 2011. I have an LL.M. from George

Washington University School of Law in international law, a J.D. from Florida State University College of Law, and two Bachelor's degrees from the University of Kansas.

4. I am admitted in the United States District Courts for the Northern, Middle, and Southern District Courts of Florida, the Northern District of Illinois, the Eastern District of Michigan, the United States District Court of Colorado, and the United States Court of Appeals for the Eleventh Circuit.

5. I have represented employers and employees in all stages of litigation in federal and state courts throughout Florida, and beyond. In the Middle District of Florida alone I have served as co-counsel or lead counsel in 700+ federal cases.

6. I possess the requisite experience necessary to serve as class counsel in this case. I have been appointed as class counsel in multiple class actions, including cases involving a few hundred class members up to nearly half a million class members. Below is a list of class action cases I have been appointed as class counsel by various courts throughout the country:

- *Brown, et al. v. Lowe's Companies, Inc., and LexisNexis Screening Solutions, Inc.*, Case No.: 5:13-CV-00079-RLV-DSC (W.D.N.C) (appointed as co-class counsel in national FCRA class action matter involving 451,000 class members);
- *Speer v. Whole Foods Market Group, Inc.*, 8:14-cv-03035-RAL-TBM (M.D. Fla.) (Fair Credit Reporting Act class action settlement involving 20,000 individuals presided over by Judge Lazzara);
- *Kohler, Kimberly v. SWF Operations, LLC and Domino's Pizza, LLC*, Case No. 8:14-cv-2568-T-35TGH (appointed class counsel in Fair Credit Reporting Act case involving several hundred class members);
- *Hargrett, et al. v. Amazon.com, DEDC, LLC*, 8:15-cv-02456-WFJ-AAS, M.D. Fla. Case No.: 8:15-cv-02456 (appointed as class counsel in FCRA case with 480,000+ class members);

- *Smith, et al. v. QS Daytona, LLC*, Case No.: 6:15-cv-00347-GAP-KRS (M.D. Fla.) (Doc. 45) (appointed as class counsel in FCRA class action involving several hundred class members);
- *Patrick, Nieyshia v. Interstate Management Company, LLC*, Case No. 8:15-cv-1252-T-33AEP (M.D. Fla.) (appointed as class counsel in FCRA class action with approximately 32,000 class members);
- *Molina et al v. Ace Homecare LLC*, 8:16-cv-02214-JDW-TGW (M.D. Fla) (appointed as class counsel in WARN Act case with approximately 500 class members);
- *Moody, et al v. Ascenda, et al.*, Case No. 0:16-cv-60364-WPD (S.D. Fla.) (appointed as class counsel in FCRA class action with approximately 12,000 class members);
- *Mahoney v. TT of Pine Ridge, Inc.*, Case No.: 9:17-cv-80029-DMM (S.D. Fla. Nov. 20, 2017) (served as class counsel in TCPA case with 300,000+ class members).
- *George v. Primary Care Holding Inc.*, Case No. 0:17-cv-60217-BB (S.D. Fla.) (appointed as class counsel in FCRA class action);
- *Vazquez v. Marriott International, Inc.*, Case No.: 8:17-cv-00116-MSS-SPF (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 20,000 class members);
- *Figueroa v. Baycare Healthcare System, Inc.*, Case No.: 8:17-cv-01780-JSM-AEP (M.D. Fla) (served as class counsel in FCRA case involving approximately 2,009 class members);
- *Valdivieso v. Cushman & Wakefield Inc.*, Case No.: 8:17-cv-00118-SDM-JSS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 2,000+ class members);
- *Dukes v. Air Canada*, Case No.: 8:18-cv-02176-TPB-JSS (M.D. Fla) (served as class counsel in FCRA case involving approximately 1,300 class members);
- *Rivera v. Aimbridge Hospitality, LLC*, Case No.: 8:18-cv-02192-EAK-JSS (M.D. Fla) remanded to *Rivera v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in data breach case with 320,000 class members).
- *Blaney v. Aimbridge Hospitality, LLC*, 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 17,00 class members);
- *Cathey v. Heartland Dental, LLC*, 2019-CA-000568, Fourth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 9,800 class members);

- *Harake v. Trace Staffing Solutions, LLC*, Case No.: 8:19-cv-00243-CEH-CPT (M.D. Fla) (served as class counsel in Fair Credit Reporting Act case with 8,700 class members);
- *Hicks v. Lockheed Martin Corporation*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 54,000+ class members);
- *Holly-Taylor v. Acadia Healthcare Company, Inc., et al.*, Case No.: 18-CA-007870, Thirteenth Judicial Circuit in and for Hillsborough County, Florida (served as class counsel in Fair Credit Reporting Act case with 25,00 class members);
- *Ali v. Laser Spine Institute, LLC*, Case No.: 8:19-cv-00261-JSM-TGW (M.D. Fla) (appointed as class counsel WARN Act case involving 500 class members);
- *Rigney et al v. Target Corporation*, Case No.: 8:19-cv-01432-MSS-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 92,000+ class members)
- *Luker v. Cognizant Technologies Solutions U.S. Corporation*, Case No.: 8:19-cv-01448-WFJ-JSS (M.D. Fla) (served as class counsel in wage case with 308 class members);
- *Lyttle v. Trulieve, Inc., et al.*, Case No.: 8:19-cv-02313-CEH-TGW (M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 1,300 class members);
- *Twardosky v. Waste Management, Inc. of Florida, et al.*, 8:19-cv-02467-CEH-TGW(M.D. Fla) (appointed as class counsel in Fair Credit Reporting Act case involving 29,295 class members);
- *Silberstein v. Petsmart, Inc.*, 8:19-cv-02800-SCB-AAS (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 12,000+ class members);
- *Benson v. Enterprise Holdings, Inc. et al.*, Case No.: 6:20-cv-00891-RBD-LRH (M.D. Fla) (appointed as class counsel in WARN Act class action involving 900+ class members);
- *Morris et al v. US Foods, Inc.*, Case No.: 8:20-cv-00105-SDM-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 19,000+ class members);
- *Forsyth v. Lucky's Market GP2, LLC et al*, Case No.: 20-10166 (JTD); Adv. Pro. No. 20-50449 (JTD) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court adversarial proceeding involving hundreds of former employees);
- *Taylor v. Citizens Telecom Services Company, LLC*, Case No.: 8:20-cv-00509-CEH-CPT (M.D. Fla) (appointed as class counsel in deficient COBRA notice case with 16,137 class members);

- *Holmes et al v. WCA Waste Systems, Inc.*, Case No.: 8:20-cv-00766-SCB-JSS (M.D. Fla) (served as class counsel in deficient COBRA notice case with 1,720 class members);
- *Boyd v. Task Management, Inc.*, Case No.: 8:20-cv-00780-MSS-JSS (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 5,500 class members);
- *In re The Hertz Corporation, et al*, Case No.: 20-11218 (MFW) (Del. Bk.) (served as class counsel in WARN Act class action pursued in Bankruptcy court involving 6,000+ class members);
- *Kaintz v. The Goodman Group, Inc.*, 8:20-cv-02115-VMC-AAS (appointed as class counsel in deficient COBRA notice case with 2,889 class members);
- *Gorman v. Whelan Event Staffing Services, Inc., et al.*, Case No.: 8:20-cv-02275-CEH-AEP (appointed as class counsel in Fair Credit Reporting Act case involving 29,000+ class members);
- *Benitez v. FGO Delivers, LLC*, Case No.: 8:21-cv-00221-KKM-TGW (M.D. Fla.) (appointed as class counsel in Fair Credit Reporting Act case involving 9,000+ class members);
- *Lopez v. Ollie's Bargain Outlet, Inc.*, 2020-CA-002511-OC, Ninth Judicial Circuit in and for Pasco County, Florida (served as class counsel in Fair Credit Reporting Act case with 3,500 class members);
- *McNamara v. Brenntag Mid-South, Inc.*, Case No.: 8:21-cv-00618-MSS-JSS (M.D. Fla.) (appointed as class counsel in deficient COBRA notice case with 800+ class members);
- *Johnson v. McDonald's Corp.*, 1:21-cv-24339-FAM (S.D. Fla. Feb. 14, 2023)(ECF. No. 50) (served as class counsel in COBRA class action settlement recently granted final approval by Judge Moreno in case involving over 8,000 class members)
- *Baja v. Costco*, 0:21-cv-61210-AHS (S.D. Fla. Oct. 25, 2022)(ECF. No. 56)(served as class counsel in COBRA class action settlement recently granted final approval by Judge Singhal in case involving over 38,000 class members);
- *Santiago v. Univ. of Miami*, 1:20-CV-21784 (ECF No. 66) (S.D. Fla. April 7, 2022) (served as class counsel in ERISA retirement plan class action settlement involving 38,000 class members);
- *Angelo v. NCL Corporation LTD, et al.*, 1:22-cv-22962-AHS (ECF No. 56) (served as class counsel in ERISA retirement plan class action settlement involving 10,000 class members);
- *Rzepkoski v. Nova Southeastern University, Inc.*, No. 0:22-cv-61147-WPD (ECF No. 108) (served as class counsel in ERISA retirement plan class action settlement involving thousands of class members);

- *Molla v. Gerdau Ameristeel US., Inc.*, No. 8:22-cv-02094-VMC (ECF No. 98) (M.D. Fla. July 8, 2025) (served as class counsel in ERISA retirement plan class action settlement involving thousands of class members);
- *Colon, et al. v. Johnson, et al.*, 8:22-cv-888-TPB-TGW (M.D. Fla. 2024) (\$19 million dollar class settlement);
- *Cannarozzo v. Nemours*, 3:23-cv-00136-BJD-LLL (M.D. Fla. 2025) (motion for preliminary approval pending seeking approval of \$2.275 million class settlement).

7. I support the settlement reached by the Parties in this case as fair, reasonable, and adequate, and ask that the Court approve it.

8. I fielded telephone calls and emails from hundreds of Class Members who received the Notice of Settlement and wanted to discuss the Settlement. All of the Class Members I spoke to were pleased with the Settlement and provided positive feedback. I am not aware of any Class Members who objected to the Settlement. I also independently confirmed that as of the date of this declaration, American Legal has not received any objections either.

9. The time reflected below was time actually spent in the prosecution of this case by me and my staff. I was careful not to expend unnecessary hours and not to duplicate work done by others.

**Reported Hours and Lodestar  
Inception through December 12, 2025**

Timekeeper	Professional Status and Law School Graduation year	Hours	Rate	Total Lodestar
Hill, Brandon J.	Partner (2007)	246.4	\$625	\$154,000
Cabassa, Luis A.	Partner (1997)	36	\$850	\$30,600
Heystek, Amanda E.	Attorney (2001)	18.3	\$600	\$10,980
Ketelsen, Amy	Paralegal	14.6	\$125	\$1,825
<b>Grand Total</b>		<b>315.3</b>		<b>\$197,405</b>

10. My firm advanced substantial costs to prosecute this case on behalf of the Class. If there had been no recovery, my firm would not have recovered any of the advanced costs. The expenses incurred pertaining to this case are reflected in the books and records of my firm. All of the expenses incurred were reasonable and necessary to the prosecution of this case.

11. The expenses that my firm seeks to recover are the same types of expenses that my firm charges hourly fee-paying clients. They include: a total of \$7,210.80 in costs, specifically: \$402 for the filing fee and \$75.00 service of process fee; \$4,833.33 in mediation costs and; and \$1,900.47 for travel costs.

12. I respectfully ask that the Court award Class Counsel attorneys' fees and the reasonable litigation expenses sought.

*Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.*

Dated this 12<sup>th</sup> day of December, 2025.

A handwritten signature in black ink, appearing to read 'BDH', with a horizontal line extending to the right from the end of the signature.

BRANDON J. HILL

# **EXHIBIT D**

**MARC R. EDELMAN DECLARATION**

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF NORTH CAROLINA**

DAVID K. SEALY, KERRY CARTER and  
HARVEY L. DAVIS on behalf of the Old  
Dominion 401(k) Retirement Plan, and all  
others similarly situated,

Plaintiffs,

v.

OLD DOMINION FREIGHT LINE, INC.,

Defendant.

**Case No. 1:23-cv-819-TDS-LPA**

**DECLARATION OF MARC R. EDELMAN IN SUPPORT OF PLAINTIFFS'  
UNOPPOSED MOTION FOR FINAL APPROVAL, AND UNOPPOSED MOTION  
FOR ATTORNEYS' FEES AND COSTS AND CASE CONTRIBUTION AWARDS**

I, MARC R. EDELMAN, declare under penalty of perjury as follows:

1. My name is Marc R. Edelman. Unless otherwise indicated, the facts set forth below are based on my personal knowledge and the opinions set forth herein are my own. I understand that this declaration under oath may be filed in the above captioned action.

2. I am a partner with the law firm of Morgan & Morgan, P.A., and have been with the firm since 2015. Morgan & Morgan is a nationwide trial advocacy law firm, currently employing over nine hundred attorneys. I am a co-manager of the firm's Employment Law practice group. My office is located at 201 N. Franklin Street, Suite 700, Tampa, Florida 33602.

3. I am a licensed attorney in Florida. I have been a member of the Florida Bar since October 1996. I have practiced law for nearly thirty years, more than half of which

have been dedicated to labor and employment law. I have a J.D. from Florida State University College of Law and a bachelor's degree from the University of Florida. For the 10 years before I joined Morgan & Morgan, I was general counsel for a national furniture retailer, overseeing all aspects of compliance and litigation, including the Fair Credit Reporting Act, ERISA, FLSA and Title VII.

4. I am licensed to practice law in the State of Florida and have been admitted *via special appearance* in this case. I have also been admitted to practice in several federal district courts and appellate courts. A list of jurisdictions and courts in which I have been admitted is set forth below:

United States District Court Middle District of Florida  
United States District Court Southern District of Florida  
United States Court of Appeals for the Eleventh Circuit  
United States District Court Western District of Tennessee  
United States District Court Eastern District Michigan  
United States District Court Western District of Wisconsin  
Supreme Court of the State of Florida  
Circuit Courts State of Florida

5. Since joining Morgan & Morgan, I have focused my efforts on employment law and employment-related class action lawsuits prosecuting violations of the Fair Credit Reporting Act and ERISA, including COBRA and breach of fiduciary duty claims on behalf of participants in 401(k) and ESOP plans.

6. I have been named Class Counsel in over twenty five class actions, including: *Graham v. Pyramid Healthcare Solutions*, Case No.: 8:16-cv- 1324-T-30AAS (Dkt.58), (M.D. Fla. June 18, 2017)(Moody, J.); *Coles v. Stateserv Medical of Florida, LLC et al.* No. 8:17-cv-829-T-17-AEP, (M.D. Fla., April 10, 2017) (Dkt. 45); *Fosbrink v. Area Wide*

*Protective, Inc.*, 8:17-cv-01154-JSM-CPT, (M.D. Fla., May 8, 2018) (Moody, J.) (Dkt. 58); *Musa v. SOS Security LLC*, No. 2:17-cv-05681-MCA-SCM (D.N.J., Newark Division, April 16, 2018) (Dkt. 42); *Grice v. Pepsi Beverages Company, et al.*, Case No:1:17-cv-08853-JPO (S.D.N.Y. May 23, 2018); *Gibbs v. Centerplate, Inc., et al.*, No.8:17-cv- 2187-T-17EAK-JSS (M.D.Fla. July 12, 2018); *Hargrett v. Amazon.comDEDCC LLC*, Case No.8:15-cv-2456-T-26EAJ (July 24, 2018); *Gross v. Advanced Disposal Services, Inc.*, No. 8:17- cv-1920-T-36TGW (M.D.Fla. Dec. 10, 2018); *Williams v. Naples Hotel Group*, No: 6:18-cv- 422-Orl-37DCI (M.D.Fla. June 11, 2019); *Lindsey v. Ring Power Corporation*, No.: 18-CA- 007124 (Fla. 13<sup>th</sup> Cir.); *Bulgajewski v. R.T.G. Furniture Corporation, d/b/a Rooms To Go*, No.: 18-CA-007000 (Fla.13<sup>th</sup> Cir.). *Bryant v. Realogy Group, LLC*, No.: 8:18-cv-2572-T-60CPT (M.D.Fla. April 9, 2020); *Bermudez v. CFI Resorts Management, Inc.*, No.: 6:19-cv-1847-Orl- 37DCI (M.D.Fla. August 3, 2020); *Silberstein v. Petsmart, Inc.*, No.: 8:19-cv-02800-SCB-AAS (M.D.Fla. August 27, 2020); *Sharp v. Technicolor Videocassette of Michigan, Inc.*, No.: 2:18-cv- 02325-cgc (W.D.T.N., December 5, 2020); *Smith, et al. v. Kforce, Inc.*, No.: 8:19-cv-02068-CEH-CPT (M.D.Fla. June 28, 2021); *Broughton v. Payroll Made Easy, Inc.*, No.: 2:20-cv-41-NPM (M.D.Fla. July 27, 2021); *Betty Morris, et al. v. US Foods, Inc.*, No.: 8:20-cv-105-SDM-CPT (M.D.Fla. July 14, 2021); *Tweedie v. Waste Pro USA, Inc.*, No.: 8:19-cv-01827-TPB-AEP (M.D.Fla. August 5, 2021); *Mendiola v. Home Depot U.S.A., Inc., et al.*, No.: 1:20-cv-04027 (N.D.G.A. October 7, 2021)(ERISA); *McNamara v. Brenntag Mid-South, Inc.*, No.: 8:21-cv-618-MSS-JSS, (M.D.Fla. November 2, 2022); *Washington v. DialogDirect*, No: 2:21-cv-10445-LVP-RSW (E.D.Mich. April 18, 2022); *Lyttle v. Trulieve, Inc.*, Case No.:

8:19-cv-02313-CEH-TGW (M.D.Fla. Aug. 18, 2022); *Moore v Computer Generated Solutions, Inc.* Case No.: 2022-ca-856 (Thirteenth Circuit Fla. Sept. 21, 2023); *Rodriguez v TZ Insurance Solutions d/b/a Tranzact and Willis Towers Watson, U.S. LLC*, Case No.: 23-ca-401 (Thirteenth Circuit Fla. Aug. 17, 2023); *Cothran v. Adams*, Case No.: 23-cv-00518-CEH-CPT (M.D. Fla. October 24, 2024)(ESOP breach of fiduciary duty action); *Forestal v. SH Group Operations, LLC and Sterling Infosystems, Inc.*, Case No. 23-CA-013634, (Thirteenth Cir. Fla. May 22, 2024); *Stewart v. Baptist Memorial Health Care Corporation*, Case No. 2:21-cv-02377-SHM-cgc (W.D. Tenn. September 30, 2024); *Grant Molla v. Gerdau Ameristeel, U.S. Inc.*, Case No.: 8:22-cv-2094-VMC-SPF, (Middle District of Florida, July 8, 2025)(ERISA breach of fiduciary duty); *Paul Harvey v. Bed Bath & Beyond, Inc., 401(k) Savings Plan Committee*, Case No.: 2:23-cv-20376-CCC-SDA (D.NJ., October 9, 2025)(ERISA breach of fiduciary duty); *Vidal McDowell v. Pluto Acquisition OPCO, LLC*, Case No.: 2:23-cv-12827-RJW-APP (United States District Court Eastern District of Michigan, October 28, 2025).

7. Class Counsel, including co-counsel, have the skills and experience to represent and protect the interests of Class Members.

8. I support the settlement reached by the Parties in this case as fair, reasonable, and adequate, and ask that the Court approve it.

9. The Class Members I have spoken with were pleased with the Settlement and provided positive feedback. I am not aware of any Class Members who objected to the Settlement. I also independently confirmed that as of the date of this declaration, American Legal has not received any objections either.

10. Below is a summary of the estimated time spent by my firm on this case through December 12, 2025.

**Reported Hours and Lodestar  
Inception through December 12, 2025**

<b>Timekeeper</b>	<b>Professional Status and Law School Graduation year</b>	<b>Hours</b>	<b>Rate</b>	<b>Total Lodestar</b>
Edelman, Marc R.	Partner (1996)	180	\$850	\$153,000

11. My firm advanced substantial costs to prosecute this case on behalf of the Class. If there had been no recovery, my firm would not have recovered any of the advanced costs. The expenses incurred pertaining to this case are reflected in the books and records of my firm. The expenses incurred were reasonable and necessary to the prosecution of this case.

12. The expenses that my firm seeks to recover are the same types of expenses typically charged to hourly paying clients. They include mediation costs (\$4,833.33) and travel costs (\$2,207). The total we are seeking is \$7,040.33. I respectfully ask that the Court award Class Counsel attorneys' fees and the reasonable litigation expenses sought.

*I declare under penalty of perjury, under the laws of the United States and the State of Florida, that the foregoing is true and correct.*

Dated this 12<sup>th</sup> day of December, 2025, in Tampa, Florida.

  
\_\_\_\_\_  
MARC R. EDELMAN, ESQ.