

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

James Smith and Jerry Honse, on behalf of themselves and all others similarly situated, and on behalf of the Triad Manufacturing, Inc. Employee Stock Ownership Plan,	)	
	)	
	)	
	)	Civil Action No.: 1:20-cv-02350-FUV
	)	
Plaintiffs,	)	JUDGE FRANKLIN U. VALDERRAMA
	)	
v.	)	MAGISTRATE JUDGE YOUNG B. KIM
	)	
	)	
GreatBanc Trust Company, the Board of Directors of Triad Manufacturing, Inc., David Caito, Robert Hardie, Michael McCormick, Elizabeth J. McCormick, Elizabeth J. McCormick Second Amended and Restated Revocable Living Trust, Michael K. McCormick Second Amended and Restated Revocable Living Trust, David M. Caito Revocable Trust, and First Amended and Restated Robert Hardie Revocable Trust,	)	
	)	
	)	
Defendants.	)	
	)	

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**DECLARATION OF MICHELLE C. YAU IN SUPPORT OF PLAINTIFFS’  
UNOPPOSED MOTION AND INCORPORATED MEMORANDUM OF LAW FOR  
FINAL APPROVAL OF SETTLEMENT AND UNOPPOSED MOTION FOR  
ATTORNEYS’ FEES AND EXPENSE REIMBURSEMENT, SETTLEMENT  
ADMINISTRATION EXPENSES, AND SERVICE AWARDS**

I, Michelle C. Yau, respectfully submit this Declaration in Support of: (1) Plaintiffs’ Unopposed Motion for Final Approval of Settlement; and (2) Plaintiffs’ Unopposed Motion for Attorneys’ Fees and Expense Reimbursement, Settlement Administration Expenses, and Service

Awards. This Settlement,<sup>1</sup> if approved by the Court, will resolve this class action in its entirety. Pursuant to 28 U.S.C. § 1746, I declare as follows:

## **I. INTRODUCTION**

1. I am a partner in the law firm of Cohen Milstein Sellers & Toll PLLC (“Cohen Milstein”), one of the two firms preliminarily approved as Class Counsel for the Settlement Class preliminarily certified by the Court.<sup>2</sup> I am a member in good standing of the Bars of Massachusetts, the District of Columbia, and the Northern District of Illinois. I have led the prosecution of this Action on behalf of the (then putative) class since it was filed in April 2020. Along with Feinberg, Jackson, Worthman and Wasow LLP (“FJWW”), I have acted as Class Counsel throughout the litigation. I have personal knowledge of the facts set forth below and, if called as a witness, I could and would testify competently thereto.

2. I have litigated several class action ERISA cases similar to this one. Based on that experience, I believe strongly that this Settlement is fair and reasonable and should be approved.

3. If the case had not settled, Class Counsel was prepared to complete expert discovery, oppose Defendants’ possible summary judgment motion(s) and *Daubert* motion(s), and prepare for trial.

## **II. SETTLEMENT ADMINISTRATION**

4. Based on class data provided by Defendants, there are approximately 468 Settlement Class Members.

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<sup>1</sup> Capitalized terms not otherwise defined in this Declaration shall have the same meaning ascribed to them in the Settlement Agreement. ECF 145-2.

<sup>2</sup> See Order Granting Plaintiffs’ Unopposed Motion for Preliminary Approval of Settlement and Certification of Settlement Class. ECF 155.

5. In addition to the substantial work Class Counsel completed in litigation, they have also undertaken considerable work in connection with the Settlement and settlement administration. This has included: (a) drafting and negotiating the Settlement Agreement and exhibits thereto; (b) drafting and filing Plaintiffs' Unopposed Preliminary Approval of Settlement and Certification of Settlement Class Motion papers; (c) soliciting and reviewing 5 detailed proposals/bids from potential settlement administrators; (d) conducting negotiations with the settlement administration candidates to ensure that settlement-related expenses were reasonable and known in advance; (e) drafting, editing and reviewing the final drafts of the Class Notice and ensuring that it was timely disseminated; (f) working with the Settlement Administrator, Analytics Consulting, LLC ("Analytics"), to create a settlement website and telephone support line for Settlement Class Members; (g) communicating with Settlement Class Members and the Settlement Administrator about settlement administration issues; (h) soliciting and reviewing 3 detailed proposals/bids from potential Independent Fiduciary firms; (i) communicating with the Independent Fiduciary and providing it with information in connection with its review of the proposed release on behalf of the Plan; and (j) preparing the Final Approval Motion and all related papers.

6. Class Counsel's work on this matter remains ongoing. Class Counsel will: (a) draft and file the last Court submission concerning the Settlement due on August 11, 2023; (b) continue to respond to questions from Settlement Class Members; (c) attend the Fairness Hearing on August 22, 2023 and address any objections or questions from the Court; and (d) if final approval is granted, supervise the effectuation of the Settlement. In addition, Class Counsel will continue to take any other actions necessary to support the Settlement until it is Final.

**III. ATTORNEYS' FEES AND EXPENSE REIMBURSEMENT, SETTLEMENT ADMINISTRATION EXPENSES, AND SERVICE AWARDS**

7. The combined attorneys' fees and expense reimbursement, settlement administration expenses, and service awards amount requested across all Class Counsel is \$2,500,000.00, which represents only 16.8% of the Settlement's total value. The requested attorneys' fees award is \$2,279,105.00, which represents only 15% of the Settlement's total value.

**A. Work Performed by Cohen Milstein**

8. As of July 11, 2023, Class Counsel at Cohen Milstein, FJWW, and Stris and Maher LLP ("Stris") expended 4,658 hours and \$3,029,591.00 in attorneys' fees.

9. The work summarized above required the efforts of numerous attorneys and professional staff ("Timekeepers") from Cohen Milstein. I supervised all the work completed by Cohen Milstein attorneys on this case and I supervised the review of fee and expense records to support this Declaration and ensure its accuracy.

10. The below table reflects the lodestar expended by each Timekeeper from the beginning of the investigation until July 11, 2023. I believe that the time billed by the following timekeepers are for the type of work that would normally be charged to a fee-paying client.

<b>Name</b>	<b>Title</b>	<b>Hours</b>	<b>Rate</b>	<b>Lodestar</b>
Michelle C. Yau	Partner	268.50	\$930.00	\$249,705.00
Mary Bortscheller*	Partner	608.35	\$800.00	\$486,680.00
Daniel Sutter	Associate	865.95	\$650.00	\$562,867.50
Caroline E. Bressman	Associate	66.60	\$600.00	\$39,960.00
Laura Older Rockmore*	Associate	554.80	\$550.00	\$305,140.00
Sarah Holz*	Associate	109.95	\$545.00	\$59,922.75
Jamie Bowers*	Associate	98.00	\$585.00	\$57,330.00
Other Attorneys	Various	49.95	Various	\$46,757.50
Melita Wallace	Law Fellow	3.80	\$450.00	\$1,710.00
Diane Kee*	Law Fellow	13.85	\$405.00	\$5,609.25
Connor Grant-Knight*	Paralegal	3.90	\$290.00	\$1,131.00
Doron Hadar	Paralegal	787.55	\$350.00	\$275,642.50
Dirk Hamel*	Paralegal	87.90	\$310.00	\$27,249.00

Tamara Haynes*	Paralegal	45.90	\$310.00	\$14,229.00
Ciara O'Neill*	Paralegal	60.50	\$350.00	\$21,175.00
Sydney Greenman	Paralegal	52.50	\$350.00	\$18,375.00
Jillian Pincus	Paralegal	24.30	\$350.00	\$8,505.00
Norma Canas Mejia*	Paralegal	1.50	\$325.00	\$487.50
<b>TOTAL</b>		<b>3,703.80</b>		<b>\$2,182,476.00</b>

11. As reflected in the above summary, Cohen Milstein attorneys and paralegals have expended 3,703.80 hours and \$2,182,476.00 in lodestar pursuing this matter through July 11, 2023. After review of all time entries, some were removed based on billing judgment.

12. The hourly rates for the Timekeepers listed above are their standard rates.<sup>3</sup> Our firm's hourly rates are largely based upon a combination of the title, cost to the firm, and the specific years of experience for each attorney, as well as market rates for practitioners in the field. These hourly rates are the same as, or comparable to, rates submitted by Cohen Milstein in other ERISA class actions and have been approved by courts reviewing the motion for attorneys' fees in connection with settlements or judgments won in favor of Cohen Milstein's class clients.

13. Courts have reviewed the reasonableness of Cohen Milstein's billing rates for purposes of "cross-checking" lodestar against a proposed fee based on the percentage of the fund method, as well as determining a reasonable fee under the lodestar method. Courts have found that the hourly rates used to calculate Cohen Milstein's lodestar were reasonable given Class Counsel's experience. *See, e.g., Ahrendsen v. Prudent Fiduciary Servs., LLC*, 2023 WL 4139151, at \*7 (E.D. Pa. June 22, 2023); *Becker v. Wells Fargo & Co.*, No. 0:20-cv-02016 (KMM/BRT), ECF 285 (D. Minn. Sept. 1, 2022); *Baird v. BlackRock Inst. Tr. Co.*, 2021 WL 5113030, at \*7 (N.D. Cal. Nov. 3, 2021).

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<sup>3</sup> The rates reflected in the above chart are Cohen Milstein's 2023 rates. However, if a Timekeeper left the firm, the rate shown is the historic rate as of the individual's departure date.

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

15. Class Counsel will continue to incur fees in responding to any Class Member inquiries or objections, preparing for and participating in the Fairness Hearing, and otherwise effectuating the Settlement.

16. The retainer agreements that my firm entered into with the Named Plaintiffs in this case are substantially similar. In both, the Named Plaintiffs agreed that my firm could seek reasonable attorneys' fees up to one-third (1/3) of any common fund recovery we achieved on behalf of the Class, plus expenses. Class Counsel is requesting *less* than that amount—15% in attorneys' fees of the total recovery value.

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

18. At the time that we originally agreed to represent the Named Plaintiffs in this litigation, we were aware, based on our prior experience handling ERISA class action litigation, that it could be expensive, hard-fought, and lengthy. ERISA litigation entails significant risks, and it may span years (sometimes decades) and often ends in no recovery after trial.

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

19. For example, Class Counsel defeated a motion to compel arbitration at a time when the law on the intersection of ERISA remedies and the effective vindication doctrine was unsettled. Class Counsel carefully developed their appellate arguments on an important issue given the oft-repeated refrain that the Supreme Court has never actually relied on the effective vindication doctrine to strike an individual arbitration clause.

20. Also, given the risky nature of ERISA class action litigation in general, I was aware that there was a significant likelihood that, after having invested a substantial amount of time and expense, Class Counsel might recover nothing or a fraction of the attorneys' fees they expended in this Action. Until the parties reached a settlement in principle, I understood that there was a significant likelihood that this case could be unsuccessful and that the Class could recover nothing.

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

22. As illustrated by the table above, which shows that Cohen Milstein invested over 3,700 hours of work and approximately \$2.18 million of lodestar in this Action, this substantial investment of time prevented me and others on my team from working on other matters.

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

23. As of July 11, 2023, Class Counsel at Cohen Milstein, FJWW, and Stris have incurred \$180,395.50 in out-of-pocket litigation expenses, which were all documented in the firms' books and records. These expenses were necessary to the prosecution of the case and helped to achieve a successful result for the Class Members. Such expenses included, *inter alia*, court filing fees, postage, online legal research, vendor expenses for electronic discovery storage and review, mediation expenses, transcript and stenography expenses for depositions, and travel expenses in connection with depositions and mediation.

24. The below table summarizes the amount of expenses advanced by Cohen Milstein (grouped by category). I believe that the expenses set forth in the below table are the type and amount that would normally be charged to a fee-paying client.

<b>Description of Expense</b>	<b>Amount</b>
Air Courier & Postage	\$216.25
Phone/Conference	\$109.17
Court Filing Fees	\$1,392.00
Process Server	\$2,595.50
Court Reporter & Transcripts	\$31,153.30
Westlaw, Lexis, Pacer and other online research	\$7,523.33
Database hosting and processing/vendor costs	\$16,935.21
Travel (airfare, ground travel, meals, lodging)	\$4,934.11
Experts	\$64,834.00
Mediation	\$13,626.25
<b>TOTAL</b>	<b>\$143,319.12</b>

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

26. In my professional opinion, and based on my experience prosecuting this litigation and similar ERISA class actions litigation, these expenses were reasonable and necessarily incurred in connection with this case.<sup>5</sup>

**C. Settlement Administration Expenses**

**1. Settlement Administrator (Analytics)**

27. The Parties' Settlement Administrator, Analytics, has performed settlement administration services, including (1) reviewing the Settlement Class Member information provided by Defendants; (2) preparing and mailing the Settlement Notices; (3) searching for valid addresses for any Settlement Class Members whose Notices were returned as undeliverable; (4)

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<sup>5</sup> Details supporting Class Counsel's expense reimbursement request are available upon request of the Court.



establishing a telephone support line and email address for Settlement Class Members; (5) creating and maintaining the Settlement website; and (6) managing the project and communicating with counsel regarding the status of settlement administration.

28. If the Settlement and the instant motion are approved, Analytics will administer the payments of attorneys' fees and out-of-pocket litigation expenses, settlement administration expenses, and service awards.

29. Class Counsel selected Analytics after a competitive bidding process involving five (5) additional settlement administration companies, and Analytics's cost of providing these services has been capped at \$5,500.

## **2. Independent Fiduciary (Fiduciary Counselors)**

30. The Settlement's Independent Fiduciary, Fiduciary Counselors Inc. ("FCI"), is reviewing the Settlement, including (1) the scope of the release of claims; (2) the Settlement recovery and the amount of any attorneys' fees and other sums to be paid from such recovery; (3) whether the Settlement terms are reasonable; and (4) whether the Settlement complies with all relevant requirements set forth in the Department of Labor regulation Prohibited Transaction Exemption 2003-39.

31. Defendants selected FCI, to which Plaintiffs had no objection, as the Independent Fiduciary after a competitive bidding process involving two (2) additional potential independent fiduciaries. The expense of FCI's services will amount to \$20,000, which is in line with other bidders and was lower than the highest bid. Each party will cover one-half of this expense, with Plaintiffs' half coming from the \$2,500,000 attorneys' fees and expenses cash fund.

32. On July 24, 2023, FCI will issue its written determination regarding the terms of the Settlement Agreement, the scope of the releases, and the amount of attorneys' fees and expense

reimbursement, settlement administration expenses, and service awards being requested, among other things.

33. FCI's Independent Fiduciary Report will be posted to the Settlement website for Class Members to review.

34. Class Counsel will also submit a final brief to the Court by August 11, 2023 that provides a copy of the Independent Fiduciary Report and addresses any objections to the Settlement.

**D. Class Representatives**

35. The Class Representatives have loyally and competently represented the Class since they respectively joined the litigation. If they had not pursued the case, there would be no settlement benefits at all for the Class.

36. The Class Representatives spent a significant amount of time and effort in pursuing the litigation on behalf of the Class. The Class Representatives communicated with Class Counsel throughout the litigation, including responding to questions, reviewing the pleadings, preparing for depositions, testifying in depositions, and assessing the settlement.

37. The Class Representatives also have worked to advance the interests of the Class. Among other things, the Class Representatives: (a) reviewed the allegations in the Complaints bearing their names; (b) provided information to counsel in connection with the lawsuit; (c) responded to discovery requests, including interrogatories and requests for the production of documents; (d) were deposed; (e) communicated with counsel regarding the litigation and Settlement; and (f) reviewed the Settlement Agreement.

38. Moreover, both Named Plaintiffs understood their responsibilities as Class Representatives and were prepared to serve the best interests of the Class through trial, if necessary.

39. Given the risks and expense in ERISA litigation, it is highly unlikely that any individual participant would bring this case on an individual basis.

40. The declarations of the two (2) Class Representatives/Named Plaintiffs, James Smith and Jerry Honse, in support of the Final Approval of Settlement and Award of Attorneys' Fees and Expense Reimbursement, Settlement Administration Expenses, and Service Awards, are being filed contemporaneously herewith.

41. Neither Class Representative has interests that are antagonistic to, or in conflict with, the Class.

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

42. Cohen Milstein has received one inquiry concerning the Settlement. The Class Member informed Cohen Milstein that they had updated their mailing address with Analytics and asked about the Settlement value. Cohen Milstein promptly responded to the inquiry. The Class Member did not express any concerns about the Settlement terms.

43. To date, no Class Members have articulated concerns to Class Counsel or Analytics with any aspect of the Settlement.

44. Both Named Plaintiffs approve of the proposed Settlement, as does Class Counsel.

45. Following the issuance of Class Notice, the Settlement Administrator and Class Counsel have received zero objections to date.

#### **V. CONCLUSION**

46. Plaintiffs' Motion for Attorneys' Fees and Expense Reimbursement, Settlement Administration Expenses, and Service Awards and supporting papers, as well as the instant motion and memorandum of law, will be posted to the website [www.TriadESOPsettlement.com](http://www.TriadESOPsettlement.com) on July 17, 2023.

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

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

Executed this 17th day of July, 2023 in Arlington, VA.

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