

In the United States Court of Federal Claims

THE ELECTRICAL WELFARE TRUST
FUND, THE OPERATING ENGINEERS
TRUST FUND OF WASHINGTON, D.C., and
THE STONE & MARBLE MASONS OF
METROPOLITAN WASHINGTON, D.C.
HEALTH AND WELFARE FUND on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 19-353 C

Judge Roumel

**CLASS REPRESENTATIVE ELECTRICAL WELFARE TRUST FUND'S UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT AND
AUTHORIZATION TO DISSEMINATE NOTICE OF SETTLEMENT**

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Class Representative Electrical Welfare Trust Fund (“EWTF” or “Class Representative”) respectfully submits this unopposed Motion, pursuant to Rule 23 of the Rules of the United States Court of Federal Claims (“RCFC” or “Rules”), for entry of the Parties’ agreed-upon [Proposed] Order Granting Preliminary Approval of Settlement and Authorization to Disseminate Notice of Settlement (attached hereto as Exhibit 3) (“Preliminary Approval Order”).

I. PRELIMINARY STATEMENT

After many years of vigorous litigation, the parties have resolved the Exaction Class’s claims against the United States of America (“Government” or “Defendant” and, together with Class Representative, the “Parties”) for a \$169,022,397.28 cash payment pursuant to the terms of the Settlement Agreement (“Settlement”).¹ The Settlement represents a mere 8.75% reduction on the total amount of damages awarded by the Court in its Judgment. It provides the Exaction Class with a prompt recovery of over 91% of their total damages and avoids the risks and delay associated with Defendant’s appeal. EWTF now seeks the Court’s preliminary approval of the proposed Settlement under RCFC 23 so that notice of the Settlement can be provided to Exaction Class members and the Fairness Hearing can be scheduled.

EWTF and Class Counsel believe that the Settlement—reached following well-informed, arm’s-length negotiations with Defendant—provides an exceptional benefit to the Exaction Class given the risks, cost, and delay attendant to continued litigation—namely, Defendant’s pending appeal. While Class Representative and Class Counsel believe their claims against Defendant and

¹ All capitalized terms not defined herein have the meanings ascribed to them in the Settlement Agreement dated February 16, 2024 (“Settlement Agreement”) attached hereto as Exhibit 1. Unless otherwise noted, all emphasis in quotations is added, and internal quotation marks, citations, and footnotes are omitted.

this Court's May 12, 2023 Rule 54(b) Judgment would survive Defendant's challenges on appeal and ultimately be upheld, they also recognize that, in the absence of settlement, they face the risk that litigating the appeal to conclusion might result in a smaller recovery for the Exaction Class, or no recovery at all, and would cause additional delay (and expense) in a case that has already been pending for years.

At the Fairness Hearing, the Court will have before it more extensive submissions in support of the proposed Settlement, and will be asked to determine whether, in accordance with RCFC 23(e)(2), the Settlement is fair, reasonable, and adequate. Entry of the Preliminary Approval Order will begin the process for considering final approval of the Settlement by, among other things: (i) preliminarily approving the Settlement on the terms set forth in the Settlement Agreement; (ii) approving the form, content, and plan for disseminating notice of the Settlement to Exaction Class members; (iii) approving Class Representative's request that JND Legal Administration ("JND"), the administrator that conducted the opt-in notice campaign (described below), be appointed to serve as the administrator for the Settlement; and (iv) setting a date and time for the Fairness Hearing.

For the reasons herein, EWTF submits that the Settlement is an outstanding result for the Exaction Class that warrants the Court's preliminary approval and respectfully requests that the Court enter the Preliminary Approval Order.

II. PROCEDURAL HISTORY

On March 8, 2019, EWTF instituted the Action in the United States Court of Federal Claims ("Court") to recover funds exacted by Defendant in contravention of the Affordable Care

Act (“ACA”). ECF No. 1.² Specifically, the Action alleged that the United States Department of Health and Human Services improperly required self-administered, self-insured employee health and welfare benefit plans to make Transitional Reinsurance Program (“TRP”) contributions for benefit year 2014 pursuant to 42 U.S.C. § 18061 of the ACA. The crux of the Action was that self-administered, self-insured entities (“SISAs”) were required to make TRP contributions despite falling outside of the ACA’s plain statutory language.

Defendant moved to dismiss the Action and for summary judgment on May 7, 2019. ECF No. 6. Following oral argument, on July 30, 2021, the Court entered a Memorandum and Order denying Defendant’s Motion as to the illegal exaction claims of EWTF and SISAs. ECF No. 22.

Thereafter, EWTF pursued discovery regarding the exaction claim and served its initial interrogatories and document requests on Defendant on October 27, 2021 and November 4, 2021, respectively. The Parties met and conferred extensively on the scope of discovery. During the discovery process, the Government identified all SISAs that paid the TRP contribution for benefit year 2014, as well as the amounts of such payments and any offsets (refunds).

² Prior to filing the instant Action, the claims at issue had already been litigated for over two years. EWTF previously filed an action against Defendant in the United States District Court for the District of Maryland in June 2016 (“2016 Action”). The 2016 Action asserted claims under 28 U.S.C. § 1346(a)(1), the Admin. Procedures Act, 5 U.S.C. § 701 *et seq.*, the Due Process Clause, U.S. CONST. amend. V, and the Takings Clause, U.S. CONST. amend. V to recover illegal exactions imposed by the TRP. The 2016 Action was ultimately dismissed by the District Court and the dismissal was subsequently upheld on appeal by the Fourth Circuit Court of Appeals on October 23, 2018. Because its claims were dismissed without prejudice, EWTF was able to bring the Action in this Court. While EWTF’s appeal to the Fourth Circuit was pending, on November 3, 2017, EWTF filed a complaint in this Court asserting substantially similar claims as the 2016 Action (“2017 CFC Action”). The Government moved to dismiss the 2017 CFC Action on the basis that 28 U.S.C. § 1500 deprived this Court of subject matter jurisdiction over Plaintiff’s claims. The parties subsequently stipulated to dismissal of the 2017 CFC Action without prejudice, and this action followed.

After analyzing the discovery produced, EWTF moved for class certification on April 8, 2022. ECF No. 53 (“Class Certification Motion”). While its Class Certification Motion was pending, EWTF filed the operative Second Amended Class Action Complaint on May 2, 2022. ECF No. 59 (“Second Amended Complaint”).

On June 22, 2022, the Court granted EWTF’s Class Certification Motion, certifying an opt-in class of all self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the TRP contribution under Section 1341 of the ACA for benefit year 2014. *EWTF v. United States*, 160 Fed. Cl. 462, 470 (2022). By the same Order, the Court appointed EWTF to serve as Class Representative and Kessler Topaz Meltzer & Check, LLP and McChesney & Dale, P.C. to serve as Class Counsel.

Thereafter, on July 27, 2022, the Court entered an Order approving EWTF’s unopposed plan for providing notice to potential Exaction Class members to inform them of their right to opt into the Action. ECF No. 77. The proposed notice plan designated JND as class action administrator for the opt-in notice campaign.

Class Counsel and JND thereafter engaged in a vigorous notice campaign. Notice was sent to approximately 650 plans identified in Defendant’s records as being self-insured and self-administered. Ultimately, 634 plans opted into the Exaction Class. Class Counsel carefully reviewed and screened all opt-ins to confirm whether each entity was, in fact, a member of the Exaction Class. ECF No. 111. Of the 634 plans that requested to opt into the Exaction Class, a total of 357 plans were ultimately accepted as members of the Exaction Class by Class Counsel and the Court. *Id.*

During this same time, EWTF moved for summary judgment on behalf of the Exaction Class. ECF No. 72. On December 21, 2022, the Court granted EWTF’s Motion for Summary

Judgment on its exaction claim. ECF No. 97. In its Order granting summary judgment, the Court stated that it would “direct entry of judgment on the Class’s illegal exaction claim pursuant to Rule 54(b) upon receiving the certification of final Class membership, which shall contain the name and damages owed to each member of the Illegal Exaction Class.” *Id.*

On May 12, 2023, after receiving the final certification discussed above, the Court issued a Rule 54(b) Judgment in favor of the Exaction Class. ECF No. 124 (“Judgment”). The Judgment awarded a total of \$185,230,024.42 to the Exaction Class, equating to 100% of the TRP contributions paid by Exaction Class members for benefit year 2014.

On June 26, 2023, Defendant filed a timely Notice of Appeal with the United States Court of Appeals for the Federal Circuit (“Federal Circuit”). ECF No. 128. As stated in the Notice, the:

[S]cope of th[e] appeal include[d] the Court’s opinion granting in part and denying in part the Government’s motion to dismiss or, in the alternative, for summary judgment, entered on July 30, 2021 (ECF No. 22); and the Court’s order granting the Exaction Class’s motion for summary judgment, entered on December 21, 2022 (ECF No. 97).

Id.

While the Government’s appeal was pending, the Parties began to explore the possibility of resolving the Action through settlement to avoid the risk and expense of continued litigation. Over the course of several weeks in May and June 2023, the Parties engaged in good-faith, arm’s-length negotiations, which included several proposals and counterproposals. These efforts ultimately culminated in an agreement in principle to resolve the Action, with Class Representative, on behalf of all Exaction Class members, agreeing to settle the Action in exchange for Defendant’s payment of \$169,022,397.28 (i.e., an 8.75% reduction on the total amount awarded by the Court in its Judgment). The Government thereafter began the lengthy process of having the settlement approved by the necessary parties, including the Associate Attorney General.

On November 9, 2023, the Parties filed a joint status report with the Federal Circuit, informing it of the Parties' agreement to resolve the Action and requesting that the case be remanded back to this Court for settlement proceedings. On December 20, 2023, the Federal Circuit issued an order remanding the matter to this Court for review of the Parties' Settlement.

Thereafter, the Parties negotiated the specific terms of their agreement to resolve the Action, executing the Settlement Agreement on February 16, 2024.

III. ESSENTIAL TERMS OF THE PROPOSED SETTLEMENT

The Settlement Agreement provides that Defendant shall pay the sum of \$169,022,397.28 ("Settlement Amount") to resolve the claims of the Exaction Class. As noted above, the Settlement Amount represents 91.25% of the total amount awarded pursuant to the Court's Judgment. Subject to the Court's approval of the Settlement, Class Representative's agreement to settle the Action on behalf of all Exaction Class members in exchange for the Settlement Amount has been accepted on behalf of the Attorney General. Settlement Agreement, ¶ 14.

If the Settlement receives the Court's final approval, Exaction Class members will release their claims in exchange for the Settlement Amount and the right to receive a payment. Settlement Agreement, ¶ 15.³ The release's scope is reasonable as it is limited to SISAs' claims "arising out of the complaint or otherwise related to this case."⁴

³ Specifically, all Exaction Class members will "release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of the complaint or otherwise related to this case, regardless of whether they were included in the complaint, including, but not limited to, any claims for costs, expenses, attorneys' fees, administrative fees and costs, and damages of any sort." *Id.*

⁴ For the avoidance of doubt, Released Claims do not include any claims of Operating Engineers Trust Fund of Washington, D.C. and The Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund (collectively, "Takings Plaintiffs"), or the putative Takings Class (i.e., all self-insured employee health and welfare benefit plans with assets held pursuant to a trust

The Settlement Amount is inclusive of any Court-approved attorneys' fees and costs awarded to Class Counsel, any case contribution award to EWTF approved by the Court, administrative fees and costs, and any other settlement-related costs ("Settlement Fees and Costs"). The remaining amount (i.e., following the deduction of the Settlement Fees and Costs) is referred to as the "Net Settlement Fund."

Exaction Class members will receive their *pro rata* share of the Net Settlement Fund based on the total amount of their respective 2014 TRP contribution. Because the Settlement represents a compromise, each Exaction Class Member's payment amount will be determined by (1) dividing their respective 2014 TRP contribution (as set forth in Exhibit 1 to the Judgment) by the total 2014 TRP contributions for all Exaction Class members—with the resulting fraction expressed as a percentage that is then (2) multiplied by the Net Settlement Fund.

As described below in Section V, notice of the Settlement will be provided to all Exaction Class members. This notice will set forth the terms of the Settlement and the rights of Exaction Class members under the Settlement, including the right to object to the Settlement and/or Class Counsel's request for attorneys' fees and expenses and case contribution award to EWTF. In addition, the notice, like the previously disseminated opt-in notice, provides that Class Counsel will apply to the Court for an award of attorneys' fees in an amount not to exceed 25% of the Settlement Amount plus reimbursement or payment of litigation expenses. Class Counsel will also request permission to pay a case contribution award in an amount not to exceed \$50,000 to EWTF, which actively participated in the prosecution and resolution of the Action. The foregoing amounts are to be paid solely from (and out of) the Settlement Amount. Settlement Agreement, ¶ 13.

agreement that were required to make the Transitional Reinsurance Contribution under Section 1341 of the Affordable Care Act for benefit years 2014, 2015, and/or 2016).

IV. THE PROPOSED SETTLEMENT MERITS PRELIMINARY APPROVAL

A. Standards Governing Approval of Class Action Settlements

Settlement is a strongly favored method for resolving class action litigation. *See Sabo v. United States*, 102 Fed. Cl. 619, 626 (2011) (“In general, ‘[s]ettlement is always favored,’ especially in class actions where the avoidance of formal litigation can save valuable time and resources.”); *Berkley v. United States*, 59 Fed. Cl. 675, 681 (2004) (“Class actions, by their complex nature, carry with them a particularly strong public and judicial policy in favor of settlement.”).

RCFC 23(e) requires judicial approval of class action settlements. Such approval is a two-step process. First, under RCFC 23(e)(1), the court performs a preliminary review of the terms of the proposed settlement to determine whether it is sufficient to warrant notice to the class and a hearing (the relief sought through this motion). Second, under RCFC 23(e)(2), after notice has been provided and a hearing held, the court determines whether to grant final approval of the settlement (the relief sought through a subsequent final approval motion). *See Furlong v. United States*, 131 Fed. Cl. 548, 550 (2017) (“In implementing RCFC 23(e), courts typically review the proposed settlement for a preliminary fairness evaluation and direct notice of the [proposed] settlement to be provided to the class, and then grant final approval of the proposed settlement following notice to the class and a fairness hearing.”); *see also* Manual for Complex Litigation (Fourth) § 13.14 (2020).⁵

⁵ The final approval stage will involve a full analysis of the RCFC 23(e)(2) factors and, to the extent they do not overlap, additional approval factors assessed by Federal Claims courts. While there is no definitive list of factors to apply when considering approval of a class action settlement, *see Raulerson v. United States*, 108 Fed. Cl. 675, 677 (2013), “[Federal Claims] courts have found the following factors instructive: (1) the relative strengths of plaintiffs’ case compared to the proposed settlement; (2) the recommendation of the counsel for the class regarding the proposed settlement, taking into account the adequacy of class counsel’s representation of the class; (3) the

With respect to the first step of the approval process, a court should grant preliminary approval and authorize notice of a settlement to the class upon a finding that the court “*will likely be able*” to (i) finally approve the settlement under RCFC 23(e)(2) and (ii) certify the class for purposes of the settlement. *See* RCFC 23(e)(1)(B).⁶ In considering whether final approval is likely, RCFC 23(e)(2) provides that courts consider whether:

(A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm’s length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney’s fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

This current standard for preliminary approval under RCFC 23(e) dictates that preliminary approval should be granted where, as here, “the proposed settlement appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to class representatives or segments of the class, and falls within the range of possible [judicial] approval.”⁴ William B. Rubenstein, *Newberg on Class Actions* § 13:13 (6th ed. 2023) (alteration in original); *see also Sutton*, 120 Fed. Cl. at 530 (“At the preliminary approval stage of the proceedings, the court needed only to consider whether the settlement had any obvious deficiencies.”); *Lambert v. United States*, 124 Fed. Cl. 675, 678 (2015) (preliminary

reaction of the class members to the proposed settlement, taking into account the adequacy of notice to the class members of the settlement terms; (4) the fairness of the settlement to the entire class; (5) the fairness of the provision for attorneys’ fees; and (6) the ability of the defendants to withstand a greater judgment, taking into account whether the defendant is a governmental actor or private entity.” *Sutton v. United States*, 120 Fed. Cl. 526, 530-31 (2015).

⁶ Here, the Court previously certified an opt-in class consisting of all self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the Transitional Reinsurance Contribution under Section 1341 of the ACA for benefit year 2014. ECF No. 70. The opt-in period has concluded and a complete list of Exaction Class members is set forth in Exhibit 1 to the Judgment and Exhibit A to the Settlement Agreement.

approval granted by court upon finding no “collusive activity, preferential treatment, or other deficiencies” in the settlement).

The Settlement here amply satisfies this standard.

B. The Court “Will Likely Be Able” to Approve the Proposed Settlement Under Rule 23(e)(2)

A court may approve a proposed class action settlement upon finding it to be “fair, reasonable, and adequate.” RCFC 23(e)(2). In determining whether a settlement is fair, reasonable, and adequate, “courts consider both the settlement agreement’s substantive terms and the negotiation process that led to it.” *Quimby v. United States*, 107 Fed. Cl. 126, 130 (2012). *See also Courval v. United States*, 140 Fed. Cl. 133, 138 (2018) (in approving settlement “the court looks to the ‘paramount’ twin elements of procedural and substantive fairness”).

1. Procedural Aspects of the Settlement Satisfy Rule 23(e)(2)

RCFC 23(e)(2)’s first two factors look to the conduct of the litigation and the negotiations leading up to the settlement. *See Courval*, 140 Fed. Cl. at 139 (“Procedural fairness is concerned with “whether the settlement resulted from ‘arms-length negotiations and whether plaintiffs’ counsel have possessed the experience and ability, and have engaged in the discovery, necessary to effective representation of the class’s interests.””). Moreover, courts will presume a settlement to be fair when it is reached following arm’s-length negotiations by fully informed, experienced, and competent counsel. *See City of Providence v. Aeropostale, Inc.*, 2014 WL 1883494, at *4 (S.D.N.Y. May 9, 2014) (“[I]nitial presumption of fairness and adequacy applies” where

“Settlement was reached by experienced, fully-informed counsel after arm’s-length negotiations”), *aff’d sub nom. Arbuthnot v. Pierson*, 607 F. App’x 73 (2d Cir. 2015).⁷

Here, the Settlement embodies all the hallmarks of a procedurally fair resolution under RCFC 23(e)(2). *First*, Class Counsel’s settlement posture was informed by the extensive, years-long litigation efforts that preceded the Settlement. As discussed above, Class Counsel zealously pursued this case—pioneering the theory of liability, litigating the claims for many years (in multiple courts), successfully defeating Defendant’s motion to dismiss, obtaining certification of a class, moving for and obtaining summary judgment, and securing the Judgment on behalf of the Exaction Class. While we believe the Judgment would survive and ultimately be affirmed on appeal, Class Counsel—who have extensive experience litigating class actions in federal courts across the country—also recognize that further delay would operate to the detriment of the Exaction Class, who made the TRP contributions roughly a decade ago.

To that end, Class Counsel engaged in settlement negotiations seeking to achieve the best possible result for the Exaction Class in light of the risks, costs, and delays of Defendant’s pending appeal. Additionally, as the Court confirmed in its class certification ruling, EWTF—a SISA required to pay the TRP contribution for benefit year 2014 in absence of statutory authority—has claims that are typical of those of other Exaction Class members. EWTF, like the rest of the Exaction Class, therefore has an interest in obtaining the largest possible recovery.⁸

⁷ “[RCFC 23] is modeled on Fed. R. Civ. P. 23, and while there are differences, cases from other federal courts that apply Fed. R. Civ. P. 23 are relevant to this court’s interpretation of RCFC 23.” *Dauphin Island Prop. Owners Ass’n v. United States*, 90 Fed. Cl. 95, 102 (2009).

⁸ *See In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 77 (S.D.N.Y. 2006) (“Where plaintiffs and class members share the common goal of maximizing recovery, there is no conflict of interest between the class representatives and other class members.”).

Second, the Parties’ settlement negotiations were conducted at arm’s length and extended over the course of several weeks. *Dauphin*, 90 Fed. Cl. at 107 (approving settlement that was “achieved through good-faith, non-collusive negotiation”). In addition, the Settlement has been reviewed and accepted by the Attorney General. “Absent fraud or collusion,” as is the case here, courts “should be hesitant to substitute [their] judgment for that of the parties who negotiated the settlement.” *In re Graña y Montero S.A.A. Sec. Litig.*, 2021 WL 4173684, at *11 (E.D.N.Y. Aug. 13, 2012) (alterations in original); *Nat’l Treasury Emps. Union v. United States*, 54 Fed. Cl. 791, 797 (2002) (“[T]he professional judgment of plaintiff’s counsel is ‘entitled to considerable weight in the court’s determination of the overall adequacy of the settlement.’”).

2. The Terms of the Proposed Settlement Are Adequate and the Settlement is Substantively Fair

a. The Settlement Provides Substantial Relief, Especially in Light of the Costs, Risks, and Delay of Further Litigation

A key factor in assessing whether to approve a class action settlement is a plaintiff’s likelihood of success on the merits, balanced against the relief offered in settlement. *See* RCFC 23(e)(2)(C); *see also Barlow v. United States*, 145 Fed. Cl. 228, 234 (2019) (“Substantive fairness requires the Court to consider the balance of the likely costs and rewards of further litigation.”). Here, the Settlement provides for a certain near-term cash recovery of \$169,022,397.28—***over 91% of the Exaction Class’s total damages***—to be allocated among members of the Exaction Class following deduction of the Settlement Fees and Costs.

Had the Action continued, Class Representative would face the risk of Defendant’s pending appeal, as well as the substantial time and expense that would be required to litigate the appeal to conclusion. *See Mercier v. United States*, 156 Fed. Cl. 580, 586-87 (2021) (“In addition to the[] risks of continued litigation, there is no question that further litigation would be expensive, complex, and likely of substantial duration . . . A fair settlement is preferable to years of additional

litigation.”). Moreover, continuing to litigate this Action would not only jeopardize Class Representative’s ability to recover anything for the Exaction Class, but it would also delay recovery in a case that has already been pending for many years. More specifically, even if EWTF and the Exaction Class were to succeed, an appeal to the Federal Circuit could take a substantial amount of time.⁹ In contrast, the Settlement provides a recovery representing *over 91%* of the Exaction Class’s damages *now*.¹⁰

b. The Settlement Does Not Unjustly Favor Any Exaction Class Member

The Court must also ultimately assess the Settlement’s effectiveness in equitably distributing relief to Exaction Class members. RCFC 23(e)(2)(C)(ii); RCFC 23(e)(2)(D). The method of allocation, set forth in the Notice, provides a straightforward and effective means of distributing the Net Settlement Fund and treats Exaction Class members equitably relative to each other. The allocation method provides for distribution of the Net Settlement Fund to the 357 Exaction Class members listed on Exhibit 1 to the Judgment and Exhibit A to the Settlement Agreement. More specifically, each Exaction Class member will receive a proportionate share of the Net Settlement Fund based upon the total amount of their respective 2014 TRP contribution. This method of allocation ensures that Exaction Class members’ recoveries are based upon the relative losses they sustained, and all Exaction Class members will receive a *pro rata* distribution from the Net Settlement Fund calculated in the same manner. *See In re Telik, Inc. Sec. Litig.*, 576 F. Supp. 2d 570, 581 (S.D.N.Y. 2008) (“Pro-rata distribution of settlement funds based on . . . loss

⁹ *See Median Time to Disposition in Cases Terminated After Hearing or Submission*, U.S. Court of Appeals for the Fed. Cir., <https://cafc.uscourts.gov/wp-content/uploads/reports-stats/FY2023/MedDispTimeMERITS-Table-FY23.pdf> (last visited Feb. 14, 2024).

¹⁰ This recovery compares favorably to other settlements. *See, e.g., Mercier*, 156 Fed. Cl. at 587 (approving settlement recovering 65% of class’s damages); *Quimby*, 107 Fed. Cl. at 131 (approving settlement recovery approximately 80% of the class’s damages).

is clearly a reasonable approach.”). Thus, the allocation method set forth in the Notice treats all Exaction Class members equitably, further supporting preliminary approval of the Settlement.

c. The Anticipated Request for Attorneys’ Fees Is Reasonable

Like the previous opt-in notice, notice of the Settlement will inform Exaction Class members that Class Counsel will apply for an award of attorneys’ fees not to exceed 25% of the Settlement Amount, plus expenses.¹¹ A fee of up to 25% is reasonable given the success achieved, the nature and length of this multi-year class action litigation, and the amount of time Class Counsel expended litigating it, and falls well within the range of attorneys’ fees typically awarded in similar cases. *See, e.g., Raulerson*, 108 Fed. Cl. at 680 (approving 33% fee and noting “[a]wards in other class action settlements with common funds typically range between 20% to 30% of the fund, with 50% being the upper limit”); *see also Kane Cnty. v. United States*, 145 Fed. Cl. 15, 18-19 (2019) (approving 33% fee); *Ciapessoni v. United States*, 145 Fed. Cl. 685, 690 (2019) (approving 25% fee); *Quimby*, 107 Fed. Cl. at 133 (approving 30% fee).

Further, Exaction Class members will have an opportunity to review and voice any objection they have to Class Counsel’s requested fees and expenses before the Fairness Hearing, and after Class Counsel has made further submissions in support of their requested fees and expenses. In these submissions, Class Counsel will, among other things, present their lodestar (time expended multiplied by hourly rates) as well as relevant case law addressing fee awards.

¹¹ As set forth in the Settlement Agreement and Notice, Class Counsel will also request the Court’s permission to pay a case contribution award to EWTF in an amount up to \$50,000. Case contributions are commonly awarded and “recognize the unique risks incurred and additional responsibility undertaken by named plaintiffs in class actions.” *Mercier*, 156 Fed. Cl. at 589 (approving award of \$20,000 to each of the six class representatives). As will be further detailed in connection with this request at the final approval stage, EWTF has actively participated in and supervised this Action. For instance, during discovery, EWTF responded to twenty-four document requests and sixteen interrogatories from the Government and produced 2,027 pages of documents.

d. Class Representative Has Identified All Agreements Made in Connection with the Settlement

The Settlement Agreement is the only agreement made by the Parties in connection with the Settlement. There are no additional agreements to identify.

C. The Exaction Class Satisfies the Standards for Class Certification

The second part of the preliminary settlement approval process is to determine whether the Action may be maintained as a class action for settlement purposes under RCFC 23. *See* RCFC 23(e)(1)(B)(ii). Here, the Court previously certified an opt-in class on June 22, 2022, finding that the proposed class satisfied RCFC 23(a)'s numerosity, commonality, typicality, and adequacy requirements as well as that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy. ECF No. 70. The opt-in period has concluded and the 357 entities that make up the Exaction Class are set forth in the Judgment and the Settlement Agreement. Because the Court has already certified the Exaction Class, it need not determine whether, pursuant to RCFC 23(e)(1)(B) it "will likely be able to" certify a class, as the Exaction Class has already been certified and all Exaction Class members have been identified.

V. NOTICE TO THE CLASS SHOULD BE APPROVED

RCFC 23(c)(2)(B) requires the Court to direct to a class certified "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Similarly, RCFC 23(e)(1)(B) requires the court to "direct notice in a reasonable manner to all class members who would be bound" by a proposed settlement. Moreover, notice must "afford [interested parties] an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

In accordance with the terms of the Settlement Agreement, the Administrator will send, by electronic mail, the Notice of Class Action Settlement ("Notice") to all Exaction Class members

(as listed on Exhibit 1 to the Judgment and Exhibit A to the Settlement Agreement) at the e-mail addresses provided in connection with the opt-in notice process.¹² For any email returned as undeliverable, the Administrator will send the Notice to the Exaction Class Member by first-class mail and make all reasonable efforts to contact the Exaction Class Member. The Administrator will also post the Notice, along with the Settlement Agreement and other Settlement-related documents, on the “Exaction Class” section of the website currently maintained by the Administrator, www.TRPLitigation.com/exaction. See Settlement Agreement, ¶¶ 25-26.

The Notice provides important information regarding the Settlement, along with the rights of Exaction Class members in connection therewith, including their right (and the deadline) to file a written objection to the Settlement, Class Counsel’s request for attorneys’ fees and litigation expenses and/or the case contribution award to EWTF. The Notice also provides an explanation of the procedures for allocating and distributing the funds pursuant to the Settlement, the date and time of the Fairness Hearing, and how to obtain more information.

The means by which Class Representative proposes providing notice of the Settlement to Exaction Class members represents “the best notice that is practical under the circumstances” and easily satisfies the requirements of due process and RCFC 23. Notably, this Court previously approved Class Representative’s class action notice plan, which included transmission through electronic means. ECF No. 77 (“[C]lass counsel shall distribute the notice to the potential class members via email and overnight mail.”); *see also* RCFC 23(c)(2)(b) (“The notice may be by one or more of the following: United States mail, *electronic means*, or other appropriate means.”).

¹² The Court previously approved JND’s retention to administer the opt-in notice campaign. ECF No. 77. Given its familiarity with the case and its possession of relevant contact information for Exaction Class members, Class Representative requests that the Court authorize Class Counsel’s retention of JND as the Administrator for the Settlement. See Preliminary Approval Order, ¶ 2.

Accordingly, Class Representative respectfully submits that the Court should approve the proposed manner and form of providing notice of the Settlement to Exaction Class members.

VI. PROPOSED SCHEDULE OF SETTLEMENT-RELATED EVENTS

In connection with preliminary approval of the Settlement, the Court must also set dates for certain future events (i.e., the Fairness Hearing, disseminating notice, and deadline for objecting to the Settlement). Class Representative respectfully proposes the schedule set forth in the chart below, as agreed to by the Parties and set forth in the proposed Preliminary Approval Order. Additionally, Class Representative requests that the Court schedule the Fairness Hearing for a date 60 calendar days after entry of the Preliminary Approval Order, or at the Court's earliest convenience thereafter.

<u>Event</u>	<u>Proposed Timing</u>
Deadline for e-mailing the Notice to Exaction Class members and posting the Notice on the website	Within 15 calendar days of the Court's preliminary approval of the Settlement
Deadline for filing papers in support of final approval of the Settlement and Class Counsel's motion for attorneys' fees, litigation expenses, and case contribution award	35 calendar days prior to Fairness Hearing
Deadline for receipt of objections	21 calendar days prior to Fairness Hearing
Deadline for filing reply papers, including response to any objections	7 calendar days prior to Fairness Hearing
Fairness Hearing	60 calendar days after entry Court's preliminary approval of the Settlement, or at the Court's earliest convenience thereafter

VII. CONCLUSION

For all the foregoing reasons, the Settlement warrants the Court's preliminary approval and Class Representative respectfully requests that the [Proposed] Preliminary Approval Order be entered.

DATED: February 16, 2024

Respectfully submitted,

/s/ Joseph H. Meltzer

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*Attorneys for Class Representative EWTF
and Class Counsel for the Exaction Class*

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of February, 2024, a true and correct copy of the foregoing document was electronically filed with the Clerk of the Court, is available for viewing and downloading from the ECF system, and will be served by operation of the Court's electronic filing system (CM/ECF) upon all counsel of record.

/s/ Joseph H. Meltzer

Joseph H. Meltzer

EXHIBIT 1

IN THE UNITED STATES COURT OF FEDERAL CLAIMS

ELECTRICAL WELFARE TRUST)	
FUND, <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 19-353C
)	
v.)	(Judge Roumel)
)	
THE UNITED STATES,)	
)	
Defendant.)	
)	

SETTLEMENT AGREEMENT

For the purpose of disposing of the claims asserted by plaintiff and class representative the Electrical Welfare Trust Fund (EWTF), as well as all other members of the Exaction Class (defined below), without any further judicial proceedings and without there being any trial or adjudication of any issue of law or fact, and without constituting an admission of liability on the part of the defendant, and for no other purpose, the parties stipulate and agree as follows:

1. EWTF is a self-insured, self-administered multi-employer group health plan that provides health and welfare benefits to eligible participants.

2. On or about January 9, 2015, and again on or about November 9, 2015, EWTF submitted to the Department of Health & Human Services (HHS) its contributions to the Transitional Reinsurance Program (TRP) for benefit year 2014. The TRP is a risk-mitigation program within the Patient Protection and Affordable Care Act of 2010 (ACA), *see* 42 U.S.C. § 18061, and EWTF was required to contribute into the TRP pursuant to an applicable HHS regulation, *see* 45 C.F.R. § 153.20.

3. On March 8, 2019, EWTF filed this suit asserting, *inter alia*, that HHS lacked legal authority to collect such contributions. Specifically, EWTF alleged that the ACA did not authorize HHS to collect TRP contributions from any self-insured, self-administered group health plans.¹

4. On June 22, 2022, the Court certified the following class:

All self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the Transitional Reinsurance Contribution under Section 1341 of the Affordable Care Act for benefit year 2014 (the “Exaction Class” or “Class”).

Elec. Welfare Tr. Fund v. United States, 160 Fed. Cl. 462, 470 (2022). The Court then appointed EWTF as class representative of the Exaction Class, and Kessler Topaz Meltzer & Check, LLP and McChesney & Dale, P.C. as class counsel (collectively Class Counsel). *Id.*

5. In subsequent orders, the Court approved EWTF’s proposed notice plan and set December 19, 2022 as the deadline for putative class members to opt into the Exaction Class.

6. On December 21, 2022, the Court granted the Motion for Summary Judgment filed by EWTF for itself and the Exaction Class. ECF No. 97.

7. On February 10, 2023, EWTF submitted a supplemented certification of final membership in the Exaction Class (Membership Certification). Therein, EWTF represented that the Court-approved claims administrator, JND Legal Administration (JND or Administrator), received 634 opt-in forms from potential class members. Through an internal review process that included cross-referencing opt-in forms with records obtained from HHS, Class Counsel ultimately recommended that 357 individual claimants should be included in the Exaction Class.

¹ In addition to EWTF, two self-insured group health plans administered by third-party administrators—the Operating Engineers Trust Fund of Washington, D.C. (OETF) and the Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund (“Stone Masons”)—asserted similar claims against the United States. The claims asserted by OETF and Stone Masons, however, were litigated on a separate track, and this settlement agreement does not purport to resolve their claims.

Class Counsel further determined that the cumulative TRP contributions of these 357 plans total \$185,230,024.42. The Court accepted Class Counsel's Membership Certification.

8. The parties have reviewed the Membership Certification, and agree that the 357 plans listed therein fall within the Court's definition of the Exaction Class. The parties also agree that these 357 plans contributed a total of \$185,230,024.42 into the TRP. "Settlement Class Members," as used in this Settlement Agreement, refers to these 357 unique claimants. Each Settlement Class Member is identified in Exhibit A attached hereto.

9. On May 12, 2023, the Court entered partial judgment against the United States. ECF No. 124.

10. The parties subsequently entered into discussions to attempt to resolve the claims asserted in the complaint by EWTF and the Settlement Class Members.

11. On June 26, 2023, the Government filed a protective notice of appeal to the United States Court of Appeals for the Federal Circuit. Due to the parties' ongoing settlement discussions, the parties jointly asked the Federal Circuit to stay all further proceedings. In an order issued on July 27, 2023, the Federal Circuit agreed to stay the appeal.

12. The parties have agreed on a settlement through which each eligible Settlement Class Member listed in Exhibit A will receive reimbursement of 91.25% of their respective TRP contributions, before deduction of the Settlement Fees and Costs defined in paragraph 19 below.

13. Based upon the per-claim agreement described in the preceding paragraph, EWTF, on behalf of itself and all Settlement Class Members, has agreed to settle all claims of the Settlement Class Members, including EWTF, in exchange for payment by the United States of a total of \$169,022,397.28, inclusive of all damages, attorneys' fees and out of pocket expenses to the end of the case, and all administrative fees and costs to the end of the case (Settlement Amount).

14. The offer as set forth in paragraph 13 above has been accepted on behalf of the Attorney General, subject to the Court's approval.

15. Upon payment of the Settlement Amount set forth in paragraph 13, all Settlement Class Members, including EWTF, release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of the complaint or otherwise related to this case, regardless of whether they were included in the complaint, including but not limited to any claims for costs, expenses, attorneys' fees, administrative fees and costs, and damages of any sort.

Disbursement of Settlement Amount

16. This Settlement Agreement applies only to those "Settlement Class Members" defined in paragraph 8, as well as Kessler Topaz Meltzer & Check, LLP and McChesney & Dale, P.C. as class counsel and JND.

17. The Administrator will establish a Settlement Trust, designated the "TRP Exaction Class Qualified Settlement Trust" (Settlement Trust), to disburse the proceeds of the settlement. The administration and maintenance of the Settlement Trust will be the sole responsibility of Class Counsel and the Administrator.

18. Following approval by the Court, as described in the "Fairness Hearing" portion of this Settlement Agreement, the United States will pay the Settlement Amount to the Settlement Trust. The parties agree that, unless otherwise specified herein, the United States' obligations and duties to EWTF and to the Settlement Class Members under this Settlement Agreement will be fully satisfied upon payment by the United States of the Settlement Amount to the Settlement Trust. The United States makes no warranties, representations, or guarantees concerning any disbursements the Settlement Trust makes, or fails to make, to any potential claimants. If any

Settlement Class Member has any disagreement concerning any disbursement, the Settlement Class Member shall resolve any such concern with the Administrator and Class Counsel.

19. Within fifteen (15) days of receipt of the Settlement Amount, the Administrator will pay from the Settlement Trust the Administrator's fees or costs approved by the Court, attorneys' fees and costs awarded to Class Counsel, any case contribution award to EWTF approved by the Court, administrative fees and costs, and any other settlement-related costs (the "Settlement Fees and Costs"). These Settlement Fees and Costs shall be charged to Settlement Class Members on a *pro rata* basis. The remaining amount after payment of Settlement Fees and Costs will be the "Net Settlement Fund."

20. All payments to Settlement Class Members will be paid from the Net Settlement Fund. From the Net Settlement Fund, the Administrator will pay Settlement Class Members a prorated portion of Net Settlement Fund proceeds, based on the TRP contributions associated with each Settlement Class Member, less a *pro rata* portion of Settlement Fees and Costs.

21. The Administrator will make payments in the form of a check or electronic transfer from the Net Settlement Fund to each Settlement Class Member who has provided a Taxpayer Identification Number (TIN) (or EIN). As a condition to payment by the Administrator, the Administrator must first provide the Government with the TIN for the Settlement Class payee. The Notice of Settlement to Class Members provided in paragraph 25 shall include notice that receipt of a TIN by the Administrator is a condition to settlement payment. The Administrator shall provide to the government a list of all TINs received prior to the Fairness Hearing. If a Settlement Class Member's settlement payment check is returned as undeliverable, the Administrator shall make a reasonable attempt to locate a mailing address for that Settlement Class Member and re-mail the check.

22. In the event the Administrator is unable to locate a valid mailing address, after undertaking the efforts discussed in paragraph 21, the amount represented by that check shall revert to the Net Settlement Fund and shall be redistributed to Settlement Class Members on a *pro rata* basis, up to an amount that represents Settlement Class Members' individual TRP contributions. In the event a Settlement Class Member loses, destroys, or is unable to take possession of a settlement payment check, the Administrator will void the original check and then reissue a new check to the Settlement Class Member.

23. If any settlement payment check remains uncashed ninety (90) days after issuance, that check shall be void, and the amounts represented by that uncashed check shall revert to the Net Settlement Fund and shall be redistributed to Settlement Class Members on a *pro rata* basis, up to an amount that represents Settlement Class Members' individual TRP contributions. In the event redistribution of uncashed settlement funds would result in settlement payments in excess of Settlement Class Members' TRP contributions, the Administrator shall return the exceeding amount to the United States, with a cover letter attaching this Settlement Agreement and identifying the amount returned pursuant to this paragraph. The letter and any returned proceeds shall be addressed to: Department of Justice, Civil Division, Attn: Director, National Courts Section, P.O. Box 480, Ben Franklin Station, Washington, D.C. 20044.

Fairness Hearing

24. As soon as possible after the execution of this Settlement Agreement, Class Counsel shall submit to the Court a motion for preliminary approval of the settlement contemplated by this Settlement Agreement. The motion shall include (a) the proposed form of the order preliminarily approving this Settlement Agreement, and (b) the proposed forms of notice of the settlement to the Settlement Class Members by email to Settlement Class Members and by posting on the Internet website maintained by the Administrator at www.TRPLitigation.com (the “Case Website”). Class Counsel shall request that a decision on the motion for preliminary approval of the settlement and on the proposed forms of notice of the settlement be made promptly on the papers or that a hearing on the motion for preliminary approval of the settlement be held at the earliest date available to the Court.

25. Within fifteen (15) days of the Court’s preliminary approval of this Settlement Agreement and of the proposed notice to the Settlement Class Members of the terms of this Settlement Agreement by posting on the Case Website maintained by the Administrator, the Administrator shall notify all Settlement Class Members of the terms of this Settlement Agreement, the procedures for allocating and distributing funds paid pursuant to this Settlement Agreement, the date upon which the Court will hold a “Fairness Hearing” pursuant to RCFC 23(e), and the date by which Settlement Class Members must file and serve their written objection, if any, to the Settlement Agreement.

26. Any Settlement Class Member may express to the Court their views in support of, or in opposition to, the fairness, reasonableness, and adequacy of the proposed settlement, including Class Counsel’s application for attorneys’ fees and expenses. If a Settlement Class Member objects to the settlement, such objection will be considered only if received no later than

twenty-one (21) calendar days prior to the date of the Fairness Hearing. The objection shall be filed with the Court, with copies provided to Class Counsel and defendant's counsel, and the objection must include a signed, sworn statement that (a) identifies the case name and number; (b) describes the basis for the objection, including all citations to legal authority and evidence supporting the objection; (c) contains the objector's name, address, and telephone number, and if represented by counsel, the name, address, email address, and telephone number of counsel; and (d) indicates whether the objector intends to appear at the Fairness Hearing.

27. Class Counsel and defendant's counsel may respond to any objection no later than seven (7) days prior to the Fairness Hearing.

28. Any Settlement Class Members who submit a timely objection to the proposed settlement may appear in person or through counsel at the Fairness Hearing and be heard to the extent allowed by the Court. Any Settlement Class Members who do not file and serve written objections in the manner provided in paragraph 26 shall be deemed to have waived such objections and shall forever be foreclosed from making any objections (by appeal or otherwise) to the proposed settlement.

29. The Court will schedule the Fairness Hearing at which it will consider any timely and properly submitted objections made by Settlement Class Members to the proposed settlement. The Court will decide whether to approve the Settlement Agreement, and any award of reasonable fees and expenses to be paid to the Administrator and Class Counsel. The parties shall request that the Court schedule the Fairness Hearing no later than forty-five (45) days from the notice date described in paragraph 25.

30. If this Settlement Agreement is not approved by the Court in its entirety, this Settlement Agreement will be void and of no force and effect whatsoever.

Wrap-Up of Settlement Trust and Conclusion of The Case

31. Within one hundred eighty (180) days of Final Approval, the Administrator will provide the parties, through the parties' attorneys of record in this matter, with a full and final written accounting of all payments made from the Settlement Trust. Within fifteen (15) days of the date that accounting is sent to the parties, the parties will confer to determine whether they are satisfied with the accounting. If not, they will attempt in good faith to resolve any dissatisfaction with the Administrator. If either party is not satisfied after such good faith efforts, either party may petition the Court to resolve the matter.

32. Promptly after the parties agree that they are satisfied or promptly after the Court resolves any dissatisfaction, Class Counsel agrees to stipulate jointly with defendant to the dismissal of this case with prejudice.

Miscellaneous Terms

33. This Settlement Agreement is for the purpose of settling the claims brought by Settlement Class Members, and for no other purpose. Accordingly, the terms of this Settlement Agreement shall not bind the parties, nor shall it be cited or otherwise referred to in any proceedings, whether judicial or administrative in nature, in which the parties or counsel for the parties have or may acquire an interest, except as is necessary to effect the terms of this Settlement Agreement.

34. Settlement Class Members warrant and represent that they have not filed any other action or suit with respect to the claims advanced in this suit in any other court, administrative agency, or legislative body. "Claims advanced in this suit" means claims arising from TRP contributions from self-insured, self-administered group health plans for benefit year 2014. The Settlement Class Members further warrant and represent that they have made no assignment or

transfer of all or any part of their rights arising out of or relating to the claims advanced in this suit. Each Settlement Class Member further warrants and represents that the Settlement Class Member is authorized to fully settle all claims arising out of or relating to the claims advanced in this suit with respect to every TRP payment listed in relation to that Settlement Class Member in Exhibit A. Should there be now or in the future any violation of these warranties and representations, any amount paid pursuant to this agreement by the United States to any such Settlement Class Member(s) who violated a warranty or representation shall be refunded promptly by such Settlement Class Member(s), together with interest thereon at the rates provide in 41 U.S.C. § 7109, as computed from the date the United States makes payment.

35. This Settlement Agreement is in no way related to or concerned with income or other taxes for which Settlement Class Members, Class Counsel, or the Administrator are now liable or may become liable in the future as a result of this agreement.

36. This Settlement Agreement sets forth the entire agreement of the parties with respect to the subject matter hereof as to all Settlement Class Members. No modification or addition to this Settlement Agreement or waiver of any right herein will be effective unless it is approved in writing by counsel for the parties and by the Court.

37. The parties agree that each fully participated in the drafting of this Settlement Agreement, and therefore, no clause shall be construed against any party for that reason in any subsequent dispute.

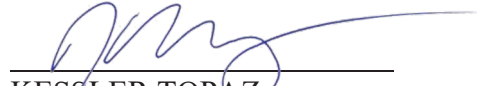
38. In the event that a party believes that the other party has failed to perform an obligation required by this Settlement Agreement or has violated the terms of the Settlement Agreement, the party who believes such a failure has occurred must so notify the other party in

writing and afford it forty-five (45) days to cure the breach, prior to initiating any legal action to enforce this Settlement Agreement or any of its provisions.

39. Class Counsel represent that they have been and are authorized to enter into this Settlement Agreement on behalf of EWTF and the Settlement Class Members.

40. This document constitutes a complete integration of the Settlement Agreement between the parties and supersedes any and all prior oral or written representations, understandings or agreements among or between them.

AGREED TO:



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Attorneys for Class Representative EWTF
and Class Counsel for the Exaction Class

Dated: 02/16/24

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Principal Deputy Assistant Attorney General

PATRICIA M. McCARTHY
Director

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Digitally signed by ERIC BRUSKIN
Date: 2024.02.16
13:03:47 -05'00'

ERIC P. BRUSKIN
Assistant Director

BORISLAV KUSHNIR
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Attorneys for Defendant

Dated: 02/16/24

EXHIBIT A

Name
1199SEIU GREATER NEW YORK BENEFIT FUND
1199SEIU HOME CARE EMPLOYEES BENEFIT FUND
1199SEIU NATIONAL BENEFIT FUND FOR HEALTH AND HUMAN SERVICE EMPLOYEES
ADMINISTRATIVE DISTRICT COUNCIL 1 WELFARE FUND
ADVENTIST HEALTH EMPLOYEE MEDICAL PLAN - BASE*
ADVENTIST HEALTH EMPLOYEE MEDICAL PLAN - ENGAGED*
AFL-AGC BUILDING TRADES WELFARE PLAN
AFTRA HEALTH FUND
AHMC HEALTHCARE INC.
ALASKA ELECTRICAL HEALTH AND WELFARE FUND
ALLIED SERVICES DIVISION WELFARE FUND
ARKANSAS BEST CORPORATION EMPLOYEE WELFARE BENEFIT PLAN
AUTOMATIC SPRINKLER LOCAL 281 U.A. WELFARE FUND
AVANT MINISTRIES MISSIONARY MEDICAL AID PLAN
BAKERY AND CONFECTIONERY UNION AND INDUSTRY INTERNATIONAL HEALTH BENEFITS FUND
BAKERY CRACKER PIE & YEAST WAGON DRIVERS LOCAL 734 WELFARE FUND
BANNER HEALTH MASTER HEALTH AND WELFARE BENEFIT PLAN
BARROW INDUSTRIES INC.
BEER INDUSTRY LOCAL UNION NO. 703 HEALTH AND WELFARE FUND
BENEFIT MANAGEMENT INC HEALTHCARE PLAN
BEST LIFE AND HEALTH INSURANCE COMPANY
BLUE BELL CREAMERIES INC. WELFARE BENEFITS PLAN
BLUE CROSS AND BLUE SHIELD OF FLORIDA INC
BLUE CROSS BLUE SHIELD OF MICHIGAN MEDICAL PLAN*
BCBSM RETIREE MEDICAL BENEFIT PLAN*
EMERGING MARKETS MEDICAL PLAN*
EMERGING MARKETS RETIREE MEDICAL BENEFIT PLAN*
BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA RETIREE MEDICAL BENEFITS PLAN*
BLUE CROSS AND BLUE SHIELD OF NORTH CAROLINA WELFARE BENEFIT PLAN*
BLUE CROSS BLUE SHIELD OF ALABAMA
BULL CONCRETE CORP.
C AND O EMPLOYEES HOSPITAL ASSOC
CALIFORNIA IRONWORKERS FIELD WELFARE TRUST
CALIFORNIA WATER SERVICE PPO PLAN
CARPENTERS' HEALTH AND WELFARE TRUST FUND OF ST. LOUIS
CARPENTERS TRUSTS OF WESTERN WA
CATSKILL AREA SCHOOLS EMPLOYEE BENEFIT PLAN
CDW LLC

Name
CEMENT MASONS INSTITUTE LOCAL 502 WELFARE TRUST FUND
CEMENT MASONS LOCAL NO. 502 RETIREE WELFARE FUND
CENTRAL LABORERS WELFARE FUND
CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS ACTIVE HEALTH AND WELFARE FUND
CENTRAL STATES SOUTHEAST AND SOUTHWEST AREAS RETIREE HEALTH AND WELFARE FUND
CHAUFFEURS TEAMSTERS HELPERS LOCAL 301
CHER MAKE SAUSAGE CO. EMPLOYEE HEALTH CARE PLAN
CHICAGO AREA I.B. OF T. HEALTH AND WELFARE TRUST FUND
CHICAGO LABORERS DISTRICT COUNCIL RETIREE HEALTH AND WELFARE FUND
CHICAGO REGIONAL COUNCIL OF CARPENTERS WELFARE FUND
CHICAGO TILE INSTITUTE WELFARE FUND
CHRISTIAN BROTHERS EMPLOYEE BENEFIT TRUST
CITY OF ODESSA - FAMILY HEALTH ADMINISTRATORS
COBALT BENEFITS GROUP LLC EMPLOYEE BENEFIT PLAN*
COBALT BENEFITS GROUP LLC*
COLMAC INDUSTRIES, INC EMPLOYEE BENEFITS PLAN
COMMUNITY HEALTH NETWORK, INC. EMPLOYEE HEALTH BENEFITS PLAN
COMMUNITY HOSPITAL OF THE MONTEREY PENINSULA
CONNECTICUT CARPENTERS HEALTH FUND
CONNECTICUT LABORERS' HEALTH FUND
CONNECTICUT PIPE TRADES HEALTH FUND
CORESOURCE INC NOW KNOW AS TRUSTMARK HEALTH BENEFITS INC
CRAWFORD COUNTY EMPLOYEE HEALTH PLAN*
CRAWFORD COUNTY EMPLOYEE MEDICAL AND PRESCRIPTION DRUG BENEFIT PLAN*
D.C 1707 LOCAL 1389 HOME HEALTH CARE EMPLOYEES HEALTH AND WELFARE FUND
DAKOTA BOYS AND GIRLS RANCH
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF AGRESERVES INC 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF AGRI NORTHWEST 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BENEFICIAL FINANCIAL GRP 87-0115120
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BENEFICIAL FNCL LIFE AGT 87-0115120
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BERBERIAN NUT COMPANY 26-0498896
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BONNEVILLE INTL CORP 87-0266746

Name
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BRIGHAM YOUNG UNIVERSITY 87-0217280
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BYU HAWAII CAMPUS 99-0083825
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF BYU IDAHO 82-0207699
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF CITY CREEK RESERVES INC 20-8152281
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF COP CALLED POSITIONS 23-7300405
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF CORP OF PRESIDING BISHOP 87-0234341
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF CORP OF THE PRESIDENT 23-7300405
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF CPB SEASONAL BENEFITS GP 87-0234341
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF CUSTODIANS - CENTRAL PAY 87-0234342
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET BOOK COMPANY 87-0128267
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET CATTLE AND CITRUS 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET CATTLE AND TIMBER 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET CATTLE FEEDERS 27-2588752
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET DIGITAL MEDIA 80-0483901
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET FARMS INC 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET FARMS OF RUSKIN 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET INDUSTRIES 87-0234342
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET MANAGEMENT CORPO 87-0274433
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET MUTUAL 87-0440163
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET NEWS 87-0128317
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF DESERET TRUST COMPANY 87-0291656
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF EAST CENTRAL FLORIDA SER 59-2996410

Name
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF ENSIGN PEAK ADVISORS 84-1432969
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF FARMLAND RESERVE INC 87-0569880
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF HAWAII RESERVES INC 99-0306760
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF KIRO FM 87-0266746
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF KPKX 87-0266746
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF KSL INC 87-0266746
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF KSWD 87-0266746
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF KTAR AM 87-0266746
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF LDS BUSINESS COLLEGE 87-0280678
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF LDS CHURCH CUSTODIANS 87-0234341
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF LDS FAMILY SERVICES 87-0299862
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF NORTHPOINT IRRIGATION CO 87-0224719
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF POLYNESIAN CULTURAL CENT 99-0109908
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF PROPERTY RESERVES INC 87-6128054
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF SECOND QUORUM 23-7300405
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF SEMINARIES AND INSTITUTES 23-7300405
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF SOUTH VALLEY ALMOND COMP 26-0499035
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF SOUTH VALLEY FARMS 87-0481574
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF SUBURBAN LAND RESERVE 87-0687704
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF TAYLOR CREEK MANAGEMENT 59-3439096
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF TEMP INTERNATIONAL ASSIGNMENT 87-0234341
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF TEMPLE SQUARE HOSPITALITY 87-0460433
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF THRASHER RESEARCH FUND 87-6179851
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF UTAH HOME FIRE INSURANCE 87-0187345

Name
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF UTAH PROPERTY MANAGEMENT 27-1460435
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF W T M X 87-0266746
DESERET HEALTHCARE EMPLOYEE BENEFITS PLAN ON BEHALF OF WELFARE PRODUCTION PROJECT 87-0234341
DIAMOND OIL & GAS, LLC
DIRECTORS GUILD OF AMERICA - PRODUCER HEALTH PLAN
DISTRICT NO. 9 INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS WELFARE TRUST
DYSART UNIFIED SCHOOL DISTRICT
ELECTRICAL WELFARE TRUST FUND
ELECTRICAL WORKERS BENEFIT TRUST FUND
ELECTRICAL WORKERS HEALTH AND WELFARE FUND LOCAL 103 IBEW
ELECTRICAL WORKERS INSURANCE FUND
ELECTRICIANS HEALTH AND WELFARE IBEW 995
EMPLOYEE BENEFIT MANAGEMENT SERVICES INC
EMPLOYERS DIRECT HEALTH
ENGINEERED BIOPHARMACEUTICALS HEALTH BENEFIT PLAN
EVERENCE MEDICAL EXPENSE PLAN
EXCELLUS HEALTH PLAN INC
FEDERATED MUTUAL INSURANCE COMPANY EMPLOYEE MEDICAL PLAN
FHN MEMORIAL HOSPITAL
FICO KAISER PERMANENTE HEALTH REIMBURSEMENT ACCOUNT
FOX EVERETT INC EMPLOYEE BENEFIT PLAN
FOX VALLEY LABORERS HEALTH AND WELFARE FUND
GENERAL AUTHORITY HEALTH AND WELFARE PLAN ON BEHALF OF THE CORPORATION OF THE PRESIDENT OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS 23-7300405
GROUP HEALTH PLAN INC.
GROUP HEALTH PROGRAM OF NTCA AND ITS MEMBERS
HEALTH AND WELFARE DEPT OF THE CONSTRUCTION AND GENERAL LABORERS OF CHICAGO AND VICINITY
HEALTH AND WELFARE FUND OF THE EXCAVATING GRADING AND ASPHALT CRAFT LOCAL NO. 731
HEALTH BENEFIT PLAN FOR EMPLOYEES OF ALLEGIANCE BENEFIT PLAN MANAGEMENT, INC.
HEALTH FITNESS CORPORATION
HEALTH OPTIONS INC
HEALTH PLANS INC.
HEALTHPARTNERS ASSOCIATES INC.
HEALTHPARTNERS CENTRAL MINNESOTA CLINICS INC.
HEARTLAND HEALTH AND WELLNESS FUND

Name
HEAVY AND GENERAL LABORERS LOCAL UNIONS 472 AND 172 OF NEW JERSEY WELFARE FUND
HIGHMARK INC. FORMERLY KNOWN AS HOSPITAL SERVICE ASSOCIATION OF NORTHEASTERN PENNSYLVANIA
HOLYOKE MEDICAL CENTER
I.B.T. LOCAL 863 WELFARE FUND
I.U.O.E. LOCAL 649 HEALTH REIMBURSEMENT ARRANGEMENT FUND
IBEW LOCAL 701 WELFARE FUND
IBEW LOCAL NO 1 HEALTH AND WELFARE FUND
IBEW LOCAL NO 129 HEALTH AND WELFARE FUND
IBT LOCAL 191 HEALTH SERVICE INSURANCE PLAN
IBT UNION LOCAL NO 710 HEALTH AND WELFARE FUND
ILA LOCAL 1478-2 WELFARE FUND
INDIANA LABORERS WELFARE FUND
INDIANA TEAMSTERS HEALTH BENEFITS FUND
INTERMOUNTAIN HEALTHCARE GROUP HEALTH PLAN
INTERNATIONAL ASSOCIATION OF HEALTH AND FROST INSULATORS LOCAL 17 WELFARE FUND
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 112 HEALTH & WELFARE FUND
INTERNATIONAL UNION OF OPERATING ENGINEERS LOCAL 25 MARINE DIVISION MEDICAL PLAN
IPM HEALTH & WELFARE TRUST OF CALIFORNIA
IRON WORKERS DISTRICT COUNCIL OF NEW ENGLAND WELFARE PLAN
IRON WORKERS HEALTH FUND OF EASTERN MICHIGAN
IRON WORKERS LOCAL 568 HEALTH AND WELFARE
IUOE LOCAL 132 HEALTH & WELFARE FUND
J AND J SNACK FOODS CORP
JOINT BOARD OF TRUSTEES IBEW LOCAL 252 HEALTH AND WELFARE FUND
KANSAS BUILDING TRADES OPEN END HEALTH AND WELFARE TRUST FUND
KENTUCKY LABORERS DISTRICT COUNCIL HEALTH AND WELFARE FUND
KERN LEGACY CLASSIC CHOICE AND NETWORK PLUS
KIRBY FOODS INC
KOPPERS PERFORMANCE CHEMICALS
KOPPERS RAILROAD STRUCTURES
LABORERS' DISTRICT COUNCIL BUILDING AND CONSTRUCTION HEALTH AND WELFARE FUND
LABORERS' DISTRICT COUNCIL HEAVY AND HIGHWAY CONSTRUCTION HEALTH AND WELFARE FUND
LABORERS LOCAL 231 HEALTH + WELFARE PLAN
LEGGETT & PLATT INCORPORATED EMPLOYEE BENEFIT FUND
LINE CONSTRUCTION BENEFIT FUND

Name
LOCAL 1102 HEALTH AND BENEFIT FUND
LOCAL 1205 WELFARE FUND
LOCAL 1964 ILA HEALTH AND INSURANCE FUND
LOCAL 309 ELECTRICAL HEALTH AND WELFARE FUND
LOCAL 705 INTERNATIONAL BROTHERHOOD OF TEAMSTERS HEALTH AND WELFARE PLAN
LOCAL 73 HEALTH AND WELFARE FUND
LOCAL 804 WELFARE TRUST FUND
LOCAL 808 IBT HEALTH AND WELFARE FUND
LOCAL 837 HEALTH AND WELFARE PLAN
LOCAL NO. 4 SEIU HEALTH & WELFARE FUND
LOCAL NO. 731 I. B. OF T. GARAGE ATTENDANTS, LINEN AND LAUNDRY HEALTH AND WELFARE FUND, BY THE LOCAL NO. 731, I.B. OF T. HEALTH AND WELFARE FUND, SUCCESSOR IN INTEREST
LOCAL NO. 731, I.B. OF T. PRIVATE SCAVENGERS HEALTH AND WELFARE FUND, BY THE LOCAL NO. 731 I.B. OF T. HEALTH AND WELFARE FUND, SUCCESSOR IN INTEREST
LOCAL UNION NO. 226 IBEW OPEN END HEALTH AND WELFARE TRUST FUND
LOCAL UNION NO. 9 IBEW AND OUTSIDE CONTRACTORS HEALTH AND WELFARE FUND
LOMA LINDA UNIVERSITY BEHAVIORAL MEDICINE CENTER EMPLOYEE HEALTH PLAN
LOMA LINDA UNIVERSITY EMPLOYEE HEALTH PLAN
LOMA LINDA UNIVERSITY HEALTH CARE EMPLOYEE HEALTH PLAN
LOMA LINDA UNIVERSITY HEALTH SERVICES EMPLOYEE HEALTH PLAN
LOMA LINDA UNIVERSITY MEDICAL CENTER EMPLOYEE HEALTH PLAN
MASHANTUCKET PEQUOT HEALTH BENEFITS PLAN
MASS. BRICKLAYERS AND MASONS HEALTH WELFARE FUND
MAYO CLINIC
MAYO CLINIC HEALTH SYSTEM EAU CLAIRE HOSPITAL, INC.
MAYO CLINIC HEALTH SYSTEM MANKATO
MAYO CLINIC HEALTH SYSTEM AUSTIN
MAYO CLINIC HEALTH SYSTEM EAU CLAIRE CLINIC, INC.
MAYO CLINIC HEALTH SYSTEM RED WING
MEBA MEDICAL AND BENEFITS PLAN
MEDBEN EMPLOYEES HEALTH & WELFARE BENEFIT PLAN
MEMORIAL HEALTHCARE SYSTEM EMPLOYEE HEALTHCARE PROGRAM
MICHIGAN CONFERENCE OF TEAMSTERS WELFARE FUND
MICHIGAN UNITED FOOD AND COMMERCIAL WORKERS UNIONS AND EMPLOYERS HEALTH AND WELFARE FUND BY THE HEARTLAND HEALTH AND WELLNESS FUND, SUCCESSOR IN INTEREST
MICHIGAN UNITED FOOD AND COMMERCIAL WORKERS UNIONS AND EMPLOYERS RETIREE HEALTH AND WELFARE FUND F/K/A MICHIGAN UNITED FOOD AND COMMERCIAL WORKERS UNIONS AND EMPLOYERS HEALTH AND WELFARE FUND

Name
MID CENTRAL OPERATING ENGINEERS HEALTH AND WELFARE FUND
MIDWEST OPERATING ENGINEERS RETIREE WELFARE PLAN
MIDWEST OPERATING ENGINEERS WELFARE FUND
MO-KAN SHEET METAL WORKERS WELFARE FUND
MOTION PICTURE INDUSTRY HEALTH PLAN
NATIONAL ASSOCIATION OF LETTER CARRIERS HEALTH BENEFIT PLAN FOR EMPLOYEES AND STAFF
NATIONAL ASSOCIATION OF LETTER CARRIERS HEALTH BENEFIT PLAN HIGH OPTION
NATIONAL AUTOMATIC SPRINKLER INDUSTRY WELFARE FUND
NATIONAL AUTOMATIC SPRINKLER METAL TRADES WELFARE FUND
NATIONAL ELEVATOR INDUSTRY HEALTH BENEFIT PLAN
NECA-IBEW WELFARE TRUST FUND
NEW ENGLAND HEALTHCARE EMPLOYEES WELFARE FUND
NEW YORK HOTEL TRADES COUNCIL & AFFILATED LOCALS STAFF INSURANCE FUND
NEW YORK HOTEL TRADES COUNCIL AND HOTEL ASSOCIATION OF NEW YORK CITY INC. HEALTH BENEFITS FUND
NGS AMERICAN INC
NORTH ATLANTIC STATES CARPENTERS HEALTH BENEFITS FUND FORMERLY NEW ENGLAND CARPENTERS HEALTH BENEFITS FUND
NORTH CENTRAL STATES REGIONAL COUNCIL OF CARPENTERS HEALTH FUND
NORTHEAST CARPENTERS HEALTH FUND (FORMERLY KNOWN AS NJ CARPENTERS WELFARE FUND)
NORTHERN NEW JERSEY TEAMSTERS BENEFIT PLAN
NRECA GROUP BENEFITS TRUST
OHIO CONFERENCE OF TEAMSTERS AND INDUSTRY HEALTH AND WELFARE FUND
OPERATING ENGINEERS HEALTH AND WELFARE FUND LOCAL 12
OPERATING ENGINEERS LOCAL 148 HEALTH AND WELFARE TRUST
PAINTERS AND ALLIED TRADES DISTRICT COUNCIL #35 HEALTH BENEFITS FUND
PAINTERS DISTRICT COUNCIL 711 HEALTH PLAN
PAINTERS DISTRICT COUNCIL NO. 30 HEALTH AND WELFARE PLAN
PARK NICOLLET HEALTH SERVICES
PARKVIEW HEALTH SYSTEM INC. SIGNATURE CARE EMPLOYEE BENEFIT PLAN*
PARKVIEW HEALTH SYSTEM INC.*
PEPCO HOLDINGS INC WELFARE PLAN FOR ACTIVE EMPLOYEES*
PEPCO HOLDINGS INC WELFARE PLAN FOR RETIREES*
PICO ENTERPRISES, INC. BENEFIT PLAN
PIPE FITTERS WELFARE FUND LOCAL 597
PIPE TRADES INDUSTRY HEALTH AND WELFARE PLAN
PIPE TRADES SERVICES MN WELFARE FUND (DUQ93NVKPR)
PIPELINE INDUSTRY BENEFIT FUND

Name
PLUMBERS & PIPEFITTERS LOCAL NO. 25 WELFARE PLAN
PLUMBERS AND PIPEFITTERS WELFARE EDUCATIONAL FUND
PLUMBERS AND STEAMFITTERS LOCAL 33 HEALTH AND WELFARE TRUST
PLUMBERS LOCAL 68 WELFARE FUND
PLUMBERS PIPE FITTERS AND MECHANICAL EQUIPMENT SERVICE LOCAL UNION NO 392 HEALTH AND WELFARE PLAN
PLUMBERS WELFARE FUND LOCAL 130 U A
POTAWATOMI CARTER CASINO HOTEL
PREFERREDONE ADMINISTRATIVE SERVICES, INC.
QUARLES PETROLEUM INC - ANTHEM VA BLUE CROSS BLUE SHIELD
QUIKTRIP CORPORATION EMPLOYEE BENEFITS PLAN
RAILROAD MAINTENANCE AND INDUSTRIAL HEALTH AND WELFARE FUND
RETIREE MEDICAL PLAN OF THE PLUMBERS LOCAL 130 UA
RHSC INC.
RIVERSIDE RADIOLOGY AND INTERVENTIONAL ASSOCIATES, INC.
ROBERT F. KENNEDY FARMWORKERS MEDICAL PLAN
ROCHESTER LABORERS WELFARE AND SUPPLEMENTAL UNEMPLOYMENT BENEFIT FUND
ROCHESTER PUBLIC SCHOOL DISTRICT
RODDA PAINT CO. HEALTH & WELFARE PLAN
ROOFERS LOCAL 74203 WELFARE FUND
ROOFERS UNIONS WELFARE TRUST FUND
SAG-AFTRA HEALTH PLAN
SAMARITAN HEALTH SERVICES BENEFIT PLAN
SAN DIEGO COUNTY EMPLOYEES RETIREMENT ASSOCIATION
SAN DIEGO ELECTRICAL HEALTH AND WELFARE FUND LOCAL 569
SANDUSKY NEWSPAPERS, INC
SANFORD HEALTH PLAN
SHELL AND KAMPETER, INC DBA DIAMOND PET FOODS HEALTH AND WELFARE PLAN
SEAFARERS HEALTH AND BENEFITS PLAN
SEIU HEALTHCARE IL HOME CARE AND CHILD CARE FUND
SEIU LOCAL 1 & PARTICIPATING EMPLOYERS WELFARE FUND - FORMERLY SEIU LOCAL 25 WELFARE FUND
SEIU LOCAL 2000 HEALTH & WELFARE & PENSION TRUST FUND
SHEET METAL WORKERS HEALTH PLAN OF SOUTHERN CALIFORNIA ARIZONA AND NEVADA
SHEET METAL WORKERS LOCAL 58 WELFARE FUND
SHEET METAL WORKERS' LOCAL 73 WELFARE FUND
SHEET METAL WORKERS LOCAL 91 HEALTH & WELFARE FUND
SHOP IRONWORKERS LOCAL 790 WELFARE PLAN
SHREVEPORT ELECTRICAL HEALTH AND WELFARE FUND
SMART LOCAL 36 WELFARE FUND

Name
SMART LOCAL LOCAL 265 WELFARE FUND (FORMERLY, SHEET METAL WORKERS LOCAL NO. 265 WELFARE FUND)
SONIC AUTOMOTIVE
SOUTH CENTRAL UNITED FOOD & COMMERCIAL WORKERS UNIONS AND EMPLOYERS HEALTH & WELFARE TRUST
SOUTH SOUND FAMILY DENTISTRY PLLC
SOUTHERN CALIFORNIA DRUG BENEFIT FUND
SOUTHERN CALIFORNIA PIPE TRADES HEALTH & WELFARE FUND
SOUTHERN CALIFORNIA PIPE TRADES PENSIONERS & SURVIVING SPOUSES HEALTH FUND
SOUTHERN ILLINOIS LABORERS AND EMPLOYERS HEALTH AND WELFARE FUND
SOUTHERN TIER BUILDING TRADES WELFARE PLAN
SPECIAL AGENTS MUTUAL BENEFIT ASSOCIATION (SAMBA) / SAMBA FEDERAL EMPLOYEE BENEFIT ASSOCIATION
ST. LOUIS GLASS AND ALLIED INDUSTRIES HEALTH AND WELFARE FUND
ST. LOUIS LABOR HEALTHCARE NETWORK
STEUBENVILLE ELECTRICAL WELFARE FUND
STONE TRANSPORT Q
SUBURBAN TEAMSTERS OF NORTHERN ILLINOIS WELFARE FUND
TEAM ONE REPAIR, INC.
TEAMSTERS HEALTH & WELFARE FUND OF PHILADELPHIA & VICINITY
TEAMSTERS HEALTH SERVICES INSURANCE PLAN LOCAL 404
TEAMSTERS INDUSTRIAL EMPLOYEES WELFARE FUND
TEAMSTERS JOINT COUNCIL NO. 83 OF VIRGINIA HEALTH WELFARE FUND
TEAMSTERS LOCAL 1035 HEALTH SERVICES INSURANCE PLAN
TEAMSTERS LOCAL 282 WELFARE TRUST FUND
TEAMSTERS LOCAL 493 HEALTH SERVICES INSURANCE PLAN
TEAMSTERS LOCAL 559 HEALTH SERVICES AND INSURANCE PLAN
TEAMSTERS LOCAL 641 WELFARE FUND
TEAMSTERS LOCAL 671 HEALTH SERVICES AND INSURANCE PLAN
TEAMSTERS LOCAL 677 HEALTH SERVICES INSURANCE PLAN
TEAMSTERS OHIO CONTRACTORS ASSOCIATION HEALTH AND WELFARE FUND
THE CHICAGO PLASTERING INSTITUTE HEALTH AND WELFARE TRUST
THE FORD METER BOX COMPANY, INC EMPLOYEE BENEFIT PLAN
THE SPECIALTY MANUFACTURING CO. EMPLOYEE BENEFIT PLAN
THE UFCW NATIONAL HEALTH AND WELFARE FUND
THE UNDERWRITERS GROUP
TOLEDO FIREFIGHTERS HEALTH PLAN
TRANSPORTATION LOCAL 443 HEALTH SERVICES INSURANCE PLAN
TRI-STATE JOINT FUND
TRUCKING EMPLOYEES OF NORTH JERSEY WELFARE FUND, INC.

Name
TRUSTMARK SERVICES COMPANY
TRUSTMARK SERVICES COMPANY (SAKSOFT INC.)
U. A. LOCAL NO. 447 PIPE TRADES HEALTH AND WELFARE PLAN
U.F.C.W. AND EMPLOYERS KANSAS AND MISSOURI HEALTH AND WELFARE FUND
UFCW & EMPLOYERS BENEFIT TRUST (UEBT) EIN ID: 94-6078804
UFCW 655 WELFARE FUND
UFCW LOCAL 400 AND EMPLOYERS HEALTH AND WELFARE FUND
UFCW NORTHERN CALIFORNIA & DRUG EMPLOYERS HEALTH AND WELFARE TRUST FUND (VALLEY DRUG) EIN ID: 68-0139450
UFCW UNIONS AND EMPLOYERS HEALTH AND WELFARE PLAN OF CENTRAL OHIO BY THE HEARTLAND HEALTH AND WELLNESS FUND, SUCCESSOR IN INTEREST
UMC HEALTH PLAN OPERATIONS
UMTA TRUST
UNION PACIFIC RAILROAD EMPLOYEES HEALTH SYSTEM
UNITED FOOD & COMMERCIAL WORKERS UNION LOCAL 1546 HEALTH & WELFARE FUND
UNITED FOOD AND COMMERCIAL WORKERS UNION AND EMPLOYERS MIDWEST BENEFITS FUND
UNITED FOOD AND COMMERCIAL WORKERS UNION AND FOOD EMPLOYERS BENEFIT FUND
UNITED FOOD AND COMMERCIAL WORKERS UNIONS AND EMPLOYERS CALUMET REGION INSURANCE FUND
UPSTATE NEW YORK ENGINEERS HEALTH FUND
VOLUSIA HEALTH VENTURES INC
WABASH MEMORIAL HOSPITAL ASSOCIATION HEALTH AND WELFARE PLAN
WELLMARK INC.
WELLSPAN HEALTH CAFETERIA PLAN
WELTMAN, WEINBERG REIS CO., LPA
WEST VIRGINIA LABORERS TRUST FUND
WESTERN & SOUTHERN FINANCIAL GROUP FLEXIBLE BENEFITS PLAN
WESTERN GROWERS ASSURANCE TRUST
WISCONSIN ELECTRICAL EMPLOYEES HEALTH AND WELFARE PLAN
WRITERS GUILD - INDUSTRY HEALTH FUND
YALE HEALTH PLAN

EXHIBIT 2

In the United States Court of Federal Claims

THE ELECTRICAL WELFARE TRUST FUND, THE OPERATING ENGINEERS TRUST FUND OF WASHINGTON, D.C., and THE STONE & MARBLE MASONS OF METROPOLITAN WASHINGTON, D.C. HEALTH AND WELFARE FUND on behalf of themselves and all others similarly situated,

Civil Action No. 19-353 C

Judge Roumel

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

NOTICE OF CLASS ACTION SETTLEMENT

You are entitled to a payment from this settlement of illegal exaction claims against the United States. Please read this Notice carefully to see what your rights are under this settlement.

A federal court authorized this Notice. This is not a solicitation from a lawyer.

1. Why are you receiving this Notice?

You are receiving this Notice because you submitted an opt-in form to join the above-captioned class action lawsuit (“Action”) asserting illegal exaction claims against the United States and your opt-in was accepted by the Court. You are an Exaction Class member.

2. What is this lawsuit about?

Electrical Welfare Trust Fund (“EWTF” or “Class Representative”), on behalf of itself and the Exaction Class, alleged that the Department of Health and Human Services (“HHS”) improperly required self-administered, self-insured employee health and welfare benefit plans to make TRP contributions for benefit year 2014 under 42 U.S.C. § 18061 of the Affordable Care Act (“ACA”). The statutory language of 42 U.S.C. § 18061 requires only “health insurance issuers, and third-party administrators on behalf of group health plans” to make TRP contributions. EWTF alleged that self-administered, self-insured entities were required to make TRP contributions despite falling outside of this plain statutory language. This Action sought the return of all TRP contributions paid by self-administered, self-insured employee health and welfare benefit plans

for benefit year 2014 based on HHS’s allegedly unlawful interpretation of 42 U.S.C. § 18061.

On June 22, 2022, the Court issued an Order certifying the following opt-in class: all self-administered, self-insured employee health and welfare benefit plans that are or were subject to the assessment and collection of the Transitional Reinsurance Contribution under Section 1341 of the ACA for benefit year 2014. On July 27, 2022, the Court directed EWTF to issue notice to potential members of the Exaction Class informing them of their right to opt-in to this litigation. Thereafter, Class Counsel and the Court-authorized administrator JND Legal Administration LLC (“JND”) disseminated notice to potential members of the Exaction Class. As a result of these efforts, 357 plans (who submitted opt-ins) were ultimately accepted as Exaction Class members by the Court.

On December 21, 2022, the Court granted EWTF’s Motion for Summary Judgment, stating its agreement with EWTF’s theory of liability. Thereafter, on May 12, 2023, the Court entered Rule 54(b) Judgment in favor of the Exaction Class (“Judgment”). The Judgment awarded a total of \$185,230,024.42 to the Exaction Class, which equates to 100% of the TRP contributions paid by Exaction Class members for benefit year 2014. The 357 Exaction Class members are listed on Exhibit 1 to the Court’s Judgment and Exhibit A to the Settlement Agreement.

On June 26, 2023, the Government filed a Notice of Appeal of the Judgment with the U.S. Court of Appeals for the Federal Circuit. During this same time, the parties began to explore the possibility of resolving the Action to avoid the time, risk and expense of litigating an appeal. After good-faith, arms-length negotiations, Class Representative EWTF, on behalf of all Exaction Class members, agreed to settle the Action in exchange for the Government’s payment of \$169,022,397.28 (i.e., an 8.75% reduction on the total amount awarded by the Court in its Judgment) (“Settlement”).¹

On _____, 2024 the Court preliminarily approved the Settlement, required that notice of the Settlement be sent to all 357 Exaction Class members, and scheduled a fairness hearing for _____, 2024 (“Fairness Hearing”) to determine if the Settlement and any requested attorneys’ fees, litigation expenses and case contribution award for Class Representative should be finally approved.

More detailed information about this lawsuit is contained in the operative Second Amended Class Action Complaint filed in this Action on May 2, 2022. The Second Amended Class Action Complaint, along with other important case documents, are available for review at www.TRPLitigation.com/exaction.

3. What are the terms of the Settlement?

Pursuant to the Settlement Agreement, the Government will pay \$169,022,397.28 (“Settlement

¹ This Settlement does not release any claims of Plaintiffs Operating Engineers Trust Fund of Washington, D.C. and The Stone & Marble Masons of Metropolitan Washington, D.C. Health and Welfare Fund (“Takings Plaintiffs”), or the putative Takings Class (all self-insured employee health and welfare benefit plans with assets held pursuant to a trust agreement that were required to make the Transitional Reinsurance Contribution under Section 1341 of the Affordable Care Act for benefit years 2014, 2015 and/or 2016). Those claims are still being litigated.

Amount”) to resolve all illegal exaction claims asserted by the 357 Exaction Class members in this Action as well as claims for attorneys’ fees and expenses. The Settlement Amount represents 91.25% of all recoverable damages against the Government. If approved by the Court, the Settlement will permit you to be paid for your claims in this case sooner, rather than years from now, or not at all.

Upon payment of the Settlement Amount, Class Representative and all other Exaction Class members will release, waive, and abandon all claims against the United States, its political subdivisions, its officers, agents, and employees, arising out of the Complaint or otherwise related to this Action, regardless of whether they were included in the Complaint, including but not limited to any claims for costs, expenses, attorneys’ fees, administrative fees and costs, and damages of any sort (“Released Claims”). For the avoidance of doubt, Released Claims do not include any claims asserted in the Action by the Takings Plaintiffs or the putative Takings Class. Released Claims also do not include any claims relating to the enforcement of the Settlement.

In the Court’s order preliminarily approving the Settlement (“Preliminary Approval Order”), available at www.TRPLitigation.com, the Court appointed JND (the same administrator that handled opt-in class notice) as the “Settlement Administrator.” In addition to sending this Notice to Exaction Class members, the Settlement Administrator will pay Court-awarded attorneys’ fees, litigation expenses and any case contribution award from the Gross Settlement Fund (i.e., the Settlement Amount plus any interest earned on the Settlement Amount while in escrow). All costs for administering the Settlement will also be paid from the Gross Settlement Fund. The amount remaining in the Gross Settlement Fund after the deduction of administration costs, attorneys’ fees, litigation expenses and case contribution award is the “Net Settlement Fund.”

4. What will my payment be and how was this amount determined?

Because the Settlement represents a compromise, the payment to each Exaction Class member will be its share of the Net Settlement Fund.

More specifically, as an Exaction Class member, you will receive a *pro rata* share of the Net Settlement Fund (i.e., the Gross Settlement Fund minus fees, expenses, and any contribution award), based on the total amount of your 2014 TRP Contribution.

If the Settlement is finally approved by the Court, the Settlement Administrator will send to you your *pro rata* share. Your payment will be sent to you by check or wire.

In order to receive payment, you must provide you Taxpayer Identification Number (or EIN) to the Settlement Administrator.

Please Note: No opinion or advice concerning the tax consequences of the proposed Settlement to individual Exaction Class members is being given or will be given by the parties or their counsel. Each Exaction Class member’s tax obligations, and the determination thereof, are the sole responsibility of the Exaction Class member, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Exaction Class member.

5. Who is representing Class Representative and the Exaction Class?

Kessler Topaz Meltzer & Check LLP and McChesney & Dale, P.C. are the law firms representing Class Representative EWTF and the Exaction Class in this Action. You are not directly responsible for Class Counsel's attorneys' fees or expenses. If the Court approves Class Counsel's request for attorneys' fees and expenses, these amounts will be paid to Class Counsel from the Gross Settlement Fund. Consistent with the representations made in the initial notice following the Court's certification of the class, Class Counsel will request that the Court approve attorneys' fees in an amount not to exceed 25% of the Gross Settlement Fund plus litigation expenses.

6. What is a case contribution award?

Class Counsel will also ask the Court to approve a case contribution award to Class Representative EWTF in an amount not to exceed \$50,000, for the extensive work it performed investigating the facts underlying the Action, supervising the litigation of the Action, participating in discovery, and negotiating the settlement at significant costs of time and resources.

7. What are my rights and options under the Settlement?

You have the right to participate in the Settlement and/or to object to the Settlement, the request for attorneys' fees and expenses, and/or the request for Class Representative's case contribution award.

a. Participation

You have opted into this lawsuit and are an Exaction Class member. Accordingly, to participate in the Settlement and receive your portion of the Net Settlement Fund, you do not need to take any further action. By opting into the lawsuit, you agreed to be bound by any adjudication by the Court or settlement approved by the Court.

b. Objections

As an Exaction Class member, you may object to the Settlement, the request for attorneys' fees and expenses and/or the request for a case contribution award to Class Representative.

The Court will consider and decide all properly submitted objections. All orders and judgments entered by the Court regarding the Settlement, including whether to accept or reject an objection, are binding on all Exaction Class members.

To object, you must file a written statement with the Court (and serve the same on Class Counsel and the Government's Counsel), stating your objection. Specifically, your objection must include: (1) the name of this proceeding, *The Electrical Welfare Trust Fund, et al. v. United States of America*, Civil Action No. 19-353 C (U.S. Court of Federal Claims); (2) your full name, current address, and telephone number; (3) your signature, or if represented, your counsel's signature; (4) a descriptions of the basis for your objection, including all citations to legal authority and evidence supporting the objection; and (5) the control number printed under your address on page 1 of this Notice. If you are represented by an attorney, you must also include the full name, address, phone number, and email address of your attorney in your objection. If you wish to personally participate in the Fairness Hearing or if you wish to have your attorney do so, your objection must include a

request to participate in the Fairness Hearing, either in person or through your attorney.

To be considered by the Court, all objections to the Settlement, and all requests to participate in the Fairness Hearing, must be filed with the Court **no later than** _____, 2024:

Clerk of Court
U.S. Court of Federal Claims
Howard T. Markey National Courts Building
717 Madison Place, N.W.
Washington, DC 20439

Copies of the objection must also be served on representative counsel for the Exaction Class and the Government's Counsel at the following addresses:

Representative Class Counsel
Joseph H. Meltzer
Kessler Topaz Meltzer & Check, LLP
280 King of Prussia Road
Radnor, PA 19087
jmeltzer@ktmc.com

Government's Counsel
Borislav Kushnir
Senior Trial Counsel
U.S. Department of Justice
P.O. Box 480
Ben Franklin Station
Washington, D.C. 20044
Steven.Kushnir@usdoj.gov

UNLESS OTHERWISE ORDERED BY THE COURT, ANY EXACTION CLASS MEMBER WHO DOES NOT OBJECT IN THE MANNER DESCRIBED HEREIN WILL BE DEEMED TO HAVE WAIVED ANY OBJECTION AND SHALL BE FOREVER FORECLOSED FROM MAKING ANY OBJECTION TO THE SETTLEMENT, INCLUDING THE REQUEST FOR ATTORNEYS' FEES, LITIGATION EXPENSES AND CASE CONTRIBUTION AWARD, AND WILL NOT BE ALLOWED TO PRESENT ANY OBJECTIONS AT THE FAIRNESS HEARING.

8. When and where will the Court decide whether to approve the Settlement and requests for attorneys' fees, expenses and case contribution award?

The Court will hold the Fairness Hearing on _____, 2024 at __:__ EDT, at the Court of Federal Claims, Howard T. Markey National Courts Building, 717 Madison Place, N.W., Washington, D.C. 20439. At this hearing, the Court will consider whether the Settlement is fair, reasonable and adequate and whether Class Counsel's requests for attorneys' fees, expenses and case contribution award to EWTF are fair and reasonable. If there are objections, the Court will consider them at that time. If you do not have objections to the Settlement, you do not have to attend the hearing.

9. How can I find out how much I will receive?

You may contact Class Counsel or the Settlement Administrator at 1-877-654-1971.

10. When and how will I get paid if the Settlement Agreement is approved?

Payments will go out after the Court finally approves the Settlement (“Final Judgment”) and there are no appeals. Your share of the Settlement will be paid by check or wire transfer.

11. What if I need more information or have additional questions?

This Notice summarizes the Settlement. The complete terms of the Settlement are set out in the Settlement Agreement. You may obtain a copy of the Settlement Agreement and other Settlement-related documents at www.TRPLitigation.com/exaction. You can also contact the Settlement Administrator at:

**TRP Litigation
c/o JND Legal Administration
PO Box 91381
Seattle, WA 9811
1-877-654-1971
info@TRPLitigation.com**

If you have additional questions, you may contact Class Counsel directly:

Joseph H. Meltzer
Melissa L. Yeates
Jonathan F. Neumann
Jordan E. Jacobson
**KESSLER TOPAZ
MELTZER & CHECK, LLP**
280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
jmeltzer@ktmc.com
myeates@ktmc.com
jneumann@ktmc.com
jjacobson@ktmc.com

Charles F. Fuller
McCHESNEY & DALE, P.C.
4000 Mitchellville Road, Suite 222
Bowie, MD 20716
Telephone: (301) 805-6080
chuck@dalelaw.com

Please do not contact the Government or the United States Court of Federal Claims with questions or requests for information.

Dated: _____, 2024

By Order of the Court

EXHIBIT 3

In the United States Court of Federal Claims

THE ELECTRICAL WELFARE TRUST
FUND, THE OPERATING ENGINEERS
TRUST FUND OF WASHINGTON, D.C., and
THE STONE & MARBLE MASONS OF
METROPOLITAN WASHINGTON, D.C.
HEALTH AND WELFARE FUND on behalf of
themselves and all others similarly situated,

Plaintiffs,

v.

UNITED STATES OF AMERICA,

Defendant.

Civil Action No. 19-353 C

Judge Roumel

[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF SETTLEMENT AND AUTHORIZATION TO DISSEMINATE NOTICE OF SETTLEMENT

Pending before the Court is Plaintiff's Unopposed Motion for Preliminary Approval of Settlement and Authorization to Disseminate Notice of Settlement. (ECF No. ___).

Having reviewed Plaintiff's Motion and supporting Memorandum and the Parties' Settlement Agreement, it is hereby Ordered, Adjudged, and Decreed as follows:

1. The Settlement Agreement entered into by Plaintiff and Defendant on February 16, 2024 is approved preliminarily as fair, reasonable, and adequate and in the best interest of the Settlement Class;

2. The Court approves JND Legal Administration ("JND") to act as Settlement Administrator and JND is authorized and directed to act in accordance with the Settlement Agreement and all Orders relating to the Settlement;

3. The form and content of the proposed Notice of Class Action Settlement and the proposed manner of communicating the Notice to Settlement Class Members are approved. The Court finds the Notice is the best practicable notice under the circumstances, constitutes reasonable notice to Settlement Class Members of the essential terms of the Parties' Settlement Agreement and Settlement Class Members' rights and options in connection with the Settlement and satisfies applicable laws, including due process and RCFC 23:

(a) Within fifteen (15) days of the Court's entry of this Order, JND will e-mail the Notice to all Settlement Class Members. Continuing through the date of the Fairness Hearing, JND will also display on the internet website dedicated to the matter the following documents: (i) the Notice of Class Action Settlement; (ii) the operative Complaint; (iii) the Settlement Agreement; and (iv) this Order.

(b) Plaintiff's Motion for Final Approval of the Settlement and Class Counsel's Motion for an Award of Attorneys' Fees, Litigation Expenses, and Case Contribution Award shall be filed no later than thirty-five (35) days prior to the date of the Fairness Hearing.

(c) Any objections to the Settlement Agreement and/or Class Counsel's Motion for an Award of Attorneys' Fees, Litigation Expenses and Case Contribution Award shall be filed with the Court, with copies provided to Class Counsel and Defendant's counsel, no later than twenty-one (21) calendar days prior to the date of the Fairness Hearing.

(d) Any reply submissions, including responses to any objection by Class Counsel and Defendant's counsel, shall be filed with the Court no later than seven (7) calendar days prior to the date of the Fairness Hearing.

4. Pursuant to RCFC 23(e), a final Fairness Hearing shall be held on _____, 2024 in the United States Court of Federal Claims, the Honorable Eleni M. Roumel presiding, to:

(a) determine whether the Settlement Agreement should be finally approved as fair, reasonable and adequate and in the best interest of the Settlement Class;

(b) determine whether Class Counsel's Motion for Attorneys' Fees, Litigation Expenses and Case Contribution Award is fair and reasonable and should be approved; and

(c) determine whether a Final Judgment should be entered dismissing all claims in this litigation with prejudice and releasing all claims asserted herein against Defendant in accordance with the Settlement Agreement.

IT IS SO ORDERED this _____ day of _____, 2024.

ELENI M. ROUMEL
Judge