

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VALESKA SCHULTZ <i>et al.</i> ,)	
)	
Plaintiffs,)	Case No. 4:16-cv-1346-JAR
)	
v.)	
)	
EDWARD D. JONES & CO., L.P., <i>et al.</i> ,)	
)	
Defendants.)	

**DECLARATION OF GREGORY Y. PORTER
IN SUPPORT OF FINAL APPROVAL OF CLASS ACTION SETTLEMENT,
CERTIFICATION OF SETTLEMENT CLASS AND
APPROVAL OF CLASS NOTICE AND PLAINTIFFS’ MOTION FOR
ATTORNEYS’ FEES, REIMBURSEMENT OF EXPENSES AND CASE
CONTRIBUTION AWARDS**

I, Gregory Y. Porter, declare as follows:

1. I make this Declaration of my own personal knowledge, and if called as a witness, I would and could testify competently to the matters stated herein.
2. I am a partner of the law firm Bailey & Glasser LLP and have been the lead attorney for my firm in this litigation representing the plaintiffs.
3. I submit this declaration in support of: (1) Plaintiff’s Motion for Final Approval of Class Action Settlement, Certification of Settlement Class and Approval of Class Notice; and (2) Plaintiff’s Motion for Attorneys’ Fees, Reimbursement of Expenses and Case Contribution Awards.
4. I have been litigating ERISA fiduciary breach lawsuits since 1998. A select group of cases in which I have acted as lead or co-lead counsel in ERISA actions includes: (i) *Jessop v. Larsen*, 14-cv-00916 (D. Utah) (employee stock ownership plan settlement with

trustee and individual defendants for \$19.8 million); (ii) *Diebold v. Northern Trust Investments, N.A.*, 09-cv-1934 (as co-lead counsel, secured a \$36 million cash settlement on behalf of hundreds of ERISA retirement plans who complained about mismanagement of class collateral pools); (iii) *Glass Dimensions, Inc. v. State Street Bank and Trust Co.*, 10-cv-10588 (D. Mass.) (class action about securities lending fees settled for \$10 million in 2014); (iv) *Figas v. Wells Fargo*, 08-04546 (D. Minn.) (recovered \$17.5 million in case alleging investment conflicts of interest); (v) *In re CMS Energy ERISA Litig.*, 02-cv-72834 (E.D. Mich.) (recovered \$28 million for employees in case alleging imprudent investment in employer stock); (vi) *Sherrill v. Federal Mogul Corp.*, 04-cv-72949 (E.D. Mich.) (recovered over \$14 million for employees in case alleging imprudent investment in employer stock); (vii) *Tittle v Enron Corp.*, 01-cv-3913 (S.D. Tex.) (represented Jeffrey Skilling, Chief Executive Officer of Enron Corp., in landmark ERISA case alleging imprudent investment of 401(k) plan savings in Enron stock); (viii) *Dupree v. The Prudential Ins. Co. of Am.*, 99-cv-8337 (S.D. Fla.) (successfully defended Prudential in trial of first impression involving claims that Prudential breached its duties by causing its own employee retirement plan to purchase investment products from Prudential).

5. Mark Boyko served as Bailey Glasser's lead associate on this matter. A copy of Bailey Glasser LLP's Firm Resume is attached hereto as Exhibit A.

6. I and co-counsel Izard Kindall & Raabe LLP and Kessler Topaz Meltzer & Check, LLP ("Class Counsel") have been actively involved in all stages of this lawsuit, including investigating and preparing the Complaint, successfully defending against Defendants' motion to dismiss, seeking discovery, reviewing documents, hiring experts, and settling this litigation.

7. As lead attorney for my firm, I personally managed, delegated, and supervised the allocation of personnel and expenses employed by my firm in this case. We have aggressively and vigorously prosecuted this case and represented the best interests of the Plaintiffs and the participants and beneficiaries of the Plan. Over the course of the litigation, we incurred the following expenses:

Expense Category	Amount
Document Hosting, Production, and other Professionals	\$1,823.93
Expert Witness Costs	\$12,302.75
Fees, Filing, Service of Process, Pro Hac Vice	\$721.13
Legal Research	\$716.43
Document Copying, Postage, FEDEX, Courier	\$8.32
TOTAL	\$15,572.56

8. The time records do not include hours billed by attorneys and paralegals who billed fewer than five hours to the lawsuit or work performed by summer associates.

9. The time records also do not include work performed to date on this Motion. None of the expenses sought to be reimbursed include any expenses incurred relating to seeking reasonable attorneys' fees and expenses in this matter.

10. The hourly rates of timekeepers reflect the hourly rates that they bill in similar matters and engagements.

11. The time records indicate the following hours worked:

Name	Position	Hourly Rate	Hours	Lodestar
Gregory Porter	Partner	\$750.00	37.4	\$28,050
Jeff Baron	Partner	\$600	4.1	\$2,460
Tillman Breckenridge	Partner	\$600	10.0	\$6,000
Mark Boyko	Associate	\$600	577.8	\$346,680
Alex Serber	Associate	\$300	162.9	\$48,870
Sue Polston	Paralegal	\$200	70.9	\$14,180
Tiffany Haggerty	Paralegal	\$200	15.1	\$3,020

Melissa Kestner-Clay	Paralegal	\$225	92.2	\$20,745
Total			970.4	\$470,005.00

12. Plaintiffs' Counsel only spent the time necessary to effectively prosecute this case, and attempted to avoid duplication of efforts.

13. Plaintiffs' Counsel anticipates, based on prior experience, spending a minimum of 25 additional hours in order to prepare for and conduct interviews with the independent Fiduciary, communicate with class members, attend the Final Approval Hearing, and monitor Defendants' compliance with the Settlement. The time records above do not include future time spent on this case.

14. The expenses pertaining to this case are reflected in the books and records of my firm. These books and records are prepared from expense vouchers, check records and other documents, and are an accurate record of the expenses incurred in the prosecution of this matter.

15. Details and material supporting the time records and expenses referenced in this declaration are available upon the request of the Court.

16. The settlement negotiations that led to this settlement began in earnest in June, 2018. As set forth in my Declaration in Support of Preliminary Approval (Doc. 94-1), prior to engaging in any settlement discussions, Class Counsel served two sets of document requests, two a set of requests for admission, and reviewed more than 22,000 documents that comprised more than 100,000 pages of material, including the minutes from the Plan's fiduciary committees showing how the Defendants selected and retained the Plan's investment options. Plaintiffs also served a subpoena on Transamerica, the Plan's recordkeeper, to obtain the Plan's transactional records in order to calculate damages and understand the fees the Plan paid for recordkeeping

services. Transamerica produced over 300 documents comprising more than 2,500 pages of material in response.

17. In connection with their settlement negotiations, the Parties exchanged information regarding their views on the merits, strengths, and weaknesses of the Action, risks of litigation, available insurance, and the financial impact to Defendants, the Class, and the Plan, with respect to any judgment or settlement. Plaintiff did not discount the amount of the Settlement based on Edward Jones' ability to pay.

18. In addition, during this time the parties shared the view of their experts on merits and damages issues. The parties engaged in in person negotiation sessions on June 6 and August 21, 2018. Although no settlement was reached at that point, the parties made sufficient progress over the subsequent weeks, that they jointly requested a stay in order to continue negotiations. Negotiations did continue, and on December 11, 2018, the parties reached a settlement. A true and correct copy of the Settlement Agreement is attached to Plaintiffs' Motion for Final Approval. Based on these negotiations and the exchange of documents and information, the Parties were able to negotiate a fair settlement that they believe to be in their respective best interests. Because the Settlement is the product of serious, informed, non-collusive negotiations, preliminary approval should be granted.

19. In litigating this class action, Class Counsel retained Steve Pomerantz, Ph.D. as an expert to calculate damages based on the fees charged to plan participants by the affiliated funds. Dr. Pomerantz calculated that certain challenged funds underperformed index funds in the same asset categories by \$45 million over the Class Period. However, Dr. Pomerantz also noted that if these benchmarks are adjusted to reflect differences in fund asset allocation, damages would be reduced to \$6 million.

20. Attached hereto as Exhibit B is the Declaration of Rachel Christman of KCC Class Action Services, the Settlement Administrator approved by the Court. Doc. 97 at ¶ 5. As set forth in ¶¶ 7-10 of Ms. Christman's Declaration, KCC sent Notice to the 71,121 members of the Class in accordance with the Court's Order which preliminarily approved the Settlement [Doc. 97 at ¶¶ 11-15]. Since the Notice was sent, Class counsel has communicated with several members of the Class who called to ask questions about the Settlement. Recognizing that Class members' opportunity to object to the Settlement has not yet passed, Class Counsel is only aware of one Class member who opposes the Settlement and that person has filed his objection with the Court [Doc. 98].

21. My firm has also been Class Counsel's primary point of contact for Plaintiff Rosalind Staley. Plaintiff Staley has been actively involved in advancing the case and achieving the best possible result for the Class. Ms. Staley kept in regular contact with about the status of the case and the settlement negotiations by email and telephone. Additionally, Ms. Staley participated in discovery in this case by gathering her Plan-related documents in response to Defendants' discovery requests and other information that was helpful in litigating this case, including how the Plan's administrative expenses were charged to participants. In all, I estimate that Ms. Staley has spent at least 20 hours of time to date on this litigation.

I declare, pursuant to 28 U.S.C. § 1746 and under penalty of perjury, that the foregoing is true and correct to the best of my knowledge, information and belief.

Executed at Washington, D.C. this 19th day of March, 2019.



Gregory Y. Porter