UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VALESKA SCHULTZ, et al.,	)	
Plaintiffs,	)	CASE No. 4:16-cv-1346-JAR
v.	)	
EDWARD D. JONES & CO., L.P., *et al.*	)	
Defendants.	)	

OBJECTION TO PROPOSED CLASS ACTION SETTLEMENT, ATTORNEY'S FEE AWARD AND CASE CONTRIBUTION AWARDS

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

I. INTRODUCTION

Mr. Shiyang Huang ("Objector"), an unnamed Class member, hereby objects to the Settlement, Attorneys' Fee Requests, and the named Plaintiffs' Request for Case Contribution Awards, because the proposed Settlement is unqualified to certify class under Rule 23(b)(1), and the Settlement terms is unfair, unreasonable, and inadequate for Class members, in addition to several procedural errors.

The Objector reviewed Memorandum of Law in Support of Motion for Preliminary Approval of a Settlement ("Settlement") , submitted by Plaintiffs Valeska Schultz, Melanie Waugh and Rosalind Staley (collectively, "Plaintiffs").on behalf of preliminarily approved Settlement-purpose Class of Edward D. Jones & Co. Profit Sharing and 401(k) Plan (formerly Edward D. Jones & Co. Profit Sharing and Deferred Compensation Plan) (hereafter the "Plan").

The Objector seeks an Order to deny the final Settlement, and the Plaintiffs and Counsel shall not consider this Settlement at all, if they were truly representatives of all similarly situated putative class members in the Plan.

Objector hereby files this objection as permitted by Fed. Civ. P. Rule 23(e)(5)(A), "*Any class member may object to the proposal if it requires court approval under this subdivision (e).*" Also see Committee Notes on Rules—2018 Amendment, Rule 23, Subdivision (e)(5)(B), "*Good-faith objections can assist the court in evaluating a proposal under Rule 23(e)(2).*". Furthermore, also in Committee Notes on Rule 23— 2018 Amendment, Rule 23, Subdivision(e)(5)(A), Objector asks the Court to avoid "unduly burdening class members who wish to object".

> *Courts should take care, however, to avoid unduly burdening class members who wish to object, and to recognize that a class member who is not represented by counsel may present objections that do not adhere to technical legal standards.*

II. LIST OF OBJECTIONS

A. PROPOSED SETTLEMENT FAILED ELIGIBILITY TESTS FOR RULE 23(B)(1)

In Amchem Products, Inc. v. Windsor, 521 US 591., Supreme Court asked courts to heavily scrutinize Rule 23 class certifications with "undiluted, even heightened, attention" for *settlement-only* class certifications, such as this proposed Settlement:

> ***Confronted with a request for settlement-only class certification,***
> ***[...] other specifications of the Rule— those designed to protect absentees by blocking unwarranted or overbroad class definitions—demand undiluted, even heightened, attention in the settlement context.*** *Such attention is of vital importance, for a court asked to certify a settlement class will lack the opportunity, present when a case is litigated, to adjust the class, informed by the proceedings as they unfold. See Rule 23(c), (d).[16]*
> [...]
> *[Rule 23(e)] was designed to function as an additional requirement, not a superseding direction,* ***for the "class action" to which Rule 23(e) refers is one qualified for certification under Rule 23(a) and (b).***
>
> (Bold emphasis added)

1. Consistent adjudication prohibits use of Rule 23(b)(1)(A)

The key purpose of Rule 23(b)(1)(A) is to resolve varying adjudications, but inconsistent adjudication is impossible for this litigation. Notes of Advisory Committee on Rules—1966 Amendment to Fed. Civ. P. Rule 23(b), explicitly set a strict test for Class certification under Rule 23(b)(1)(A):

> *Clause (A): One person may have rights against, or be under duties toward, numerous persons constituting a class, and be so positioned that conflicting or varying adjudications in lawsuits with individual members of the class might establish incompatible standards to govern his conduct.*

The Court's finding for below questions on Defendants' duty to the Plan will uniformly apply to all eligible Plan members, and *inconsistent adjudications is impossible.* The following six sample questions (but not solely limited to them) can be tested by the Court to determine

whether the Plan fiduciaries were disloyal or imprudent in the decisions made for the Plan, and once determined, the Court shall uniformly apply the same adjudication for all Plan members:

(1) Did Defendants fulfill fiduciary roles and limit Plan's recordkeeping costs with Mercer?

(2) Did Defendants fulfill fiduciary responsibility, when the Plan did not offer lowest-cost institutional share class of the same underlying mutual fund investments?

(3) Did Defendants fulfill fiduciary responsibility, when the Plan regularly offered "money market funds" that is basis points more costly than top decile comparables, every year?

(4) If Defendants secured kickback agreements ("revenue sharing") with mutual fund companies for fiduciary assets in the Plan, are such actions permitted for Plan fiduciaries?

(5) Did Defendants fulfill Plan fiduciary responsibilities of "continuing duty to monitor trust investments and remove imprudent ones"? see Tibble v Edison Int'l, 575 U.S. (2015)

(6) Are Plan members responsible for any unnecessary expenses in the Plan, if the Plan is found to have imprudent investments (*or lack of* prudent investment options)?

Those six example questions can be tested by the Court to determine whether the Plan fiduciaries were disloyal or imprudent in the decisions made for the Plan, and once determined, the Court shall uniformly apply the same adjudication for all Plan members, eliminating use of Rule 23(b)(1)(A). Consistent with findings in LaRue v. DeWolff, Boberg & Associates, Inc., 552 US 248 (2008), Supreme Court specified that remedy for individual injuries are *not distinct* from Plan injuries, such that inconsistent adjudication is not possible.

> *For defined contribution plans, however, fiduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive.*
> *[...]*
> *We therefore hold that although [ERISA] §502(a)(2) does not provide a remedy for individual injuries distinct from plan injuries, that provision does authorize recovery for fiduciary breaches that impair the value of plan assets in a participant's individual account.*

LaRue applies to this case, because Supreme Court specified that remedy for individual injuries are *not distinct* from Plan injuries, such that inconsistent adjudication is not possible. Individuals are allowed to bring suit such as *LaRue* to seek recovery of individual accounts, but it will not create inconsistent adjudication for all the other members of the "defined contribution" Plan. Plaintiffs cannot meet settlement-only class certification under Rule 23(b)(1)(A).

2. Lack of "Limited Fund" prohibits use of Rule 23(b)(1)(B)

Fed. Civ. P. Rule 23(b)(1)(B) explicitly stated the very limited use case of this clause:

> *(B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interest*

Rule 23(b)(1) (B) of Fed. Civ. P. Rule also explicitly states the key condition for certifying a Class under Rule 23(b)(1)(B) is the "dispositive to the interest of other members"; but the key difference with this litigation is, actions seeking financial relief that will flow into individuals' accounts, are not dispositive of other parties' interests. As a result, Plaintiffs may file suit "on behalf of the Plan", but not "on behalf of the Plan" *as a whole*, because the Plan is a defined contribution plan with individualized account balances. Thus, this litigation cannot meet requirements of Rule 23(b)(1)(B).

3. Courts frequently criticized creative use of Rule 23(b)(1)(B)

In Ortiz v. Fibreboard Corp. 527 US 815, (1999), the Supreme Court set strict standards on the application of Fed. R. Civ. P. Rule 23(b)(1)(B):

> *The prudent course, therefore, is to presume that when subdivision (b)(1)(B) was devised to cover limited fund actions, the object was to stay close to the historical model.*
>
> [...]

> *Consistent with its backward look under subdivision (b)(1), as commentators have pointed out, it is clear that the Advisory Committee did not contemplate that the mandatory class action codified in subdivision (b)(1)(B) would be used to aggregate unliquidated tort claims on a limited fund rationale.*

In *Ortiz*, the Supreme Court made clear that "unliquidated tort claims" is **NOT** limited fund action, and are ineligible for Class certification under Rule 23(b)(1)(B). Similar to *Ortiz*, "the only limited fund in the case was a creature of the settlement itself".

In the Settlement's Section IV, Part B-2, Plaintiffs' Counsel clearly affirmed the Defendant's "unliquidated" financial conditions, thus there is no "Limited Fund" to be applied, and again the putative class shall not be certificated under Rule 23(b)(1)(B).

4. In conclusion, Rule 23(b)(1) is a terrible choice for class certification

The Plaintiffs may seek individual recovery alone against Defendants under *LaRue* authorization. If Plaintiffs insist the legitimacy of Rule 23(b)(1) for the putative class, then Plaintiffs shall not have expressed the same reservations about class certification for litigation purposes, such that Plaintiffs have not filed motion to certify class promptly.

B. PROPOSED SETTLEMENT IS UNFAIR, UNREASONABLE, AND INADEQUATE FOR CLASS MEMBERS

1. Effective December 1, 2018, Rule 23 formalized "fair, reasonable, and adequate" standards against class action settlements proposals

After updates go into effect on December 1, 2018, Fed. Civ. P. Rule 23(e)(2) formalized various factors for measuring "fair, reasonable, and adequate" requirements for settlement scrutiny:

> *[Rule 23(e) (2)] Approval of the Proposal. If the proposal would bind class members, the court may approve it only after a hearing and only on finding that it is fair, reasonable, and adequate after considering 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.

2. Even without superseding Rule 23 revisions, the Settlement proposal missed key elements in "fair, reasonable, adequate" evaluations.

Prior to Rule 23 amendments in December 2018, 8th Circuits decided Keil v. Lopez, 862 F. 3d 685 (8th Cir., 2017) by using factors in Van Horn v. Trickey, 840 F.2d 604 (8th Cir., 1988). Analysis proves that this proposed Settlement cannot meet requirements under *Van Horn* either.

Plaintiffs established several types of losses to the Plan, and as further discussed in another section below, 8th Circuit's *Braden* decision affirmed Plaintiffs' fulfillment of pleading standards, such that ERISA fiduciary Defendants now have the burden of proof for their breach of fiduciary duty. Contrary to *Keil* and *Van Horn*, in which burden of proof relied on the plaintiffs, burden of proof on Defendants significantly raises the "Merits of the Plaintiffs' Case", which is "Weighed Against the Terms of the Settlement". In addition, the objections from class members differ, as nearly 45,000 Class members have a current employment relationship with the Defendants, so as to be eligible as a Class member – in conjunction with their employments, there are no incentives, and plenty of disincentives for them to not object to the Settlement. As a result, this proposed Settlement cannot be compared simply with *Keil* and *Van Horn* in their fairness evaluations, and the proposed Settlement failed to discuss the favorable burden of proof.

3. Plaintiffs improperly assessed Rule 23(e)(2)(C) in favor of proposed Settlement.

i. Plaintiffs missed 8th Circuit precedents that shift burden of proof to Defendants

In Braden v. Wal-Mart Stores, Inc., 588 F. 3d 585 (8th Cir., 2009)"8th Circuit affirmed ERISA Fiduciary's duties as "*the highest known to the law*" (Citing Donovan v. Bierwirth, 680 F.2d 263, 272 n. 8 (2d Cir.1982)). In Brotherston v. Putnam Investments, LLC, 907 F. 3d 17 (1st Cir., 2018), 1st Circuit also emphasized 8th Circuit precedents to hold ERISA fiduciary responsible to prove the prudence of Defendants' actions. ERISA Plaintiffs only need to prove Defendants' fiduciary duty to the Plan, and any actual losses to the Plan:

> *For the foregoing reasons, we align ourselves with the Fourth, Fifth, and Eighth Circuits and hold that once an ERISA plaintiff has shown a breach of fiduciary duty and loss to the plan, the burden shifts to the fiduciary to prove that such loss was not caused by its breach, that is, to prove that the resulting investment decision was objectively prudent.*

Furthermore, in *Braden*, 8th Circuit found the allegation of ERISA plan losses to fulfill plaintiffs' pleading standards, by establishing losses in ERISA plans, such that in this case, the burden of proof will shift from Plaintiffs to Defendants to significantly reduce Plaintiff risks:

> *The district court correctly noted that none of these allegations directly addresses the process by which the Plan was managed.* ***It is reasonable, however, to infer from what is alleged that the process was flawed.*** *Taken as true, and considered as a whole, the* ***complaint's allegations can be understood to assert that the Plan includes a relatively limited menu of funds*** *which were selected by [defendants] despite the ready availability of better options.*
> *[...]*
> *If these allegations are substantiated, the process by which [defendants/appellees] selected and managed the funds in the Plan would have been tainted by failure of effort, competence, or loyalty. Thus the allegations state a claim for breach of fiduciary duty. See Roth, 16 F.3d at 918-19.*

In *Braden* and *Brotherston*, courts held that burden of proof shifts to ERISA fiduciary defendants, as long as ERISA Plaintiffs prove (1) Fiduciary duty of Defendants, and (2) Actual Damages. Plaintiffs, instead, cherry picked the very few cases that ERISA plaintiffs lost.

Furthermore, in Santomenno v. Transamerica Life Ins. Co., 883 F. 3d 833 (9th Cir., 2018), an affiliate of Plan's recordkeeper, Transamerica, since 2017, is held to be not a fiduciary under

the agreements with similar ERISA plan fiduciaries such as Defendants. This decision places a higher importance to how Defendants made decisions as sole fiduciary for the Plan.

ii. Plaintiffs failed to properly consider the risks of Defendants

Plaintiffs and Counsel spent considerable time to discuss why the Settlement faced risks (except that, Plaintiffs and Counsel have not filed for Motion to Certify Class for years.) While recognizing further litigation risks is an requirement of Fed. Civ. P. Rule 23(e)(2), risk evaluation on Defendants are as equally important to the fair, reasonable and adequate evaluation.

In O'Connor v. Uber Technologies, Inc., 201 F.Supp.3d 1110 (N.D. Cali. 2016), court also evaluated a fair review of risks to the Defendants, so as to test for fairness, reasonableness and adequacy of the settlement.

> *While Plaintiffs thus face substantial risks both in their ability to maintain class certification and on the merits, the Court reiterates that [defendants] also faces substantial risks of losing on the [claims of alleged wrongdoing]*

As it directly applies to this litigation, the proposed Settlement relies upon pending settlement-only class certification, and Defendants have substantial risks.

(1) Defendants are a large national investments company. Contrary to many other ERISA lawsuits against defendants as employers, Defendants, who are employers, are also in the investment services industry. Any judgment that convicts the failure of an investment services company may result in additional impacts that are more extensive than, for example, a hospital system as ERISA defendant (such as *Kruger*, to be discussed).

(2) Defendants have fiduciary duty to the Plan, and whether or not "self dealing", "revenue sharing" or "kickbacks" exists, ERISA fiduciaries are held to a very high standard. See *Tibble." continuing duty to monitor trust investments and remove imprudent ones. This*

continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset."

(3) Finally, similar to *O'Connor*, if class certification fails, Defendants will have a large exposure of over 74,000 putative members, such that individual's recovery for each individual's account under the Plan is permitted under *LaRue*. That will expose Defendants to significant monetary and nonmonetary expenses.

iii. Release claims are overly expansive to cover additional allegations

In Settlement section 1.30, the Settlement listed various release claims included:

> "Released Claims" shall be any and all claims for monetary, injunctive and all other relief against [Defendants], as well as all other Defendant Released Parties that arise out of or relate to the transactions and occurrences asserted in the Action, or that could have been asserted in the Action, including, but not limited to, the selection and monitoring of Plan investment options and the expense of the Plan's recordkeeper.

As emphasized in Braden, ERISA fiduciary duties are among "the highest known in law", the "selection and monitoring of Plan investment options" is a key determination of ERISA fiduciary duty in Tibble. These are the highest duties for ERISA fiduciaries, and a proposed Class Settlement without even a full-purpose putative class certification presents risk to the Class for such full-coverage release with extremely limited Plaintiff efforts on discovery.

Furthermore, "monitoring of Plan investment options" has been a key allegation of Plaintiffs in the active First Amended Complaint. If expert witness' "benchmark" claim were to erase most Class damages from $45 million to $6 million, why should the Settlement include terms addressing a non-fiduciary Plan recordkeeper in *Santomenno*?

4. Nonmonetary agreement in Settlement has zero benefit to the Plan, while exposing the Plan to carry additional liability in expenses

i. Rule 23 asks the Court to scrutinize the actual value of nonmonetary Settlement terms.

Committee Notes on Rules—2003 Amendment emphasized "actual value to the class":

> *Settlements involving nonmonetary provisions for class members also deserve careful scrutiny to ensure that these provisions have actual value to the class.*

According to Settlement term 6.2, Defendants agreed to the following:

> the Edward Jones Investment and Education Committee is retaining an independent consultant to review the Plan's investment strategy, structure, and fund selection, and the Edward Jones Profit Sharing and 401(k) Administrative Committee is issuing a request for proposal for Plan recordkeeping services;

ii. The "Consultant" clause lacked Plaintiffs' participation at all in execution

The Settlement fails to examine the nature of outside consultant agreements. Plaintiffs failed to set the scope of consultants, including but not limited to:

(1) How Plaintiffs will execute the agreement and pick Plan "consultants" independently?

(2) What Plan information will Defendants allow "consultants" to access to make truly independent and well-informed recommendations?

(3) What findings by "consultants", by the supposedly independent third party, will be enacted to the Plan to protect the ERISA Plan participants?

Objector is very concerned by the lack of checkpoints at all for Settlement Agreement Section 6.2, and omission of such key details may led the Plan's consultation become lip service.

iii. The Plan need NO change after consultant evaluations

According to Settlement terms 6.2, Defendants can fulfill its requirement, by the sole action of hiring investment consultants alone:

> Nothing in this Agreement requires the Edward Jones Investment and Education Committee to make any changes to the lineup of fund offerings within the Plan, and nothing in this Agreement requires the Edward Jones Profit Sharing and 401(k) Administrative Committee to select a different recordkeeper for the Plan or alter the current recordkeeping agreement.

While Settlement Section 6.2 outlines the use of external consultants, the Settlement Agreement term perfectly allows Defendants to retain all existing practices of the Plan, as if this Section 6.2 was not executed. This again severely undermining the likelihood of structure changes in the Plan to adequately protect any subsets of the Class still invested in the Plan.

Defendants' public statement also proved this nonmonetary agreement worthless, such that the Agreement will have no impact upon any allegedly imprudent Plan fiduciary practices:

https://www.investmentnews.com/article/20181213/FREE/181219965/edward-jones-settles-401-k-lawsuit-for-3-2-million

> John Boul, an Edward Jones spokesman, said the firm has always believed the claims to be without merit.
> "We're pleased this matter has been resolved, avoiding the additional time and expense required to defend our position in a trial," Mr. Boul said.
> **He pointed out that the settlement agreement, filed Dec. 11 in the U.S. District Court for the Eastern District of Missouri, doesn't require any changes to be made to the company 401(k) plan.**
> (Bold emphasis added)

iv. The subset of in-Plan participants are poised to pay for such Consultants

Plaintiffs are attempting, *on behalf of the Plan,* to authorize several more millions of dollars to hire consultants for fruitless Plan practices review. The Settlement Section 6.2 states:

> [T]he Edward Jones Investment and Education Committee is retaining an independent consultant to review the Plan's investment strategy

The above language can be interpreted as the Committee will retain a consultant to review Plan's investment strategy, ***on behalf of the Plan, such that the Plan will bear the costs of consultants.*** Such setups for the Plan further raises concerns for the Class members, as this agreement exemplifies Plaintiffs' lack of due diligence to the Settlement Agreement, such that the interest of Plan is at odds with the Plaintiffs.

In conclusion, "External Consultant Evaluation" provisions under Section 6.2 of the Settlement Agreement exposes the Plan to extra costs in millions, with zero value to Class.

5. Plaintiffs have NOT adequately represented the Class

Plaintiffs do not appear to be suitable representative for the Class; furthermore, the Court should consider the risks for Plaintiffs to compromise the Class, as said in *Greenberg*:

> *sensibl[e] fear that incentive awards may lead named plaintiffs to expect a bounty for bringing suit or to compromise the interest of the class for personal gain." (citing Hadix v. Johnson, 322 F.3d 895, 897 (6th Cir. 2003))*

i. Plaintiffs failed to file Motion to Certify Class after nearly two years

As required by Fed. Civ. P. Rule 23(a)(4), Plaintiffs and Counsel must adequately represent the Class. See In re Milk Products Antitrust Litigation, 195 F.3d 430 (8th Cir. 1999)

> *A named plaintiff who lacks the desire to "vigorously pursue" the interests of potential class members is not a fair and adequate representative of the class.*

Since the original complaint was filed to the Court, and especially after the complaint has survived from Defendants' Motion to Dismiss, the litigation has not advanced at all, since March 2018, and the Parties started discussing Settlement as soon as the Defendants' Motion to Dismiss was denied by the Court. Plaintiffs lacked interests to certify putative class for litigation after over 2 calendar years. It raises credible questions against Plaintiffs' intent and ability to adequately protect the putative Class a whole. The class is not adequately represented as a result.

In Rattray v. Woodbury County, IA, 614 F. 3d 831(8th Cir., 2010), 8th Circuit explicitly demanded prompt class certification requests for adequate class representation, and Plaintiffs have clearly failed to certify class promptly:

> ***[Plaintiffs'] failure to move to certify with alacrity undermines confidence in the zeal with which she would represent the interests of absent class members.*** *See E. Texas Motor Freight Sys. Inc. v. Rodriguez, 431 U.S. 395, 405, 97 S.Ct. 1891, 52 L.Ed.2d 453 (1977).* ***A failure of the putative class representative to assure the court that it will vigorously pursue the interests of class members is a sufficient basis to deny certification.*** *Monroe v. City of Charlottesville, 579 F.3d 380, 385 (4th Cir.2009), cert. denied, ___ U.S. ___, 130 S.Ct. 1740, 176 L.Ed.2d 214 (2010); see 7A Charles A. Wright, Arthur R. Miller & Mary Kay Kane,*

> *Federal Practice and Procedure § 1766, at 373 (3d ed. 2005) ("[T]he failure of the representative to move for class certification in a timely fashion or otherwise to prosecute the action is a clear indication that the named party is not an adequate representative.*
> (Bold emphasis added)

Since the filing of First Amended Complaint in May 2017, Plaintiffs have not yet filed Motion to Certify Class for litigation purposes up to this day; however, as soon as Court denied Defendants' Motion to Dismiss in March 2018, Plaintiffs and Counsel actively pursued negotiations without Plaintiff motions to certify Class, jeopardizing the interests of Class.

ii. Plaintiffs wrongfully used Russell's "as-a-whole" use in defined benefit plans.

Plaintiffs' wrote the following in the Settlement Memorandum, section VI-2:

> Thus, a court adjudicating a suit by an individual plaintiff would determine the issues of the existence of the fiduciary duty and its breach not in relation to the individual plaintiff, but in relation to the **entire plan** since the fiduciaries' actions are taken as to the **plan as a whole**. The language of ERISA § 409 makes clear that the **liability of the fiduciary is to the plan**, and that a fiduciary found liable for damages due to a breach must reimburse the plan.
> (bold emphasis added)

Plaintiffs failed to consider Supreme Court's key clarifications on "defined contribution plan" in the *LaRue* decision. Instead, as discussed, Settlement's "Consultant" provisions actually may result in additional harms against the subset of Class still in Plan. The Plan is a "defined contribution plan". In *LaRue*, Supreme Court authorized individual nature of relief under ERISA for "defined contribution plans", without harming the Plan or other participants.

> *For defined contribution plans, however, fiduciary misconduct need not threaten the solvency of the entire plan to reduce benefits below the amount that participants would otherwise receive. Whether a fiduciary breach diminishes plan assets payable to all participants and beneficiaries, or only to persons tied to particular individual accounts, it creates the kind of harms that concerned the draftsmen of §409. Consequently, our references to the "entire plan" in Russell, which accurately reflect the operation of §409 in the defined benefit context, are beside the point in the defined contribution context.*

iii. Plaintiffs did not recover adequately for the Class to deserve proposed Award.

The Settlement cited an unpublished case of Kruger v. Novant Health, Inc., No. 14-cv-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016) to justify Plaintiffs' request for Case Contribution Award of $10,000 per Plaintiff; **however, *Kruger* actually suggests a much lower Case Contribution Award for Plaintiffs in this Settlement:**

The class representatives in *Kruger* helped their class reached a settlement fund total for $101 million for similar class size, well beyond settlement amounts for similar ERISA lawsuits.

In total, each Kruger plaintiff received $25,000 case contribution award and recovered $101 million for 70,683 beneficiaries during Kruger's class period.

In pale comparison, Plaintiffs are asking $10,000 case contribution award per Plaintiff, while only recovering some $3 million gross proceeds for about same count of unique Class members

(40% *Kruger*'s plaintiff award for 3% of *Kruger*'s benefit to similar 70,000+ Class sizes)

Case	Settlement Fund Size	# Unique Class member	Case Contribution Award Per Plaintiff	Before-Fee Average Recovery per Class Member	Case Contribution Award as multiple of pre-fee recovery
The Settlement	$3.175 million	74,121	$10,000	$42	**233x**
Kruger	$101 million	70,683	$25,000	$1428	17.5x
Based on *Kruger* ratio	$3.175 million	74,121	**$750**	$42	17.5x
based on *Kruger ratio*	**$42.4 million**	74,121	$10,000	$572	17.5x

Using the Table, it is clearly evident that *Kruger* limited the class representative's awards to under 20 times the straight average recovery per class member. In contrast, **the Settlement offered straight average of $42 per Class member before all expenses**, which will go under $30 if Attorney's one-third fee request were to be approved. The Settlement fund also intends to

incur administration costs, and Plaintiffs would have exchanged covenant-not-to-sue before Class members discover any potential Plan fiduciary misconducts in the future.

It does not appear that the Settlement has put the interests of Class members at a priority during Settlement negotiations. Based on the ratio of recovery for class members from *Kruger*, *before attorney's fee reductions*, Plaintiffs might be worth $750 each for Case Contribution Award from the Settlement of merely $3.175 million. Otherwise, at least recover $42.4 million or more for all Class members to match the ratios in *Kruger*.

Plaintiffs also cited Calogiuri v. Symantec Corp., 855 F.3d 860, 867 (8th Cir. 2017). Plaintiffs asserted that *Calogiuri* is "affirming decision to give case contribution awards of $10,000 to each of the plaintiffs".

Calogiuri, however, signified Plaintiffs' conflict of interest with the Class, and also showed how Plaintiffs lacked the merits to deserve $10,000 per plaintiff for this litigation.

- *Calogiuri* plaintiffs only received $2,500 per plaintiff from a $60 million settlement fund
- Plaintiffs in this litigation sought awards of $10,000 each for merely $3.175 million

The Plaintiffs failed to mention the premises of such awards that were justified by the 8th Circuit:

> *In April 2015, the parties agreed to settle. The settlement agreement provided that [defendants] would pay $60,000,000 into a total settlement fund. In addition to this amount, [defendants] agreed to pay each named plaintiff up to $7,500 of any service award approved by the court. Any amount over $7,500 would be paid from the total settlement fund.*

(1) The plaintiffs in *Calogiuri* recovered $60 million for the Class, versus slightly over $3 million in consideration for this Settlement, a multiplier of nearly 20 times;

(2) The defendant in *Calogiuri* agreed to pay, *in addition to the $60 million Settlement fund value*, for up $7,500 of court-approved service awards (equivalent to Case Contribution Awards for Plaintiffs). The $7,500 was to be paid separately from the

"common fund" from settlement, and *the incentive awards to Calogiuri plaintiffs, that would otherwise reimburse class members, is only $2,500 per plaintiff.*

iv. Although 8th Circuit supports incentive awards for Plaintiffs, incentive awards shall be effort-based, and median of such awards is $4,000.

The 8th Circuit supports reasonable incentive awards for Plaintiffs, and have adopted 7th Circuit's measurement criteria (in (1)(2)(3) below) from Cook v. Niedert, 142 F.3d 1004, 1016 (7th Cir. 1998). See In re US Bancorp Litigation, 291 F. 3d 1035 (8th Cir. 2002).

(1) the actions the plaintiff has taken to protect the interests of the class;

Objector found that Plaintiffs failed to "vigorously pursue" on behalf of the Class

(2) the degree to which the class has benefited from those actions;

Objector found the monetary benefits to the Class is immaterial on individual basis, and nonmonetary agreements were even at a detriment to subset of Class as current Plan members

(3) the amount of time and effort the plaintiff expended pursuing the litigation.

Three Plaintiffs in total spent a claimable maximum of 90 hours in this litigation.

In stark comparison, Objector already spent at least of 150 hours to review all case documents, objector's past Plan statements, and additional research on merits and legal applications of each claim made by Plaintiffs.

7th Circuit, the same Circuit that authored *Cook*, also stressed the "modest" nature of Plaintiff Awards in Espenscheid v. DIRECTSAT USA, LLC, 688 F. 3d 872 (7th Cir., 2012):

> *The incentive reward is designed to compensate him for bearing these risks, [...] as well as for as any time he spent sitting for depositions and otherwise participating in the litigation as any plaintiff must do.*
> ***The plaintiff's duties are not onerous and the risk of incurring liability is small;***
> [...]
> ***The incentive award therefore usually is modest—the median award is only $4,000 per class representative.*** *Theodore Eisenberg & Geoffrey P. Miller,*

> *"Incentive Awards to Class Action Plaintiffs: An Empirical Study," 53 UCLA L.Rev. 1303, 1308 (2006)*

In this case, Plaintiffs altogether failed three criteria from 7th Circuit's *Cook* decision, and the same 7th Circuit also showed the typical Case Contribution Award to be less than half of what Plaintiffs requested - $4,000 per plaintiff as median. Plaintiffs' unjustified request of $10,000 would be deemed excessive and requires substantial justifications, and scrutiny from the Court.

v. Plaintiffs will make whole or more than whole from the alleged damages, at the detriment of overall Class recovery.

Federal Courts have denied settlement approvals similar to the proposed Settlement, because named Plaintiffs' *make-whole*, if not *more-than-whole* recovery is sufficient to sway the Plaintiffs against Class interests and "create a patent divergence of interests", especially with

- Outsized Case Contribution Award
- Lack of actions to "vigorously pursue"
- Nonmonetary agreement at expense of Plan but with no material effect
- Lack of discovery before agreeing to settle for full-coverage release claims

See Greenberg v. Procter & Gamble Co. , No. 11-4156 (6th Cir. 2013):

> *The propriety of incentive payments is arguably at its height when the award represents a fraction of a class representative's likely damages; for in that case the class representative is left to recover the remainder of his damages by means of the same mechanisms that unnamed class members must recover theirs. The members' incentives are thus aligned.* ***But we should be most dubious of incentive payments when they make the class representatives whole, or (as here) even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief.*** *Accord Radcliffe v. Experian Info. Solutions, 715 F.3d 1157, 1161 (9th Cir. 2013) (holding that the "incentive awards significantly exceeded in amount what absent class members could expect upon settlement approval" and thus "created a patent divergence of interests between the named representatives and the class")*
> (bold emphasis added)

In this case, Plaintiffs have little actual damages from the Plan, but the outsized Case Contribution Award, if granted without contest, will permit the Plaintiffs to receive 1000 times more than recovery for the least-reimbursed Class member, more than recovering alleged losses.

Objector is familiar with the role responsibilities and compensation level of positions similar to Plaintiffs' work with Defendants, in addition to the IRS mandated annual limits to contribute to the Plan's 401(k) portion to make reasonable estimates of Plaintiffs' alleged losses.

All three Plaintiffs believed to have worked in the position "BOA", or in its full name, "Branch Office Administrators". Such roles typically serves in administrative capacity, not financial industry licensed, and have a very limited scope to customer interactions without securities licenses, with primarily customer service duties to "financial advisors" who are licensed by the industry to practice financial advisory and generate investment-based revenue. According to Glassdoor.com (a well-known website for salary research), typical Edward Jones Branch Office Administrators (based on the tenure of all Plaintiffs) has a median salary of about $32,000 ($16/hour, annualized by 2,000 hours). Also according to IRS taxation rules, the maximum voluntary pre-tax salary deferral for 401(k) plans such as the Plan, is at most $18,000 per year in 2016 (regressively lower for each earlier year). Based on the maximum elected deferrals and compensation estimates, and based on limited scope of discovery (as Plaintiffs submitted their Case Contribution Award request late, only 10 business days before objection deadline), **Objector estimates the actual damages of Plaintiffs to be less than $1,000 during the Class period, per Plaintiff, and Plaintiffs are highly likely in the *make-more-than-whole* scenario that contains strong conflicts of interest against the Class.**

vi. Plaintiffs did not release their legal agreements for the Class to scrutinize

In Radcliffe v. Experian Information Solutions Inc., 715 F. 3d 1157 (9th Cir., 2013), 9th Circuit sharply declined a settlement proposal that demanded named plaintiffs' support in exchange for incentive awards.

In *Radcliffe*, class counsel demanded named plaintiffs to support any settlement to receive $5,000 of "incentive award" (hereby equivalent to "Case Contribution Awards"); if named plaintiffs objected to any settlements, named plaintiffs will receive as much as unnamed class members do, and such practice was sharply criticized by 9th Circuit.

Objector does not claim existence of such for this litigation, because Objector does not yet have access to Plaintiffs' agreement with Counsels to determine whether such concerns may exist. Objector requests the Court to scrutinize Plaintiffs agreements for such items for the Class.

6. Attorney's Fee request is excessive.

i. See Section II – A(2) – Failure to file Attorney's Fee Request timely;

ii. Attorney's Fee Request also lacks substantial billing details.

Because of above, Objector has no details of exact billing records besides summary submissions by Plaintiffs' Counsel. Currently all Plaintiffs attorneys on file listed their name, billing rate, total hours, and lodestar. Objector has no information to assess the reasonableness of such hour totals or rates for the scope of this litigation, and thus the Court shall consider a reduced fee award for lack of precision exhibited. See Owner-Operator Indep. Drivers Ass'n v. Supervalu, Inc., No. 05-cv-2809 (JRT/JJG), 2012 U.S. Dist. LEXIS 184055, 48-49 (D. Minn. Sept. 30, 2012) *("Incomplete or imprecise billing records prevent the Court from exercising meaningful review and are grounds for reducing a fee award."* (citing Hensley, 461 U.S. at 433; see H.J. Inc. v. Flygt Corp., 925 F.2d 257, 260 (8th Cir. 1991))).

iii. Courts have well established practices to award Attorney's Fee

At the discretion of the Court, Courts have the discretion to determine Attorney's Fee by methods of "the percentage-of-fund method and the lodestar method." In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig., No. 05-1708 (DWF/AJB), 2008 U.S. Dist. LEXIS 17535, at *22 (D. Minn. Mar. 7, 2008). "It is within the discretion of the district court to choose which method to apply[.]'" In re Life Time Fitness, 2017 U.S. App. LEXIS 1843, at *5.

The Court has exclusive right to determine reasonable Attorney's fees, and as such, the Court bears great responsibility as outlined by Committee Notes on Rule 23 - 1998 Amendment:

> *Active judicial involvement in measuring fee awards is singularly important to the proper operation of the class-action process. Continued reliance on caselaw development of fee-award measures does not diminish the court's responsibility. In a class action, the district court must ensure that the amount and mode of payment of attorney fees are fair and proper whether the fees come from a common fund or are otherwise paid. Even in the absence of objections, the court bears this responsibility.*

Furthermore, See Hensley v. Eckerhart 461 US 424. "*The district court may [...] reduce the award to account for limited success.*"

There are several main reasons exist for the Court to not grant the full Attorney's fee request:

iv. Plaintiffs' Counsel appeared to have done unnecessary work.

See detailed discussions in Section II, Part B, Element 4 - Burden of Proof shifts to Defendants after Plaintiffs establish Defendants' fiduciary duty to the Plan, as well as losses suffered by the Plan, following 8th Circuit's precedent in *Braden*.

As a result of the ERISA plaintiff burden shift, Plaintiffs solely should have focused on establishing the proof of damages sustained by the Plan, whether not as a *direct result* of Defendants' actions (or *lack of actions*).

v. Attorney appeared to have billed for unnecessary work.

Based on the First Amended Complaint and the Settlement, Plaintiffs' Counsel noted unnecessary work done in Settlement Memorandum, Section III, Part A:

> Defendants produced over 22,000 documents that comprised more than 100,000 pages of material, including the minutes from Investment Committee and Administrative Committee meetings showing how Defendants selected and retained the Plan's investment options and chose the Plan's recordkeeper.

Plaintiffs and Counsel suggested the discovery process has been extensive; however, Counsel did not make any meaningful progress to investigate Mercer, a key recordkeeper during Class period, or regarding the measurement of damages, which is the key task for Plaintiffs to shift the burden of proof to Defendants. Instead, Counsel likely compromised the strong position of the Class with "expert witness results" that varied wildly between $6 million and $45 million – according to the Class Counsel's declaration, expert witness did not benefit the Class.

> 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.

In Paris School District v. Harter, No. 17-3152 (8th Cir. 2018), 8th Circuit approved the reduction of Attorney's fees for "billed for unnecessary and excessive work", because the Court has "extensive knowledge of the details of this case and familiarity with similar litigation.". Also see Tussey v. ABB, Inc., No. 15-2792 (8th Cir. 2017), in which 8th Circuit affirmed district court's decision to reduce attorney's fees, because the attorneys performed unnecessary work:

> *[Plaintiffs'] lawyers won on only one issue (out of three) before this court and accuse them of spending too much time on the appeal. The district court acknowledged both points and reduced the amount it calculated based on the hourly rates by about a third to account for them.*

vi. Attorney's fee-per-hour rates conflict with historical evidence

Attorney	Rate	Hours	Current Lodestar
Ciolko, Edward (P)	$750.00	6.75	$5,062.50
Gertner, Abigail J. (S)	$385.00	89.20	$34,342.00
Gyandoh, Mark (C)	$690.00	36.60	$25,254.00
Maro, James (P)	$820.00	36.50	$29,930.00
Prifti, Ardit (A)	$400.00	127.50	$51,000.00
Siebert-Johnson, Julie (A)	$500.00	32.40	$16,200.00
Topaz, Marc (P)	$920.00	5.75	$5,290.00
Attorney Totals:		**334.70**	**$167,078.50**

(Source: Declaration of Mark K. Gyandoh; Kessler Topaz Meltzer & Check, LLP)

Name	Years of Practice	Rate	Hours	Lodestar
Robert A. Izard	35	$925.00	41.25	$38,158.25
Mark P. Kindall	30	$850.00	6.75	$5,737.50
Douglas P. Needham	11	$550.00	66.00	$36,300.00
Craig A. Raabe	30	$850.00	1.00	$850.00
Total			**115.00**	**$81,043.75**

(Source: Declaration of Robert A. Izard; Izard, Kindall & Raabe, LLP)

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**

(Source: Declaration of Gregory Y. Porter; Bailey & Glasser LLP)

Objector's First observation is the wild, uncontrolled range of billing rates. Partners' hourly rate swings between $600 to $950 across three attorney firms, and the rates swing wildly between firms and positions. Counsels attached declarations and claimed that such rates charged

by their firms have been approved in other litigations or settlement agreements, but establish little basis to really justify such rates.

In Exhibit B, Objector has attached a list of Counsel's historical billing rates between 2017-2019. Objector *surprisingly* found that:

- Izard, Kindall & Raabe, LLP has highest rates but has not raised prices since Oct 2017
- Kessler Topaz Meltzer & Check, LLP actually published a $75 lower rate for the same Partner in January 2019 submission: $850 in Jan 2019, versus $925 in Settlement dated Dec 2018. Staff Attorney also was only $15/hour cheaper than a partner-track Associate.
- Bailey & Glasser LLP heavily justified the use of following table (case available in Exhibit B), which set Partner rates for $50/hour lower, Associate rates for up to $150/hour lower (a different of almost $100,000 more charged to this Settlement fund).

Bailey & Glasser LLP				
Position	Hours	Hourly Rate	Time	Expenses
Partner	1,968.94	$700	$1,378,258.00	
Associate	323.52	$450	$145,584.00	
Paralegal	1,770.35	$200	$354,070.00	
Legal Assistant	51.7	$100	$5,170.00	
Business Analyst	9.25	$300	$2,775.00	
SUB-TOTAL	4,123.76		$1,885,857.00	267,729.03

With all stated above, there is more than enough evidence for Court to scrutinize and determine the fair rates of attorney's fees, so that Class interests are well protected.

vii. Courts shall exercise scrutiny to fairly decide the attorney fees for the Class.

In Dillard v. City of Greensboro, 213 F.3d 1347 (11th Cir., 2000), courts established the basis for fair and reasonable attorney rates determined by the court, at the burden of plaintiffs.

> *Plaintiffs are entitled to have their lawyers compensated at a reasonable hourly rate, which is the "prevailing market rate in the relevant legal community for similar services by lawyers of reasonably comparable skills, experience, and reputation." Barnes, 168 F.3d at 436 (quoting Norman v. Housing Authority, 836 F.2d 1292, 1299 (11th Cir.1988)). Establishing a claimed market rate is the plaintiff's burden. See id. at 427.*

Furthermore, in the same case, it noted the importance to carefully decide the actual rates and hours, because "*the court is not a legal souk*" to barter or negotiate billing rates:

> ***a court should hesitate to give controlling weight to prior awards, even though they may be relevant. See Norman, 836 F.2d at 1299 (observing that the twelve-factor standard** of Johnson v. Georgia Highway Express, Inc., 488 F.2d 714 (5th Cir.1974), one of whose factors is prior awards, may have been subsumed into the lodestar rule adopted in Hensley v. Eckerhart, 461 U.S. 424, 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983)). The reason is obvious: **Prior awards are not direct evidence of market behavior; the court is not a legal souk.***
>
> (Bold emphasis added)

The rates shall be determined by the court to account for "twelve factors" in addition to prior awarded rates, including factors such as:

- Prior awards in Objector's Exhibit B
- Imprecise billing records
- Unnecessary work
- Results obtained by the class

C. PROPOSED SETTLEMENT SUBSTANTIALLY UNDERESTIMATED THE DAMAGES AND RECOVERY FOR THE CLASS

In Standard Fire Ins. Co. v. Knowles, 568 U.S. 588 (2013), Supreme Court affirmed "class representative's duty to not throw away what could be a major component of the class's recovery". In this Settlement, Plaintiffs and Counsel is about to throw away a list of crucial major components of the Class's recovery, discussed below in details.

1. Plan fiduciaries have the ongoing duty to monitor assets under *Tibble*

Plan fiduciaries need to make good of their fiduciary duties by actively monitoring the Plan assets in a fiduciary capacity. See references from *Tibble*:

> *Under trust law, a trustee has a continuing duty to monitor trust investments and remove imprudent ones. This continuing duty exists separate and apart from the trustee's duty to exercise prudence in selecting investments at the outset.*

In Settlement, Plaintiffs discussed allegations that the Investment Committee did not fulfill its ongoing fiduciary duty to regularly monitor Plan assets, a policy-making failure that led to Class members' losses, so the damages should also account for the process failures. The Investment Committee, as quoted from the Settlement,

> [Defendants] did not remove **all** allegedly imprudent funds and often replaced the ones it removed with other Partner or Preferred Partner products.

There is a misconception with this quote. "other Partner or Preferred Partner products" are also allegedly imprudent funds, and switching between allegedly imprudent funds retains the continuity of allegedly imprudent investment selections.

2. Most damage claims are NOT related to "Benchmark Adjustment" excuse

Objector found lack of usefulness in Plaintiffs' expert witness statements, in which "Benchmark Adjustment" was cited to account for an outrageously 83% reduction between the total request for relief and the Settlement outcomes:

> 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. *(Source: Declaration of Gregory Y. Porter; Bailey & Glasser LLP)*
>
> However, the Settlement likely represents a much higher percentage of the Plaintiffs' expected damages. The $45 million figure is based on comparing the funds Plaintiffs allege were imprudent to Vanguard Index Funds within the same Morningstar Categories as the challenged funds. Porter Decl. at ¶ 19. Plaintiffs performed this comparison because the underlying funds were classified as domestic equity stock funds. However, several of the challenged funds also invested in asset categories outside of their Morningstar Categories. Id. After adjusting benchmarks to account for this factor, the Class's expected damages would be reduced to $6 million. Id.
> *(Source: Memorandum of Law in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement)*

By interpreting these declarations above, Objector found the "benchmark" argument to be severely challenged, and such results with substantial lack of reliability shall be excluded.

i. Class R5 excessive expenses appears legitimate and has no relation to "benchmark"

In the First Amended Complaint, Plaintiffs alleged damages from Plan's "Class R5 Share" ownership, which was substantially more expensive than "Class R6" mutual fund shares of the ***exact same underlying mutual fund***. There is absolutely no use of "benchmarks" at all, ***for cost differences of the same mutual fund EXCEPT fee charges***, when the alleged Plan losses are based on excessive percentages of fees charged to Plan members in the Class. **Alleged improper Class share has no relation to the "benchmark" at all.**

ii. Claims for Excess Plan Administrative Fees appears legitimate and has no relation to "benchmark" either

Plaintiffs also alleged "Excess Plan Administrator Fees with Mercer". Mercer's fee arrangement, as discussed by Plaintiffs after limited scope of discovery, relies on the assets invested in the Plan, which has no relation with "benchmark" at all, either. In First Amended Complaint, Plaintiffs conducted comparison of Mercer's fee structure with the Plan, as well as how outsized it was comparing to fiduciary 401(k) arrangements for similar ERISA retirement plans. **Excess administrative fees also have no relation to "benchmark" at all.** Furthermore, see *Santomenno*, in which Plan administrators are not held by the standards of ERISA fiduciaries.

iii. Plaintiffs did not contest considerably higher Money Market expense ratio in Plan.

Money market funds are known to have the purpose of no-risk, no-return in the investments market, and typical money market funds include disclosures similar to Plan's money market fund for years, "American Funds U.S. Government Money Market Fund":

> https://www.americanfunds.com/individual/investments/fund/afaxx
>
> *Although the fund seeks to preserve the value of your investment at $1.00 per share, it cannot guarantee it will do so*

There are a large number of money market fund choices available in the investment market, and especially for a billion-dollar retirement plan such as the Plan; however, Investment Company Institute, a well-respected source, found Plan's money market fund to be consistently costing more than the top 10% money market funds available in the market. This is similar but **unrelated** to Plaintiff's discussion regarding "Stable Value Funds". **This discussion focuses particularly on possibly excessive fees charged versus similar "Money Market Funds", which has the common characteristics of preserving original investment to $1.00 per share.**

According to Exhibit C, a complied list of annual data on mutual fund expense ratios, Objector included years of ICI research findings on "Money Market Fund" ratios. Based on limited discovery and historical statements from the Objector, and using assumptions that can be

easily verified through Court discovery, a "0% return" money market fund, at a cost of 34-38 basis points within the Class period, could lead to $77.9 million in Class damages, which is rather significant.

Cost of Excess Money Market Funds Fee in Basis Points, 2010-2018				
Year	ICI 10th Percentile*	"The Plan" rate*	Difference	Excess Fee Estimate *
2010	16	38	22	$5.03 Million
2011	13	38	25	$5.71 Million
2012	8	38	30	$8.26 Million
2013	10	38	28	$9.95 Million
2014	6	38	32	$12.67 Million
2015	5	38	33	$14.3 Million
2016	9	34	25	$12.03 Million
2017	17	34	17	$9.96 Million
*2018	DATA NOT AVAILABLE			
Estimated Excess Fee Total (Excl. 2018)				**$77.9MM**
Notes:				
1. Source: ICI. ICI is an Association with all its members managing >$21 trillion assets in total				
"ICI Fact Book" is released to public each year, with top 10% funds' fee ratio for money market funds				
2. Objector's monthly statement indicates 38 basis points until June 2016, 34 basis points thereafter				
Plaintiffs verified Plan money market fund costing 38 bps per year throughout Class period				
3. Multiplied excess fee ratio by 12% of annual Plan assets (2010-17 "Plan" Form 5500: $2.3-5.9 Billion)				
Source: Univ. of Pennsylvannia found typically 12-16% assets in 401(k) are in Money Market Funds				
https://pensionresearchcouncil.wharton.upenn.edu/wp-content/uploads/2015/09/WP08TangMitchellMottolaUlkus08.27.09b.pdf				

3. Class period is too narrow for potential damages identified in Section C, Part 1

According to disclosures from American Funds, provider of most mutual funds in Plan,

> *https://americanfundsretirement.retire.americanfunds.com/about/share-prices-and-returns.htm?sort=A&fundclass=R-6*
>
> *Class R-6 shares were first offered on May 1, 2009.*

If Plaintiffs allege that the Plan suffered substantial losses as a result of Defendants' "*monitor trust investments and remove imprudent ones*" as defined by *Tibble*, then the Plan should have converted all its other more expensive holdings to Class R6 shares, *on May 1, 2009*, or earlier for other mutual fund companies that may have offered Class R6 shares earlier.

Otherwise, subset of members, "who owned other Class shares other than lowest-cost R6 shares", would have suffered excess fee losses without Plan's fiduciaries to promptly convert the shares.

Expanding damages from lack of class R6 shares, whenever available, in addition to the May 2009 R6 share inception of American Funds, Class period shall expand to: The earliest day for any member in the Plan to own any not-lowest-priced mutual fund shares in the Plan.

4. Moreover, the Settlement calculations did NOT account for potential class damages from lack of "Target Date Funds".

i. Target Date Funds offer flexible objectives with reasonably low fees.

Target funds are mutual funds with a typical fund name ending in future years. Target date funds continuously adjusts the investment mix based on the years towards retirement for likely investors of such fund, and in general, Target Date Funds invest similarly to equity funds when years to maturity is long, and invests similarly to bond funds, when there are few years left to maturity. ("maturity" refers to the year investors expects to withdraw all dollars, the same year that is listed in particular fund's names).

ii. Target Date Funds offer equity-fund alike performance, at a much lower cost that is typically near the costs of cheaper bond funds.

Target Date Funds allow investors to have exposure and investment returns of equity funds, but successfully limit expenses of the mutual fund to all-bond funds that has no equity exposure. According to Exhibit C, the lowest-cost 10th percentile of Target Date Fund, whenever ICI data available, are generally in-line with the best 10th percentile of bond funds, **and often 20-30 basis points cheaper than top 10% equity funds for similar purposes.**

iii. Objector is not aware of any Target Date Funds available to the Plan.

In Objector's historical Plan statements, no Target Date Funds are offered. Plan offered various "portfolios", but those funds have similar expense ratios to equity funds; also from Plaintiffs' First Amended Complaint, "Portfolios", or those mix of proprietary funds, are merely a predetermined mix of several standalone mutual funds in the Plan

5. The Plan's further limited options in "Profit Sharing" portion of the plan increased losses to Class members in the Plan.

To Objector's best knowledge, the Objector recalls the following:

a) The Objector held investment assets in the Plan with two accounts, one in employee-elected deferral 401(k) program, and the other in the Plan's Profit Sharing program.

b) While the Plan's 401(k) employee-elected deferral program offered a set of index funds and mutual funds as of June 2015, the Plan's Profit Sharing deferral program offered much limited options to invest - options were further restricted to have a majority of options in Edward Jones proprietary fund portfolios, such as

- Profit Sharing-Income Focus (2015 Fee: 0.58%)
- Profit Sharing-Growth Focus (2015 Fee: 0.67%)
- Profit Sharing-Balanced Toward Income (2015 Fee: 0.62%)
- Profit Sharing-Balanced Toward Growth (2015 Fee: 0.65%)
- Profit Sharing-Balanced Growth & Income (2015 Fee: 0.71%)
- Profit Sharing-All Equity (2015 Fee: 0.57%)

c) Profit Sharing program's <u>minimum</u> expense fee ratio is much higher than the 401(k) program , and investment choices are severely limited to predominantly proprietary "Portfolios" with a much higher minimum expense ratio charge.

d) The Objector has requested before to transfer Profit Sharing investments to the 401(k) Plan to increase selection and deploy more low-expense mutual funds, but the Objector's request was denied by the Plan administrators. Plan representatives told

Objector that, there were no tax-exempt options to allow the same investments in 401(k), as long as the Profit Sharing Plan owner remains employed by Edward Jones.

The key points illustrate the fact that, The Plan's **Profit Sharing has substantially higher expenses with even more limited set of investment options, and the damages from Profit Sharing investments can be a much larger sum** than Plaintiffs and Counsel currently estimated.

D. PROPOSED SETTLEMENT CONTAINS MANY PROCEDURAL ERRORS

1. Plaintiffs failed to timely file Attorney's Fee request under Rule 23(h)(1)

According to latest Fed. Civ. P. Rule 23, Committee Notes on Rules—2018 Amendment,

> ***At the time they seek notice to the class,*** *the proponents of the settlement should ordinarily provide the court with all available materials they intend to submit to support approval under Rule 23(e)(2) and that they intend to make available to class members.*

In this case, the Settlement was entered on December 11, 2018, while objections are due by April 3, 2019. In similarity to Redman v. Radioshack Corporation, 768 F.3d 622 (7th Cir. 2014), where attorney's delayed fee request were criticized as a major defect, objectors did not receive adequate time to evaluate Plaintiffs' late filing for Motion for Attorney's Fees, as the filing was only available 10 business days before objection deadlines. Since all documents should be submitted on December 11, 2018, Counsel's delayed fee filing unfairly limited Objectors to more general objections to the Attorney's fees and Case Contribution Awards.

From Dec 2018 Settlement Proposal , objectors can only estimate Counsel's request for Attorney's fee to be up to $1,058,333, one-third of the proposed Settlement fund, but the Counsel's hour and expense records is released just about ten business days before objection deadline. Plaintiff's Counsel had over 3 months after Settlement's preliminary approval to produce records, but Objector only had 10 business days in total to respond, including time for mailing. Significant handicap against objectors' ability to evaluate *all* supporting document for Rule 23(e) approval is in conflict with the specifications required by Rule 23's 2018 amendments.

2. The Settlement set "Appeal Deadline" before Court's final decision on Settlement

According to Fed. Civ. P. Rule 23(e), if Courts were to approve settlements, courts may do so" only after a hearing". According to Committee Notes on Rules –2018 Amendment below,

Settlement's proposed Appeal Deadline of April 3, 2019 is not permitted, because the Court has not yet conducted the fairness hearing to finally decide on class certification for appeal purposes.

> **Subdivision (f).** As amended, Rule 23(e)(1) provides that the court must direct notice to the class regarding a proposed class-action settlement only after determining that the prospect of eventual class certification justifies giving notice. But this decision does not grant or deny class certification, and review under Rule 23(f) would be premature. This amendment makes it clear that an appeal under this rule is not permitted until the district court decides whether to certify the class.

3. The Settlement failed to timely execute Settlement-required condition 2.12

In Settlement's Section 2, "Conditions to the Finality of the Settlement", the Settlement agreement explicitly identified required conditions for Settlement to proceed.

> *The Settlement shall be contingent upon each of the following conditions in Section 2.1 to 2.15 being satisfied. The Parties agree that if any of these conditions is not satisfied, then this Agreement shall terminate*

The Settlement, however, has undeniably failed to meet the required section 2.12 below:

> *2.12. Settlement Website.* ***Within thirty (30) days of the entry of Preliminary Approval Order and no later than the first date that the mailing of the Notice occurs,*** *the Settlement Administrator shall establish the* ***Settlement Website, which will contain*** *the operative Complaint,* ***the Defendants' Motion to Dismiss the operative Complaint,*** *the Notice, this agreement and its exhibits, any Orders related to the Settlement, and any additional material agreed upon by the Parties related to the Settlement.*
> (Bold emphasis added)

In Exhibit A, Prints of all Settlement Website with timestamps did ***NOT*** include "Defendant's Motion to Dismiss the operative Complaint", as of date of this objection, far after 30 days of the entry of Preliminary Approval Order. A last-minute addition of the missing documents will no longer fulfill this condition in its entirety, and the **Settlement failed to meet deadlines of Settlement Agreement's condition 2.12.**

As the Parties agreed on in the Settlement Agreement, when "any of [2.1 to 2.15] conditions is not satisfied, then this [Settlement] shall terminate."

III. CONCLUSIONS AGAINST THE PROPOSED SETTLEMENT

The proposed Settlement shall not proceed with all the class eligibility issue, lack of fairness, and failures in procedures found by the Objector, and the proposed Settlement is unfair, unreasonable, and inadequate for putative class members' best interests for the following reasons:

- The proposed Settlement fails to meet both Fed. Civ. P. Rule 23(b)(1)(A), 23(b)(1)(B)
- The proposed Settlement is unfair, unreasonable and inadequate
  - ERISA stipulates the burden of proof on Defendants, not Plaintiffs
  - Plaintiffs have **not** adequately represented the putative class
  - Plaintiffs' Attorney's fees appear to be excessive
  - The proposed Settlement would "throw away" major components of probable recovery for the putative class
- The proposed Settlement has various procedural errors
  - Failure to timely file papers and set correct appeal deadline under Rule 23(h),(f)
  - Failure to satisfy Condition 2.12 to Finality of Settlement

Putative class members would be much more benefited from continuing this litigation to protect the interest of all putative class members, instead of the poor proposed outcome from the proposed Settlement.

The Objector seeks an Order to *deny* the Settlement.

Dated: April 1, 2019

Respectfully Submitted,

/s/ Shiyang Huang
Shiyang Huang (Pro Se)

IV. REQUIRED DETAILS FOR FILING AN OBJECTION

1. **The Case Name and Number**

   Case Name: VALESKA SCHULTZ *et al.* v. EDWARD D. JONES & CO., L.P., *et al.*

   Case No. 4:16-cv-1346-JAR

2. **Address, Telephone Number and Signature in this document**

   Mailing Address: 2800 SW Engler CT, Topeka, KS 66614

   Telephone Number: 314-669-1858

3. **A Statement that the Objector is a Class member and an Explanation of the Basis upon which the Objector Claim to be a Class Member** (Exhibit D)

   Shiyang Huang is an eligible a Class member and invested in several allegedly imprudent mutual funds within the Plan during Class period.

4. **All Grounds for the Objection, with Specificity, Accompanied by any Legal Support Known to the Objector or Objector's Counsel**

   This Objection outlines all grounds with specificity, accompanied by known legal support.

5. **A Statement as to Whether the Objector and/or Counsel Intends to Personally Appear and/or Testify at the Fairness Hearing**

   The Objector does not intend to personally appear and/or testify at the Fairness Hearing.

6. **A List of any Persons the Objector and/or Counsel May Call to Testify at the Fairness Hearing in Support of the Objection**

   There is no list of Persons for testimony for the Fairness Hearing at this time.

7. **Whether the Objection Applies only to the Objector, to a Specific Subset of the Class, or to the Entire Class.**

   All Objections applies to the entire Class, unless otherwise specified.

CERTIFICATE OF SERVICE

I certify that a copy of this Objection was served upon on all counsel of record registered, to the Court's address, and to the following via United States Postal Service:

Gregory Y. Porter
Bailey & Glasser LLP
1055 Thomas Jefferson Street NW, Suite 540,
Washington, DC 20007

Mark G. Boyko
Bailey & Glasser, LLP
8012 Bonhomme Ave. Suite 300
St. Louis, MO 63105
Telephone: (314) 863-5446
Facsimile: (314) 863-5483
Email: mboyko@baileyglasser.com

Thomas J. Kavaler
Cahill Gordon & Reindel LLP
80 Pine Street
New York, NY 10005-1702
Telephone: (212) 701-3406
Facsimile: (212) 378-2230
Email: tkavaler@cahill.com

James F. Bennett
Dowd Bennett LLP
7733 Forsyth Blvd. Suite 1900
St. Louis, MO 63105
Telephone: (314) 889-7302
Facsimile: (314) 378-2230
Email: jbennett@dowdbennett.com

/s/ Shiyang Huang
Shiyang Huang

EXHIBIT A

Edward Jones 401K Settlement

PROPOSED CLASS ACTION SETTLEMENT

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

PLEASE READ THIS NOTICE CAREFULLY AS IT MAY AFFECT YOUR RIGHTS.

Please be advised that to clarify the Initial Notice you received on January 17, 2019, the correct phone number to call with any inquiries regarding this Settlement is 1-866-455-3740. You can also send inquiries to info@edwardjones401ksettlement.com.

If you were a participant in the Edward D. Jones & Co. Profit Sharing and 401(k) Plan ("the Plan") who maintained a balance of any amount in the Plan at any point during the period from January 1, 2010 to December 13, 2018. As such, your rights may be affected by a proposed settlement of this class action lawsuit (the "Settlement"). **Please read the Notice carefully to find out what the lawsuit is about, what the terms of the proposed Settlement are, what rights you have to object to the proposed Settlement agreement if you disagree with its terms, and what deadlines apply.**

You do not need to do anything to be a part of this Class or, if the Settlement is approved, to receive your share of the distribution. If you still have your savings in the Plan, your distribution will be made directly into your Plan account. If you have left the Plan, a check will be mailed to you.

This class action lawsuit was filed on August 19, 2016, on behalf of certain Plan participants. Valeska Schultz, Melanie Waugh and Rosalind Staley (referred to as "**Plaintiffs**" or "**Class Representatives**") are the named plaintiffs and the representatives on behalf of all members of the Settlement Class in the lawsuit.

Plaintiffs sued Edward D. Jones & Co., L.P., The Jones Financial Companies, L.L.L.P., the Edward Jones Investment and Education Committee, the Edward Jones Profit Sharing and 401(k) Administrative Committee and members of those committees (together, "**Defendants**"). The lawsuit involves claims that Defendants violated the federal Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1104(a), by choosing investment funds that the Plan offered based on whether Edward Jones had a corporate relationship with the fund's provider, not whether the fund was a prudent investment option. Plaintiffs allege that the Plan selected investment options that consisted predominantly of mutual funds managed by "partners" and "preferred partners" of Edward Jones — investment management companies that worked

closely with Edward Jones brokers and agents and paid revenue sharing to Edward Jones based on Edward Jones marketing their funds to Edward Jones clients. Plaintiffs allege there were superior, less expensive investment options available that Defendants should have chosen for the Plan. Plaintiffs also allege that Defendants caused Plan participants to pay excessive recordkeeping fees.

Defendants deny all allegations of wrongdoing, fault, liability or damage to the Plaintiffs and the class, deny that they have engaged in any wrongdoing or violation of law or breach of duty, or acted in any way that was not in the best interest of the Plan, and believe they acted properly at all times.

	Deadline
Objection filing Deadline	**April 03, 2019**
Notice of Intent to Appeal filing Deadline	**April 03, 2019**
Fairness Hearing	**April 18, 2019**

KCC Class Action Services LLC

Terms of Use (http://www.kccllc.com/terms-of-use/)

Privacy Statement (http://www.kccllc.com/privacy/)

Edward Jones 401K Settlement

Notice Page

- Notice (/media/1827995/v4_ews_notice_011519_final_web.pdf)
- Plan of Allocation (/media/1827998/edward_jones_plan_of_allocation.pdf)

Edward Jones 401K Settlement

Court Documents Page

- Preliminary Approval Order (/media/1827989/edward_jones_preliminary_approval_order.pdf)
- Memorandum of Support of Preliminary Approval Order (/media/1827992/_edward_jones__12-11-18_doc__94_memorandum_of_law_in_support_of_plaintiffs__unopposed_motion_for_preliminary_approval_of_class_action_settlement__etc
- Settlement Agreement (/media/1836876/edward_jones_filed_settlement_agreement.pdf)
- Amended Complaint (/media/1836951/edward_jones_amended_complaint.pdf)

Edward Jones 401K Settlement

Schultz v. Edward D Jones, Co. Frequently Asked Questions

1. **What is this lawsuit about?**

This class action lawsuit was filed on August 19, 2016 on behalf of certain Plan participants. The lawsuit alleges that Defendants violated the federal Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1104(a), by choosing investment funds that the Edward D Jones & Co. Profit Sharing and 401K Plan ("Plan") offered based on whether Edward Jones had a corporate relationship with the fund's provider, not whether the fund was a prudent investment option. Plaintiffs allege that the Plan selected investment options that consisted predominantly of mutual funds managed by "partners" and "preferred partners" of Edward Jones — investment management companies that worked closely with Edward Jones brokers and agents and paid revenue sharing to Edward Jones based on Edward Jones marketing their funds to Edward Jones clients. Plaintiffs further allege there were superior, less expensive investment options available that Defendants should have chosen for the Plan. Plaintiffs also allege that Defendants caused Plan participants to pay excessive recordkeeping fees.

Defendants deny all allegations of wrongdoing, fault, liability or damage to the Plaintiffs and the class, deny that they have engaged in any wrongdoing or violation of law or breach of duty, or acted in any way that was not in the best interest of the Plan, and believe they acted properly at all times.

Top

2. **Am I a part of the Settlement Class?**

The Court certified a Settlement Class, and the Settlement applies to and is binding on that Class. The Settlement Class is defined as:

All current and former participants in the Plan who maintained a balance of any amount in the Plan at any point during the period from January 1, 2010 to December 13, 2018.

Defendants, including individual members of the Edward Jones Investment and Education Committee and the Edward Jones Profit Sharing and 401(k) Administrative Committee, as well as their beneficiaries, are excluded from the Class.

Whether a person is a member of this Settlement Class is reflected in Edward D. Jones & Co., L.P.'s ("Edward Jones") records.

Top

3. **What is the Settlement?**

Edward Jones will cause $3,175,000.00 (the "Settlement Amount") to be paid to settle the lawsuit. This sum, after the deduction of reasonable amounts to be approved by the Court for Case Contribution awards to Plaintiffs and Attorneys' Fees and Expenses, Administration Costs, and Taxes and Tax-Related Costs, will be distributed to participants in the Plan during the relevant period, pursuant to a Plan of Allocation approved by the Court. The details of the Plan of Allocation are available on the Notice Page (http://www.edwardjones401ksettlement.com/notice-page.aspx) of this website, and are generally calculated using the average year-end account balances of each participant during the Class Period. Pursuant to the terms of the Settlement Agreement, the Settlement Administrator has obtained Plan records and will pay your award, if any. Consequently, all inquiries related to such distributions should be addressed solely to the Settlement Administrator, at info@edwardjonese401Ksettlement.com or by calling the Edward Jones Settleement helpline at (866) 455-3740.

Top

4. **When is the Fairness Hearing?**

The Court has scheduled a Fairness Hearing for **April 18, 2019**, which will take place at the United States District Court for the Eastern District of Missouri, located at the Thomas F. Eagleton U.S. Courthouse, 111 South 10th Street, St. Louis, Missouri 63102 in Courtroom 12 North. The date and location of the Fairness Hearing is subject to change by order of the

Court, which will appear on the Court's docket for the case. Please check the Dates and Deadlines Page (http://www.edwardjones401ksettlement.com/dates-and-deadlines.aspx) of this website for the most up-to-date information regarding the Fairness Hearing.

Top

5. **How do I Object to the Settlement?**

Prior to the Fairness Hearing, Class members can give reasons why they think the Court should not approve the proposed Settlement.

Objections must be filed with the Court Clerk on or before **April 3, 2019**. Objections filed after that date will not be considered. Any Class member failing to submit a timely objection will be deemed to have waived any objection he or she might have, and any untimely objection will be barred absent an order from the Court.

Objections must include: (1) the case name and number; (2) your full name, current address, telephone number and signature; (3) a statement that you are a Class member and an explanation of the basis upon which you claim to be a Class member; (4) all grounds for the objection, with specificity, accompanied by any legal support known to you or your counsel; (5) a statement as to whether you or your counsel intends to personally appear and/or testify at the Fairness Hearing; (6) a list of any persons you or your counsel may call to testify at the Fairness Hearing in support of your objection, and (7) whether your objection applies only to you, to a specific subset of the class, or to the entire class.

Class members who do not comply with these procedures, or who miss the deadline to file an objection, lose the opportunity to have their objection considered by the Court or to appeal from any order or judgment entered by the Court regarding the Settlement.

Top

6. **Do I need to appear at the Fairness Hearing?**

No, you are not required to attend the Fairness Hearing in order to stay in the Settlement Class.

Anyone who files and serves a timely written objection in accordance with the instructions above may also appear at the Fairness Hearing either in person or through qualified counsel retained at his or her own expense. Those persons or their attorneys intending to appear at the Fairness Hearing must effect service of a Notice of Intention to Appear setting forth: (1) the name, address, and telephone number of the Settlement Class member, and (2) if applicable, the name, address, and telephone number of that Class member's attorney — on Class Counsel and Defendants' counsel (at the addresses set out

below in FAQ 7) and file it with the Court Clerk by no later than **April 3, 2019**. Anyone who does not timely file and serve a Notice of Intention to Appear in accordance with this paragraph shall not be permitted to appear at the Fairness Hearing, except by Order of the Court for good cause shown. Any comment or objection that is timely filed will be considered by the Court even in the absence of a personal appearance by the Settlement Class member or his or her counsel.

Top

7. **Do I have an Attorney in this matter?**

The Settlement Class is represented by Class Counsel. The attorneys for the Settlement Class are as follows:

Gregory Y. Porter BAILEY & GLASSER LLP 1055 Thomas Jefferson Street NW, Suite 540 Washington, DC 20007	Mark G. Boyko BAILEY & GLASSER LLP 8012 Bonhomme Ave, Suite 300 St. Louis, MO 63105

Top

8. **How will the Attorneys' Fees and Case Contribution Award be paid?**

Class Counsel will file a motion with the Court seeking approval of payment from the Settlement Fund of the expenses they incurred in prosecuting the case, reasonable attorneys' fees, and a Case Contribution Award not to exceed $10,000 for each of the three Class Representatives. Class Counsel intends to seek attorneys' fees not to exceed one-third of the Settlement Fund, or $1,058,333. The motion and supporting papers will be filed on or before **March 19, 2019**. After that date, you may review the motion and supporting papers on the Court Documents page at www.edwardjones401ksettlement.com. Any attorneys' fees, expenses, and Case Contribution Award approved by the Court, in addition to the expenses incurred by the Settlement Administrator in sending this Notice and administering the Settlement, will be paid from the Settlement Fund.

Top

9. **How do I exclude myself from the Settlement?**

The Courts have certified that this is a non-opt-out Settlement Class. This means that class members will not be permitted to exclude themselves from the Settlement. If you would like to tell the court that they should not approve the Settlement or that there are elements that you would like to change, you should file an Objection.

Top

10. **Who are the Defendants?**

Plaintiffs sued Edward D. Jones & Co., L.P., The Jones Financial Companies, L.L.L.P., the Edward Jones Investment and Education Committee, the Edward Jones Profit Sharing and 401(k) Administrative Committee and members of those committees.

Top

11. **Who are the Plaintiffs / Class Representatives?**

Valeska Schultz, Melanie Waugh and Rosalind Staley are the named plaintiffs and the representatives on behalf of all members of the Settlement Class in the lawsuit.

Top

12. **How do I get more information?**

If there are any changes to these deadlines, the date of the Fairness Hearing, or Settlement Agreement, those changes will be posted to this Settlement website. You will not receive an additional mailed Notice with those changes, unless separately ordered by the Court. If you cannot find the information you need on this website, you may also contact **1-866-455-3740** or email the Settlement Administrator at info@edwardjones401kSettlement.com for more information.

Please do not contact the Court to get additional information.

Top

Edward Jones 401K Settlement

Contact Us

If there are any changes to the Fairness Hearing, other Dates and Deadlines or Settlement Agreement, they will be posted to this Website. You will not receive an additional mailed Notice with those changes, unless separately ordered by the Court.

Please do not contact the Court to get additional information.

Schultz v. Edward D Jones & Co. Settlement Administrator

P.O. Box 404101
Louisville, KY 40233-4101

Edward D Jones ERISA Settlement

info@edwardjones401KSettlement.com (mailto:info@edwardjones401KSettlement.com)

(866) 455-3740

KCC Class Action Services LLC
Terms of Use (http://www.kccllc.com/terms-of-use/)
Privacy Statement (http://www.kccllc.com/privacy/)

EXHIBIT B

EXHIBIT 2

In re Cobalt International Energy, Inc. Sec. Litig.,
No. 4:14-cv-3428 (NFA)

KESSLER TOPAZ MELTZER & CHECK, LLP

TIME REPORT
From Inception through Dec. 31, 2018

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Amjed, Naumon	30.50	$800	$24,400.00
Berman, Stuart L.	76.50	$850	$65,025.00
Degnan, Ryan	29.60	$725	$21,460.00
Kessler, David	44.60	$850	$37,910.00
Topaz, Marc A.	25.90	$850	$22,015.00
Whitman, Jr., Johnston de F.	873.60	$775	$677,040.00
Counsel and Associates			
Dodemaide, Andrew	18.20	$400	$7,280.00
Enck, Jennifer	26.55	$675	$17,921.25
Hasiuk, Nathan	101.90	$450	$45,855.00
Materese, Josh	233.10	$450	$104,895.00
Newcomer, Michelle	37.80	$675	$25,515.00
Staff Attorneys			
Gamble, Kimberly V.	177.30	$350	$62,055.00
Hu, Sufei	100.50	$350	$35,175.00
Paralegals			
Potts, Denise	166.28	$250	$41,570.00
TOTAL LODESTAR	**1,942.33**		**$1,188,116.25**

addition, I believe that the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace

4. The total number of hours spent on this litigation by my firm through September 18, 2017, is 108. The total lodestar amount for attorney time based on the firm's current rates is $78,921.50. The hourly rates shown below are the usual and customary rates set by the firm for each individual. A breakdown of the lodestar is as follows:

Attorney	Hours	Rate	Lodestar
Nicole A. Veno, Associate	0.5	$350	$175.00
Christopher M. Barrett, Associate	13	$550	$7,150.00
Douglas P. Needham, Associate	37.25	$550	$20,487.50
Mark P. Kindall, Partner	24.75	$850	$21,037.50
Robert A. Izard, Partner	32.50	$925	$30,062.50
TOTAL	108		**$78,921.50**

5. My firm seeks an award of $121.50 in expenses in connection with the prosecution of the litigation through September 18, 2017. They are broken down as follows:

PACER & Out-of-Plan Westlaw Research	$121.50
TOTAL EXPENSES:	**$121.50**

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

of the complexity and scope of this action, Class Counsel had to forego other cases once they had agreed to represent the Class Representative and class in this action. The total requested fee of $9.33 million constitutes 33.33% of the economic value of the Settlement to the Class.

17. A chart of Counsel's hours and rates is also provided below. The summaries of time and expenses were taken from computer-based timekeeping programs, in which the attorneys maintained their fees and expense records. The detailed time and expense entries are available to the Court upon request. The hourly rates are based on the typical hourly rates for lawyers of similar experience in the communities in which Class Counsel practice.

18. The total number of hours is based only on the hours reasonably expended to achieve an excellent result for the class. Class Counsel coordinated efforts in the litigation of this case to ensure that there was no duplicative or unnecessary work. Because all firms are experienced in litigating actions of this type, we were able to efficiently divide tasks based on expertise.

19. The combined lodestar of all firms is $6,177,571 in fees, and the combined hours for all firms is 12,422.53 as reflected in the chart below.

Bailey & Glasser LLP				
Position	**Hours**	**Hourly Rate**	**Time**	**Expenses**
Partner	1,968.94	$700	$1,378,258.00	
Associate	323.52	$450	$145,584.00	
Paralegal	1,770.35	$200	$354,070.00	
Legal Assistant	51.7	$100	$5,170.00	
Business Analyst	9.25	$300	$2,775.00	
SUB-TOTAL	4,123.76		$1,885,857.00	267,729.03

EXHIBIT C

Mutual Fund Investment Objective

Mutual fund expense ratios vary by investment objective (Figure 6.5). For example, bond and money market mutual funds tend to have lower expense ratios than equity mutual funds. Among equity mutual funds, expense ratios tend to be higher for funds that specialize in a given sector—such as healthcare or real estate—or those that invest in equities around the world, because such funds tend to cost more to manage. Even within a particular investment objective, mutual fund expense ratios can vary considerably. For example, 10 percent of equity mutual funds that focus on growth stocks have expense ratios of 0.70 percent or less, while the top 10 percent have expense ratios of 1.95 percent or more. This variation reflects, among other things, the fact that some growth funds focus more on small- or mid-cap stocks and others focus more on large-cap stocks. This is important because portfolios of small- and mid-cap stocks tend to cost more to manage since information about these types of stocks is less readily available, and therefore portfolio managers spend more time doing research.

FIGURE 6.5

Mutual Fund Expense Ratios Vary Across Investment Objectives

Percent, 2017

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity mutual funds[1]	**0.66**	**1.18**	**2.00**	**0.59**	**1.25**
Growth	0.70	1.14	1.95	0.73	1.21
Sector	0.76	1.33	2.13	0.76	1.37
Value	0.68	1.10	1.89	0.70	1.18
Blend	0.40	1.00	1.80	0.36	1.04
World	0.80	1.28	2.10	0.73	1.36
Hybrid mutual funds[1]	**0.65**	**1.15**	**1.98**	**0.70**	**1.26**
Bond mutual funds[1]	**0.45**	**0.81**	**1.61**	**0.48**	**0.93**
Investment grade	0.35	0.69	1.49	0.35	0.77
World	0.65	1.00	1.80	0.61	1.12
Government	0.29	0.74	1.60	0.40	0.82
High-yield	0.63	0.95	1.76	0.73	1.05
Municipal	0.48	0.77	1.57	0.51	0.90
Money market funds[1]	**0.17**	**0.40**	**0.66**	**0.25**	**0.40**
Memo:					
Target date mutual funds[2]	**0.36**	**0.77**	**1.49**	**0.44**	**0.85**
Index equity mutual funds[1]	**0.06**	**0.33**	**1.53**	**0.09**	**0.61**

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

[1] Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

[2] Data include mutual funds that invest primarily in other mutual funds, but exclude mutual funds available as investment choices in variable annuities. Ninety-five percent of target date mutual funds invest primarily in other mutual funds.

Note: Each fund's share class is weighted equally for the median, 10th, and 90th percentiles.

Sources: Investment Company Institute and Morningstar

Mutual Fund Investment Objective

Mutual fund expense ratios vary by investment objective (Figure 5.5). For example, bond and money market mutual funds tend to have lower expense ratios than equity mutual funds. Among equity mutual funds, expense ratios tend to be higher for funds that specialize in a given sector—such as healthcare or real estate—or those that invest in equities around the world, because such funds tend to cost more to manage. Even within a particular investment objective, mutual fund expense ratios can vary considerably. For example, 10 percent of equity mutual funds that focus on growth stocks have expense ratios of 0.71 percent or less, while the top 10 percent have expense ratios of 1.97 percent or more. This variation reflects, among other things, the fact that some growth funds focus more on small- or mid-cap stocks and others focus more on large-cap stocks. This is important because portfolios of small- and mid-cap stocks tend to cost more to manage.

FIGURE 5.5

Expense Ratios for Selected Investment Objectives

Percent, 2016

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity mutual funds[1]	**0.68**	**1.21**	**2.04**	**0.63**	**1.28**
Growth	0.71	1.15	1.97	0.77	1.23
Sector	0.77	1.33	2.15	0.78	1.38
Value	0.70	1.13	1.92	0.74	1.20
Blend	0.41	1.01	1.83	0.39	1.06
World	0.83	1.33	2.15	0.78	1.41
Hybrid mutual funds[1]	**0.65**	**1.19**	**2.01**	**0.74**	**1.29**
Bond mutual funds[1]	**0.45**	**0.83**	**1.63**	**0.51**	**0.94**
Investment grade	0.35	0.70	1.51	0.37	0.79
World	0.62	1.01	1.84	0.65	1.11
Other taxable	0.49	0.90	1.75	0.65	1.01
Municipal	0.48	0.78	1.58	0.54	0.91
Money market funds[1]	**0.09**	**0.22**	**0.39**	**0.18**	**0.23**
Memo:					
Target date mutual funds[2]	**0.37**	**0.84**	**1.52**	**0.51**	**0.89**
Index equity mutual funds[1]	**0.06**	**0.35**	**1.51**	**0.09**	**0.63**

[1] Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

[2] Data include mutual funds that invest primarily in other mutual funds, but exclude mutual funds available as investment choices in variable annuities. Ninety-seven percent of these mutual funds invest primarily in other mutual funds.

Note: Each fund's share class is weighted equally for the median, 10th, and 90th percentiles. Data include index mutual funds but exclude exchange-traded funds (ETFs).

Sources: Investment Company Institute and Morningstar

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

FIGURE 5.7

Expense Ratios for Selected Investment Objectives

Basis points, 2015

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity funds[1]	71	124	205	68	131
Growth	74	119	199	81	126
Sector	78	135	215	78	140
Value	71	115	194	77	123
Blend	45	105	188	44	109
World	85	135	218	82	143
Hybrid funds[1]	70	123	206	77	134
Bond funds[1]	48	85	165	54	97
Taxable	46	89	170	54	98
Municipal	50	79	158	55	93
Money market funds[1]	5	9	21	13	11
Memo:					
Target date funds[2]	45	90	153	55	94
Index equity funds[1]	8	45	158	11	71

[1] Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

[2] Data include mutual funds that invest primarily in other mutual funds, but exclude mutual funds available as investment choices in variable annuities. Ninety-seven percent of these funds invest primarily in other mutual funds.

Note: Data include index mutual funds but exclude exchange-traded funds.

Sources: Investment Company Institute and Lipper

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

FIGURE 5.7

Expense Ratios for Selected Investment Objectives

Basis points, 2014

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity funds[1]	**72**	**125**	**208**	**70**	**133**
Growth	74	120	200	82	128
Sector	79	135	216	81	141
Value	73	118	196	80	125
Blend	45	108	189	46	112
World	88	139	220	86	146
Hybrid funds[1]	**70**	**124**	**205**	**78**	**133**
Bond funds[1]	**48**	**86**	**165**	**57**	**98**
Taxable	47	90	172	57	99
Municipal	50	80	157	56	93
Money market funds[1]	**6**	**10**	**21**	**13**	**12**
Memo:					
Target date funds[2]	**49**	**94**	**161**	**57**	**99**
Index equity funds[1]	**8**	**44**	**156**	**11**	**70**

[1] Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

[2] Data include mutual funds that invest primarily in other mutual funds, but exclude mutual funds available as investment choices in variable annuities. Ninety-seven percent of these funds invest primarily in other mutual funds.

Sources: Investment Company Institute and Lipper

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

Understanding Differences in the Expense Ratios of Mutual Funds

Like the prices of most goods and services, the expenses of individual mutual funds differ considerably across the array of available products. The expense ratios of individual funds depend on many factors, including investment objective, fund assets, balances in shareholder accounts, and payments to intermediaries.

Fund Investment Objective

Fund expenses vary by investment objective (Figure 5.7). For example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher for funds that specialize in sectors—such as healthcare or real estate—or those that invest in international stocks, because such funds tend to cost more to manage.

FIGURE 5.7

Expense Ratios for Selected Investment Objectives

Basis points, 2013

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity funds[1]	**74**	**129**	**213**	**74**	**137**
Growth	77	125	204	85	132
Sector	80	137	221	83	144
Alternative strategies	125	177	276	135	188
Value	75	121	200	83	129
Blend	47	111	194	50	116
World	90	142	225	90	151
Hybrid funds[1]	**64**	**116**	**198**	**80**	**125**
Bond funds[1]	**49**	**88**	**167**	**61**	**100**
Taxable	48	90	173	62	102
Municipal	50	80	157	57	95
Money market funds[1]	**10**	**16**	**27**	**17**	**17**
Target date funds[2]	**50**	**101**	**167**	**58**	**104**

[1] Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

[2] Data include the full universe of target date funds, 97 percent of which invest primarily in other mutual funds.

Note: Data include index mutual funds but exclude exchange-traded funds.

Sources: Investment Company Institute and Lipper

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

Understanding Differences in the Expense Ratios of Mutual Funds

Like the prices of most goods and services, the expenses of individual mutual funds differ considerably across the array of available products. The expense ratios of individual funds depend on many factors, including investment objective, fund assets, balances in shareholder accounts, and payments to intermediaries.

Fund Investment Objective

Fund expenses vary by investment objective (Figure 5.7); for example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher for funds that specialize in particular sectors—such as healthcare or real estate—or those that invest in international stocks, because such funds tend to be more costly to manage.

FIGURE 5.7

Expense Ratios for Selected Investment Objectives

Basis points, 2012

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity funds[1]	**77**	**133**	**216**	**77**	**141**
Aggressive growth	85	137	219	89	147
Growth	72	124	206	83	131
Sector	84	146	235	83	153
Growth and income	52	112	191	47	118
Income	68	112	187	82	120
International	93	147	230	93	155
Hybrid funds[1]	**65**	**120**	**199**	**79**	**127**
Bond funds[1]	**49**	**89**	**167**	**61**	**101**
Taxable	49	92	175	62	103
Municipal	50	82	159	60	97
Money market funds	**8**	**17**	**30**	**17**	**18**
Target date funds[2]	**49**	**104**	**172**	**58**	**107**

[1] Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds. Data include index mutual funds but exclude ETFs.

[2] Data include the full universe of target date funds, 96 percent of which invest primarily in other mutual funds.

Sources: Investment Company Institute and Lipper

"Plan" Money Market Fund Expense: 0.38% / 38 bps until 06/2016 0.34% / 34 bps after 06/2016

No Target Date Fund Available

To a certain extent, the fact that equity index assets are concentrated in the least costly index funds reflects the investment focus of index funds compared to that of actively managed funds. The assets of index funds have historically been concentrated most heavily in "large-cap blend" funds that target large-cap stock market indexes, notably the S&P 500 index. The assets of actively managed funds, on the other hand, have been more diffuse, spread among funds that focus on large-cap stocks, but also those that focus on mid- and small-cap stocks, on the international sector, or on particular sectors such as medical, electronics, or natural resources. All else equal, managing a portfolio of large-cap stocks is generally acknowledged to be less costly than managing a portfolio of mid- or small-cap, international, or sector stocks.

Understanding Differences in the Expense Ratios of Mutual Funds

To examine mutual fund expenses only through the lens of industry averages is to mask important diversity in the costs faced by funds and investors. Like the prices of most goods and services, the expenses of individual mutual funds differ considerably across the array of available products (Figure 5.7). The level of fund expenses depends on many factors, including fund investment objective, fund assets, balances in shareholder accounts, and payments to intermediaries.

FIGURE 5.7

Expense Ratios for Selected Investment Objectives

Basis points, 2011

Investment objective	10th percentile	Median	90th percentile	Asset-weighted average	Simple average
Equity funds	**78**	**135**	**220**	**80**	**144**
Aggressive growth	86	140	221	92	149
Growth	73	125	209	85	137
Sector	86	146	237	86	154
Growth and income	54	115	195	50	121
Income equity	72	116	193	85	124
International equity	94	150	232	95	157
Hybrid funds	**65**	**121**	**200**	**80**	**128**
Bond funds	**50**	**90**	**169**	**62**	**102**
Taxable bond	48	93	175	63	103
Municipal bond	51	84	160	59	99
Money market funds	**13**	**22**	**36**	**21**	**24**

Note: Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

Sources: Investment Company Institute and Lipper

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

Factors Influencing Mutual Fund Expenses

The prices of most goods and services differ considerably across the array of available products. Mutual funds are no exception: expense ratios vary across the range of mutual funds (Figure 5.5). The level of fund expenses depends on the fund investment objective, fund assets, balances in shareholder accounts, payments to intermediaries, and other factors.

Fund Investment Objective

Expenses vary by type of fund; for example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher among funds that specialize in particular sectors—"sector" funds, such as healthcare or real estate—or those that invest in international stocks, because such funds tend to be more costly to manage.

Even within a particular type of investment objective, there can be considerable variation in fund expense ratios. For example, 10 percent of aggressive growth equity funds have expense ratios of 0.89 percent or less, while 10 percent have expense ratios of 2.27 percent or more. Among other

FIGURE 5.5

Expense Ratios for Selected Investment Objectives*

Percent, 2010

Investment objective	10th percentile	Median	90th percentile	Average *Asset-weighted*	Average *Simple*
Equity funds	**0.80**	**1.40**	**2.25**	**0.84**	**1.47**
Aggressive growth	**0.89**	**1.45**	**2.27**	**0.99**	**1.54**
Growth	0.76	1.29	2.15	0.89	1.39
Sector funds	0.93	1.56	2.43	0.98	1.65
Growth and income	0.55	1.18	2.00	0.54	1.25
Income equity	0.73	1.20	1.94	0.83	1.27
International equity	0.95	1.53	2.38	0.99	1.61
Hybrid funds	**0.62**	**1.21**	**2.00**	**0.83**	**1.27**
Bond funds	**0.50**	**0.92**	**1.70**	**0.64**	**1.04**
Taxable bond	0.49	0.95	1.78	0.65	1.06
Municipal bond	0.53	0.87	1.60	0.62	1.02
Money market funds	**0.16**	**0.29**	**0.52**	**0.26**	**0.32**

*Data exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.

Sources: Investment Company Institute and Lipper

"Plan" Money Market Fund Expense:
0.38% / 38 bps until 06/2016
0.34% / 34 bps after 06/2016

No Target Date Fund Available

Factors Influencing Mutual Fund Expenses

As is true of the prices of most goods and services, expense ratios differ considerably across the range of mutual funds (Figure 5.5). The level of fund fees depends on the fund investment objective, fund assets, balances in shareholder accounts, the number and kinds of services that a fund offers, and other factors.

Fund Investment Objective

Expenses vary by type of fund; for example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher among funds that specialize in particular sectors—"sector" funds, such as healthcare or real estate—or those that invest in international stocks, which tend to be more costly to manage.

Even within a particular type of investment objective, there can be considerable variation in fund expense ratios. For example, 10 percent of aggressive growth equity funds have expense ratios of 0.91 percent or less, while 10 percent have expense ratios of 2.33 percent or more (Figure 5.5). Such variation reflects the fact that such funds are not all identical. Some aggressive growth funds may choose to focus more on small- or mid-cap stocks while others may focus more on large cap stocks. This can be significant because portfolios of small- and mid-cap stocks tend to be more costly to manage.

FIGURE 5.5

Expense Ratios for Selected Investment Objectives*

Percent, 2009

Investment objective	10th percentile	Median	90th percentile	Average *Asset-weighted*	Average *Simple*
Equity funds	**0.82**	**1.44**	**2.28**	**0.87**	**1.52**
Aggressive growth	0.91	1.49	2.33	1.03	1.58
Growth	0.78	1.33	2.16	0.91	1.43
Sector funds	0.92	1.62	2.50	0.98	1.70
Growth and income	0.52	1.21	2.00	0.56	1.25
Income equity	0.75	1.24	1.98	0.85	1.32
International equity	0.99	1.60	2.45	1.02	1.67
Hybrid funds	**0.63**	**1.20**	**2.00**	**0.84**	**1.28**
Bond funds	**0.52**	**0.96**	**1.73**	**0.65**	**1.08**
Taxable bond	0.50	0.99	1.80	0.65	1.09
Municipal bond	0.55	0.92	1.62	0.64	1.07
Money market funds	**0.22**	**0.50**	**0.91**	**0.34**	**0.54**

*Figures exclude mutual funds available as investment choices in variable annuities and mutual funds that invest primarily in other mutual funds.
Sources: Investment Company Institute and Lipper.

Factors Influencing Mutual Fund Fees and Expenses

As is true of the prices of most goods and services, fees differ considerably across the range of mutual funds (Figure 5.4). The level of fund fees depends on the fund investment objective, fund assets, balances in shareholder accounts, the number and kinds of services that a fund offers, and other factors.

FUND INVESTMENT OBJECTIVE. Expenses vary by type of fund; for example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher among funds that specialize in particular sectors ("sector" funds), such as healthcare or real estate, or those that invest in international stocks, which tend to be more costly to manage than, for instance, stocks in the S&P 500 index.

Even within a particular type of fund, there can be considerable variation in fund expense ratios. For example, 10 percent of aggressive growth equity funds have expense ratios of 0.89 percent or less, while 10 percent have expense ratios of 2.24 percent or more. Such variation in part reflects the fact that such funds are not all identical. Some aggressive growth funds may choose to focus more on small- or mid-cap stocks while others may focus more on large-cap stocks. This can be significant because small- and mid-cap stocks tend to be more costly to manage.

FIGURE 5.4

EXPENSE RATIOS FOR SELECTED INVESTMENT OBJECTIVES*

PERCENT, 2008

Investment objective	10th percentile	Median	90th percentile	Average *(asset-weighted)*	Average *(simple)*
Equity funds	**0.79**	**1.39**	**2.22**	**0.84**	**1.46**
Aggressive growth	0.89	1.44	2.24	1.02	1.53
Growth	0.76	1.30	2.12	0.90	1.39
Sector funds	0.91	1.54	2.36	0.95	1.61
Growth and income	0.49	1.17	1.97	0.57	1.23
Income equity	0.75	1.20	1.97	0.80	1.30
International equity	0.94	1.55	2.36	1.00	1.61
Hybrid funds	**0.69**	**1.26**	**2.05**	**0.78**	**1.35**
Bond funds	**0.50**	**0.95**	**1.71**	**0.63**	**1.07**
Taxable bond	0.49	0.97	1.78	0.66	1.07
Municipal bond	0.54	0.92	1.62	0.63	1.05
Money market funds	**0.20**	**0.55**	**1.04**	**0.39**	**0.60**

Variable annuities and mutual funds that invest primarily in other mutual funds are excluded.

Sources: Investment Company Institute; Lipper; Data © CRSP University of Chicago, used with permission, all rights reserved. (312.263.6400/www.crsp.com); and Strategic Insight Simfund

Factors Influencing Mutual Fund Fees and Expenses

As is true of the prices of most goods and services, fees differ considerably across the range of mutual funds (Figure 5.4). The level of fund fees depends on the fund investment objective, fund assets, balances in shareholders accounts, the number and kinds of services that a fund offers, and other factors.

Fund Investment Objective. Expenses vary by type of fund: for example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher among funds that specialize in particular sectors ("Sector" funds) such as health care or real estate, or those that invest in international stocks, which tend to be more costly to manage than, for instance, stocks in the S&P 500 index.

Even within a particular type of fund, there can be considerable variation in fund expense ratios. For example, expense ratios for aggressive growth equity funds range from less than 0.90 percent to more than 2.24 percent. Such variation in part reflects the fact that such funds are not all identical. Some aggressive growth funds may choose to focus more on small- or mid-cap stocks while others may focus more on large-cap stocks. This can be significant because small- and mid-cap stocks tend to be more costly to manage.

FIGURE 5.4

EXPENSE RATIOS FOR SELECTED INVESTMENT OBJECTIVES*

(percent, 2007)

Investment Objective	10th Percentile	Median	90th Percentile	Average *(asset-weighted)*	Average *(simple)*
Equity Funds	**0.79**	**1.40**	**2.22**	**0.86**	**1.47**
Aggressive Growth	0.90	1.45	2.24	1.03	1.53
Growth	0.77	1.30	2.13	0.91	1.30
Sector	0.91	1.55	2.36	0.95	1.61
Growth & Income	0.50	1.18	1.97	0.58	1.23
Income Equity	0.75	1.21	1.94	0.81	1.30
International Equity	0.94	1.56	2.37	1.01	1.62
Hybrid Funds	**0.69**	**1.27**	**2.06**	**0.78**	**1.36**
Bond Funds	**0.50**	**0.96**	**1.73**	**0.65**	**1.07**
Taxable Bond	0.49	0.98	1.79	0.66	1.08
Municipal Bond	0.54	0.93	1.63	0.64	1.06
Money Market Funds	**0.20**	**0.55**	**1.05**	**0.39**	**0.61**

*Data are preliminary; variable annuities are excluded.

Sources: Investment Company Institute; Lipper; © CRSP University of Chicago, used with permission, all rights reserved (312.263.6400/ www.crsp.com); and Strategic Insight Simfund

Fund Investment Objective. Expenses vary by type of fund: for example, bond and money market funds tend to have lower expense ratios than equity funds. Among equity funds, expense ratios tend to be higher among funds that specialize in particular sectors such as health care or real estate, or those that invest in international stocks because those kinds of stocks are the most costly to manage per dollar of assets.

Even within a particular type of fund, there can be considerable variation in fund expense ratios. For example, expense ratios for aggressive growth equity funds range from less than 0.91 percent to more than 2.25 percent. Such variation in part reflects the fact that such funds are not all identical. Some aggressive growth funds may choose to focus more on small- or mid-cap stocks while others may focus more on large-cap stocks. This can be significant because small- and mid-cap stocks tend to be more costly to manage.

Figure 5.4

EXPENSE RATIOS FOR SELECTED INVESTMENT OBJECTIVES

(percent, 2006)

Investment Objective	10th Percentile*	Median*	90th Percentile*	Average (asset-weighted)*	Average (simple)*
Equity Funds	0.85	1.42	2.25	0.87	1.51
Aggressive Growth	0.91	1.50	2.25	1.08	1.52
Growth	0.80	1.38	2.17	0.94	1.45
Sector	0.94	1.54	2.35	0.92	1.64
Growth & Income	0.56	1.23	2.00	0.57	1.27
Income Equity	0.75	1.23	1.94	0.82	1.32
International Equity	1.08	1.65	2.45	1.05	1.71
Hybrid Funds	0.73	1.33	2.15	0.80	1.45
Bond Funds	0.55	0.99	1.74	0.68	1.10
Taxable Bond	0.51	1.00	1.80	0.63	1.11
Municipal Bond	0.58	0.96	1.64	0.68	1.09
Money Market Funds	0.20	0.56	1.04	0.41	0.63

*Data are preliminary.

Source: Investment Company Institute and Lipper, a division of Reuters, used with permission. All rights reserved. See www.icifactbook.org and Lipper Insight, respectively.

EXHIBIT D

INVESTMENT PERFORMANCE

Total return at NAV for the period ended June 30, 2016.

	10 Year/ Life*	5 Year*	3 Year*	1 Year	YTD	Last Quarter	Annual Gross Expense Ratio**
Aggressive Growth							
American Funds New World Cl R5	5.42%	0.89%	1.53%	-6.07%	2.42%	2.15%	**0.81%**
American Funds New World Cl R6 (Began 05/01/2009)	8.33%	0.95%	1.58%	-6.02%	2.42%	2.16%	**0.65%**
Growth							
Goldman Sachs Sm Cap Val Fd I	8.01%	10.28%	8.53%	-2.93%	5.09%	4.71%	**0.99%**
American Small Cap World Fd R5	6.54%	6.89%	7.20%	-8.27%	-0.22%	2.63%	**0.75%**
Victory Munder Mid Cap Core Gr	7.06%	8.56%	7.65%	-7.71%	1.60%	0.51%	**1.07%**
American Small Cap World Fd R6 (Began 05/01/2009)	14.04%	6.94%	7.25%	-8.23%	-0.20%	2.63%	**0.71%**
Franklin Bal Sheet Invmt Adv	3.49%	6.08%	3.35%	-4.40%	1.78%	0.66%	**0.71%**

For information, call
your plan's toll-free number shown below
1-800-355-8389

Account Information

April 1, 2016 - June 30, 2016

SHIYANG HUANG

INVESTMENT PERFORMANCE (Continued)

Total return at NAV for the period ended June 30, 2016.

	10 Year/ Life*	5 Year*	3 Year*	1 Year	YTD	Last Quarter	Annual Gross Expense Ratio**
Growth and Income							
American Fds Inc Fd of Amr R5	6.55%	8.69%	8.11%	5.71%	6.80%	3.59%	0.32%
American New Economy Fd Cl R5	8.06%	10.58%	9.20%	-8.65%	-4.71%	-1.74%	0.50%
Washington Mutual Investors R5	7.22%	11.72%	10.65%	6.45%	5.48%	3.54%	0.34%
Amcap Fund R-5	8.03%	11.84%	11.81%	-1.09%	2.23%	1.73%	0.42%
Investment Co of America R-5	6.91%	11.65%	11.96%	4.98%	7.25%	4.00%	0.35%
Growth Fund of America Cl R-5	7.23%	11.44%	11.64%	1.08%	0.39%	2.96%	0.38%
American Fds Cptl Inc Bldr R5	5.70%	7.05%	6.90%	4.15%	7.28%	3.18%	0.34%
BlackRock Equity Dividend Fd I	7.10%	9.60%	9.02%	5.68%	4.77%	4.22%	0.70%
Hartford Gro Opps Hls Fd Cl Ia	8.83%	13.13%	14.88%	-0.80%	-1.72%	3.44%	0.64%
Franklin Mutual Global Disc (Began 05/01/2013)	5.23%	-	5.29%	-5.56%	0.37%	1.80%	0.84%
American Capital World G&I R6 (Began 05/01/2009)	10.94%	6.55%	6.70%	-3.09%	1.81%	1.44%	0.45%
American Funds Amcap Fund R-6 (Began 05/01/2009)	15.22%	11.90%	11.87%	-1.02%	2.28%	1.73%	0.37%
Capital Income Builder R6 (Began 05/01/2009)	10.33%	7.10%	6.95%	4.20%	7.29%	3.20%	0.30%
American Fds Inc Fd of Amer R6 (Began 05/01/2009)	12.49%	8.74%	8.16%	5.76%	6.83%	3.60%	0.28%
The New Economy Fund R6 (Began 05/01/2009)	14.54%	10.63%	9.26%	-8.61%	-4.67%	-1.72%	0.46%
EuroPacific Growth Fund R-6 (Began 05/01/2009)	8.31%	2.50%	3.76%	-9.57%	-2.63%	-0.32%	0.50%
Fundamental Investors Fd Cl R5	7.56%	11.05%	11.29%	4.64%	4.04%	3.49%	0.35%
Fundamental Investors Fd Cl R6 (Began 05/01/2009)	14.68%	11.10%	11.34%	4.67%	4.07%	3.50%	0.31%
Growth Fund of America Cl R-6 (Began 05/01/2009)	14.20%	11.49%	11.68%	1.11%	0.41%	2.96%	0.33%
Investment Co of America R6 (Began 05/01/2009)	14.08%	11.71%	12.01%	5.00%	7.28%	4.01%	0.30%
Dodge & Cox Int'l Stock Fund	2.22%	1.02%	0.37%	-18.86%	-4.91%	-1.20%	0.64%
Franklin Mutual Glbl Discovery	5.97%	6.17%	5.12%	-5.73%	0.31%	1.76%	0.99%
Hartford Gro Opportunities R5 (Began 12/22/2006)	8.03%	12.69%	14.21%	-1.72%	-2.07%	3.27%	0.84%
T Rowe Price Blue Chip Growth	8.82%	12.84%	13.07%	-1.60%	-5.73%	-0.26%	0.71%
New Perspective Fund Cl R-6 (Began 05/01/2009)	12.66%	8.05%	8.22%	-1.60%	-1.55%	0.85%	0.45%
Washington Mutual Investors R6 (Began 05/01/2009)	15.00%	11.77%	10.69%	6.50%	5.51%	3.55%	0.30%
New Perspective Fund Class R-5	6.97%	8.00%	8.16%	-1.65%	-1.61%	0.83%	0.49%
EuroPacific Growth Fund R-5	3.92%	2.45%	3.72%	-9.61%	-2.63%	-0.32%	0.54%
American Capital World G&I R-5	5.64%	6.49%	6.64%	-3.14%	1.78%	1.45%	0.49%
Vanguard Total Stock Market I	7.55%	11.59%	11.08%	2.13%	3.64%	2.67%	0.04%
Van FTSE All-Wld Exus Ind Inst (Began 04/30/2007)	0.09%	0.47%	1.86%	-9.34%	0.02%	0.31%	0.12%
Inv Equity and Inc Fd Cl Y	6.26%	7.99%	6.58%	-1.60%	1.92%	2.92%	0.56%
Inv Comstock Fund Class Y	5.73%	9.14%	6.00%	-6.50%	0.04%	1.96%	0.59%
Income							
American Cptl Wld Bond Fund R5	4.66%	2.04%	2.81%	6.70%	8.03%	2.41%	0.58%
American Funds US Gov't Sec R5	4.60%	3.19%	3.43%	5.00%	3.81%	1.13%	0.32%
JPMorgan Cr Bnd Fund Select	5.38%	3.72%	3.73%	5.58%	5.10%	2.20%	0.73%
Ame Capital World Bond Fund (Began 05/01/2009)	4.77%	2.07%	2.84%	6.71%	8.00%	2.37%	0.53%
US Government Securities Fd R6 (Began 05/01/2009)	3.67%	3.25%	3.48%	5.05%	3.84%	1.14%	0.27%
Dodge & Cox Income Fund	5.53%	3.98%	3.96%	4.36%	5.07%	2.64%	0.43%
Lord Abbett Bond Debenture I	6.99%	5.89%	5.13%	1.37%	6.14%	4.38%	0.62%
Vanguard Total Bond Index	5.15%	3.74%	4.04%	6.13%	5.53%	2.36%	0.05%
Money Market							
American Fd US Govt Mm Fd (Began 05/01/2009)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.38%
American Funds US Govt Mm R6 (Began 05/01/2009)	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.34%
Investment Portfolios							
Profit Sharing-Income Focus (Began 08/31/2011)	5.68%	-	5.29%	4.18%	4.67%	2.61%	0.58%
Profit Sharing-Growth Focus (Began 08/31/2011)	10.82%	-	7.37%	-1.17%	1.82%	2.23%	0.64%

For information, call
your plan's toll-free number shown below
1-800-355-8389

03964 6580784 012747 024123 00003/00007

Account Information

April 1, 2016 - June 30, 2016 SHIYANG HUANG

INVESTMENT PERFORMANCE (Continued)

Total return at NAV for the period ended June 30, 2016.

	10 Year/ Life*	5 Year*	3 Year*	1 Year	YTD	Last Quarter	Annual Gross Expense Ratio**
Ps-Balanced Toward Income (Began 08/31/2011)	7.28%	-	6.03%	2.99%	3.94%	2.53%	**0.60%**
Ps-Balanced Toward Growth (Began 08/31/2011)	9.56%	-	6.71%	-0.42%	2.35%	2.22%	**0.61%**
Ps-Balanced Growth & Income (Began 08/31/2011)	8.64%	-	6.48%	1.19%	3.40%	2.49%	**0.60%**
Profit Sharing-All Equity (Began 08/31/2011)	12.11%	-	7.86%	-2.87%	0.88%	2.07%	**0.67%**
Profit Sharing-All Income (Began 08/31/2011)	3.53%	-	4.04%	5.33%	5.76%	2.60%	**0.56%**

* Total returns are cumulative for periods of one year or less and annualized for periods of greater than one year. 10 year performance shown where available. Where not available, performance for the life of the fund is shown.

** As it appears in the investment's current prospectus, offering statement, annual report or other similar information.

Performance data is historical and does not guarantee future results. Investment return and principal value fluctuate with changing market conditions that, when redeemed, shares may be worth more or less than their original cost. Current performance may be lower or higher than the performance data quoted. For the most recent month-end performance, please visit your plan's web site. Returns do not reflect the imposition of sales charges that are waived for your plan; if such sales charges were imposed, returns would be lower.

Before investing, carefully consider the investment options or funds' investment objectives, risks, charges, and expenses. Visit your plan's website or call your plan's toll-free number for a prospectus, offering statement, or, if available, a summary prospectus containing this and other information. Supplemental information, including fund fact sheets, may also be available. Please read the information carefully before investing.

All returns assume reinvestment of distributions. Short-term trading fees may apply as noted in the plan's Annual Expense and Investment Notice. If a short-term trading fee applies to your investment activity, you will be notified of the estimated fee at the time of transaction. Fees that are actually charged will be reported on the quarterly benefits statement.

Funds whose performance data reflect triple-digit and unusually high double-digit annualized returns generally achieved those returns during favorable market conditions, which may not be sustained.

Sources:

Lipper, a Thomson Reuters Company - all open-end mutual fund, stock, public index and some non-registered investment data are supplied by Lipper, a Thomson Reuters Company, subject to the following copyright:

Content not provided by Lipper for non-registered investment products, separate accounts, co-mingled trusts, and custom indices are provided by the respective fund managers or their agents.

For information, call
your plan's toll-free number shown below
1-800-355-8389

PRESS FIRMLY TO SEAL

PRESS FIRMLY TO SEAL

PRIORITY MAI
FLAT RATE
POSTAGE REQUI

UNITED STATES POSTAL SERVICE®

This envelope is made from post-consumer waste. Please recycle - again.

PRIORITY® MAIL

- Date of delivery specified*
- USPS TRACKING™ included to many major international destinations.
- Limited international insurance.
- Pick up available.*
- Order supplies online.*
- When used internationally, a customs declaration label may be required.

* Domestic only

PS00001000014

EP14F Oct 2018
OD: 12 1/2 x 9 1/2

To schedule free Package Pickup, scan the QR code.

USPS.COM/PICKUP

UNITED STATES POSTAL SERVICE®

www.paypal.com

P

04/01/2019
From 66614

INSURED

US POSTAGE PAID
Pitney Bowes
ComBasPrice
Flat Rate Envelope
024P0007775243

PRIORITY MAIL 2-DAY™

[redacted]
topeka KS 66614-[redacted]

0006

C009

United States District Court
Jar; Eastern District Of Missouri
111 S 10th St Ste 3.300
Saint Louis MO 63102-1123

NO. 4:16-CV-1346-JAR

USPS TRACKING #

9405 8096 9993 8326 1809 02