

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

DIANE G. SHORT, JUDITH DAVIAU,
and JOSEPH BARBOZA, Individually
and as representatives of a class of
participants and beneficiaries in and on
behalf of the BROWN UNIVERSITY
DEFERRED VESTING RETIREMENT
PLAN, and the BROWN UNIVERSITY
LEGACY RETIREMENT PLAN,

Plaintiffs,

vs.

BROWN UNIVERSITY,

Defendant.

Civil Action No. 1:17-cv-00318-WES-
PAS

DECLARATION OF ATTORNEY MICHAEL M. MULDER

I, Michael M. Mulder, declare as follows:

1. I have been a member in good standing of the State Bar of Illinois since 1975.
2. I am the principal in the law firm of Law Offices of Michael M. Mulder (hereafter “MMM”).
3. I am admitted and have practiced and argued in the United States Supreme Court, several United States Courts of Appeal, and district courts across the country.

4. I now offer this declaration in support of Plaintiffs' motion for attorney's fees, costs and incentive awards.

5. I and my firm have considerable experience handling complex ERISA class litigation similar to this action and we are knowledgeable in the applicable law.

6. Over the past 37 years, I, in conjunction with my law firm and its predecessor firm, have successfully prosecuted many complex federal class action cases, including several class action ERISA cases. For example, we litigated and reached settlement in *In re: Sears Retire Group Life Insurance Litigation*, No. 97-C-7453 (N.D. Ill.), which involved issues concerning whether retiree life insurance benefits were vested for life or were subject to reduction. I was appointed liaison counsel and headed the steering committee responsible for coordinating the prosecution of the case. The case eventually settled in 2001 for approximately \$28 million and an agreement from Sears not to reduce class members' benefits below a certain floor.

7. I was also co-lead counsel in *Millsap v. McDonnell Douglas Corporation*, 162 F.Supp.2d 1262 (N.D. Okla. 2001), an ERISA section 510 class action. In that case, I tried liability issues to a favorable verdict for a class of 1,200 hourly and management employees. In reviewing the class counsel's work, the *Millsap* court stated, "that, at all stages of this nine-year litigation, Class Counsel has been faced with novel questions and significant obstacles. In every instance, the

Court finds that Class Counsel demonstrated the requisite skill necessary to provide high quality legal services to class members.” *Millsap v. McDonnell Douglas*, No. 94-v-633, 2003 WL 21277124, at *11 (N.D. Okla. May 28, 2003). The case was partially settled for approximately \$38 million. As part of the settlement, an appeal of the district court’s ruling that the class was entitled to additional relief in the form of back pay was certified for review by the Tenth Circuit. The Court of Appeals reversed with one judge dissenting. *Millsap v. McDonnell Douglas*, 368 F.3d 1246 (10th Cir. 2004). The back-pay claims of the class were then settled for approximately \$8 million, bringing the total value of the settlement to around \$46 million.

8. More recently, I served as co-lead counsel in *Neil v. Zell*, No. 1:08-cv-06833 (N.D. Ill.), on behalf of participants in the Tribune Employee Stock Ownership Plan. The plaintiffs alleged that defendants breached their fiduciary duty to the class and engaged in prohibited transactions all in violation of ERISA. On March 4, 2011, the court certified the class. On the basis of the work undertaken by counsel in that case prior to the class certification order and declarations filed, the court found that Rule 23(g) was satisfied and appointed me as co-counsel for the class. *Neil v. Zell*, 275 F.R.D. 256, 270 (N.D. Ill. 2011). In March 2012, the case was resolved in favor of the class through a \$32 million settlement. Appended to my declaration as Attachment A is a partial list of other ERISA cases and other class

actions in which my firm or its predecessor firm, Meites Mulder, has been lead or co-lead counsel.

9. Currently, my firm is co-counsel in *Tracey v. MIT*, No. 16-11620-NMG (D. Mass.) with the law offices of Schlichter, Bogard & Denton, LLP. This ERISA case alleges breach of fiduciary duty concerning MIT's supplemental 401(k) plan. A class of plan participants was certified by the court on October 19, 2018. *Tracey v. MIT*, No. 16-11620.

National ERISA Hourly Market Rates

10. The hourly rates of Class Counsel here are comparable or less than hourly rates based on the national market for complex ERISA fiduciary breach of fiduciary duty excessive fee litigation, similar to the instant case. We are cognizant of national market rates that have been awarded to law firms with which MMM has co-counseled in other ERISA 401(k) breach of fiduciary duty litigation, including Schlichter, Bogard & Denton (SBD). Recently, for purposes of cross-checking SBD's lodestar, the court found to be reasonable a fee range of up to \$1,060 per hour, depending on years of attorney experience:

this Court finds that the reasonable hourly rates for Class Counsel's services at this time are as follows: for attorneys with at least 25 years of experience, \$1,060 per hour; for attorneys with 15–24 years of experience, \$900 per hour; for attorneys with 5–14 years of experience, \$650 per hour; for attorneys with 2–4 years of experience, \$490 per hour; for Paralegals and Law Clerks, \$330 per hour.

Ramsey et al., v. Phillips North America, No. No., 3-18-cv-01099-NJR-RJD, Doc. 27 at 8 (S.D. Ill. Oct. 15, 2018).¹

11. These 2018 rates for SBD reflected a modest increase (3% annually) from those previously approved national market rates for ERISA 401(k) fiduciary breach class actions in *Spano v. Boeing Co.*, No. 06-743, Doc. 587 at 6-7 (S.D. Ill. March 31, 2016) (finding “that reasonable hourly rate for Class Counsel’s services” at that time was \$998 for attorneys with at least 25 years of experience, \$850 for attorneys with 15-24 years of experience, \$612 for attorneys with 5-14 years of experience, \$460 for attorneys with 2-4 years of experience, \$309 for paralegals and law clerks, and \$190 for legal assistants.)

Similar rates have been approved in other federal district courts in ERISA 401(k) breach of fiduciary duty actions, including district courts within the First Circuit. *See Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016) (finding under a lodestar analysis that counsel was entitled to compensation at the following hourly rates: \$998 for attorneys with at least 25 years of experience; \$850 for attorneys with 15-24 years of experience; \$612 for attorneys with 5-14 years of experience; \$460 for attorneys with 2-4 years of experience; and \$309 for

¹ In *Ramsey*, the court also noted that, “Sanford Rosen, a recognized expert in attorney fee litigation, opined that these rates are well within the rates charged by national attorneys for equivalent skill and expertise. He provided independent market data to verify the reasonableness of the requested rates, and opined ‘that for complex cases, such as this one, a national rate applies.’” *Id.* at 9. (internal cite omitted)

paralegals and clerks); *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-CV-30184, Docs. 144 at 6 (D. Mass. Nov. 3, 2016) and 120 at 29-30 (D. Mass. Sept. 2, 2016) (approving the “reasonable rates suggested by counsel” where those rates were the same is in *Kruger*).

12. The hourly rates Class Counsel in the instant action seek to have the Court approve for the purposes of cross-checking the lodestar are conservative because they are comparable with even the 2016 national ERISA hourly rates approved in *Spano*, *Kruger*, and *Gordan* and range between \$960, for partners and \$875, for Of Counsel, all with 39 or more years of experience, and \$300 for paralegals.

I declare, under penalty of perjury, that the forgoing is true and correct.

DATED: July 3, 2019



Michael Mulder
The Law Offices of Michael M.
Mulder
1603 Orrington, Suite 600
Evanston, IL 60201
mmmulder@mmulderlaw.com
Tel: (312) 263-0272
Fax: (847) 563-2301