

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 TODD M. SCHNEIDER IN SUPPORT OF
PLAINTIFFS' UNOPPOSED MOTION FOR AN ORDER
FINALLY APPROVING CLASS ACTION SETTLEMENT,
APPROVING THE PLAN OF ALLOCATION;
APPROVING CASE CONTRIBUTION AWARDS TO PLAINTIFFS; AND
AWARDING ATTORNEYS' FEES AND COSTS**

I, Todd M. Schneider, declare as follows:

1. I am the founder and a partner of the firm Schneider Wallace Cottrell Konecky Wotkyns, LLP ("Schneider Wallace"). I am also Co-Lead Class Counsel in this action. This declaration is submitted in support of Plaintiff's Motion for Approval of Attorneys' Fees, Reimbursement of Expenses, and Class Representative Incentive Awards. I have personal knowledge of the facts in this declaration. If called as a witness, I would and could competently testify to these facts.

2. Schneider Wallace has extensive experience in class action matters, including ERISA matters, as outlined in Exhibit B to this Declaration. Of note, SWCKW (with co-counsel) was appointed co-lead counsel in a class action challenging the management of a leading collection

of stable value funds managed by JP Morgan and affiliates, *In re J.P. Morgan Stable Value Fund ERISA Litigation*, Master File No. 12-cv-2548-VSB (S.D.N.Y.). That class was certified on March 31, 2017 and the court has approved the parties' \$75 million settlement. Schneider Wallace also served as class counsel (with co-counsel) in *Glass Dimensions, Inc. v. State Street Corp. et al.*, Civ. No. 10-10588-FDS, an ERISA fiduciary breach class action that settled for \$10 million as well as substantial injunctive relief.

3. Schneider Wallace was appointed co-lead counsel in connection with a \$6.5 million settlement of *Daugherty v. University of Chicago*, 2018 WL 1805646, (N.D. Ill. Jan. 10, 2018), class action litigation involving claims of breach of fiduciary duty for failing to prudently monitor the performance of certain investment funds offered as investment voices in the University's 403(b) plans¹, and for failing to prudently monitor and control administrative expenses charged by the plan's recordkeeper. An order of final approval of the settlement was entered on Sept. 12, 2018.

4. Schneider Wallace served as co-lead counsel in connection with a \$4.5 million settlement of *Pease v. Jackson National Life Insurance Company*, Civil Action No.: 17-cv-00284 (W.D. MI 2017), a class action brought on behalf of the Jackson National Life Defined Contribution Plan and all of its participants, alleging breach of fiduciary duty for self-dealing by selecting as investment options for the Plan only investment funds sponsored by Jackson National Life and receiving compensation related to those funds that exceeded the legal limit imposed by ERISA Section 408(c)(2). An order of final approval of that settlement was entered by the Court on April 23, 2019.

¹ A 403(b) plan is a defined contribution individual account plan that is virtually identical to a 401(k) plan but that is routinely adopted by universities, hospitals and other similar tax-exempt entities.

5. Schneider Wallace has been appointed class counsel in many other similarly-complex class actions, and Exhibit B includes a list of representative actions in which Schneider Wallace has been appointed lead counsel as well as a set of biographies for the attorneys principally working on this matter.

6. From the inception of this litigation, the Schneider Wallace team, along with co-counsel for Plaintiffs, Berger Montague PC (“Berger”), and Sonja L. Deyoe serving as local counsel, have aggressively and vigorously prosecuted this case and represented the best interests of Plaintiffs and the class.

7. My firm assisted in the prosecution of this action by conducting legal and factual research relating to all of the allegations in the complaint, drafting the complaint, discussing the allegations in the complaint with the named plaintiffs, drafting and editing briefs, participating in settlement mediations, working with co-counsel, reviewing documents produced by Defendants, and participating in expert-related litigation activities, among many other things.

8. The total number of hours spent on the litigation by my firm is 467.20. The total lodestar amount for attorney/professional time based on the firm’s rates is \$382,972.50. The hourly rate set forth in the chart below for the attorneys are the regular rates for their services in similar ERISA class actions:

Short, Diane v. Brown University			
TIME KEEPER	RATE	TIME	CHARGES
Partners			
Kim, Jason (JXK)	\$865	24.40	\$21,106.00
McKay, Michael (MCM)	\$775	64.50	\$49,987.50
Wotkyns, Garrett (GWW)	\$925	90.20	\$83,435.00
Of Counsel / Associates			
Hogg, William (WMH)	\$775	1.20	\$930.00
Johnson, Mark (MTJ)	\$875	1.20	\$1,050.00
Nestico, John (JJN)	\$840	260.70	\$218,988.00
Law Clerks / Paralegals			
Gueorguieva, Eugenia (EPG)	\$300	.90	\$270.00

Guthrie, Lisa (LAG)	\$300	2.20	\$660.00
Walker, Christopher (CJW)	\$250	.50	\$125.00
Winter, Kelle (KJW)	\$300	21.40	\$6,420.00
Grand Total		467.20	\$382,971.50

The aggregate lodestar for all Plaintiffs' counsel as of July 2, 2019 is \$766,839.00 (including \$385,604.60 in fees and 482 hours of time for Berger Montague (see Collins Decl. para. 19) and \$6,662,50 and 20.5 hours of time for Sonja Deyoe (see Deyoe Decl. at para. 4), although I anticipate that the aggregate lodestar for Class Counsel will increase materially from the present date until final allocation of the Net Settlement Fund, in light of work that will be required in connection with continuing to administer the Settlement, communicating with Settlement Class Members, coordinating efforts with other Class Counsel, Defendant's Counsel, and the Settlement Administrator, and preparing for and participating in the Final Approval Hearing scheduled for August 1, 2019. Based on recent experience in a similar case involving the same plan recordkeeper, aggregate final lodestar could increase by between \$40,000.00 and \$80,000.00. Taking that into consideration, the multiplier represented by the requested percentage of the fund would be between 1.24 and 1.3.

9. Schneider Wallace has incurred a total of \$8,495.27 in expenses in the connection with the prosecution of this litigation. They are broken down as follows:

Schneider Wallace Cottrell Konecky Wotkyns LLP			
Short v. Brown 101356 – Incurred Expense			
Date	Source Name	Expense	Amount
09/18/2017	Law Offices of Sonja L. Deyoe	Complaint Filing Fee	400.00
09/18/2017	Law Offices of Sonja L. Deyoe	PHV Fee	200.00
11/04/2017	Pacer	Document retrieval / legal research Q3 2017	3.10
04/15/2018	Nestico, John	Airfare re: MTD, American Airlines	578.10
04/15/2018	Nestico, John	Lodging: Renaissance	281.86

04/15/2018	Nestico, John	Transportation to/fr airport	23.13
04/15/2018	Nestico, John	Parking at Charlotte Airport	14.00
08/07/2018	Pacer	Document retrieval / legal research Q2 2018	4.80
12/05/2018	Berger & Montague - C Corp	1/2 of P's portion of mediation fees	3,500.00
12/14/2018	FedEx	Overnight mail to B&M	26.10
12/31/2018	Nestico, John	Airfare re Mediation: American Airlines	263.70
12/31/2018	Nestico, John	Airfare re: United Airlines	300.00
01/15/2019	Wotkyns, Garrett W.	Lodging re: Mediation: Renaissance	153.68
01/15/2019	Nestico, John	Airfare re: Mediation: United Airlines	300.20
01/15/2019	Nestico, John	Airfare re: Mediation: American Airlines	263.70
01/15/2019	Nestico, John	Parking re: Mediation: Clt Daily Garage	20.00
01/15/2019	Nestico, John	Train re: Mediation: CTA Ventra	20.00
01/15/2019	Nestico, John	Business Meals re Mediation: Lloyds Chicago	78.13
02/13/2019	JAMS, Inc.	Total amount for mediation is \$3,634.88 We pay half of it	1,817.44
03/15/2019	Wotkyns, Garrett W.	Dinner re mediation: Forno Rosso	105.88
03/15/2019	Wotkyns, Garrett W.	Taxi re: mediation: Yellow Cab	55.25
03/15/2019	Wotkyns, Garrett W.	Taxi re: Yellow Cab	53.70
07/03/2019	SWCKW	Copying Costs, Postage	32.50
		Total Costs	\$8,495.27

10. Schneider Wallace was also actively involved in reaching this settlement on behalf of the Settlement Classes by leading negotiations throughout the litigation and during mediation, discussing the settlement with co-counsel and actively pursuing discovery and review and analysis of discovery material. Since preliminary approval was granted and notice has been sent to the Class, Schneider Wallace has assisted in retention of the Settlement Administrator, management of the plan of allocation and answered numerous questions from Class Members about the settlement. Schneider Wallace will continue to represent the Settlement Class through final approval and completion of the claims administration process.

11. Attached to this affidavit as Exhibit A in support of our fee application is the affidavit of Michael M. Mulder, Esq., an attorney with 37 years of experience handling complex

class action litigation, including ERISA class litigation similar to this action, and is knowledgeable in the applicable law, whom we requested to review our fee application and offer his opinion of the fee request and applicable hourly rates. He has determined that, based on his familiarity with cases similar to the case at bar, and after a review of fee awards in such cases, that requested fees and associated hourly rates used as a cross-check of the requested fee, that the requested fee is reasonable and consistent with fee awards in similar cases.

I declare under penalty of perjury under the laws of the state of the United States that the foregoing is true and correct and that this declaration was executed on July 3, 2019 in Emeryville, California.

Respectfully submitted,

By: /s/ Todd M. Schneider
Todd M. Schneider (admitted *pro hac vice*)
Schneider Wallace Cottrell
Konecky Wotkyns LLP
2000 Powell Street, Suite 1400
Emeryville, CA 94608
Telephone: (415) 421-7100
tschneider@schneiderwallace.com