

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STEPHEN G. WHETSTONE,
on behalf of himself and all others
similarly situated,

Plaintiff,

v.

HOWARD UNIVERSITY *et al.*,

Defendants.

Civil Action No. 23-2409 (LLA)

**PLAINTIFF’S UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Plaintiff Stephen G. Whetstone, on behalf of himself and the Class Members, respectfully moves this Court for an Order granting preliminary approval of the Class Action Settlement Agreement with Defendants Howard University, the Howard University Employees’ Retirement Plan, and the Retirement Plan Committee of the Howard University Employees’ Retirement Plan; granting leave to file the Second Amended Complaint; approving Plaintiff Whetstone as a Class Representative (Subgroup A) and potential Plaintiff Linda Hutchins as a Class representative (Subgroup B); preliminarily certifying the Settlement Class; appointing Siri & Glimstad LLP as Class Counsel; approving the proposed Settlement Notice; and scheduling a Final Approval Hearing. In support of this Motion, Plaintiff relies on the accompanying Memorandum of Law, the declaration of Plaintiff’s counsel, Oren Faircloth, Esq., and the exhibits attached thereto, as well as the Second Amended Complaint and the Settlement Agreement, including all exhibits thereto.

Date: April 23, 2026

Respectfully submitted,

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MEMORANDUM IN SUPPORT OF PLAINTIFF’S UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS SETTLEMENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
I. INTRODUCTION	1
II. BACKGROUND	4
A. Plaintiff’s Allegations	4
B. Procedural Background.....	5
C. Settlement Negotiations and the Proposed Settlement	5
1. The Proposed Settlement Classification	7
2. Settlement Relief and Benefit Adjustments	7
3. Release of Claims	10
4. Anticipated Notice Program	10
5. Attorneys’ Fees, Expenses, and Case Contribution Awards.....	11
III. ARGUMENT.....	12
A. Legal Standard	12
B. The Court Should Preliminarily Approve the Settlement Because it is Fair Reasonable, and Adequate	13
1. The Proposed Class Representatives and Class Counsel Have Adequately Represented the Class.....	13
2. The Proposed Settlement Was Negotiated at Arm’s Length	14
3. The Relief Provided Is Adequate, Taking Into Account the Costs, Risks, and Delay of Trial and Potential Appeals	16
4. The Plan of Allocation and Method of Distribution Are Fair, Reasonable, and Equitable	21
5. The Proposed Class Representatives and Class Counsel Support the Settlement	23
C. The Class Should Be Preliminarily Certified for Settlement Purposes	24

1. The Settlement Class Satisfies Rule 23(a)’s Requirements 25

 i. Numerosity..... 25

 ii. Commonality..... 25

 iii. Typicality 26

 iv. Adequacy 27

2. The Settlement Class Meets the Requirements for Certification Under Rule 23(b)’s Requirements 29

 i. The Settlement Class Should Be Certified Under Rule 23(b)(1) 29

D. The Proposed Notice Plan Should Be Approved..... 30

IV. CONCLUSION..... 32

TABLE OF AUTHORITIES

Cases

<i>Abraha v. Colonial Parking, Inc.</i> , No. 16-cv-680, 2020 U.S. Dist. LEXIS 136538, at *17 (D.D.C. July 31, 2020).....	30
<i>Amchem Prods., Inc. v. Windsor</i> , 521 U.S. 591 (1997).....	27, 29
<i>Beach v. JPMorgan Chase Bank, Nat’l Ass’n</i> , 2020 WL 6114545, at *1 (S.D.N.Y. Oct. 7, 2020)	19
<i>Berkeley v. Intel Corp.</i> , No. 5:23-cv-00343, 2026 U.S. Dist. LEXIS 76782 (N.D. Cal. Apr. 8, 2026)	17
<i>Berube v. Rockwell Automation, Inc.</i> , No. 20-C-1783, 2023 U.S. Dist. LEXIS 217630, at *23 (E.D. Wis. Apr. 3, 2023).....	18, 19
<i>Blackman v. District of Columbia</i> , 454 F. Supp. 2d 1 (D.D.C. 2006).....	15, 16
<i>Brown v. District of Columbia</i> , 928 F.3d 1070 (D.C. Cir. 2019).....	25, 26
<i>Castillo De Martinez v. Tier-One Prop. Servs., LLC</i> , No. 23-cv-2339, 2025 U.S. Dist. LEXIS 27509, at *10 (D.D.C. Feb. 14, 2025)	12, 15, 25
<i>Caufield v. Colgate-Palmolive Co.</i> , 2017 U.S. Dist. LEXIS 118022, at *15 (S.D.N.Y. July 27, 2017)	29
<i>Clark v. Duke Univ.</i> , No. 1:16-cv-1044, 2019 U.S. Dist. LEXIS 105792, at *13–14 (M.D.N.C. June 24, 2019)	21
<i>Cohen v. Chilcott</i> , 522 F. Supp. 2d 105 (D.D.C. 2007).....	24
<i>Comcast Corp. v. Behrend</i> , 569 U.S. 27 (2013).....	24

<i>Compton v. N. Cent. Va. Rests., Inc.</i> , Civil Action No. 5:20-cv-00073, 2022 U.S. Dist. LEXIS 159070, at *9 (W.D. Va. Sep. 2, 2022)	17
<i>Covic v. FedEx</i> , No. 24-5945, 2026 U.S. App. LEXIS 7628 (6th Cir. Mar. 16, 2026)	17
<i>Dew v. Mindfinders, Inc.</i> , No. 20-cv-2930, 2021 U.S. Dist. LEXIS 197732, at *12 (D.D.C. Oct. 14, 2021).....	15
<i>Drummond v. Southern Container Co.</i> , No. 24-12773 (11th Cir. Aug. 28, 2024)	17
<i>Franklin v. Duke Univ.</i> , No. 1:23-cv-833, 2026 U.S. Dist. LEXIS 14532, at *2 (M.D.N.C. Jan. 27, 2026)	19
<i>Gen. Tel. Co. of Sw. v. Falcon</i> , 457 U.S. 147 (1982).....	26
<i>George v. Duke Energy Ret. Cash Balance Plan</i> , No. 8:06-cv-00373, 2011 U.S. Dist. LEXIS 170192, at *20 (D.S.C. May 16, 2011).....	19
<i>Hardy v. District of Columbia</i> , 283 F.R.D. 20 (D.D.C. 2012).....	26
<i>Herndon v. Huntington Ingalls, Inc.</i> , No. 4:19-cv-00052 (E.D. Va.)	19
<i>Howard v. Liquidity Servs.</i> , No. 14-cv-1183, 2018 U.S. Dist. LEXIS 172321, at *15 (D.D.C. Oct. 5, 2018).....	16, 21, 23
<i>Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.</i> , No. 16-cv-3025, 2019 U.S. Dist. LEXIS 120558, at *18 (D. Md. July 15, 2019).....	15
<i>In re District of Columbia</i> , 792 F.3d 96 (D.C. Cir. 2015).....	25
<i>In re Enron Corp. Sec. Deriv. & “ERISA” Litig.</i> , 586 F. Supp. 2d 732 (S.D. Tex. 2008)	19

<i>In re Fannie Mae Sec., Derivative, & ERISA Litig.</i> , 4 F. Supp. 3d 94 (D.D.C. 2013).....	17, 23
<i>In re MicroStrategy, Inc. Sec. Litig.</i> , 148 F. Supp. 2d 654 (E.D. Va. 2001)	18
<i>In re Vitamins Antitrust Litig.</i> , 209 F.R.D. 251 (D.D.C. 2002).....	27
<i>Kinard v. E. Capitol Fam. Rental, L.P.</i> , 331 F.R.D. 206 (D.D.C. 2019).....	12
<i>Landel v. Olin Corp.</i> , No. 4:25-cv-00096, 2026 U.S. Dist. LEXIS 59091 (E.D. Mo. Mar. 20, 2026)	17
<i>Masten v. Metropolitan Life Ins. Co.</i> , No. 1:18-cv-11229 (S.D.N.Y.)	18
<i>McAlister v. Metro. Life Ins. Co.</i> , 2023 U.S. Dist. LEXIS 158560, at *25–26 (S.D.N.Y. Sept. 7, 2023).....	29
<i>McFadden v. Sprint Communications, LLC</i> , No. 2:22-cv-02464 (D. Kan.).....	19
<i>Mehling v. New York Life Ins. Co.</i> , 248 F.R.D. 455 (E.D. Pa. 2008).....	20
<i>Mullane v. Cent. Hanover Bank & Trust Co.</i> , 339 U.S. 306 (1950).....	30
<i>Nat’l Ass’n of Reg’l Med. Programs, Inc. v. Mathews</i> , 551 F.2d 340 (D.C. Cir. 1976).....	27
<i>Osher v. SCA Realty I, Inc.</i> , 945 F. Supp. 298 (D.D.C. 1996).....	12
<i>Ortiz v. Fibreboard Corp.</i> , 527 U.S. 815 (1999).....	29
<i>Phillips Petroleum Co. v. Shutts</i> , 472 U.S. 797 (1985).....	31
<i>Prince v. Aramark Corp.</i> , 257 F. Supp. 3d 20 (D.D.C. 2017).....	23

<i>Reichert v. Kellogg Co.</i> , No. 24-1442, 2026 U.S. App. LEXIS 7628 (6th Cir. Mar. 16, 2026)	17
<i>Richardson v. L'Oréal USA, Inc.</i> , 951 F. Supp. 2d 104 (D.D.C. 2013).....	12
<i>Sims v. BB&T Corp.</i> , No. 1:15-cv-732, 2019 U.S. Dist. LEXIS 75837, at *19 (M.D.N.C. May 6, 2019)	19
<i>Skirtich v. Pinnacle West</i> , No. 2:22-cv-01753 (D. Ariz.)	19
<i>Stewart v. Rubin</i> , 948 F. Supp. 1077 (D.D.C. 1996).....	24
<i>Thomas v. Albright</i> , 139 F.3d 227 (D.C. Cir. 1998).....	12
<i>Toomey v. Demoulas Super Markets, Inc.</i> , No. 1:19-cv-11633, Dkt. 95, at 18 (D. Mass. Mar. 24, 2021)	19
<i>Trombley v. Nat'l City Bank</i> , 759 F. Supp. 2d 20 (D.D.C. 2011).....	12
<i>Tussey v. ABB, Inc.</i> , 746 F.3d 327 (8th Cir. 2014)	18
<i>Twelve John Does v. District of Columbia</i> , 117 F.3d 571 (D.C. Cir. 1997).....	14
<i>Urakhchin v. Allianz Asset Mgmt. of Am., L.P.</i> , No. 8:15-cv-01614, 2018 U.S. Dist. LEXIS 127131, at *11 (C.D. Cal. July 30, 2018).....	20
<i>Urlaub v. CITGO Petroleum Corp.</i> , No. 21-cv-4133 (N.D. Ill.)	20, 23
<i>Urlaub v. CITGO Petroleum Corp.</i> , 2024 U.S. Dist. LEXIS 238735, at *9 (N.D. Ill. June 7, 2024)	20, 27
<i>Wal-Mart Stores, Inc. v. Dukes</i> , 564 U.S. 338 (2011).....	25, 26

Rules

Fed. R. Civ. P. 23	3, 10, 23
Fed. R. Civ. P. 23(a)	24, 25
Fed. R. Civ. P. 23(a)(1)	25
Fed. R. Civ. P. 23(a)(2)	25, 26
Fed. R. Civ. P. 23(a)(3)	26, 27
Fed. R. Civ. P. 23(a)(4)	27, 28, 29
Fed. R. Civ. P. 23(b)	24
Fed. R. Civ. P. 23(b)(1)	<i>passim</i>
Fed. R. Civ. P. 23(b)(1)(B)	29
Fed. R. Civ. P. 23(e)	1, 3, 12, 13
Fed. R. Civ. P. 23(e)(1)	24, 30
Fed. R. Civ. P. 23(e)(1)(B)	12
Fed. R. Civ. P. 23(e)(2)(D)	21, 23
Fed. R. Civ. P. 23(e)(3)	13
Fed. R. Civ. P. 23(g)	28

Statutes

28 U.S.C. § 1715	11
29 U.S.C. § 1055(d)	4
ERISA § 409	29
ERISA § 502(a)(2)	29

I. INTRODUCTION

After years of hard-fought litigation involving complex actuarial issues, substantial motion practice, and meaningful litigation risk in a developing area of ERISA law, Plaintiff Stephen G. Whetstone (“Plaintiff”), on behalf of himself and the Settlement Class, respectfully moves for preliminary approval of the Class Action Settlement Agreement reached with Defendants Howard University, the Howard University Employees’ Retirement Plan, and the Retirement Plan Committee of the Howard University Employees’ Retirement Plan (collectively, “Defendants”).¹

The proposed Settlement delivers significant monetary and structural relief to roughly 1,788 retirees and beneficiaries, while avoiding the substantial delay, uncertainty, and expense that would accompany continued litigation through trial and possibly appeal. Plaintiff seeks approval of this Settlement as fair, reasonable, and adequate under Rule 23(e). Specifically, Plaintiff respectfully requests that the Court: (1) grant leave to file the Second Amended Complaint; (2) preliminarily approve the proposed Settlement; (3) preliminarily certify the Settlement Class; (4) approve the proposed form and method of Settlement Notice to the Class; and (5) schedule a hearing at which the Court will consider final approval of the Settlement.

This Settlement follows years of vigorously contested litigation. Defendants moved to dismiss Plaintiff’s claims in their entirety, and the Court allowed the case to proceed, permitting Plaintiff to pursue his claims challenging the actuarial assumptions used to determine pension benefits under the Plan. The parties then engaged in extensive investigation and analysis of complex actuarial issues, including the Plan’s mortality tables, interest rate assumptions, and the impact those assumptions had on the calculation of joint and survivor annuities (“JSAs”) and

¹ Capitalized terms have the meaning ascribed to them in the Class Action Settlement Agreement unless specifically defined herein.

preretirement survivor benefits. Through this process, Plaintiff developed a comprehensive damages model and worked with experts to evaluate the scope of the alleged underpayments. The Settlement was ultimately reached only after significant arm's-length negotiations facilitated by Magistrate Judge G. Michael Harvey.

The Settlement provides a substantial recovery to a broad group of Plan participants and beneficiaries whose benefits date back decades, including individuals whose pension payments commenced as early as the 1990s. Measured against Plaintiff's damages model, the recovery represents roughly 30% and 18% for Subgroups A and B, respectively, of the potential class-wide damages while also delivering something even more meaningful: structural relief that will increase pension payments going forward. As a result, Class Members will see concrete increases in their monthly pension benefits for the remainder of their lives. This is particularly significant given that the Settlement Class consists of retirees and surviving beneficiaries or alternate payees, an aging population for whom prompt relief carries real and immediate importance. Continued litigation could take years to resolve through summary judgment, trial, and appeals. The Settlement ensures that Class Members receive meaningful relief now rather than years from now.

This case also arises in a developing and highly complex area of ERISA. Although several similar cases have been filed across the country, no court has yet resolved these claims through a full trial on the merits, and numerous appeals addressing key legal questions are currently pending. The legal landscape therefore remains uncertain, particularly with respect to the standards governing actuarial assumptions used to determine optional forms of benefit and the remedies available under ERISA. While Plaintiff firmly believes that the claims asserted in this case are well-founded and supported by both the statute and prevailing actuarial principles, the absence of

controlling precedent and the evolving nature of the case law present meaningful litigation risks. Against that backdrop, the Settlement provides an excellent result for the Settlement Class.

Importantly, this proposed Settlement would not have been possible without the efforts of Class Counsel. Claims challenging pension actuarial assumptions are highly complex, require substantial expert analysis, and involve significant financial risk. Few firms possess the know-how or willingness to pursue such claims on behalf of retirees whose individual damages are often modest. Through years of litigation and negotiation, Class Counsel have secured relief that will provide tangible financial benefits to thousands of retirees and beneficiaries for the rest of their lives.

The proposed Settlement readily satisfies the requirements of Federal Rule of Civil Procedure 23(e). It is the product of arm's-length negotiations conducted by experienced counsel following substantial investigation and analysis of the facts and law. It provides meaningful and equitable relief tied to the losses claimed by Settlement Class Members and establishes a fair and reasonable allocation methodology based on Defendants' records. The Settlement also ensures that the relief obtained will directly benefit the Plan's participants and beneficiaries.

Because the Settlement is adequate, fair, and reasonable, Plaintiff respectfully requests that the Court: (a) preliminarily approve the proposed Settlement; (b) grant leave to file the Second Amended Complaint, which adds Plaintiff Linda Hutchins and expands the class period consistent with the Settlement; (c) certify the Settlement Class for settlement purposes under Rule 23; (d) appoint Plaintiff Whetstone and Plaintiff Hutchins as Class Representatives, with Ms. Hutchins serving as a representative of Subgroup B; (e) appoint the undersigned as Class Counsel; (f) approve the proposed notice program; and (g) schedule a Final Approval Hearing.

II. BACKGROUND

A. Plaintiff's Allegations

Plaintiff alleged that Defendants violated ERISA's actuarial equivalence requirement by using outdated and unreasonable actuarial assumptions when converting participants' single life annuities ("SLAs") into certain other optional forms of benefit under the Howard University Employees' Retirement Plan (the "Plan"). *See* First Amended Complaint ("FAC"), ¶¶ 7–16. Under ERISA, certain JSAs must be the "actuarial equivalent" of SLAs. *See* ERISA § 205(d), 29 U.S.C. § 1055(d). Plaintiff alleged that Defendants relied on mortality tables and interest rate assumptions that were fixed decades earlier and failed to reflect conditions existing at the time participants commenced their benefits. *See* FAC, ¶ 84. Plaintiff alleged these outdated assumptions systematically undervalued the optional forms of benefit selected by participants and beneficiaries. *Id.* Had Defendants applied reasonable and contemporaneous actuarial assumptions, Plaintiff alleged, the present value of the optional benefit forms would have been equal to the SLA, as ERISA requires. *Id.*, ¶ 83.

Plaintiff asserted two primary causes of action. First, Plaintiff alleged that Defendants violated ERISA's actuarial equivalence requirement under § 205 by calculating optional forms of benefit using outdated and unreasonable actuarial assumptions. *Id.*, ¶¶ 98–104. Second, Plaintiff alleged that Defendants breached their fiduciary duties under ERISA by administering the Plan in a manner that failed to comply with ERISA's actuarial equivalence requirements and by allowing the Plan to continue using actuarial assumptions that were no longer reasonable. *Id.*, ¶¶ 112–123.

Defendants deny these allegations, deny Plaintiff's interpretation of ERISA and the governing regulations, and maintain that the Plan's actuarial assumptions and benefit calculations fully comply with ERISA and all applicable legal requirements. *See* Answer, Doc. 27, *generally*; *see also* Defendants' Motion to Dismiss, Doc. 19 at 10–24.

B. Procedural Background

This case has been vigorously litigated since its inception. Plaintiff commenced this action by filing a class action complaint; Defendants moved to dismiss, and Plaintiff amended and filed the FAC. *See* Docs. 1, 10, 16, and 19. After full briefing, the Court substantially denied Defendants' motion to dismiss, allowing the bulk of Plaintiff's claims to proceed. Doc. 25. Following that ruling, Defendants filed their Answer. Doc. 27. The parties thereafter commenced discovery. Following a scheduling conference on November 20, 2024, and a referral by the Court to Magistrate Judge G. Michael Harvey for mediation and settlement discussions, Plaintiff moved for leave to file a Second Amended Complaint to further refine the allegations and broaden the scope of the Class Period on December 20, 2024. Doc. 34. While the motion for leave to amend was pending, the parties informed the Court that they believed settlement discussions could be productive, and, on January 21, 2025, the parties jointly moved to stay the deadlines relating to Plaintiff's motion for leave to file a Second Amended Complaint while they explored the possibility of resolving the case. *See* Doc. 37. Consistent with the Court's referral, the parties participated in a remote mediation session on February 19, 2025, before Magistrate Judge G. Michael Harvey.

As part of the Settlement, the Parties have agreed that Plaintiff will file a Second Amended Complaint that adds Linda Hutchins as a named plaintiff and expands the class period consistent with the Settlement Class definition. The Parties respectfully request that the Court grant leave to file that pleading in connection with preliminary approval.

C. Settlement Negotiations and the Proposed Settlement

The proposed Settlement is the product of extensive, arm's-length negotiations between experienced counsel who are well-versed in complex ERISA litigation. Prior to the mediation, the Parties conducted substantial investigation and analysis concerning the Plan's actuarial

assumptions, the structure of the challenged benefit conversion factors, and the potential scope of class-wide damages. *See* Declaration of Oren Faircloth in Support of Preliminary Approval (“Faircloth Decl.”), ¶¶ 9–14. Plaintiff retained an actuarial expert and developed a detailed damages model designed to evaluate the extent to which the Plan’s conversion factors allegedly reduced participants’ optional forms of benefit below actuarially equivalent levels. *Id.* Defendants likewise analyzed the relevant Plan provisions and actuarial assumptions and vigorously disputed Plaintiff’s legal and factual claims. *Id.*

During mediation with Judge Harvey, the parties engaged in extensive discussions concerning the strengths and weaknesses of their respective positions, the risks associated with continued litigation, and the potential structure of a class-wide resolution. *Id.*, ¶¶ 18–20, 34–36. Although the case did not fully resolve during the mediation itself, the session proved productive and significantly narrowed the issues between the parties. *Id.*, ¶¶ 18–20. Following the mediation, the parties continued negotiations and exchanged information necessary to evaluate potential settlement terms, including participant data and expert analyses relevant to the calculation of class-wide relief. *Id.* As the parties later informed the Court in a status report filed on May 12, 2025 (Doc. 40), these negotiations ultimately resulted in the parties reaching a settlement in principle. *Id.*

Since that time, the parties have continued to work cooperatively to finalize the details of the proposed settlement, including analyzing participant data, refining the allocation methodology, and preparing the comprehensive Settlement Agreement now submitted to the Court for preliminary approval. Faircloth Decl., ¶ 20. This process required significant additional analysis and collaboration, including the review of detailed participant-level data, the development of a

methodology for allocating settlement proceeds, and the drafting of the proposed Settlement Agreement and accompanying exhibits. *Id.*

1. The Proposed Settlement Class

For settlement purposes only, the Settlement contemplates certification of a non-opt-out class under Rule 23(b)(1) consisting of:

All participants and beneficiaries of the Plan who are receiving monthly benefit payments as of the Measurement Date and (1) who have an Annuity Start Date that was on or after January 1, 1995 but before January 1, 2025 and (2) who are receiving a JSA that is less valuable than it would be if the participant's single life annuity were converted to a JSA using the interest rates and mortality tables set forth in 26 U.S.C. Section 417(e), determined under an annual stability period beginning each July 1 and a May lookback month.

Based on Plan data reviewed by the parties, the Settlement Class is expected to include approximately 1,788 participants and beneficiaries. *See* Faircloth Decl. ¶ 4.

2. Settlement Relief and Benefit Adjustments

The Settlement provides meaningful monetary and prospective relief to Settlement Class Members through recalculation of affected pension benefits in a manner that accounts for both past and future alleged underpayment.

Under the Settlement, Defendants will recalculate the monthly pension benefits of Settlement Class Members whose JSA and preretirement survivor benefits were calculated using actuarial assumptions that allegedly did not produce actuarially equivalent benefits under ERISA. SA § III.B. at 17–20. For affected participants and beneficiaries, the recalculation will result in increased monthly pension payments going forward, thereby providing Class Members with higher pension benefits for the remainder of their lives. *Id.*

To ensure that the Settlement allocates relief in a fair and administratively feasible manner, the Net Settlement Amount is divided between two subgroups of Class Members based on their annuity start dates:

(1) Subgroup A consists of Class Members whose annuity start dates are on or after August 17, 2017;

(2) Subgroup B consists of Class Members whose annuity start dates precede August 17, 2017. *Id.*, § III.B.1. The Settlement allocates 75% of the Net Settlement Amount to Subgroup A and 25% to Subgroup B. *Id.* This allocation reflects, among other considerations, the differing availability of data, the relative precision with which alleged underpayments can be calculated, and the risks associated with proving damages for earlier time periods.²

For Subgroup A Class Members, the Settlement employs an individualized, loss-based methodology tied directly to each participant's estimated alleged underpayment. *See id.*, § III.B.2. Specifically, Class Counsel's actuary calculates each Class Member's "Individual Alleged Loss" by comparing: (i) the accumulated value of the benefits actually paid and expected to be paid under the Plan; with (ii) the value that would have been paid had the participant's single life annuity been converted using the settlement actuarial assumptions. Each Subgroup A Class Member's share of the allocated settlement amount is then determined on a pro rata basis relative to total alleged

² The two-tiered allocation methodology is a careful and reasoned approach to distributing relief across a diverse class spanning multiple decades. Faircloth Decl., ¶¶ 22–26. By tailoring the methodology to the characteristics of each subgroup, the Settlement ensures that relief is both equitable and grounded in the available data, while avoiding the substantial uncertainty and administrative burden that would accompany attempting to apply a single uniform methodology across all time periods. *Id.* In doing so, the Settlement balances accuracy with efficiency and practicality by delivering meaningful recovery promptly to all Class Members while accounting for the differing evidentiary and actuarial considerations associated with their claims. Notably, the parties and their experts all agree that this is the best possible approach to ensuring fairness given the circumstances. *Id.*, ¶¶ 26–27.

losses within Subgroup A, ensuring that participants with larger estimated alleged underpayments receive proportionally larger recoveries. *Id.* That allocated amount is then converted into a monthly benefit increase using actuarial annuity factors tailored to each Class Member's benefit form, resulting in a permanent upward adjustment to monthly pension payments. *Id.* Simply put, Subgroup A members receive a share of the settlement based on how much they were alleged underpaid in the past and anticipated to be underpaid in the future, and that amount is converted into a permanent increase in their monthly pension benefits.

For Subgroup B Class Members—whose benefits commenced between 1995 and August 2017—the Settlement utilizes a proportional allocation methodology based on current benefit levels. *Id.* Rather than attempting to reconstruct individualized historical alleged losses for each participant (which would not only be significantly more complex and less precise given the passage of time and data limitations but also administratively infeasible due to limitations in the data set and concerns with excessive costs associated with such a calculation), the Settlement allocates the Subgroup B portion of the Net Settlement Amount based on each Class Member's share of total benefits currently in pay status. *Id.* Under this approach, each Subgroup B Class Member's recovery is determined by: (i) calculating the Class Member's proportion of aggregate monthly benefits within Subgroup B; and (ii) applying that percentage to the portion of the Net Settlement Amount allocated to Subgroup B. *Id.* Simply put, Subgroup B members receive a share of the settlement based on the size of their current monthly pension benefit relative to others in the group.

After the Settlement is fully approved, but no more than 150 days following Final Approval, the Plan will be amended to implement these benefit increases. *Id.*, § III.C; *see also id.*, I.F. (definition of Benefit Increase Payment Date). Each Class Member will receive an ongoing

increase to monthly pension benefits, effective on a going-forward basis and a lump-sum retroactive payment reflecting the accrued value of the monthly increases from the measurement date through implementation. These calculations will be performed using Plan data and actuarial modeling, and distributions will be implemented automatically without the need for claim forms. *Id.*, § III.C; *see* Faircloth Decl., ¶ 21, 29–30.

3. Release of Claims

In exchange for the relief provided under the Settlement, Class Members will release a narrowly tailored set of claims relating to the allegations asserted in this litigation. Specifically, upon the Settlement Effective Date, the Plan and Settlement Class Members will release claims arising out of or relating to the allegations in this Action concerning the actuarial assumptions used to convert single life annuity benefits into joint and survivor annuity benefits under the Plan. *See* SA § IV.A. The release is limited to claims based on the facts, transactions, and occurrences alleged in the operative complaint and does not extend to unrelated claims or disputes involving the Plan. *Id.* Class Members will not release employment, discrimination, wage-and-hour, or other personal claims unrelated to the claims asserted in this case. *Id.*; Faircloth Decl., ¶ 28. Also, the release does not prevent Settlement Class Members from raising issues concerning the implementation or calculation of their individual settlement payments, should an administrative error occur. *Id.*

4. Anticipated Notice Program

The Settlement provides for a comprehensive notice program designed to satisfy Rule 23 and due process requirements. Faircloth Decl., ¶ 29–30. The Settlement Agreement provides for the appointment of a Settlement Administrator, retained by Class Counsel as an independent contractor, to oversee notice and administration. *See* SA, SS.

As soon as practicable, but no later than forty-five (45) days after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Court-approved Notice (attached as Exhibit 1 to the Settlement Agreement) by mail to each Class Member's address as maintained in the Plan's records. *See* SA § II.B.3. If a Notice is returned as undeliverable, the Settlement Administrator will use commercially reasonable means to attempt to obtain a current address and re-mail the Notice. *Id.*

The Notice describes the nature of the Action, the terms of the Settlement, the binding effect of the Court's approval, the date and time of the Final Approval Hearing, Class Members' right to appear and object, and the procedures and deadlines for submitting objections. *See* SA, Ex. A. In addition, the Settlement Administrator will maintain a Settlement Website that will host key case documents, including the Complaint, Settlement Agreement, and the Preliminary Approval Order, as well as provide an email address and telephone number for Class Members to contact if they have inquiries. *See* SA § II.B.4. Finally, Defendants are responsible for serving the CAFA Notice on the appropriate state and federal officials within ten days of filing the Settlement Agreement with the Court, as required by 28 U.S.C. § 1715. *See* SA § II.B.1.

5. Attorneys' Fees, Expenses, and Case Contribution Awards

Class Counsel will petition the Court for a reasonable award of attorneys' fees in an amount not to exceed one third (33⅓%) of the Gross Settlement Amount or \$432,900. SA, II.F. Class Counsel will also seek reimbursement of litigation expenses and costs incurred in prosecuting this action, to be paid separately from, and in addition to, any award of attorneys' fees. *See* SA § II.F. Plaintiff will also seek a Case Contribution Award of up to \$5,000 for each Class Representative, subject to Court approval. *See id.*, § II.E. Any request for attorneys' fees, costs, and service awards will be disclosed to the Settlement Class in advance of the Final Approval Hearing. Importantly,

the Settlement is not contingent on the Court awarding any particular amount of fees or costs, and any reduction by the Court will not affect the validity of the Settlement. *See id.*

III. ARGUMENT

A. Legal Standard.

As this Court recently explained, preliminary approval is appropriate where the proposed settlement “appears to fall ‘within the range of possible approval’ and ‘does not disclose grounds to doubt its fairness or other obvious deficiencies.’” *Castillo De Martinez v. Tier-One Prop. Servs., LLC*, No. 23-cv-2339, 2025 U.S. Dist. LEXIS 27509, at *10 (D.D.C. Feb. 14, 2025) (citing *Richardson v. L'Oréal USA, Inc.*, 951 F. Supp. 2d 104, 106 (D.D.C. 2013)); *Trombley v. Nat'l City Bank*, 759 F. Supp. 2d 20, 23 (D.D.C. 2011). This standard reflects the well-established principle that courts should not decide the merits at this stage; rather, the Court’s “primary task is to evaluate the terms of the settlement in relation to the strength of the plaintiffs’ case.” *Thomas v. Albright*, 139 F.3d 227, 231 (D.C. Cir. 1998). Public policy strongly favors settlement, particularly in class actions, where litigation is often complex, expensive, and protracted. *See Kinard v. E. Capitol Fam. Rental, L.P.*, 331 F.R.D. 206, 217 (D.D.C. 2019) (reiterating there is a “long-standing judicial attitude favoring class action settlements”) (citations omitted); *Osher v. SCA Realty I, Inc.*, 945 F. Supp. 298, 304 (D.D.C. 1996) (“In the context of class actions, settlement is particularly appropriate given the litigation expenses and judicial resources required in many such suits.”).

The review of a proposed class settlement proceeds in two stages: preliminary approval and final approval. *See* Fed R. Civ. P. 23(e). At the preliminary approval stage, a court will review the proposed settlement and make an initial determination as to whether the settlement is “fair, reasonable, and adequate.” *Id.* Under Rule 23(e)(1)(B), a court considering preliminary approval need only consider whether it “will likely be able to” grant final approval of the settlement and

certify the class for settlement purposes.

The criteria guiding the Court's preliminary-approval determination are 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) 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.

B. The Court Should Preliminarily Approve the Settlement Because it is Fair Reasonable, and Adequate.

All of the above criteria support preliminary approval of the Settlement in this case. The Settlement provides meaningful relief in the form of increased pension benefits for the lifetime of Class Members, calculated in a manner that accounts for past and future alleged underpayment. This Court should grant preliminary approval of the Settlement and authorize the distribution of Settlement Notice to the Class because all of the Rule 23(e) criteria support approval.

1. The Proposed Class Representatives and Class Counsel Have Adequately Represented the Class

The first factor the Court considers when reviewing class action settlements is the adequacy of Class Counsel and Class Representatives. "Two criteria for determining the adequacy of representation are generally recognized: (1) the named representative must not have antagonistic or competing interests with the unnamed members of the class, and (2) the representative must

appear able to vigorously prosecute the interests of the class through qualified counsel.” *Twelve John Does v. District of Columbia*, 117 F.3d 571, 575 (D.C. Cir. 1997) (internal quotation omitted). Both requirements are satisfied here.

Plaintiff Whetstone and proposed Plaintiff Hutchins have been exemplary representatives. Importantly, Ms. Hutchins is a member of Subgroup B and ensures that the interests of participants whose benefits commenced in earlier periods are directly represented in this action. Both representatives spent significant time reviewing pleadings, gathering relevant documents, communicating with Class Counsel, and participating in settlement discussions. Faircloth Decl., ¶ 17. Their claims arise from the same course of conduct and are based on the same legal theories as those of all Class Members, and the relief they seek is determined pursuant to the same settlement framework applicable to the Class as a whole, including the allocation methodologies applied to Subgroup A and Subgroup B.

Class Counsel likewise meet the highest standards of adequacy. Counsel has extensive experience litigating complex ERISA and class action matters, and they vigorously prosecuted this case over the course of three years of contested litigation. *See* Faircloth Decl., ¶¶ 9–16, 41–42. They litigated novel issues of law and actuarial practices to position the Class for a favorable resolution and engaged experts, ensuring that the claims remained viable and the Class’s interests were fully protected at every stage of the case. *Id.* As set forth in the supporting declaration, counsel’s qualifications and track record demonstrate that the Class has been represented with skill, diligence, and tenacity.

2. The Proposed Settlement Was Negotiated at Arm’s Length

The next factor examines the negotiation process. This factor asks whether the negotiations were made at arm’s length. “There is a ‘presumption of fairness, adequacy, and reasonableness’ for class-action settlements reached through ‘arm’s length negotiations between experienced,

capable counsel after meaningful discovery.” *Castillo*, 2025 U.S. Dist. LEXIS 27509, at *19 (citation omitted).

Here, “both sides negotiated at arms-length and in good faith,” and “the interests of the class members were adequately and zealously represented in the negotiations.” *Blackman v. District of Columbia*, 454 F. Supp. 2d 1, 9 (D.D.C. 2006). The Settlement is the product of extensive arm’s-length negotiations conducted by experienced counsel with substantial experience in complex ERISA class actions, including litigation involving actuarial equivalence in defined benefit pension plans. *See* Faircloth Decl., ¶ 18–20. The negotiations were informed by detailed analysis of Plan data, actuarial modeling, and the parties’ assessment of the strengths and risks of the claims and defenses.

The Parties reached this Settlement only after participating in a full day mediation session on February 19, 2025, before the Honorable G. Michael Harvey, United States Magistrate Judge, who has experience overseeing complex federal litigation and facilitating settlement discussions. *Dew v. Mindfinders, Inc.*, No. 20-cv-2930, 2021 U.S. Dist. LEXIS 197732, at *12 (D.D.C. Oct. 14, 2021) (participation of “an experienced and respected mediator . . . further bolsters the arm’s length nature of the negotiations”) (citations omitted); *Hutton v. Nat’l Bd. of Exam’rs in Optometry, Inc.*, No. 16-cv-3025, 2019 U.S. Dist. LEXIS 120558, at *18 (D. Md. July 15, 2019) (“[R]eliance on a neutral mediator experienced in complex litigation, indicate the Settlement is fair and that it should be approved.”).

Although the case was not resolved during the mediation itself, the session proved productive and significantly narrowed the issues between the Parties. *See* Faircloth Decl., ¶ 19. The Parties continued to negotiate in good faith following the mediation, exchanging additional information and refining the structure of a class-wide resolution. *Id.* It was only after these

continued, mediator-assisted negotiations that the Parties ultimately reached an agreement in principle, which has since been memorialized in the Settlement Agreement now before the Court. *Id.*

Further, the parties were represented by experienced counsel. *See Howard v. Liquidity Servs.*, No. 14-cv-1183, 2018 U.S. Dist. LEXIS 172321, at *15 (D.D.C. Oct. 5, 2018) (“The sophistication and experience of counsel support the arm’s-length nature of the negotiations in this case.”). Defendants are represented by Groom Law Group, a nationally recognized firm with extensive experience in complex ERISA class actions. *See Faircloth Decl.*, ¶ 42. Class Counsel likewise meet the highest standards of adequacy. Counsel have extensive experience litigating complex ERISA and class action matters and currently represent participants in dozens of ERISA class actions pending across the country. *See id.*, ¶ 42. In this case, they vigorously prosecuted the claims through roughly three years of contested litigation, including briefing on a motion to dismiss and several subsequent issues. *Id.* ¶ 48. Counsel engaged with leading experts in actuarial science to evaluate the strengths and risks of the claims and were fully prepared to litigate those issues at trial if necessary. *Id.*, ¶¶ 13, 15, 61. Again, as detailed in the supporting declaration, counsel’s experience, skill, and record of results in ERISA litigation demonstrate that Plaintiff was, and the Class would be, represented with diligence, sophistication, and tenacity throughout this matter. Thus, this factor favors preliminary approval of the settlement.

3. The Relief Provided Is Adequate, Taking Into Account the Costs, Risks, and Delay of Trial and Potential Appeals

The third and “most important factor” examines “how the relief secured by the settlement compares to the class members’ likely recovery had the case gone to trial.” *Blackman*, 454 F. Supp. at 9-10. The proposed Settlement provides meaningful and immediate relief that is more than adequate when weighed against the risks, costs, and delays of continued litigation. Actuarial

equivalence claims under ERISA remain largely untested at trial. Although the Sixth Circuit recently issued its combined decision in *Reichert v. Kellogg Co.* and *Covic v. FedEx*, that decision is quite recent and postdates the Settlement the parties reached here. *See Reichert v. Kellogg Co.*; *Covic v. FedEx Corp.*, Nos. 24-1442, 24-5945, 2026 U.S. App. LEXIS 7628 (6th Cir. Mar. 16, 2026). Moreover, even after the Sixth Circuit’s recent ruling in favor of plaintiffs, two district courts dismissed similar actuarial equivalence claims. *See Berkeley v. Intel Corp.*, No. 5:23-cv-00343, 2026 U.S. Dist. LEXIS 76782 (N.D. Cal. Apr. 8, 2026); *Landel v. Olin Corp.*, No. 4:25-cv-00096, 2026 U.S. Dist. LEXIS 59091 (E.D. Mo. Mar. 20, 2026) (granting motion to dismiss). Additional appellate proceedings remain pending, including in the Eleventh Circuit, further underscoring the unsettled nature of the law. *See Drummond v. Southern Container Co.*, No. 24-12773 (11th Cir. Aug. 28, 2024). Against this backdrop, the risk of continued litigation—including the possibility of adverse rulings at summary judgment, trial, or on appeal—remained substantial, making the immediate and certain relief secured by the Settlement particularly appropriate.

Proceeding to trial in this case likely would have required a costly “battle of the experts” because the key question in this case—whether Class Members’ JSA benefits were less than the actuarial equivalent of the SLAs that they could have selected—is one that is highly technical and not within a lay person’s expertise. There was also a risk that the Court would accord more credibility to Defendants’ experts, and given the burden of proof is on Plaintiff, there was a risk that the experts “cancel” each other out. *See In re Fannie Mae Sec., Derivative, & ERISA Litig.*, 4 F. Supp. 3d 94, 105 (D.D.C. 2013) (“Moreover, even if plaintiffs had succeeded at trial—which likely would have involved a costly ‘battle of the experts’—an appeal likely would have followed, further delaying any recovery for the class members.”); *Compton v. N. Cent. Va. Rests.*,

Inc., Civil Action No. 5:20-cv-00073, 2022 U.S. Dist. LEXIS 159070, at *9 (W.D. Va. Sep. 2, 2022) (“[T]he court recognizes that ‘when the success of a party’s case turns on winning a so-called ‘battle of the experts,’ victory is by no means assured.’”) (citation omitted). Further, even if Plaintiff prevailed on issues of Defendants’ liability, proving damages is also difficult and uncertain. *See Berube v. Rockwell Automation, Inc.*, No. 20-C-1783, 2023 U.S. Dist. LEXIS 217630, at *23 (E.D. Wis. Apr. 3, 2023) (denying class certification based on various damages models for determining actuarial equivalence).

Experience in other ERISA cases demonstrates that such litigation can stretch on for years—sometimes close to a decade—leaving retirees in their 60s and 70s waiting while their claims remain unresolved. *See Tussey v. ABB, Inc.*, 746 F.3d 327 (8th Cir. 2014) (settlement reached only after a decade); *Masten v. Metropolitan Life Ins. Co.*, No. 1:18-cv-11229 (S.D.N.Y.) (actuarial equivalence case filed in 2018 and still ongoing). By contrast, this Settlement ensures that Class Members will see an increase in their monthly pension checks promptly, without further delay. *See In re MicroStrategy, Inc. Sec. Litig.*, 148 F. Supp. 2d 654, 667 (E.D. Va. 2001) (recognizing that “a bird in hand is worth two in the bush”).

The monetary and structural relief secured by the Settlement is significant. Based on the analysis of Plaintiff’s actuarial expert, the Settlement provides recovery representing approximately 30.8% of estimated damages for Subgroup A and 18.2% for Subgroup B, with the higher recovery for Subgroup A reflecting the strength of those claims. *See Faircloth Decl.*, ¶ 27. This differential allocation is both rational and appropriate, as it aligns recovery with the relative strength of the underlying claims and defenses and the availability of reliable data to quantify alleged losses. Importantly, the Settlement does not merely provide a one-time recovery. It also delivers prospective relief in the form of permanent increases to monthly pension benefits,

ensuring that Class Members will receive higher payments for the remainder of their lives. *See* Faircloth Decl., ¶ 21. These recovery levels are consistent with outcomes approved in comparable ERISA actuarial equivalence settlements, particularly given that this case resolved prior to class certification and dispositive motions.

Even focusing solely on the monetary component, the recovery achieved here falls comfortably within the range commonly approved in complex ERISA class actions, particularly given the procedural posture and litigation risks at the time of settlement. Here, the recovery is roughly 30% and 18% of total possible damages for Subgroups A and B, respectively. Courts routinely approve settlements representing a fraction of total alleged damages where, as here, litigation risks are substantial and the law is evolving. *See George v. Duke Energy Ret. Cash Balance Plan*, No. 8:06-cv-00373, 2011 U.S. Dist. LEXIS 170192, at *20 (D.S.C. May 16, 2011) (noting that “[t]he typical recovery in most class actions generally is three to six cents on the dollar.”) (citing *In re Enron Corp. Sec. Deriv. & “ERISA” Litig.*, 586 F. Supp. 2d 732, 804 (S.D. Tex. 2008)). Indeed, comparable ERISA actuarial equivalence settlements frequently resolve in the range of 15% to 25% of claimed losses. *Franklin v. Duke Univ.*, No. 1:23-cv-833, 2026 U.S. Dist. LEXIS 14532, at *2 (M.D.N.C. Jan. 27, 2026) (17% recovery in ERISA actuarial equivalence case); *Berube v. Rockwell Automation Inc.*, No. 2:20-cv-01783 (E.D. Wis.) (27% of total damages); *Herndon v. Huntington Ingalls, Inc.*, No. 4:19-cv-00052 (E.D. Va.) (22%); *Skirtich v. Pinnacle West*, No. 2:22-cv-01753 (D. Ariz.) (33%); *McFadden v. Sprint Communications, LLC*, No. 2:22-cv-02464 (D. Kan.) (24%). Other ERISA cases settle in similar ranges. *See, e.g., Sims v. BB&T Corp.*, No. 1:15-cv-732, 2019 U.S. Dist. LEXIS 75837, at *19 (M.D.N.C. May 6, 2019) (19% recovery); *Toomey v. Demoulas Super Markets, Inc.*, No. 1:19-cv-11633, Dkt. 95, at 18 (D. Mass. Mar. 24, 2021) (15–20% recovery); *Beach v. JPMorgan Chase*

Bank, Nat'l Ass'n, 2020 WL 6114545, at *1 (S.D.N.Y. Oct. 7, 2020) (16% recovery); *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2008) (20% recovery in ERISA class action approved); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 8:15-cv-01614, 2018 U.S. Dist. LEXIS 127131, at *11 (C.D. Cal. July 30, 2018) (\$12 million settlement representing 17.7% of maximum alleged damages).

This result also compares favorably to another similar actuarial equivalence settlement approved in *Urlaub v. CITGO Petroleum Corp.*, No. 21-cv-4133 (N.D. Ill.), where the court certified a similar Rule 23(b)(1) class and approved a resolution providing substantial prospective pension increases tied to a percentage of alleged losses. *Urlaub*, 2024 U.S. Dist. LEXIS 238735, at *9 (N.D. Ill. June 7, 2024). There, similar to here, the class was divided into subgroups based on the timing of benefit commencement, with differing recovery percentages reflecting variations in claim strength and applicable defenses, resulting in a greater percentage of potential recovery for the more recent subgroup with a smaller percentage for the earlier subgroup. *Id.*, Final Approval Motion, Doc. 170-3, PageID: 4638. There, however, the litigation had progressed significantly further; class certification had already been granted, summary judgment had largely been resolved, and the case had advanced to the eve of trial. *Id.* By contrast, this case is being resolved at a materially earlier stage, without the need for rulings on class certification or dispositive motions. That distinction matters. While *Urlaub* achieved high recovery percentages for certain subclasses, those results were obtained in a posture where liability and class-wide adjudication were far more certain.

Here, the Settlement reflects a negotiated compromise in the face of meaningful and unresolved risks. Even so, the recovery for Subgroup A, roughly 30%, approaches the upper range of outcomes seen in the most favorable actuarial equivalence cases, while the recovery for

Subgroup B, roughly 18%, also secures meaningful relief that is in-line with other actuarial equivalence recoveries, despite substantial legal hurdles that likely would have resulted in no recovery at all. In that light, the Settlement not only aligns with, but favorably compares to, the best outcomes achieved in analogous ERISA litigation.

Additionally, while the Court already has sufficient reason to conclude that the Settlement is fair and adequate, the Settlement requires approval by an Independent Fiduciary, which should assure the Court of the fairness and adequacy of the Settlement. *See Clark v. Duke Univ.*, No. 1:16-cv-1044, 2019 U.S. Dist. LEXIS 105792, at *13–14 (M.D.N.C. June 24, 2019) (acknowledging the approval by an independent fiduciary in evaluating settlement).

For the foregoing reasons, the Settlement satisfies the adequacy requirement. It eliminates the risk and uncertainty, provides for substantial, immediate benefit to the Class Members, falls within, or surpasses, the range of other ERISA settlements in similar contexts, will be subject to review by an Independent Fiduciary, and should be approved by the Court.

4. The Plan of Allocation and Method of Distribution Are Fair, Reasonable, and Equitable

The Court must evaluate whether the Settlement’s plan of allocation treats Class Members equitably and bears a rational relationship to the alleged harm. *See* Fed. R. Civ. P. 23(e)(2)(D); *Howard v. Liquidity Servs.*, No. 14-cv-1183, 2018 U.S. Dist. LEXIS 172321, at *22 (D.D.C. Oct. 5, 2018). A plan need not provide identical recoveries; it is sufficient that it reasonably reflects differences in claim strength, provability, and litigation risk. *Howard*, 2018 U.S. Dist. LEXIS 172321, at *23 (“A plan of distribution is . . . sufficient where . . . there is ‘a rough correlation’ between the settlement distribution and the relative amounts of damages recoverable by Class Members.” (citation omitted)).

The Plan of Allocation satisfies that standard. It relies on objective actuarial analysis and allocates relief based on estimated alleged economic harm while accounting for the materially different legal circumstances facing the two subgroups. Faircloth Decl., ¶¶ 22–26. The Plan was developed by Class Counsel in consultation with their actuarial expert and is designed to achieve an equitable and rational distribution of settlement proceeds, while also representing the most practical and administratively efficient method for allocating relief to the Class. *Id.* The Plan of Allocation was also presented to Defendants’ actuarial consultant, and Defendants’ counsel agreed that, given the data limitations and risks, it represents a fair and reasonable method for distributing relief to the Class. *Id.*

Subgroup A—participants with undisputably timely claims—receives individualized, loss-based recoveries tied directly to the present value of their alleged underpayments, ensuring that those who allegedly suffered greater harm receive proportionally greater relief. Subgroup B—participants whose claims face substantial statute of limitations defenses and evidentiary limitations—is appropriately treated differently because reconstructing individualized alleged losses would be both speculative and administratively impractical. *See id.* Within Subgroup B, class members are treated consistently under a proportional framework tied to their current benefit levels, ensuring that recoveries correspond to the size of each participant’s monthly benefit amount. *Id.* Moreover, even if the individualized methodology used for Subgroup A could be applied to Subgroup B, doing so would require significant actuarial resources, materially reducing the funds available for distribution to the Class and delaying payments to a significantly aged population.

Instead, the Settlement allocates relief to Subgroup B proportionally based on current benefit levels, which is a reasonable and objective proxy that provides meaningful recovery despite

the passage of time, incomplete historical data, and the resulting uncertainty in reconstructing individualized alleged losses. *Id.* The *Urlaub* court approved a similarly structured allocation where subclasses were facing differing risks. *See Urlaub*, Doc. 170-3 at PageID:4634 (discussing differing percentages of recovery based on litigation risk). There, the court approved a framework that divided the class by timing and applied different recovery levels to reflect variations in claim strength and defenses. Likewise, here, participants with stronger claims will receive higher recoveries, while those facing limitations defenses will receive reduced, but still equitable, relief.

The Plan also ensures equity within each subgroup. Class Members are treated uniformly under objective formulas, with no arbitrary distinctions. *In re Fannie Mae Sec.*, 4 F. Supp. 3d at 108 (“[A] plan of allocation ‘need not be perfect’ Rather, it suffices if the plan has ‘a reasonable, rational basis, particularly if recommended by experienced and competent class counsel.’” (citations omitted)). And the method of distribution—automatic implementation through pension adjustments—ensures efficient, accurate, and complete delivery of relief without claim forms. The method of allocation ensures that those with the strongest, most provable claims recover the most, while still delivering fair and meaningful relief to those whose claims face greater legal and evidentiary hurdles. This is exactly what Rule 23(e)(2)(D) requires: equitable treatment, not identical outcomes. *Howard*, 2018 U.S. Dist. LEXIS 172321, at *23.

5. The Proposed Class Representatives and Class Counsel Support the Settlement

The final relevant factor is not enumerated in the text of Rule 23 but is well-settled in this jurisdiction’s case law. Under this Court’s cases, “the opinion of experienced and informed counsel should be afforded substantial consideration by a court in evaluating the reasonableness of a proposed settlement.” *Prince v. Aramark Corp.*, 257 F. Supp. 3d 20, 26 (D.D.C. 2017); *see also*

Stewart v. Rubin, 948 F. Supp. 1077, 1087 (D.D.C. 1996) (“A court should defer to the judgment of experienced counsel who have competently evaluated the strength of the proof.”).

That principle strongly supports approval here. The Settlement is endorsed by Plaintiff Whetstone, proposed Plaintiff Hutchins, and Class Counsel, who have been actively involved in the prosecution and resolution of this case. *See Faircloth Decl.*, ¶ 48. Based on their collective experience and a thorough evaluation of the legal and factual issues, including the risks associated with continued litigation, they have concluded that the Settlement is fair, reasonable, and in the best interests of the Class. Counsel on both sides, all of whom are experienced in complex ERISA litigation, likewise agree that the Settlement represents an appropriate resolution of a vigorously contested dispute. *See id.*; *see also Cohen v. Chilcott*, 522 F. Supp. 2d 105, 121 (D.D.C. 2007). Their considered judgment, which was formed only after substantial litigation, discovery, and negotiation, further confirms that the Settlement falls well within the range of possible approval. Accordingly, this factor weighs strongly in favor of approval, and the Court should grant preliminary approval of the Settlement as fair, reasonable, and adequate.

C. The Class Should Be Preliminarily Certified for Settlement Purposes

The Settlement Class is cohesive, objectively defined, and likely to be certified upon entry of judgment. *See Fed. R. Civ. P. 23(e)(1)*. Class certification is appropriate if all Rule 23(a) subdivisions and at least one Rule 23(b) subdivision are satisfied. *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013). Plaintiffs seek certification of the Settlement Class pursuant to Rule 23(b)(1), as the claims at issue concern the administration of a single ERISA-governed plan and present issues that are appropriately resolved on a class-wide basis to ensure uniform treatment of all participants and beneficiaries.

1. The Settlement Class Satisfies Rule 23(a)'s Requirements

i. Numerosity

Rule 23(a)(1) requires that the class be “so numerous that joinder of all members is impracticable.” Fed. R. Civ. P. 23(a)(1). “This court has presumed sufficient numerosity ‘when a proposed class has at least forty members.’” *Castillo De Martinez*, 2025 U.S. Dist. LEXIS 27509, at *11. Here, the proposed Settlement Class includes approximately 1,788 participants and beneficiaries of the Plan who received JSAs and preretirement survivor annuities calculated under the challenged assumptions. Faircloth Decl., ¶ 4. Joinder of this many individuals would plainly be impracticable, and numerosity is satisfied.

ii. Commonality

Rule 23(a)(2) requires the existence of “questions of law or fact common to the class.” This threshold is “easily met,” requiring only a single common question—not that every issue be common. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 359 (2011); see *Brown v. District of Columbia*, 928 F.3d 1070, 1080 (D.C. Cir. 2019) (requiring a “common contention . . . capable of class wide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke”) (citation omitted); *In re District of Columbia*, 792 F.3d 96, 100 (D.C. Cir. 2015) (even a single common question may suffice).

Here, all Class Members are participants or beneficiaries of the same ERISA-governed Plan and were subject to the same actuarial assumptions and conversion methodology used by Defendants to calculate JSAs. See Faircloth Decl., ¶ 52. These assumptions were embedded in the Plan and applied uniformly across the entire Class. The core legal question is likewise common to all Class Members: whether Defendants’ uniform use of those actuarial assumptions resulted in benefits that were not actuarially equivalent in violation of ERISA. Because that question turns on

standardized Plan terms and actuarial inputs, not individualized circumstances, it can be resolved in one stroke for the entire Class. *See Brown*, 928 F.3d at 1080. In other words, Class Members’ injuries “share a common thread” arising from the same Plan-wide methodology, which is sufficient to satisfy Rule 23(a)(2).

The Settlement further underscores this point. It provides class-wide relief through standardized adjustments based on updated assumptions applied through a Plan amendment, confirming that both liability and remedy are appropriately addressed on a Plan-wide basis. This case presents a textbook example of a uniform policy applied on a class-wide basis, giving rise to common questions capable of class-wide resolution. Rule 23(a)(2) is therefore plainly satisfied.

iii. Typicality

Typicality under Rule 23(a)(3) requires that “[t]he claims of the representative plaintiff . . . be typical of the claims of the class.” Fed. R. Civ. P. 23(a)(3). Although typicality and commonality often “tend to merge” together, they are distinguished by the fact that “the commonality inquiry focuses on what characteristics are shared among the whole class while the typicality inquiry focuses on the desired attributes of the class representative.” *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n. 13 (1982) *accord Dukes*, 564 U.S. at 349 n.5. A claim is “typical if it arises from the same event or practice or course of conduct that gives rise to a claim of another class member’s where his or her claims are based on the same legal theory.” *See Hardy v. District of Columbia*, 283 F.R.D. 20, 25 (D.D.C. 2012) (citation omitted).

That standard is easily met here. Plaintiff Whetstone and proposed Plaintiff Hutchins, like all Class Members, challenge Defendants’ uniform use of the same actuarial assumptions and conversion methodology in calculating JSAs under the Plan. Their claims arise from the same Plan-wide conduct and are based on the same legal theory: that Defendants’ standardized

methodology produced benefits that are not actuarially equivalent, in violation of ERISA. See Faircloth Decl., ¶¶ 52–53. Importantly, the use of different allocation methodologies for certain subgroups, which are driven by data availability and the varying strength of claims, does not defeat typicality or intra-class alignment. *In re Vitamins Antitrust Litig.*, 209 F.R.D. 251, 261 (D.D.C. 2002) (“[A]s long as the substance of the claim is the same as it would be for other class members, then the claims of the named plaintiffs are not atypical.” (citation omitted)).

Just like in *Urlaub*, where typicality was satisfied, here, there are allegations that all Class Members received benefits calculated under the same allegedly unlawful framework. *Id.* Accordingly, Plaintiff Whetstone, proposed Plaintiff Hutchins, and the Class all suffered the same type of harm, share the same interest in establishing Defendants’ liability, and will rely on the same common evidence (i.e., Plan documents and actuarial data) to do so. There are no unique defenses or individualized issues that would render their claims atypical, and the Settlement’s use of standardized formulas applied across the Class further confirms that their claims are fully representative. Because the claims of Plaintiff Whetstone and proposed Plaintiff Hutchins arise from the same conduct and rest on the same legal foundation as those of all Class Members, Rule 23(a)(3) is satisfied.

iv. Adequacy

Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” This requirement ensures that (1) the named plaintiff has interests that are not antagonistic to the class, and (2) class counsel are qualified, experienced, and capable of conducting the litigation. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 625–26 (1997); *Nat’l Ass’n of Reg’l Med. Programs, Inc. v. Mathews*, 551 F.2d 340, 345 (D.C. Cir. 1976). Both requirements are readily satisfied here.

Plaintiff Whetstone and proposed Plaintiff Hutchins have actively participated in this litigation and have demonstrated a clear understanding of the claims, the risks, and the relief obtained through the Settlement. *See* Faircloth Decl., ¶¶ 53–57. They have conferred with counsel, reviewed pleadings, and been part of settlement discussions. *Id.* They agreed to resolve this case only after careful consideration of the substantial risks and uncertainties of continued litigation. *Id.* Their interests are fully aligned with those of the Class: like all Class Members, they seek to remedy the effects of Defendants’ uniform use of actuarial assumptions that allegedly resulted in reduced pension benefits. *Id.*

Further, Plaintiff Whetstone and proposed Plaintiff Hutchins have no interests antagonistic to other Class Members. To the contrary, the structured allocation framework reflects a reasoned effort to maximize recovery for all participants in light of differing claim strengths. Both Plaintiff Whetstone and proposed Plaintiff Hutchins have every incentive to obtain the best possible outcome for the Class. Their claims arise from the same course of conduct, are based on the same legal theories, and are advanced through the same proof as those of all Class Members. *Id.*

Class Counsel likewise satisfy Rule 23(a)(4) and Rule 23(g). Siri & Glimstad LLP has devoted substantial time and resources to investigating and prosecuting this action, including drafting detailed complaints, successfully opposing Defendants’ motion to dismiss, engaging in discovery and data analysis, and participating in arm’s-length settlement negotiations. *See* Faircloth Decl., ¶¶ 42, 59–62. The firm has extensive experience litigating complex ERISA class actions, particularly actuarial equivalence cases, and possesses deep knowledge of the statutory and regulatory framework governing these claims. *Id.* Counsel have been at the forefront of this developing area of law and are well-equipped to continue representing the Class through final

approval and implementation of the Settlement. *Id.* Thus, the adequacy requirements are satisfied under Rule 23(a)(4) and the Court should appoint Siri & Glimstad as Class Counsel.

2. The Settlement Class Meets the Requirements for Certification Under Rule 23(b)'s Requirements

i. The Settlement Class Should Be Certified Under Rule 23(b)(1)

Certification under Rule 23(b)(1) is appropriate because Plaintiff's claims, brought under ERISA §§ 409 and 502(a)(2), seek relief on behalf of the Plan and challenge Defendants' uniform conduct in applying allegedly outdated formulas to determine JSA and QPSA benefits. This is a "classic example" of a (b)(1)(A) case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 614 (1997). Separate actions could lead to inconsistent rulings about ERISA compliance and the calculation of actuarially equivalent benefits, thereby exposing Defendants to incompatible standards of conduct. *See McAlister v. Metro. Life Ins. Co.*, 2023 U.S. Dist. LEXIS 158560, at *25–26 (S.D.N.Y. Sept. 7, 2023).

Allowing hundreds of Plan participants to pursue separate actions on behalf of the Plan would likely result in varying adjudications on (a) the extent of Defendants' liability and (b) the appropriate method for measuring damages. *See McAlister*, 2023 U.S. Dist. LEXIS 158560, at *26 (S.D.N.Y. Sep. 7, 2023) (quoting *Caufield v. Colgate-Palmolive Co.*, 2017 U.S. Dist. LEXIS 118022, at *15 (S.D.N.Y. July 27, 2017) ("If two courts came to different conclusions as to how the proposed class members' [Plan] benefits must be calculated, Defendants would face a conflict between treating Plan participants alike and complying with each separate court order.")).

Certification is also proper under Rule 23(b)(1)(B), which applies to cases charging fiduciary breach and seeking plan-wide relief. A judgment in one case would, as a practical matter, determine the rights of absent Plan participants and impair their ability to protect their interests. *See Fed. R. Civ. P. 23(b)(1)(B)*; *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999). Courts have

certified other ERISA classes under this provision. *See Abraha v. Colonial Parking, Inc.*, No. 16-cv-680, 2020 U.S. Dist. LEXIS 136538, at *17 (D.D.C. July 31, 2020) (citing cases certifying ERISA classes under Rule 12(b)(1)). The instant ERISA class action, which raises breach of fiduciary duty claims, is precisely the type of case that Rule 23(b)(1) envisioned.

D. The Proposed Notice Plan Should Be Approved

For class action settlements, the Court must “direct notice in a reasonable manner to all class members who would be bound by” a proposed settlement. Fed. R. Civ. P. 23(e)(1). To satisfy due process, class notice should be “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

The Settlement here provides for a robust notice program that easily satisfies Rule 23(e)(1) in both form and substance. Shortly after entry of the Preliminary Approval Order, the Settlement Administrator will mail the Notice to each Class Member at the address maintained in the Plan’s records. SA, § II.B.3. If a Notice is returned as undeliverable, the Settlement Administrator will use commercially reasonable means to identify a current address and re-send the Notice. *Id.* In addition, the Settlement Administrator will establish and maintain a dedicated Settlement Website, which will host the Settlement Agreement, the operative Complaint, the Preliminary Approval Order, the Settlement Notice, and the motions for attorneys’ fees, expenses, and the Case Contribution Award, and the Final Approval Order once entered. Faircloth Decl., ¶ 30.

The Notice itself is clear, informative, and comprehensive. It explains the nature of the Action, the claims and defenses, and the terms of the Settlement. Faircloth Decl., Ex. A, Notice. It specifies that Defendants will provide \$1,300,000 in value, less attorneys’ fees, expenses, and Case Contribution Awards, to be distributed in the form of Individual Monthly Benefit Adjustments for Class Members and their beneficiaries, based on each participant’s share of past and projected

future benefits. *Id.* The Notice makes plain that Class Members will be bound by the release of claims, and it discloses the maximum attorneys' fee request (\$432,900), as well as the potential Case Contribution Awards of up to \$5,000 to each Class Representative. *Id.*

The Notice also sets forth the date, time, and manner of the Final Approval Hearing, and it explains the procedures for objections, including that objections must be filed at least thirty (30) days before the hearing. SA, Ex. C., Preliminary Approval Order. It informs Class Members that they may appear at the hearing personally or through counsel, though appearance is not required. *Id.*, Ex. A. Finally, because benefits will be automatically increased for eligible Class Members and their beneficiaries through the Plan's existing payment system, no claim forms are required. Faircloth Decl., ¶¶ 21, 30.

These procedures ensure that every Class Member receives individual mailed notice, backed by an online resource containing all key filings and information. *See Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811 (1985) (holding that individual mailed notice which clearly describes the case and Class Members' rights meets due process requirements). Accordingly, the Court should approve the form and manner of Notice set forth in the Settlement Agreement and authorize its dissemination to the Class.

Should this Court grant preliminary approval to the Settlement, Plaintiffs respectfully propose the following schedule for sending notice to the Settlement Class and scheduling a final approval hearing:

Event	Scheduled Date
Deadline for sending Notice to Class Members	No later than 45 days after entry of Preliminary Approval Order, or such other date as the Court may set in the Preliminary Approval Order
Motion(s) for, and memoranda in support of, (i) Final Approval of	45 days before the Final Approval Hearing

Event	Scheduled Date
Settlement and (ii) Attorneys' Fees and Costs	
Last day for objections to the Settlement to be filed with the Court and sent to counsel	30 days before the date set by the Court for the Final Approval Hearing
Final Approval Hearing	At the convenience of the Court, but not less than 120 days after entry of the Preliminary Approval Order

IV. CONCLUSION

For the foregoing reasons, Plaintiff respectfully moves the Court for an Order: (a) preliminarily approving the Settlement; (b) granting Plaintiff leave to file the Second Amended Complaint and adopting that as the operative Complaint; (c) preliminarily certifying the Settlement Class; (d) appointing Plaintiff Whetstone and proposed Plaintiff Hutchins as Class Representatives; (e) appointing Siri & Glimstad LLP as Class Counsel; (f) approving the proposed form and manner of Settlement Notice; and (g) setting a date for the Final Approval Hearing.

Dated: April 23, 2026

Respectfully submitted,

SIRI & GLIMSTAD LLP

/s/ Oren Faircloth
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*Attorneys for Plaintiff and the
Proposed Class*

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of April 2026, I caused the foregoing document to be filed electronically with the Clerk of Court using the CM/ECF system. Notice of this filing will be sent by operation of the Court's electronic filing system to all counsel of record who are registered to receive electronic notices.

/s/ Oren Faircloth
Oren Faircloth