UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CASSIE SOMERS and JOLIA GEORGES, individually and as the representative of a class of similarly situated persons, and on behalf of The Cape Cod Healthcare 403(b) Partnership Plan, Plaintiffs, V. CAPE COD HEALTHCARE, INC. and JOHN and JANE DOES 1-10, Defendants.	Civil Action No.: 23-cv-12946-MJJ

PLAINTIFFS' REQUEST FOR AWARD OF ATTORNEYS' FEES AND COSTS

Pursuant to Fed. R. Civ. P. 23, Plaintiffs Cassie Somers and Jolia Georges, individually and in their representative capacities for a class of similarly situated persons and on behalf of The Cape Cod Healthcare 403(b) Partnership Plan ("Plan"), request an award of attorneys' fees and costs in connection with the proposed settlement that resolves the above-captioned class action lawsuit.

Background

On December 1, 2023, Plaintiff Somers commenced this Action, challenging the Defendants' exercise of fiduciary duties as to the Plan, in violation of the Employee Retirement Income Security Act of 1974 ("ERISA). She filed a First Amended Complaint on January 8, 2024, joined by Plaintiff Georges. (ECF No. 8). The Amended Complaint defines the proposed class as "All persons, except Defendants and their immediate family members, who were participants in, or beneficiaries of the Plan, at any time between December 1, 2017 through the date of judgment."

The case presents two principal claims. One claim challenges the amount of fees charged by Lincoln Retirement Services Company LLC for providing recordkeeping services for the Plan ("Recordkeeping Fees Claim"). The other claim challenges the selection of investments made available by the Plan, including the Lincoln Stable Value Fund ("Lincoln SVF Claim"). As to the Lincoln SVF Claim, the Plaintiffs alleged that Plan participants did not receive an adequate guaranteed crediting rate, resulting in losses during periods of low interest rates, including the years 2021 through 2024.

On February 9, 2024, the Defendants filed a comprehensive motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), asserting that the Amended Complaint should be dismissed in its entirety, based on a lack of standing and a failure to state a claim for breach of fiduciary duty under ERISA. (ECF No. 12). On August 30, 2024, following extensive briefing and a hearing, the Court issued a Memorandum of Decision denying the Defendants' motion. (ECF No. 33).

Following the Court's decision, the parties began discussing a potential resolution. To advance those discussions, the parties engaged in informal but extensive discovery, including production of documents reflecting the deliberations of the Plan's Retirement Plan Oversight & Investment Committee ("Committee") over the last seven years, from 2018 to 2024. The documents included detailed materials presented to the Committee by the Plan's investment advisor, Fiducient Advisors, and minutes of the Committee's quarterly meetings. One of the factors supporting a resolution of the case was the Committee's recent negotiation of substantially lower recordkeeping fees and a higher guaranteed crediting rate for the Lincoln SVF, both of which were effective as of October 1, 2024.

Following preliminary discussions, the parties jointly moved for a stay pending mediation (ECF No. 41), which the Court granted. On December 18, 2024, the parties attended a full-day, in-person mediation with Hon. Mitchell Kaplan (Ret.). As a result of the mediation, the parties reached agreement as to the material terms of a classwide settlement and notified the Court of this development. (ECF No. 43). The Court granted the parties' request to extend the stay pending filing of this Motion. (ECF No. 44).

Summary of Proposed Settlement

The Agreement provides that this action be settled by a payment of $900,000 ("Gross Settlement Amount"), thereby avoiding the need for further litigation. The Agreement proposes that the net settlement proceeds, after fees and costs, be allocated equally as between the Recordkeeping Fees Claim and the Lincoln SVF Claim. The amount allocated to the Recordkeeping Fees Claim will be paid to class members in proportion to the assets they had in the Plans between December 1, 2017 and September 30, 2024. That allocation is equitable, because recordkeeping fees were charged as a percent of a participant's assets. The amount allocated to the Lincoln SVF Claim will be paid to class members in proportion to their balances in the Lincoln SVF between January 1, 2021 and September 30, 2024. That allocation is equitable, because it reflects each participant's potential loss for periods during which the crediting rate for the Lincoln SVF was allegedly imprudent.

The Agreement further proposes that one-third of the Gross Settlement Amount be allocated for attorneys' fees and costs, that an additional amount be allocated for administrative expenses of the settlement, including costs for an independent fiduciary[1] (in an amount expected

[1] The independent fiduciary will be charged with determining whether to approve and authorize the settlement on behalf of the Plan, pursuant to Prohibited Transaction Class Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued

to be no greater than $15,000), fees for a third-party settlement administrator (in an amount expected to be no greater than $25,000), fees, expenses and costs of the Plan's recordkeeper for any functions performed in connection with implementation and administration of the settlement, and modest service awards of $2,500 for each of the two named plaintiffs.

The Agreement also provides that the Defendants will continue to retain the services of a qualified consultant to advise the Committee as to the Plan's recordkeeping and administrative fees and services and the Plan's investments for a period of five years.

Argument

Courts frequently favor an award of attorneys' fees from a common fund, as called for by the proposed settlement in this case. As the Supreme Court has explained:

> [T]his Court has recognized consistently that a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorneys' fee from the fund as a whole. . . . Jurisdiction over the fund involved in the litigation allows a Court to prevent . . . inequity by assessing attorney's fees against the entire fund, thus spreading fees proportionately among those benefited by the suit.

Boeing Co. v. Van Gemert, 444 U.S. 472, 478 (1980) (citations omitted).

When awarding fees from a common fund, the "percentage of the fund" method has substantial advantages over the lodestar method. As the First Circuit observed, the percentage method is less burdensome to administer than the lodestar method. *In re Thirteen Appeals*, 56 F.3d 295, 307 (1st Cir. 1995). The court also endorsed the percentage method because it is result-oriented, and therefore promotes a more efficient use of attorney time; a loadstar method, in contrast, might give attorneys an incentive to spend as many hours as possible on the litigation

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December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended.

and might discourage early settlements. *Id.* When using the percentage method, courts routinely approve fee awards that represent one-third of the settlement fund.[2]

An award of one-third of the fund is consistent with the vital role that contingency arrangements play in making legal counsel available to employees who cannot afford hourly fees. Unlike traditional firms that receive hourly fees on a monthly basis, employment counsel who take cases on contingency often spend years litigating cases (typically while incurring significant out-of-pocket expenses for experts, transcripts, travel, etc.), without receiving any ongoing payment for their work. Sometimes fees and expenses are recovered; other times, despite hundreds of hours of work, nothing is recovered. Indeed, class counsel in this case have litigated other cases on a contingency basis in which they expended over $500,000 in attorney time and well over $100,000 in expert fees or other costs and recovered a small fraction of those fees and costs. In other cases, they have recovered nothing, even after years of litigation.

This type of practice is viable only if attorneys, having received nothing for their work on some cases, receive more in other cases than they would if they charged hourly fees. Courts have long recognized this reality. *See, e.g., Hensley v. Eckerhart*, 461 U.S. 424, 448 (1983) (noting that "[a]ttorneys who take cases on contingency, thus deferring payment of their fees until the case has ended and taking upon themselves the risk that they will receive no payment at all, generally receive far more in winning cases than they would if they charged an hourly rate"); *In*

[2] There are numerous examples of cases in which a one-third fee was approved. *See, e.g., Roberts v. TJX Companies, Inc*., 2016 WL 8677312, at *13–14 (D. Mass. Sep. 30, 2016) (awarding fees of one-third of $4,750,000 common fund); *Scovil v. FedEx Ground Package System, Inc*., 2014 WL 1057079, at *5 (D. Me. Mar. 14, 2014) (awarding fees and costs equal to one-third of $5,794,200 common fund); *Beckman v. KeyBank, N.A*., 293 F.R.D. 467, 481 (S.D.N.Y. 2013) (awarding fees of 33% of $4.9 million common fund) (citations omitted); *In re Relafen Antitrust Litigation*, 231 F.R.D. at 82 (awarding fees equal to one-third of $75,000,000 settlement fund).

re Union Carbide Corp. Consumer Products Business Securities Litigation, 724 F. Supp. 160, 168 (S.D.N.Y. 1989) ("Contingent fee arrangements implicitly recognize the risk factor in litigation and that the winning cases must help pay for the losing ones if a lawyer who represents impecunious plaintiffs, or those plaintiffs not so fully committed as to put their own money where their mouth is, will remain solvent and available to serve the public interest.").

By permitting clients to obtain attorneys without having to pay hourly fees, this system provides critical access to the courts for people who otherwise would not be able to find competent counsel to represent them. That access is particularly important for the effective enforcement of public protection statutes, such as the laws at issue in this case. It is well recognized that "private suits provide a significant supplement to the limited resources available to [government enforcement agencies] for enforcing [public protection] laws and deterring violations." *Reiter v. Sonotone Corp*., 442 U.S. 330, 344 (1979).

To the extent the Court deems it necessary or appropriate to compare the requested award for fees and costs to class counsel's accrued fees and costs, the requested award is plainly within the range of reasonableness. To date, class counsel have incurred total fees of over $135,800. (Affidavit of Stephen Churchill, Ex. 1, ¶ 10). These fees have been incurred performing work on a lengthy case investigation, researching and drafting a highly-detailed and technical complaint, researching and briefing an opposition to a complex motion to dismiss, reviewing and analyzing extensive records produced by the Defendants, engaging in lengthy settlement discussions (including a day-long mediation), and handling the ongoing settlement approval and administration process. (*Id*.). Class counsel expect to spend considerably more time with the remaining settlement approval and administration process. (*Id*.).

Under longstanding law, class counsel in common fund cases are entitled to recover a multiplier of their fees and costs. *See, e.g., In re Puerto Rican Cabotage Antitrust Litigation*, 815 F. Supp. 2d 448, 465 (D.P.R. 2011) (citing decisions approving multipliers of up to 3.5 times the lodestar) (citations omitted). Indeed, "courts routinely impose enhanced common fund awards to compensate counsel for litigation risk at the expense of beneficiaries who did not shoulder this risk." *Brundle v. Wilmington Trust, N.A*., 919 F.3d 763, 786 (4th Cir. 2019), *citing In re Wash. Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1300 (9th Cir. 1994) ("courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases" and "[t]here is nothing unfair about contingency enhancements in common fund cases because of the equitable notion that those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it").

Here, the requested award of $300,000 represent a multiplier of about 2.2 or less, given the total expected fees through the end of the settlement administration process of over $135,800. Other courts have approved multipliers that are substantially greater. *See, e.g., New England Carpenters Health Benefits Fund v. First Databank, Inc.*, 2009 WL 2408560, at *2 (D. Mass. Aug. 3, 2009) (approving 8.3 multiplier), *citing In re Rite Aid Corp. Sec. Litig.,* 146 F.Supp.2d 706, 736 n.44 (E.D. Pa. 2001) (lodestar multiplier in the range of 4.5 to 8.5 was "unquestionably reasonable"). *See also Beckman,* 293 F.R.D. at 481-82 (S.D.N.Y. 2013) (approving multiplier of 6.3 and noting that "[c]ourts regularly award lodestar multipliers of up to eight times the lodestar, and in some cases, even higher multipliers") (collecting cases). As a result, the requested fees in this case are reasonable and in line with settled authority.

Conclusion

For the foregoing reasons, Plaintiffs respectfully request that the Court approve an award of attorneys' fees and costs in the amount of $300,000 from the settlement fund in this case.

CASSIE SOMERS and JOLIA GEORGES, individually and as the representative of a class of similarly situated persons, and on behalf of The Cape Cod Healthcare 403(b) Partnership Plan,

/s/ *Stephen Churchill*
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Dated: April 28, 2025

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing document was served via electronic mail on counsel of record and will be posted on the settlement website that is available to all settlement class members, at https://www.ilymgroup.com/CapeCodHealthcare.

Dated: April 28, 2025

/s/ *Stephen Churchill*
Stephen Churchill

EXHIBIT 1

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CASSIE SOMERS and JOLIA GEORGES, individually and as the representative of a class of similarly situated persons, and on behalf of The Cape Cod Healthcare 403(b) Partnership Plan, Plaintiffs, V. CAPE COD HEALTHCARE, INC. and JOHN and JANE DOES 1-10, Defendants.	Civil Action No.: 23-cv-12946-MJJ

AFFIDAVIT OF STEPHEN CHURCHILL

I, Stephen Churchill, state as follows.

1. I am a 1988 graduate of Stanford University and a 1993 graduate of Harvard Law School. Following my admission to the Massachusetts bar in 1993, I have focused primarily on employment law.

2. After graduating law school, I worked for one year at a plaintiff's employment firm, followed by ten years at Conn Kavanaugh, a 20-plus attorney firm in Boston, where I worked as an associate and then a partner. During my time at Conn Kavanaugh, I represented both employees (in discrimination, non-compete, and other cases) and employers (including cases for Raytheon Company; Metropolitan Life Insurance Company; Avon Products, Inc.; and numerous smaller employers). From 2004 to 2010, I worked at Harvard Law School, running the Employment Civil Rights Clinic at the WilmerHale Legal Services Center. From 2007 to the present, I have taught at least two employment law courses each year at Harvard Law School, one focusing on advocacy skills and one focusing on the enforcement of employment laws. I have also taught courses on

employment discrimination. I continue to direct the law school's employment law clinic. From 2010 to 2013, I worked at Lichten & Liss-Riordan, P.C., a nationally-recognized employment law firm, handling both individual and class action litigation on behalf of employees. In 2013, I co-founded Fair Work, P.C., a firm dedicated to representing employees in workplace disputes, including both individual and complex class action cases. Fair Work handles class action cases in Massachusetts and across the country.

3. Based on my 30-plus years of experience, I have developed a high level of expertise in employment law matters, including cases of employment discrimination. I also have developed expertise in two other areas that are more specialized. First, I have substantial experience in ERISA matters, an area that requires specialized knowledge based on the statute, its detailed regulations, and a large body of caselaw. I have a number of reported cases from the First Circuit in ERISA cases. Second, I have extensive experience with class actions. Indeed, over the course of my career, I have worked as plaintiffs' counsel in numerous class actions, in both Massachusetts and other states. I have been designated as class counsel by numerous courts.

4. Over the course of my career, I have been counsel on numerous reported cases, in both state and federal court. I have worked individually or with co-counsel to obtain favorable rulings in the following more recent cases, among other cases, *Gonzalez v. XPO Last Mile, Inc*., 2024 WL 3697543 (D.Mass. Aug. 7, 2024), *Doe v. Morgan Stanley & Co., LLC*, 2024 WL 3677615 (D.Mass. Aug. 6, 2024), *Brookins v. Northeastern Univ*., --- F. Supp. 3d ---, 2024 WL 1659507 (D.Mass. Apr. 17, 2024), *Prinzo v. Hannaford Bros. Co., LLC*, 343 F.R.D. 250 (D.Mass. 2023), *Weiss v. Loomis, Sayles & Company, Inc*., 97 Mass. App. Ct. 1 (2020), *Gammella v. P.F. Chang's China Bistro, Inc*., 482 Mass. 1 (2019), *Sullivan v. Sleepy's LLC*, 482 Mass. 227 (2019), *Lavery v. Restoration Hardware Long Term Disability Benefits Plan*, 937

F.3d 71 (1st Cir. 2019), *Ouadani v. TF Final Mile LLC*, 876 F.3d 31 (1st Cir. 2017), *Malebranche v. Colonial Automotive Group*, 2017 WL 5907557 (Mass. Super. Ct. Oct. 20, 2017), *Mooney v. Domino's Pizza, Inc.,* 2016 WL 4576996 (D.Mass. Sep. 1, 2016), *Reeves v. PMLRA Pizza, Inc.,* 2016 WL 4076829 (D.Mass. Jul. 29, 2016), *Craig v. Sterling Lion, LLC,* 2016 WL 239299 (Mass. App. Ct. Jan. 21, 2016), *Smith v. City of Boston,* 144 F. Supp. 3d 177 (D.Mass. 2015), *Vitali v. Reit Management & Research, LLC*, 88 Mass. App. Ct. 99 (2015), *Carpaneda v. Domino's Pizza, Inc.,* 89 F. Supp. 3d 219 (D.Mass. 2015), *Parham v. Wendy's Co*., 2015 WL 1243535 (D.Mass. Mar. 17, 2015), *Carpaneda v. Domino's Pizza, Inc.,* 991 F. Supp. 2d 270 (D.Mass. 2014), *Torres v. Niche, Inc*., 2013 WL 6655415 (D.Mass. Dec. 18, 2013), *Depianti v. Jan-Pro Franchising International, Inc.*, 465 Mass. 607 (2013), *Lopez v. Commonwealth of Massachusetts*, 463 Mass. 696 (2012), and a number of earlier cases.

5. I have tried numerous cases, including cases in federal court, in state court, in arbitration, and in administrative agencies (including the Massachusetts Commission Against Discrimination) and have won substantial verdicts and judgments on behalf of employees.

6. In 2019, I was recognized as a Lawyer of the Year by *Massachusetts Lawyers Weekly* for my work on employment cases. I have for many years been recognized as a Super Lawyer and have made the Super Lawyer Top 100 in Massachusetts list numerous times.

7. In addition to my regular teaching at Harvard Law School, I have spoken on or moderated a number of panels addressing employment law issues.

8. I also have written a number of articles or papers on employment law matters.

9. Based on my 30-plus years of experience, it is difficult for employees who have suffered harm to find counsel to represent them. There are many more employees looking for legal assistance than there are attorneys available to represent them. Our firm represents workers on a

contingency basis, because virtually none of the individuals we represent can afford to pay hourly fees. Based on available data, however, I believe that my fair market hourly rate is at least $650 per hour, and I have been awarded fees at that rate. Based on his years of experience and market data, I believe that the fair market hourly rate for Attorney Oswaldo Vazquez, who has been practicing law since 2008, is at least $500 per hour.

10. To date, I have spent at least 52 hours on this matter (representing fees of over $33,800) and Attorney Vazquez has recorded 204.2 hours (representing fees of $102,000). These fees have been incurred performing work on a lengthy case investigation, researching and drafting a highly-detailed and technical complaint, researching and briefing an opposition to a complex motion to dismiss, reviewing and analyzing extensive records produced by the Defendants, engaging in lengthy settlement discussions (including a day-long mediation), and handling the ongoing settlement approval and administration process. There were frequent occasions when I performed additional work on the case that was not recorded, including brief emails or phone calls, or other minor tasks, so our firm's actual fees are higher. In addition, Attorney Vazquez and I expect to spend considerably more time with the remaining settlement approval and administration process. Given the timing of the settlement in this case, the only out-of-pocket expenses that our firm incurred was the filing fee. We do not separately account for or allocate overhead costs like copying or the use of administrative or paralegal staff, but we relied on those resources during the prosecution of this case.

Signed under the penalties of perjury this 28th day of April, 2025.

/s/ Stephen Churchill
Stephen Churchill