UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA

CRAIG PARMER and MARK A. LAURANCE individually and on behalf of all others similarly situated, Plaintiffs, v. LAND O'LAKES, INC., THE BOARD OF DIRECTORS OF LAND O'LAKES, INC., LAND O'LAKES, INC. RETIREMENT PLAN COMMITTEE, and JOHN DOES 1-30. Defendants.	Case No. 0:20-cv-01253-DSD-HB

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS CRAIG PARMER AND MARK A. LAURANCE'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT, CERTIFICATION OF SETTLEMENT CLASS, AND APPROVAL OF PLAN OF ALLOCATION

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Named Plaintiffs Craig Parmer and Mark A. Laurance (collectively, "Plaintiffs"), by and through their undersigned counsel, hereby submit this memorandum of law in support of their Motion for Final Approval of Class Action Settlement. Plaintiffs' accompanying motion seeks an Order: 1) approving the Class Action Settlement Agreement ("Settlement" or "Settlement Agreement") under FED. R. CIV. P. 23(e); (2) certifying a Settlement Class; (3) appointing Named Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel under FED. R. CIV. P. 23(g); (4) finding that the manner in which the Settlement Class was notified of the Settlement was the best manner practicable under the circumstances and adequately informed Class members of the terms of the Settlement and how to lodge an objection and obtain additional information; and (5) approving the Plan of Allocation as set forth in the Settlement Agreement.

I. INTRODUCTION

On June 28, 2022, the Court preliminarily approved the Settlement in this Action (ECF No. 61), which provides for the creation of a $1,800,000.00 Settlement Fund with additional non-monetary consideration.[1] The Court's Preliminary Approval Order also, *inter alia*, conditionally certified a Settlement Class and appointed the Named Plaintiffs as class representatives and Capozzi Adler, P.C. ("Capozzi Adler") as Class Counsel. *Id.* Plaintiffs and Class Counsel believe each of these findings in the Preliminary Approval Order should be made final because the proposed Settlement represents an outstanding

[1] The Settlement Agreement, previously submitted to the Court, is being submitted herein as Exhibit 1 to the Declaration of Mark K. Gyandoh ("Gyandoh Decl.") which is filed contemporaneously with this memorandum. Undefined capitalized terms herein have the same meaning as in the Settlement Agreement.

recovery. In particular, the Settlement represents at least 20% of the Settlement Class's estimated realistic damages as calculated by Plaintiffs. Gyandoh Decl., ¶ 38. Class Counsel achieved this Settlement only after extensive negotiations under the auspices of David Geronemus, Esquire, a neutral, third-party private mediator with experience mediating ERISA class actions. Without doubt, the Settlement was reached after arm's length negotiations by experienced counsel on both sides. The independent fiduciary appointed to review the Settlement has also approved it. *See* Gyandoh Decl., ¶¶ 50-52, Ex._2_(Report of Gallagher Fiduciary Advisors, LLC ("Gallagher")). Plaintiffs now present the Settlement Agreement for final approval.[2]

II. THE PROPOSED SETTLEMENT

The Settlement provides Land O'Lakes (or its insurers) will pay $1,800,000.00 – the Gross Settlement Amount – to be allocated to participants on a pro-rata basis pursuant to the proposed Plan of Allocation (*see* Exhibit B to Settlement Agreement) in exchange for releases and dismissal of this action. *See* Gyandoh Decl. at ¶ 44 (citing Article 7 of the Settlement Agreement). Additionally, the Settlement includes non-monetary terms. Within three years after the Settlement Effective Date, if the Plan's fiduciaries have not already done so, the Plan's fiduciaries will conduct or cause to be conducted a request for proposal relating to the Plan's recordkeeping and administrative services (described in Article 12 of the Settlement Agreement). *See* Gyandoh Decl. at ¶ 45. The Gross Settlement Fund will be used to pay the participants' recoveries, administrative expenses to facilitate

[2] The full procedural history of this matter is recounted in the Gyandoh Declaration, filed contemporaneously with this memorandum, at ¶¶ 13-29.

the Settlement, Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Compensation if awarded by the Court. *See* Gyandoh Decl. at ¶ 46.

A portion of the funds from the Net Settlement Amount will be allocated to each Class Member in proportion to the sum of that Class Member's Balance as compared to the sum of the Balance for all Class Members. *See* Gyandoh Decl. at ¶ 48 (citing Plan of Allocation at II.C). Class Members who are entitled to a distribution of less than the minimum amount of $10.00 will receive $10.00, the De Minimis amount, from the Net Settlement Amount. *Id.* (citing Plan of Allocation at II.D). For Class Members with an Active Account (an account with a positive balance) as of March 31, 2022, each Class Member's Final Entitlement Amount will be allocated into their Plan account. *Id.* (citing Plan of Allocation at II.E). Former Participants shall be paid directly by the Settlement Administrator by check. *Id.* (citing Plan of Allocation at II.F).

III. THE NOTICE PLAN HAS BEEN EFFECTIVELY IMPLEMENTED

Pursuant to the Preliminary Approval Order, Class Counsel has overseen the issuance of the Court-approved Class Notice. Class Counsel retained JND Legal Administration ("JND") as settlement and notice administrator and duly appointed JND as the Settlement Administrator. *See* Gyandoh Decl. at ¶ 53. JND has submitted a declaration testifying to their efforts regarding sending notice to the Settlement Class. *See* Declaration of Ryan Bahry Regarding Settlement Administration ("JND Decl.") (attached to Gyandoh Decl. as Exhibit 3). On July 18, 2022, JND received spreadsheets from Defendants containing, among other information, the names and mailing addresses for a total of 18,455 rows of potential Class Members. *See* Gyandoh Decl. at ¶ 55 (citing Declaration of Ryan Bahry Regarding Settlement

Administration ("JND Decl.") at ¶ 6. Prior to mailing notices, JND analyzed the raw data to consolidate duplicate records within the spreadsheets and determined a total of 18,425 unique Class Members. *See* Gyandoh Decl. at ¶ 56 (citing JND Decl., ¶ 7). JND updated the Class Member contact information using data from the National Change of Address ("NCOA") database and performed advanced address research using the TransUnion skip-trace database to identify current addresses prior to mailing as required under the Order. *Id.* The Class Member data was promptly loaded into a secure database established for this Action. *Id.*

Pursuant to the terms of the Settlement Agreement, on July 28, 2022, JND mailed the Court-approved notice via USPS first-class mail to all 18,425 unique Class Members. *See* Gyandoh Decl. at ¶ 57 (citing JND Decl., ¶ 8). As of October 6, 2022, JND tracked 1,772 Class Notices that were returned to JND as undeliverable. *See* Gyandoh Decl. at ¶ 58 (citing JND Decl., ¶ 9). Of these 1,772 undeliverable Class Notices, 522 were re-mailed to forwarding addresses provided by the USPS. *Id.* JND then conducted additional advanced address research through TransUnion and received updated address information for an additional 73 Class Members. *Id.* JND promptly re-mailed Class Notices to these 73 Class Members (of which (9) were returned as undeliverable). *Id.* As of October 6, 2022, 17,239 Class Members were mailed a Class Notice that was not returned as undeliverable, representing 93.6% of total Class Members. *See* Gyandoh Decl. at ¶ 59 (citing JND Decl., ¶ 10).

On July 28, 2022, JND established a Settlement Website (www.LOLERISASettlement.com), which hosts copies of important case documents, including the Class Action Settlement Agreement, Class Notice, Plan of Allocation, answers to frequently asked questions, and contact information for the Administrator. *See* Gyandoh Decl. at ¶ 60 (citing JND Decl., ¶ 11). As of October 6, 2022, the Settlement Website has tracked 368 unique

users with over 974 page views. *See* Gyandoh Decl. at ¶ 61 (citing JND Decl., ¶ 12). JND will continue to update and maintain the Settlement Website throughout the administration process. *Id.*

On July 28, 2022, JND established a case-specific, toll-free numbers, 1-855-579-1257, for Class Members to call to obtain information regarding the Settlement. *See* Gyandoh Decl. at ¶ 62 (citing JND Decl., ¶ 13). Callers have the option to listen to the Interactive Voice Response ("IVR") system, or to speak with a live agent. *Id.* The toll-free number is accessible 24 hours a day, seven days a week. *Id.* As of October 6, 2022, the toll-free number has received 132 incoming calls. *See* Gyandoh Decl. at ¶ 63 (citing JND Decl., ¶ 14). JND will continue to maintain the toll-free number throughout the settlement administration process. *Id.* The Class Notice informed recipients that any Class Member who wished to object to the proposed Settlement could do so by filing a written objection with the Court, postmarked on or before October 19, 2022. *See* Gyandoh Decl. at ¶ 64 (citing JND Decl., ¶ 15). As of October 6, 2022, JND has not received, and is not aware of, any objections. *See* Gyandoh Decl. at ¶ 65 (citing JND Decl., ¶ 16).

IV. THE COURT SHOULD GRANT FINAL APPROVAL OF THE SETTLEMENT

A. Legal Standard

To grant final approval of a settlement, a court must determine that a settlement is "fair, reasonable and adequate." *In re Uponor, Inc.*, 716 F.3d 1057, 1063 (8th Cir. 2013). The Eighth Circuit directs courts to consider the following factors in evaluating if it should approve a class action settlement:

> (1) the merits of the plaintiff's case weighed against the terms of the settlement; (2) the defendant's financial condition; (3) the complexity and expense of further litigation; and (4) the amount of opposition to the settlement.

In re Wireless Tel. Fed. Cost Recovery Fees Litig., 396 F.3d 922, 932 (8th Cir. 2005). A district court has broad discretion in assessing the weight and applicability of these factors. *Prof. Firefighters Ass'n of Omaha Local 385 v. Zalewski*, 678 F.3d 640, 645 (8th Cir. 2012). Further, FED. R. CIV. P. 23(e)(2 specifies consideration of the following factors:

> (A) the class representatives and class counsel have adequately represented the class; (B) the proposal was negotiated at arm's length; (C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorney's fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and (D) the proposal treats class members equitably relative to each other.

As set forth below, the Settlement is fair, reasonable and adequate and should be granted final approval.

B. The Settlement is Fair, Reasonable, and Adequate

1. The Merits of the Case Weigh In Favor of the Terms of the Settlement

The merits of Plaintiffs' case are the most important consideration in deciding whether a settlement is fair, reasonable, and adequate. *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1150 (8th Cir. 1999). The first step in determining if a settlement is fair is analyzing the strength of the plaintiff's case to establish the value of class members' claims. "This is not a simple mathematical exercise with definite outcomes; a 'high degree of precision cannot be expected in valuing a litigation.'" *Hashw*, 182 F.3d at 943 (quoting *Synfuel*

Techs., Inc. v. DHL Express (USA), Inc., 463 F.3d 646, 653 (7th Cir. 2006). Courts perform a "ballpark valuation." *Synfuel Techs.*, 463 F.3d at 463.

Here, Class Counsel determined potential damages to the Plan to be a maximum of $9,006,703.78 assuming all revenue received by the Plan's recordkeeper should have been considered fees for recordkeeping and administrative costs, and a reasonable per participant annual fee should have been $35 per participant. Gyandoh Decl. at ¶ 38. Defendants disagreed with Plaintiffs' methodology for calculating damages because they argue the revenue Plaintiffs alleged was received by the Plan's recordkeeper far exceeded the Plan's contractually agreed rates with its recordkeeper. *Id.* Accordingly, the Settlement Amount of $1,800,000.00 is at least 20% of the Settlement Class's maximum potential damages. This percentage, in and of itself, is reasonable and warrants final approval. *See, e.g.*, *Mehling v. New York Life Ins. Co.*, 248 F.R.D. 455, 462 (E.D. Pa. 2008) (recovery representing 20% of estimated damages in ERISA class action approved); *Johnson v. Fujitsu Tech. & Business of America, Inc.*, 2018 WL 2183253, at *6-7 (N.D. Cal. May 11, 2018) (approving $14 million ERISA 401(k) settlement that represented "just under 10% of the Plaintiffs' most aggressive 'all in' measure of damages"); *In re Rite Aid Corp. Sec. Litig.*, 146 F.Supp.2d 706, 715 (E.D. Pa. 2001) (noting that since 1995, class action settlements have typically "recovered between 5.5% and 6.2% of the class members' estimated losses"); *Medoff v. CVS Caremark Corp.*, 2016 WL 632238, at *6 (D.R.I. Feb. 17, 2016) (settlement providing recovery of 5.33% of maximum recoverable damages was well above the median percentage of settlement recoveries in comparable securities class action cases); *Baker v. John Hancock Life Ins. Co.*, No. 1:20-cv-10397-RGS (ECF No. 67)

(D. Mass. June 2, 2021) (preliminarily approving $14 million recovery therefore representing estimated 23% of the investment damage); *Eaton Vance*, No. 18-12098 (ECF No. 32), at 12 (may 6, 2019) (recovery represented 23% of calculated likely damages); *see also Keil v. Lopez*, 862 F.3d 685, 696 (8th Cir. 2017)**Error! Bookmark not defined.** (finding that a 27% recovery of maximum possible full verdict at trial to be reasonable). Moreover, as noted above, Class Counsel negotiated prospective relief that inures to the benefit of the Settlement Class.

In considering the Settlement's fairness, a court must consider the challenges that plaintiffs would face in prevailing on their claims. *See, e.g.*, *Ramsey v. Sprint Comm. Co., L.P.*, 2012 WL 6018154, at *3 (D. Neb. Dec. 3, 2012). In doing so, a court "does not try the case," but instead identifies the disputed factual and legal issues that make it less likely for the plaintiffs to receive a full recovery. *Id*. (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975).

Here, Plaintiffs faced significant hurdles to recovering their maximum damages, no matter what the figure. As an initial matter, their maximum damages figure is contingent on the Court certifying a class. Defendants would be expected to oppose class certification on a number of grounds. Plaintiffs would also face other challenges in proving their claims.

Breach of fiduciary duty claims under ERISA depend on the process by which decisions were made rather than the results of those decisions. *Braden v. Wal-Mart Stores, Inc.*, 588 F.3d 585, 595 (8th Cir. 2009). The Plan's investment decisions were made by the Land O'Lakes, Inc. Retirement Committee (the "Committee"). Defendants maintain that the process by which the Committee approved the Plan's investment selection meets or

exceeds the requirements of ERISA. Further, Defendants maintain that discovery would have shown that recordkeeping fees were appropriate. While Plaintiffs disagree with Defendants' positions, these disputed issues support the Settlement's approval. *See, e.g.*, *Cooper v. Integrity Home Care, Inc.*, 2018 WL 3468372, at *2 (W.D. Mo. July 18, 2018). ("A settlement is bona fide if it reflects a reasonable compromise over issues actually in dispute."). Further, proving damages would not be a given. As set forth above, the $9,006,703.78 of damages amount was a "best case" scenario and Defendants would try to minimize – if not eliminate – these alleged damages at the summary judgment stage or at trial.

The proposed Settlement is an immediate guaranteed result for the Class and warrants approval. Indeed, plaintiffs in two recent analogous breach of fiduciary actions, including one in this District Court, have survived a motion to dismiss only to lose at trial. *See Wildman, et al., v. Am. Century Servs.*, 362 F. Supp. 3d 685 (W.D. Mo. 2019); *Sacerdote v. NYU*, 328 F. Supp. 3d 273 (S.D.N.Y. 2018). As further support for the reasonableness of the settlement, Gallagher states "[a]fter a thorough review of the pleadings and interviews with the parties' counsel and the mediator, Gallagher has concluded that the Settlement was achieved at arms' length and is reasonable given the uncertainties of a larger recovery for the Class at trial and the value of claims forgone." Report at 3.

2. Defendants' Financial Condition

While Land O'Lakes could withstand a judgment in an amount larger than the Settlement amount, the risks and expenses attendant to continuing this litigation, combined with the immediacy of the benefit to Class members, easily support a prompt resolution to this matter. This factor supports the Court's final approval of the Settlement. *See, e.g.*, *Cooper*, 2018 WL 3468372, at *4.

3. Complexity and Expense of Further Litigation

"The possible length and complexity of further litigation is a relevant consideration to the trial court in determining whether a class action settlement should be approved." *In re Charter Commc'ns*, 2005 WL 4045741, at *8 (E.D. Mo. June 30, 2005). Without settlement, this case would proceed with additional motions relating to class certification and then into merits discovery, and summary judgment, as well as a trial and a possible appeal. Each stage will take time and, importantly, present additional risks the Plaintiffs and Class members will receive less than the $1,800,000.00 that they are now being offered.

The Settlement provides money to the Settlement Class ***now***, instead of years in the future ***if*** the Plaintiffs prevail on their claims. Courts have repeatedly recognized that ERISA 401(k) cases "often lead [] to lengthy litigation." *Krueger v. Ameriprise*, 2015 WL 4246879, at *1 (D. Minn. July 13, 2015). It is not unusual for ERISA "fee" cases to last for a decade or longer.[3] Plaintiffs would also incur considerable expenses if this case

[3] *See, e.g.*, *Tussey v. ABB, Inc.*, 2017 WL 6343803, at *3 (W.D. Mo. Dec. 12, 2017) (requesting proposed findings on amount of damages more than 10 years after the suit was

continued. To prove their claims, Plaintiffs would need to depose several Committee members and employees of the Plan's recordkeeper. These depositions, including the costs of transcripts and travel, would be expensive and reduce the net amount of the Class's recovery. *Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *5 (M.D.N.C. Sept. 29, 2016) (granting final approval, noting that "early settlement of a 401(k) excessive fee case benefits the employees and retirees in multiple ways."). Thus, the immediate and guaranteed benefit to the Settlement Class here outweighs the uncertainty and costs of continued litigation.

4. The Reaction of the Class to the Settlement

To date, no objections have been received to the Settlement. The objection deadline is October 19, 2022, and Class Counsel will address any objections prior to the Fairness Hearing in accordance with the schedule set forth in the Preliminary Approval Order.

C. The Requirements of Fed. R. Civ. P. 23I(2) Is Satisfied

The Rule 23(e)(2) factors which the Court must address are (1) whether the class representatives and class counsel have adequately represented the class; (2) whether the proposal was negotiated at arm's length; (3) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;

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filed); *Tibble v. Edison Int'l*, 2017 WL 3523737, at *15 (C.D. Cal. Aug. 16, 2017) (outlining issues for trial in a case filed in 2007); *See also Cullan and Cullan LLC v. M-Qube, Inc.*, 2016 WL 5394684, *7 (D. Neb. Sept. 27, 2016) (approving settlement because it provided "a real and substantial remedy without the risk and delay inherent in prosecuting this matter through trial and appeal…").

(4) the terms of any proposed award of attorney's fees, including timing of payment; and (5) whether the proposal treats class members equitably relative to each other.

1. Adequacy of Representation

First, with respect to the Plaintiffs' adequacy of representation, their claims and interests are aligned with those of the Settlement Class, as they are seeking to prove Defendants' liability based on common facts and claims and to maximize monetary recovery to the Plan and protect the Plan from excessive fees in the future. The interests of the Plaintiffs are not antagonistic to any Class Member. Since the damages and remedies for ERISA fiduciary breach claims all go to the Plan as a whole, to then be credited later to the accounts of individual participants, the Named Plaintiffs have the same interest as any participant of the Plan – specifically, recovering their share of the Plan's losses.

Second, with respect to Plaintiffs' Counsel's adequacy of representation, Rule 23(g) directs consideration of: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources counsel will commit to representing the class." FED. R. CIV. P. 23(g)(1)(A)(i)-(iv). Proposed Class Counsel Capozzi Adler, P.C. have done substantial work, have experience litigating ERISA class actions and complex matters, and have committed ample resources to prosecute this matter. *See* Gyandoh Decl., ¶¶ 3-12. Accordingly, they are well-qualified to weigh the risks and benefits of continued litigation as compared to the relief provided by the Settlement. Thus, Plaintiffs retained highly qualified and experienced attorneys in satisfaction of Rules 23(a)(4) and 23(g).

2. Arm's Length Negotiations

The proposed Settlement here is the result of lengthy and complex arms-length negotiations between the Parties under the auspices of David Geronemus, Esquire, a neutral, third-party private mediator with extensive experience mediating ERISA class actions.

A class action settlement is a private contract negotiated between the parties that is "presumptively valid." *In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013) (internal quotations omitted). Courts look for "glaring substantive or procedural deficiencies" and consider whether the "settlement carries the hallmarks of collusive negotiation or uninformed decision-making, is unduly favorable to class representatives or certain class members, or excessively compensates attorneys." *Adams*, 2016 WL 7664135, * 3 (citation omitted).

The Settlement does not contain any deficiencies, glaring or otherwise. Class Counsel was fully aware of this case's strengths and weaknesses when negotiating the Settlement, which supports the Settlement's final approval. *See, e.g., King v. Ranieri Constr., LLC et al.*, 2015 WL 631253, at *3 (E.D. Mo. Feb. 12, 2015) (approving settlement when the "parties engaged in settlement negotiations and exchanged a large amount of documents and information for a month before submitting the proposed settlement."). Prior to engaging in settlement discussions, the Parties exchanged initial disclosures and engaged in targeted discovery in which Defendants produced over 7,200 pages of documents to Plaintiffs' counsel. Gyandoh Decl. at ¶¶ 34. Class Counsel also has in-depth knowledge of the legal framework applicable to this case. Class Counsel have extensive

experience prosecuting, settling, and trying ERISA cases (and other complex matters) on behalf of retirement plan participants and extensive and recent experience litigating matters such as this one in federal courts, which they used to evaluate and negotiate the Settlement. Gyandoh Decl. at ¶¶ 3-12; *see, e.g.*, *Schapker v. Waddell & Reed Fin., Inc*., 2018 U.S. Dist. LEXIS 28458, 2018 WL 1033277 (D. Kan. Feb. 22, 2018). Class Counsel used that knowledge and experience to not only negotiate for monetary relief, but also prospective non-monetary relief (including Land O'Lakes issuing a request for proposal for recordkeeping services for the Plan) that will benefit the Plan moving forward. *See* Settlement Agreement, Art. 12.

Because the Settlement was negotiated by experienced counsel, there is a presumption it was "the product of arm's length negotiations." *Netzel*, 2017 WL 1906955, at *6; *see also Bonetti v. Embarq Mgmt. Co.*, 715 F. Supp. 2d 1222, 1227 (M.D. Fla. 2009) ("If the parties are represented by competent counsel in an adversary context, the settlement they reach will, almost by definition, be reasonable.").

3. Effectiveness of Plan of Distribution

"A court must also look beyond the settlement documents and review the plan of allocation to assure it is 'fair and reasonable.'" *Zilhaver v. UnitedHealth Group, Inc.*, 645 F.Supp.2d 1075, 1080 (D. Minn. 2009) (citation omitted). The proposed Plan of Allocation here, detailed in Exhibit B of the Settlement Agreement, is premised on calculating a Class Member's distribution on a *pro rata* basis based on account balances, a proxy for the

alleged losses. Plan of Allocation II.C. Any Class Member with an available payment of less than $10.00 shall receive a payment of ten ($10.00) dollars. *Id.* at II.D.

Further, current participants will receive their share of the Settlement Fund through an electronic distribution to their Plan account. *Id*. at II.E. Former participants will receive their share of the settlement fund by check. II.F. The plan of allocation described in the Settlement has been utilized in other analogous ERISA matters and is highly effective. *See, e.g., McDonald v. Edward Jones*, 791 Fed. Appx. 638, 640 (8th Cir. 2020) (affirming judgment that granted final approval to settlement in ERISA action with analogous plan of allocation); *Beach et al. v. JPMorgan Chase Bank, N.A. et al.*, No. 1:17-cv-00563-JMF, ECF NO. 221 (S.D.N.Y. Aug. 21, 2020) (Order granting final approval of similar plan of allocation in analogous ERISA matter). Where the Settlement Fund "proceeds will be distributed among class members in proportion to their calculated losses," courts have found this distribution plan to be "fair and reasonable." *Zilhaver,* 645 F.Supp.2d at 1080.

4. Terms of Proposed Attorneys' Fees

The Settlement does not excessively compensate Class Counsel. The Settlement is not contingent on Class Counsel receiving a specific amount of fees and any fees they receive will be determined by the Court. Settlement at §§ 6.1 and 6.2. *Adams*, 2016 WL 7664135, at *6 (granting preliminary approval when "class counsel's compensation is not set by the settlement but will be determined by petition to the Court."). The amount of fees Class Counsel is requesting, a third of the monetary portion of the Settlement, is reasonable

and consistent with the awards in other ERISA cases.[4] As noted above, the Settlement also includes prospective non-monetary relief that will substantially benefit the Plan moving forward. *See* Settlement Agreement, Art. 12.

5. Equitable Treatment of Class Members

The Settlement does not unduly favor the Named Plaintiffs. Named Plaintiffs' shares of the Settlement will be based on the losses to their Plan account. While Named Plaintiffs are requesting Case Contribution Awards, the Settlement is not contingent on Plaintiffs receiving an award in a specified amount, and the amount Plaintiffs intend to request is in line with the awards in other cases.[5] Further, the Plan of Allocation agreed to by the Parties clearly treats class members equitably relative to each other because each member is entitled to their pro rata share of losses and any Class Member will be entitled to a recovery.

Given the above, Rule 23(e)(2) is satisfied.

V. FINAL CERTIFICATION OF THE SETTLEMENT CLASS IS WARRANTED

Before entering the Preliminary Approval Order, this Court examined the record and conditionally certified the Settlement Class pursuant to FED. R. CIV. P. 23(b)(1). *See* Preliminary Approval Order at ¶¶ 1-3. Nothing has changed in the record that would compel the Court to now reach a different conclusion with respect to the final approval of

[4] The support for Class Counsel's fee request is set forth in their Motion and Memorandum in Support of an Award of Attorneys' fees, Reimbursement of Expenses, and Case Contribution Awards to the Named Plaintiffs, which is being filed contemporaneously.

[5] *See generally* Fee Petition.

the Settlement Class. Indeed, courts across the country have determined that breach of fiduciary duty claims under ERISA analogous to those at issue in this action are uniquely appropriate for class treatment.[6] Accordingly, Plaintiffs request that the Court make the same findings it made previously and certify the following Class for settlement purposes only:

> All persons who participated in the Plan at any time during the Class Period (May 26, 2014 through June 28, 2022, inclusive), including any Beneficiary of a deceased person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are the members of the Land O'Lakes, Inc. Retirement Plan Committee during the Class Period

Moreover, the Supreme Court has acknowledged the propriety of certifying a class solely for settlement purposes. *See, e.g., Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 618 (1997).

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[6] *See, e.g., Henderson, et al. v. Emory Univ.*, et al., No. 1:16-cv-02920 (N.D. Ga. Sept. 13, 2018) (certifying class under 23(b)(1)(A) and (B)); *Fuller et al. v. SunTrust Banks, Inc. et al.*, 2018 U.S. Dist. LEXIS 113108 (N.D. Ga. June 27, 2018) (same); *Clark v. Duke Univ.*, 2018 WL 1801946 (M.D.N.C. April 13, 2018) (same); *Sacerdote v. New York Univ.*, 2018 WL 840364 (S.D.N.Y. Feb. 13, 2018) (same); *Troudt v. Oracle Corp., et al.*, 325 F.R.D. 373 (D. Colo. 2018) (certifying class and subclasses pursuant to Rule 23(b)(1)(A)); *Wildman v. Am. Century Servs., LLC*, 2017 WL 6045487 (W.D. Mo. Dec. 6, 2017) (certifying class and subclasses pursuant to Rule 23(b)(1)); *Marshall, et al. v. Northrop Grumman Corp.*, 2017 WL 6888281 (C.D. Cal. Nov. 2, 2017) (certifying class and subclasses pursuant to Rules 23(a) and 23(b)(1)); *Sims v. BB & T Corp.*, 2017 WL 3730552 (M.D.N.C. Aug. 28, 2017) (certifying class and subclasses pursuant to Rules 23(a) and Rule 23(b)(1)(A)); *Cryer v. Franklin Templeton Res., Inc.*, 2017 WL 4023149 (N.D. Cal. July 26, 2017) (certifying class and subclasses pursuant to Rule 23(b)(1)); *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, 2017 WL 2655678 (C.D. Cal. June 15, 2017) (certifying class and subclass pursuant to Rule 23(b)(1)); *Rozo v. Principal Life Ins. Co.*, 2017 WL 2292834 (S.D. Iowa May 12, 2017) (certifying class and subclasses pursuant to Rules 23(a) and Rule 23(b)(1)(A)).

VI. CONCLUSION

For the reasons set forth above, and accompanying declarations, the Settlement meets the standard for final approval under Rule 23. Accordingly, Plaintiffs seek an Order: (1) approving the Class Action Settlement Agreement under FED. R. CIV. P. 23(e); (2) certifying the above-defined Settlement Class; (3) appointing Named Plaintiffs as Class Representatives and Plaintiffs' Counsel as Class Counsel under FED. R. CIV. P. 23(g)**Error! Bookmark not defined.**; (4) finding the manner in which the Settlement Class was notified of the Settlement was the best manner practicable under the circumstances and fair and adequate; and (5) approving the Plan of Allocation set forth in the Settlement Agreement.

Dated: October 10, 2022

Respectfully submitted,

CAPOZZI ADLER, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on October 10, 2022, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

By: *Mark K. Gyandoh*
Mark K. Gyandoh, Esq.

CERTIFICATE OF COMPLIANCE

I, Mark K. Gyandoh, certify that the Memorandum of Law In Support of Plaintiffs Craig Parmer and Mark A. Laurance's Motion for Final Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Plan of Allocation complies with the limits in Local Rule 7.1(f) and type-size limit of Local Rule 7.1(h). I further certify that Microsoft Word version 2013, 13-point font, Times New Roman typeface, and that this word processing program has been applied to include all text, including headings, footnotes, and quotations in the word count, which contains 4,907 words.

/s/ Mark K. Gyandoh
Mark K. Gyandoh