UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF NORTH CAROLINA

MATT ALLISON, as representative of a class of similarly situated persons, and on behalf of the Republic Mortgage Insurance Company and Affiliated Companies Profit Sharing Plan, Plaintiff, v. REPUBLIC MORTGAGE INSURANCE COMPANY, Defendant.	Case No. 1:24-cv-00950-CCE-LPA

PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF AMENDED UNOPPOSED MOTION FOR ATTORNEYS' FEES, COSTS & ADMINISTRATIVE EXPENSES, AND CLASS REPRESENTATIVE CASE CONTRIBUTION AWARD

Matt Allison ("Plaintiff"), individually and on behalf of all others similarly situated ("Settlement Class"), file this Memorandum of Law in Support of its Amended Unopposed Motion for Attorneys' Fees, Costs and Administrative Expenses, and Class Representative Case Contribution Awards, seeking approval of attorneys' fees, costs, and case contribution awards.

I. INTRODUCTION

Plaintiff, as representative of the Settlement Class, and Republic Mortgage Insurance Company ("Defendant") entered into a Class Action Settlement (the "Settlement") resolving Plaintiff's claims under the Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* ("ERISA"). Defendant agreed to pay $650,000 in cash, representing approximately 50% of the potential monetary recovery.

This excellent result was achieved because of the extensive time and effort of Class Counsel who thus far have worked approximately 135 hours without any compensation and was able to efficiently position this action class action lawsuit for the Court's approval within a year of filing it. (*See* Exhibit A, Third Edelman Decl., ¶ 11; Exhibit B, Third Lee Decl. ¶ 19). Plaintiff Allison personally spent considerable time representing the Class, including meeting with counsel, producing documents, reviewing drafts of pleadings and briefs, and attending mediation at his own expense. Following settlement, Class Counsel has spent considerable time negotiating the terms of the settlement agreement, drafting settlement-related motions and meeting with the Settlement Administrator and Independent Fiduciary. (*See* Dkts. 39-1, 39-2, Exhibit A - Third Edelman Decl. ¶¶ 8-9; Exhibit B - Third Lee Decl.,¶ 26).

Plaintiff seeks $216,450.00 in attorneys' fees, which represents one-third of the $650,000.00 settlement amount. Class Counsel seeks the Court's approval for a case contribution award in the amount of $10,000 to Plaintiff Allison, payment to

Atticus in the amount of $11,835 and to the Independent Fiduciary in an amount not to exceed $25,000.

II. BACKGROUND

A. Description of the Action

This case presented a novel claim under ERISA concerning the monitoring of the GIA as the Plan's capital preservation option in light of RMIC's financial struggles. Plaintiff's counsel is unaware of any court order regarding the prudent monitoring of a plan's capital preservation option under similar circumstances. Thus, Plaintiff faced great uncertainty as to the success of this claim, even at the pleading stage. Indeed, the parties hotly contested the plausibility that Defendant could have anticipated the termination of the Plan and the downturn in the bond market that caused the negative Market Value Adjustment. (*See* Dkt. 17 at ¶¶11–13).

B. Procedural Background

On January 13, 2025, Defendant filed a motion to dismiss. (Dkt. 16). On February 3, 2025, Plaintiff filed an Amended Complaint. (Dkt. 18). On February 18, 2025, Defendant filed a second motion to dismiss. (Dkt. 19). On March 11, 2025, Plaintiff filed his response. (Dkt. 22). After the motion was fully briefed, on April 8, 2025, the Court denied the motion. (Dkt. 24). Thereafter, the parties participated in a Rule 26(f) planning meeting and on May 19, 2025, submitted a report regarding the same. (ECF No. 27). On August 1, 2025, the parties jointly moved the Court to

stay all litigation so the parties could try to resolve this matter with the assistance of Hon. Mark W. Bennett (Ret.). (Dkt. 32). The Court granted that joint motion and gave the parties until September 25, 2025, to mediate and to submit a notice informing the Court whether mediation was successful. (Dkt. 33). On September 18, 2025, the parties participated in a full-day, in-person mediation in Minneapolis, Minnesota, and ultimately were able to reach a settlement in principle. On September 25, 2025, the parties notified the Court that they had reached settlement on a class-wide basis. (Dkt. 36).

Class Counsel drafted and filed an unopposed motion for final approval on April 2, 2026. (Dkt. 49). On April 16, 2026, the Court held a conference with the Parties to address a recent decision of the Fourth Circuit Court of Appeals in *Trauernicht v. Genworth Financial Inc.*, No. 24-1880 (4th Cir. Mar. 10, 2026). In *Trauernicht*, the Fourth Circuit barred certification of ERISA class actions under Fed. R. Civ. P. 23(b)(1). Following this conference, the Parties negotiated at arms'-length certain amendments to the settlement agreement to account for an opt-out settlement class under Fed. R. Civ. P. 23(b)(3). On June 17, 2026, Plaintiffs moved for Preliminary Approval of an Amended and Restated Settlement Agreement. (Dkt. 55). On July 1, 2026, the Court preliminarily approved the Amended and Restated Settlement Agreement. (Dkt. 58).

C. Discovery

Before filing the lawsuit, Plaintiff's counsel conducted significant independent research providing a foundation for the claim and potential losses flowing therefrom. Following the filing of Defendant's Answer, both sides propounded written discovery requests, including interrogatories, requests for production, and requests for admission. (Third Lee Decl., ¶¶ 6-8) Defendant provided Plaintiff with nearly 2,000 pages of relevant documents. (*Id).*

D. The Settlement Agreement

1. Settlement Amount

The Amended and Restated Settlement Agreement establishes a Gross Settlement Amount of $650,000 to be paid to the Plan. It is important to emphasize that Plaintiffs' claims were brought on behalf of the Plan, and the money will be paid to the Plan. The $650,000 recovery represents about 50% of the total potential Plan recovery. The Gross Settlement Amount ($650,000) will first be used to cover all administrative costs associated with implementing the Settlement; attorney's fees as approved by the Court; any Case Contribution Awards as approved by the Court, and the Claim Administrator's fees. The remainder will then be distributed according to the Plan of Allocation. The Settlement Administrator will be responsible for calculating the amounts payable to Settlement Class members pursuant to the Plan of Allocation. The Amended and Restated Settlement is being implemented under

Fed. R. Civ. P.23(b)(3), providing Class Members with the opportunity to opt-out of the Settlement.

2. Retention of an Independent Fiduciary

Defendant has retained an Independent Fiduciary who will opine on the Settlement prior to the Final Fairness hearing.

3. Attorneys' Fees, Costs, and Case Contribution Awards

Class Counsel is seeking $216,450 in attorneys' fees, which represents one-third of the $650,000 of the Gross Settlement Amount. Class Counsel is also seeking a Case Contribution Award not to exceed $10,000 for Plaintiff in recognition of his service of the Class. Class Counsel is not seeking reimbursement for its incurred costs, which equal approximately $6,000.00, the majority of which were mediation-related expenses.

4. Release of Claims

The Class Representative, the Plan, and Class Members agree to release all claims against Defendant for breach of ERISA's fiduciary duties, including all claims asserted or claims that could have been asserted in this action. The scope of the release is typical in ERISA settlements similar this settlement.

5. CAFA Compliance

As required by the Amended and Restated Settlement Agreement, the Settlement Administrator prepared and sent notices to the Attorney General of the

United States and to the Attorneys General of all states in which Class Members reside, in accordance with the Class Action Fairness Act of 2005, 28 U.S.C. § 1715 ("CAFA"). (Dkt. 59). To date, none of the government actors objected to the Settlement.

6. The Court Approved Notice Plan Was Implemented

The Amended and Restated Settlement Agreement provides for notice to Settlement Class members consistent with due process and provides an opportunity for Settlement Class members to object to final approval of the Settlement or opt-out of the Settlement. On July 31, 2026, supplemental notice was sent to the Class Members advising them of the amended settlement terms and right to opt-out.[1] (Third Lee Decl., ¶ 28-29).

7. The Class Members' Reactions to the Settlement

The deadline for Settlement Class members to object or opt out of the Amended and Restated Settlement is August 31, 2026. To date, there have been no opt-outs or objections. (Third Lee Decl., ¶ 30).

H. Work Related to Settlement Approval and Administration

[1] Upon expiration of the objection deadline, the specific details of the Notice to the Settlement Class will be provided to the Court in the form of a Declaration from the Settlement Administrator and summarized in Plaintiff's Amended Motion for Final Approval.

Class Counsel has spent considerable time in the Settlement approval process, including drafting briefs and supporting documents for the preliminary approval and attorney's fees motions, as well as time related to administration of the Settlement. (*See* Third Edelman Decl. ¶¶ 9-11; Third Lee Decl., ¶¶ 12-16, 19).

The Settlement Administrator, Atticus, has also performed substantial work, including CAFA notice and providing notice and supplemental notice to the Class Members. For services provided to date, and for administering the Settlement to conclusion, including calculating and distributing payments to Class Members, Atticus is charging $11,835, which Class Counsel opines to be reasonable. (Third Lee Decl., ¶ 33)

III. THE COURT SHOULD AWARD THE REQUESTED FEES

A. The Percentage of Recovery Method with a Lodestar Cross-Check is Appropriate for Evaluating an Attorneys' Fees Request in this Case.

In a case such as this where a common fund has been created, district courts in this Circuit generally employ the percentage-of-recovery method with a lodestar cross-check. *Sims v. BB&T Corp*., No. 1:15-CV-732, 2019 WL 1993519, at *1 (M.D.N.C. May 6, 2019)("District Courts in the Fourth Circuit prefer the percentage method in common-fund cases, including ERISA)(Judge Eagles awarding 33.33% fee in ERISA breach of fiduciary duty settlement after confirming reasonableness of fee with lodestar crosscheck) (internal quotation marks and citations omitted); *Clark*

v. Duke Univ., No. 1:16-CV-1044, 2019 WL 2579201, at *2 (M.D.N.C. June 24, 2019)(Judge Eagles confirming 33.33% fee to be reasonable after conducting lodestar cross-check); *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016)(applying percentage-of-recovery method and lodestar cross-check in similar ERISA class action brought on behalf of defined contribution plan participants)(collecting cases).

To determine the reasonableness of the fee award, courts begin by considering the twelve factors identified in *Barber v. Kimbrell's, Inc.*: "(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney's opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney's expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorney's fees awards in similar cases." *Clark*, at *2, citing *Barber v. Kimbrell's, Inc.*, 577 F.2d 216, 226 & n.28 (4th Cir. 1978).

B. <u>Each of the Twelve Factors Supports the Fee Request</u>

1. The Time and Labor Required

Class Counsel has litigated this case for over a year and a half and has recorded over 135 hours of time on the matter without any compensation. In context of the amount in controversy, Class Counsel has obtained an excellent outcome with surgical efficiency, and by doing so avoided the resource-draining motion practice that typically accompanies ERISA litigation. This factor weighs in favor of approving Class Counsel's fee.

2. The Novelty and Difficulty of Questions Raised

This Court has recognized ERISA class action work is a complex area of the law in which few firms "are willing or capable of practicing." *Clark*, at *3. Here, even within the complex ERISA litigation arena, this case presented novel issues of law regarding guaranteed investment accounts at a financially challenged employer. The theories of recovery were not obvious and would have been less apparent to less experienced counsel. Class Counsel, who have been litigating ERISA class actions for years, are unaware of any other action advancing similar legal theories. This factor weighs in favor of the requested fee.

3. The Skill Required to Properly Perform the Legal Services Rendered

Here, the quality, skill, and efficiency of Class Counsel also support the requested fee award. Class Counsel includes some of the most experienced,

successful, and active attorneys in complex ERISA other employment-related class action. Class Counsel has served leadership positions in numerous ERISA class actions and have successfully obtained meaningful recoveries for retirement plan participants through class litigation. Class Counsel's ability to resolve this action quickly, less than 2 years, within filing the lawsuit, and recover more than is typically recovered in ERISA 401(k) litigation, is a testament to Class Counsel's skills and abilities.

4/7. <u>The Attorney's Opportunity Costs in Pressing the Instant Litigation and Time Limitations Imposed by Client or Circumstances</u>

Factors four and seven are related and addressed together. Class Counsel was able to resolve this action efficiently, thereby avoiding significant opportunity cost or expending a disproportional amount of time or resources in this matter. Plaintiff Allison was an ideal client, educating himself on the subject matter and advancing the legal theories by sharing his institutional knowledge. This factor is neutral.

5/12. <u>The Customary Fee for Like Work and Attorney's Fees in Similar Cases</u>

Factors five and twelve are nearly identical and addressed together. Simply put, a typical fee percentage awarded in ERISA class actions involving defined contribution plans is one-third of the common fund. *Sims v. BB&T Corp.*, No. 1:15-

CV-732, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019) (awarding attorneys' fees of one-third of common fund, holding that "[a] one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects a customary fee for like work"); *Clark v. Duke University*, No. 1:16-cv-01044, 2019 WL 2579201, at *3 (M.D.N.C. June 24, 2019) (M.D.N.C. Jun 24, 2019) ("[a] one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects a customary fee for like work.").

Class Counsel undertook this action with expectation that it would be compensated with a percentage of the common fund obtained for the Settlement Class, consistent with how it has been compensated in previous cases. Concomitantly, it prosecuted this action with no guarantee of payment, and the possibility of expending hundreds, if not thousands of hours, and the possibility of receiving no payment at all. *See, e.g.*, *Pledger v. Reliance Tr. Co.*, No. 1:15-CV-4444-MHC, 2019 WL 10886802, at *24–25 (N.D. Ga. Mar. 28, 2019) (granting summary judgment in defendants' favor on ERISA claim involving claims of breach of the duty of prudence); *Ramos v. Banner Health*, 461 F. Supp. 3d 1067, 1134-35 (D. Colo. 2020) (judgment awarding only a fraction of the damages sought in ERISA class action after bench trial). Thus, this factor thus supports the fees requested.

8/10. The Amount in Controversy and Results Obtained and Undesirability of the Case Within Legal Community

Factors eight and ten are related and therefore addressed together. In this context of ERISA litigation, the amount in controversy in this action was relatively small. The maximum Plan losses were less than $1,300,000.00, if the Court was to fully embrace Plaintiff's loss model. Defendant, on the other hand, had legitimate arguments that the Plan's losses were significantly less, and gains in the GIA during the Class Period arguably offset any alleged Plan losses. The relatively low upside in this action would typically render it undesirable for seasoned ERISA class action litigators. It is doubtful any firms of similar caliber would accept the risk of prolonged, expensive litigation for a case worth $1,300,000 on its best day. These factors also support the fees requested.

9. The Experience, Reputation and Ability of the Attorney

Class Counsel have extensive class action experience, in ERISA breach of fiduciary duty actions and other consumer-related causes of action. Class Counsel's accomplishments and appointment as Class Counsel in similar actions is documented in the declarations previously submitted to this Court. (Dkts. 39-1; 39-2, ¶¶ 1, 6). This factor weighs in favor of granting Class Counsel's fee request.

11. The Nature and Length of the Professional Relationship Between Attorney and Client

The only relationship between Class Counsel and Plaintiff Allison is in the context of this action. This factor is neutral.

B. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Fees

The lodestar cross-check is not intended to penalize efficiency or "supplant the court's detailed inquiry into the attorneys' skill and efficiency in recovering the settlement." *Kay Co. v. Equitable Prod. Co.*, 749 F. Supp. 2d 455, 470 (S.D.W. Va. 2010)(citation omitted). "Given that courts in this Circuit approve of the percentage-of-fund method for awarding fees in common fund cases, "[i]t is not necessary for the Court to conduct a lodestar analysis[.]" *Kruger v. Novant Health, Inc.*, No. 1:14CV208, 2016 WL 6769066, at *4 (M.D.N.C. Sept. 29, 2016) (quoting *Smith v. Krispy Kreme Doughnut Corp.*, No. 1:05CV00187, 2007 WL 119157, at *3 (M.D.N.C. Jan. 10, 2007)).[2] However, courts frequently perform "a lodestar cross-check to confirm that the percentage award is fair and reasonable by determining the hours reasonably expended and then multiplying that amount by the reasonable hourly rate." *Kelly*, 2020 WL 434473, at *6. The lodestar cross-check confirms the reasonableness of Class Counsel's fee request. To date, Class Counsel has spent

[2] When the lodestar method is used only as a cross-check, a court may rely on summaries and need not "exhaustively scrutinize[]" the hours documented by counsel, and "the reasonableness of the claimed lodestar can be tested by the court's familiarity with the case." *Kelly*, 2020 WL 434473, at *6.

approximately 135 hours developing and prosecuting this case. (*See* Ex. A - Third Edelman Decl., ¶ 11; Exhibit B - Third Lee Decl., ¶ 19).

With respect to hourly rates, "courts have repeatedly recognized [that] complex ERISA class action litigation, such as this, involves a national market." *Kelly*, 2020 WL 434473, at *6; *Sims v. BB&T Corp.*, No. 1:15-CV-732, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019) ("national market rate is appropriate for matters involving complex issues requiring specialized expertise, such as ERISA class actions"). Class Counsel's then-current rates have been approved by federal courts around the country. The reasonableness of Class Counsel's present hourly rates is further evidenced by similar ERISA fiduciary breach cases approving similar rates, including one court in this district. *See*, *e.g.*, *Kelly*, 2020 WL 434473, at *6 (approving hourly rates from $650 an hour to $1,060); *Sims*, 2019 WL 1993519, at *3 (same).

Accordingly, the lodestar cross-check further confirms the reasonableness of the fees requested, especially given the facts here – as the requested fee represents a multiplier of 2.39. *See*, *e.g.*, *Kelly*, 2020 WL 434473, at *7 (approving fees representing a lodestar multiplier of 2.45 and noting that this multiplier is "well within the range routinely approved in this Circuit"); *Kruger*, 2015 WL 6769066, at *5 (approving 3.69 lodestar multiplier in similar ERISA case and noting that courts have routinely approved multipliers of 4.5 or higher).

V. A CASE CONTRIBUTION AWARD SHOULD BE GRANTED TO THE CLASS REPRESENTATIVE

At the conclusion of a successful class action case, it is common for courts, exercising their discretion, to award special compensation to the class representatives in recognition of the time and effort they have invested for the benefit of the Class. *Kelly*, 2020 WL 434473, at *7. "A substantial incentive award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiffs'] efforts." *Savani*, 121 F. Supp. 3d at 577. Such awards are also warranted because the Class Representatives risked their reputation and alienation from employers or peers "in bringing an action against a prominent company in their community." *Kruger*, 2016 WL 6769066, at *6.

Plaintiff Allison made significant contributions and spent significant time representing the Settlement Class in this litigation. If Plaintiff Allison had not contacted Class Counsel regarding his concerns about the market valuation of the GIA, there would be no Settlement. After Plaintiff Allison accepted his role as class representative, he was actively involved and assisted Class Counsel with every aspect of the litigation. (*See* Dkt. 39-2, ¶ 13; Third Lee Decl. ¶¶24-26) Admirably, Plaintiff Allison attended the in-person mediation in Minneapolis, Minnesota, flying from Texas at his own expense. A $10,000 service award is appropriate and deserved. *See*, *e.g.*, *Kelly*, 2020 WL 434473, at *7 (approving $20,000 service

awards to each of eight class representatives in similar ERISA class action); *Sims*, 2019 WL 1993519, at *4 (approving $20,000 service awards to each of ten class representatives in similar ERISA proprietary fund class action); *Krueger*, 2015 WL 4246879, at *3–4 (approving incentive awards of $25,000).

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant this Motion and an Order granting the attorneys' fees in the amount of $216,450; awarding Plaintiff Allison a case contribution award of $10,000; payment to the Fiduciary Counselor's in amount up to $25,000, and payment to Atticus in the amount of $11,835.00 as part of its Final Approval of the Settlement.

Dated: August 31, 2026.

Respectfully submitted,

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

I certify that on August 31, 2026, the foregoing was electronically filed with the Clerk of the Court via the CM/ECF system, which will send a notice to all counsel of record.

/s/ Jean S. Martin
Jean S. Martin