UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

PLAINTIFFS' UNOPPOSED
MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

In accordance with Rule 23(e) of the Federal Rules of Civil Procedure, Plaintiffs respectfully request preliminary approval of a Class Action Settlement. Defendants do not oppose this motion.

On January 19, 2021, Plaintiffs brought this action alleging that Defendants breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by causing the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan ("Plan") to maintain underperforming investment options and selecting and retaining as Plan investment options higher-cost share classes of mutual funds and collective investment trusts. Doc. 1. Defendants disputes these allegations and deny liability for any alleged fiduciary breach.

After over a year and a half of litigation, and over two mediations held almost a year apart, on November 14, 2022, the parties entered into a Settlement Agreement. *See* **Exhibit A** (Settlement Agreement attached hereto).

Under the terms of the Settlement Agreement, the Settlement Class is defined as:

> All persons who participated in the Plan at any time during the Class Period, 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.

The Class Period is from January 19, 2015, through September 30, 2022.

The settlement is fundamentally fair, adequate, and reasonable in light of the circumstances of this case, and preliminary approval of the settlement is in the best interests of the class members. In return for a release of the class representatives' and class members' claims, Defendants have agreed to pay a sum of $22,000,000 into a Gross Settlement Fund. Defendants have further agreed to certain non-monetary terms under Article 10, which adds further value to the settlement on behalf of class members.

At the preliminary approval stage, the Court is only required to make a "preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms." *Hochstadt v. Boston Sci. Corp.,* 708 F. Supp. 2d 95, 107 1 (D. Mass. 2010) (internal quotations omitted). The settlement reached between the parties here more than satisfies this standard given the complex nature of the case and the results obtained for the Settlement Class. Preliminary approval will not foreclose interested persons from objecting to the settlement and thereby presenting dissenting viewpoints to the Court.

In support of preliminary approval, Plaintiffs submit a memorandum in support of this Motion and the Declaration of Plaintiffs' counsel, Jerome J. Schlichter.

Plaintiffs respectfully request:

- That the Court enter an Order granting its preliminary approval of the Settlement Agreement;
- That the Court order any interested party to file any objections to the Settlement within the time limit set by the Court, with supporting documentation, order such objections, if any, to be served on counsel as set forth in the proposed Preliminary

Approval Order and Class Notice, and permit the Settling Parties the right to limited discovery from any objector as provided for in the proposed Preliminary Approval Order;

- That the Court schedule a Fairness Hearing for the purpose of receiving evidence, argument, and any objections relating to the Settlement Agreement. However, given the processing and mailing of Settlement Notices, the objection deadline to the Settlement, the review and approval period of the Independent Fiduciary, among other interim milestones and deadlines, Plaintiffs request that a Fairness Hearing not be scheduled before 120 days after entry of an order of preliminary approval; and
- That following the Fairness Hearing, the Court enters an Order granting final approval of the Settlement and dismissing the Second Amended Complaint (Doc. 53) with prejudice.

November 14, 2022

/s/ Jerome J. Schlichter
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CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 14, 2022.

/s/ Jerome J. Schlichter

LOCAL RULE 7.1 CERTIFICATION

Plaintiffs' counsel conferred with Defendants' counsel related to the issues raised in this motion. Defendants stated that they do not oppose Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement.

/s/ Jerome J. Schlichter

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

PLAINTIFFS' MEMORANDUM IN SUPPORT OF UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

Plaintiffs allege that Defendants breached their duties under the Employee Retirement Income Security Act of 1974 ("ERISA") to the Takeda Pharmaceuticals U.S.A., Inc. Savings and Retirement Plan ("Plan") by causing the Plan to maintain underperforming investment options and selecting and retaining as Plan investment options higher-cost share classes of mutual funds and collective investment trusts. Doc. 53. Defendants dispute these allegations, deny liability for any alleged fiduciary breach, and contend that the Plan has been managed, operated, and administered at all relevant times in compliance with ERISA and applicable regulations. After arm's length negotiations with assistance of two experienced ERISA class action mediators, the parties reached a settlement that provides meaningful monetary and non-monetary relief to class members. In light of the litigation risks further prosecution of the actions would inevitably entail, Plaintiffs respectfully request that the Court: (1) preliminarily approve the proposed settlement attached as Ex. A to Plaintiffs' motion (the "Settlement"); (2) approve the proposed form and method of notice to the Settlement Class; and (3) schedule a hearing at which the Court will consider final approval of the Settlement.

BACKGROUND

I. Procedural Background and Plaintiffs' Claims

On January 19, 2021, Plaintiffs filed their original complaint. Doc. 1. On March 15, 2021, Defendants filed a motion to dismiss Plaintiffs' complaint. Doc. 17. On April 19, 2021, Plaintiffs filed an amended complaint, Doc. 22, which Defendants moved to dismiss on June 4, 2021. Doc. 26. The Court held a hearing on Defendants' motion to dismiss the amended complaint on July 21, 2021, and permitted Plaintiffs leave to file a motion for leave to file a second amended complaint. Doc. 35. The next day, the Court ordered the parties to mediate. Doc. 36. The parties held that mediation in the fall of 2021 but did not reach a settlement. Plaintiffs subsequently moved for leave to file a second amended complaint, Doc. 39, which motion the Court granted on January 24, 2022, Doc. 49, denying Defendants' motion to dismiss the first amended complaint as moot. Doc. 51.

On January 24, 2022, Plaintiffs filed a second amended complaint that is the operative complaint and that sets forth Plaintiffs' claims. Doc. 53. In Count I, Plaintiffs allege Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by retaining the Northern Trust Focus Fund target date funds, which consistently underperformed and suffered from a variety of ongoing and significant quantitative and qualitative deficiencies. In Count II, Plaintiffs allege Defendants breached their duty of prudence under 29 U.S.C. § 1104(a)(1)(B) by selecting and retaining as Plan investment options higher-cost share classes of mutual funds and collective investment trusts. In Count III, Plaintiffs alleged that Defendants failed to loyally and prudently monitor their appointed fiduciaries.

Defendants answered the second amended complaint on March 7, 2022. Doc. 58. Defendants moved to strike Plaintiffs' jury demand on May 27, 2022, Doc. 70, and Plaintiffs moved for class

certification on June 30, 2022. Doc. 78. Both motions were fully briefed, and the Court had set a hearing on Plaintiffs' motion for October 13, 2022. Doc. 93.

The parties held a second mediation on September 13, 2022, in front of the Hon. Morton Denlow. The parties reached a settlement in principle at that mediation. The parties informed the Court of their tentative agreement, and the Court cancelled the hearing scheduled for October 13, 2022, and ordered the parties to file a motion for preliminary approval of the settlement by November 14, 2022. Doc. 94.

II. The Terms of the Proposed Settlement

In exchange for releases and for the dismissal of the actions and for entry of a judgment as provided for in the Settlement, Defendants will make available to Class Members the benefits described below.

A. Monetary Relief

Defendants will deposit $22,000,000 (the "Gross Settlement Amount") into an interest-bearing settlement account (the "Gross Settlement Fund"). The Gross Settlement Fund will be used to pay the participants' recoveries, administrative expenses to facilitate the Settlement, and Plaintiffs' counsel's attorneys' fees and costs, and Class Representatives' Compensation if awarded by the Court.

B. Additional Terms

In addition to the monetary component of the Settlement, Defendant agreed to substantial non-monetary terms in accordance with Article 10 of the Settlement Agreement. These terms include:

1. There will be a Settlement Period of three years from the Settlement Effective Date during which Defendants will comply with the terms set forth herein.

2. During the Settlement Period, the Committee shall meet as often as is necessary to fulfill its fiduciary duties, but no less than quarterly.

3. During the Settlement Period, Defendants shall continue to provide annual training to the Committee regarding ERISA's fiduciary duties.

4. During the Settlement Period, Defendants shall retain or continue to retain an independent consultant pursuant to ERISA § 3(21) to provide ongoing assistance in reviewing the Plan's investment options.

5. During the Settlement Period, in considering the Plan's investment options, Defendants shall consider (1) the cost of different share classes available for the particular investment option as well as other criteria applicable to different share classes; (2) the availability of revenue sharing on any share class available for any particular investment option; and (3) other factors that Defendants deem appropriate under the circumstances.

6. Before the expiration of the Settlement Period, Defendants, through the use the Plan's consultant shall initiate a request for information ("RFI") for recordkeeping and administrative services. The RFI will be conducted by a knowledgeable consultant and will disclose the identity of the Plan along with pertinent details about the Plan and its participants, soliciting bids from at least three competent vendors. The bids will be formally evaluated by the consultant and the Plan fiduciaries. Within sixty (60) days after the conclusion of the RFI, Defense Counsel on behalf of Defendants shall notify Class Counsel by e-mail that Defendants have completed the RFI and briefly describe the outcome of their decision related to the Plan's expenses for recordkeeping and administrative services.

7. Within thirty (30) calendar days after the end of each year of the Settlement Period, and within thirty (30) calendar days after the conclusion of the Settlement Period, Defendants will

provide Class Counsel with the following information current as of the end of the most recent calendar quarter: a list of the Plan's investment options, the fees for those investment alternatives, and a copy of the Investment Policy Statement(s) (if any) for the Plan.

The non-monetary terms are substantial and materially add to the total value of the Settlement.

C. Notice and Class Representatives' Compensation

The costs to administer the Settlement, including those associated with providing notice to the Settlement Class, will be paid from the Gross Settlement Amount. Incentive payments of an amount approved by the Court also will be paid from the Gross Settlement Amount. For the costs associated with the Settlement Administrator, Plaintiffs reviewed proposals from candidates to provide these services. After consideration of the proposed fees and the quality of the services to be provided by each candidate, Analytics Consulting LLC was selected as the Settlement Administrator at an estimated cost of $100,000 to provide notices electronically for those class members for whom a current e-mail address is available and by first-class mail to the current or last known address of all class members for whom there is no current email address.[1]

Plaintiffs will seek incentive awards in the amount of $15,000 for each of the named plaintiffs. This amount is consistent with precedent recognizing the value of individuals stepping forward to represent a class, particularly in contested litigation like this where the potential benefit to any individual does not outweigh the cost of prosecuting class-wide claims and there are significant risks of no recovery and the risk of alienation from their employers and peers. *E.g., Dial Corp. v. News Corp.*, 317 F.R.D. 426, 439 (S.D.N.Y. 2016) (approving incentive

[1] The proposed fee for the Settlement Administrator to provide notice to class members and other related services to facilitate the Settlement is estimated based on information presently available to the parties and is subject to change once the number of class members and those with available e-mail addresses are determined.

awards of $50,000 and noting that incentive awards "have generally ranged from $2,500 to $85,000"); *Clark v. Duke Univ.*, No. 16-1044, Doc. 165 at 11 (M.D.N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-732, 2019 WL 1993519, at *4 (M.D.N.C. May 6, 2019); *Kruger v. Novant Health, Inc*., No. 14-208, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016) (collecting cases awarding $25,000 to each named plaintiff).

D. Attorneys' Fees and Costs

Plaintiffs' counsel will request attorneys' fees to be paid out of the Gross Settlement Fund in an amount not more than one-third of the Gross Settlement Amount, or $7,333,333, as well as reimbursement for costs incurred of no more than $100,000. Plaintiffs' counsel "pioneer[ed]" 401(k) excessive fee litigation as recognized by multiple federal judges, *e.g., Abbott v. Lockheed Martin Corp.,* No. 06-701, 2015 WL 4398475, at *1 (S.D. Ill. July 17, 2015), conducted the first trials of 401(k) excessive fee cases, and handled successfully two ERISA cases taken by the Supreme Court, *Tibble v. Edison, Int'l*, 135 S.Ct. 1823 (2015), and *Hughes v. Nw. Univ.*, 142 S. Ct. 737, 740 (2022), both decided unanimously in favor of Plaintiffs. Plaintiffs' counsel also filed the first excessive fee cases against institutions of higher education in history. Before Plaintiffs' counsel filed excessive fee cases against corporations and university plan sponsors, no one had ever brought a case alleging excessive fees. *See infra*, Argument §III. A contingent one-third fee is the market rate for complex ERISA excessive fee cases. *Kruger*, 2016 WL 6769066, at *2 (collecting cases); *Sims*, 2019 WL 1993519, at *2; *Spano v. Boeing Co*., No. 06-743, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016); *see also Decohen v. Abbasi, LLC,* 299 F.R.D. 469, 482 (D.Md. 2014) (Quarles, J.) (complex consumer action). It is also the rate contractually agreed to by the named plaintiffs. Decl. of Jerome J. Schlichter ¶ 5.

Although Plaintiffs' counsel will not request a fee greater than one-third of the monetary

recovery, the additional terms of the settlement provide meaningful value in addition to the monetary amount. This results in the requested fee being significantly lower than a one-third award. In addition, Plaintiffs' counsel will not seek attorneys' fees: (1) from the interest earned on the Gross Settlement Amount; (2) for time associated with communicating with class members or Defendant during the Settlement Period; and (3) for work required in future years to enforce the settlement, if necessary. Plaintiffs' counsel will submit a formal application for attorneys' fees and costs and for the Class Representatives' incentive awards at least 30 days prior to the deadline for class members to file objections to the settlement.

ARGUMENT

"The approval of a settlement agreement is a two-step process." *Hochstadt v. Boston Sci. Corp.,* 708 F. Supp. 2d 95, 97, n. 1 (D. Mass. 2010). In the first step, "the judge reviews the proposal preliminarily to determine whether it is sufficient to warrant public notice and a hearing. If so, the final decision on approval is made after the hearing." *Id*. at 106-7 (*quoting* Manual for Complex Litigation (Fourth), §13.14 (2004)). Therefore, a court first makes a "'preliminary determination on the fairness, reasonableness, and adequacy of the settlement terms.'" *Id*. at 107 (*quoting* Manual for Complex Litigation (Fourth), §21.632 (2004)). A presumption of fairness attaches when "'(1) the negotiations occurred at arm's length; (2) there was sufficient discovery; (3) the proponents of the settlement are experienced in similar litigation; and (4) only a small fraction of the class objected.'" *Id*. (citing *In re Lupron Mktg. and Sales Practices Litig.*, 345 F.Supp.2d 135, 137 (D. Mass. 2004) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 785 (3d Cir. 1995). Each of those factors is satisfied.

I. The Settlement is the product of extensive arm's-length negotiations.

There is an initial presumption that a proposed class action settlement is fair and reasonable when it is the result of arm's-length negotiations. *City P'ship. v. Atlantic Acquisition Ltd.*, 100 F.3d 1041, 1043 (1st Cir. 1996). The Settlement is the result of lengthy and complex arm's-length negotiations between the parties. *See* Schlichter Decl., ¶2. These negotiations included two mediations with nationally recognized mediators experienced in ERISA class actions. After two all-day mediations almost a year apart, the parties were able to resolve this matter to avoid the expense and uncertainty of continued litigation and an eventual trial.

II. The settlement was reached after vigorous litigation and extended negotiations.

At the time the settlement was reached, the parties had been engaged in over a year and a half of litigation. Although this case settled before full-scale discovery had occurred, the case was vigorously litigated. Defendant moved to dismiss Plaintiffs' original and amended complaints, and the parties fully briefed two additional motions (for class certification and to strike Plaintiffs' jury demand) before this case settled. Only after extended arm's length negotiations were the parties able to reach an agreement to resolve the claims asserted in this lawsuit.

III. The proponents of the settlement are highly experienced in similar ERISA litigation.

Plaintiffs' counsel is not only highly experienced in handing ERISA class actions involving 401(k) and 403(b) plans, but "pioneer[ed]…the field of retirement plan litigation." *Abbott,* 2015 WL 4398475, at *1. Schlichter Bogard and Denton is the "preeminent firm" in excessive fee litigation having "achieved unparalleled results on behalf of its clients" in the face of "enormous risks". *Nolte v. Cigna Corp.,* No. 07-2046, 2013 WL 12242015, at *3–4 (C.D. Ill Oct. 15, 2013). They are "experts in ERISA litigation," *Krueger v. Ameriprise Fin., Inc*., No. 11-2781, 2015 WL 4246879, at *2 (D.Minn. July 13, 2015) (citation omitted), and "highly experienced," *In re*

Northrop Grumman Corp. ERISA Litig., No. 06-6213, 2017 WL 9614818, at *4 (C.D. Cal. Oct. 24, 2017). The firm also obtained the only victory of an ERISA 401(k) excessive fee Supreme Court case, which held that an ERISA fiduciary has a continuing duty to monitor plan investments and remove imprudent ones. *Tibble,*135 S.Ct. at 1828–29. In the most recent completed Supreme Court term, Plaintiffs won another unanimous victory, with the Supreme Court holding that plan fiduciaries are required to conduct an independent evaluation to determine which investments might be prudently excluded from a plan's options and that the timely failure to remove an imprudent investment from the plan can constitute a breach of fiduciaries' duties. *Hughes*, 142 S. Ct. at 739.

District courts across the country have recognized the reputation and extraordinary skill and determination of Plaintiffs' counsel. Chief Judge Osteen from the Middle District of North Carolina, speaking of the efforts of Schlichter, Bogard and Denton, noted:

> Class Counsel's efforts have not only resulted in a significant monetary award to the class but have also brought improvement to the manner in which the Plans are operated and managed which will result in participants and retirees receiving significant savings in the coming four years.

Kruger, 2016 WL 6769066, at *3. Recently, on June 24, 2019, Judge Eagles from the same District "recognized the experience, reputation, and ability" of Plaintiffs' counsel and found that the firm "demonstrated diligence, skill, and determination in this matter and, more generally, in an area of law in which few attorneys and law firms are willing or capable of practicing." *Clark,* Doc. 165 at 7. In another ERISA class action, Judge Eagles also recognized the "skill and determination" of the firm and noted that "[i]t is unsurprising that only a few firms might invest the considerable resources to ERISA class actions such as this, which require considerable resources and hold uncertain potential for recovery." *Sims,* 2019 WL 1993519, at *3.

Judge McDade of the Central District of Illinois, again speaking of the firm, observed that

achieving a favorable result in this type of case required extraordinary efforts because the "litigation entails complicated ERISA claims." *Martin v. Caterpillar, Inc*., No. 07-1009, 2010 WL 3210448, at *2 (C.D. Ill. Aug. 12, 2010). Judge Baker from the same District also found:

> The law firm Schlichter, Bogard & Denton is the leader in 401(k) fee litigation…[T]he fee reduction attributed to Schlichter, Bogard & Denton's fee litigation and the Department of Labor's fee disclosure regulations approach $2.8 billion in annual savings for American workers and retirees.

Nolte, 2013 WL 12242015, at* 2 (internal citations omitted).

Numerous judges have commended the work of Schlichter, Bogard and Denton. Judge Patrick Murphy stated:

> Schlichter, Bogard & Denton's work throughout this litigation illustrates an exceptional example of a private attorney general risking large sums of money and investing many thousands of hours for the benefit of employees and retirees…Litigating the case required Class Counsel to be of the highest caliber and committed to the interests of the participants and beneficiaries of the General Dynamics 401(k) Plans.

Will v. Gen. Dynamics Corp., No. 06-698, 2010 WL 4818174, at *3 (S.D.Ill. Nov. 22, 2010).

Judge David Herndon echoed those thoughts:

> Litigating this case against formidable defendants and their sophisticated attorneys required Class Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard & Denton and lead attorney Jerome Schlichter's diligence and perseverance, while risking vast amounts of time and money, reflect the finest attributes of a private attorney general.

Beesley v. Int'l Paper Co., No. 06-703, 2014 WL 375432, at *2 (S.D.Ill. Jan. 31, 2014).

After recognizing "their persistence and skill of their attorneys," Judge Nancy Rosenstengel similarly noted:

> Class Counsel has been committed to the interests of the participants and beneficiaries of Boeing's 401(k) plan in pursuing this case and several other 401(k) fee cases of first impression. The law firm Schlichter, Bogard & Denton has significantly improved 401(k) plans across the country by bringing cases such as this one[.]

Spano, 2016 WL 3791123, at *3.

In awarding attorney's fees after the first 401(k) excessive fee trial, the district court concluded that "Plaintiffs' attorneys are clearly experts in ERISA litigation." *Tussey v. ABB, Inc*., No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012). Following remand, the district court again awarded Plaintiffs' attorney's fees, emphasizing the significant contribution Plaintiffs' attorneys have made to ERISA litigation, including educating the Department of Labor and federal courts about the importance of monitoring fees in retirement plans.

> Of special importance is the significant, national contribution made by the Plaintiffs whose litigation clarified ERISA standards in the context of investment fees. The litigation educated plan administrators, the Department of Labor, the courts, and retirement plan participants about the importance of monitoring recordkeeping fees and separating a fiduciary's corporate interest from its fiduciary obligations.

Tussey v. ABB, Inc., No. 06-4305, 2015 WL 8485265, at *2 (W.D. Mo. Dec. 9, 2015).

It is Class Counsel's opinion that the settlement is fair and reasonable. Schlichter Decl. ¶ 2. As set forth above, the Settlement provides a substantial monetary relief component in the amount of $22,000,000. In addition, the Settlement provides substantial and comprehensive non-monetary relief. Finally, independent of the parties' opinion as to the reasonableness of the settlement, the parties will also submit the settlement terms to an independent fiduciary who will provide an opinion on the settlement's fairness before the final approval hearing.

IV. The settlement is fair, reasonable, and adequate to warrant sending notice to the Settlement Class.

Due process and Rule 23(e) do not require that each Class Member receive notice but do require that class notice be "reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank and Trust Co*., 339 U.S. 306, 314 (1950). "Individual notice must be provided to those class members who are identifiable through reasonable effort." *Eisen v. Carlisle and Jacquelin*, 417 U.S. 156, 175 (1974).

The proposed form and method of notice satisfy all due process considerations and meet the requirements of Rule 23(e)(1) because it is reasonably calculated to affect actual notice to the Settlement Class. The parties' proposed notice to current and former participants are attached as Exhibits 3 and 4 to the Settlement Agreement. The notice will fully apprise class members of the existence of the lawsuit, the proposed settlement, and the information they need to make informed decisions about their rights, including: (i) the terms and operation of the settlement; (ii) the nature and extent of the release; (iii) the maximum attorneys' fees and costs that will be sought; (iv) the procedure and timing for objecting to the settlement and the right of parties to seek limited discovery from objectors; (v) the date and place of the fairness hearing; and (vi) the website on which the full settlement documents and any modifications thereto will be posted.

The notice plan consists of multiple components designed to reach class members. First, the notice will be sent by electronic email to all class members who have a current email address known to Takeda and/or the Plan's recordkeeper and by first-class mail to the current or last known address of all class members for whom there is no current email address shortly after entry of the order preliminarily approving the settlement. In addition to the notice, Plaintiffs' counsel will develop a dedicated website solely for the settlement, and a link to that website will appear on Plaintiffs' counsel's website [www.uselaws.com]. The notice plan also includes a follow-up requirement for the Settlement Administrator to take additional action to reach those class members whose notice letters are returned as undeliverable. Thus, the form of notice and proposed procedures for notice satisfy the requirements of due process and the Court should approve the notice plan as adequate.

CONCLUSION

The Motion for Preliminary Approval of Class Settlement should be granted.

November 14, 2022

/s/ Jerome J. Schlichter
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Local Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 14, 2022.

/s/ Jerome J. Schlichter

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ROBERT FORD, et al., Plaintiffs, v. TAKEDA PHARMACEUTICALS U.S.A., INC., et al., Defendants.	No. 1:21-cv-10090-WGY

DECLARATION OF JEROME J. SCHLICHTER

1. I am the founding partner of the law firm Schlichter Bogard & Denton, LLP, counsel for the Plaintiffs in the above-referenced matters. This declaration is submitted in support of Plaintiffs' Memorandum in Support of their Unopposed Motion for Preliminary Approval of Class Settlement. I am familiar with the facts set forth below and able to testify to them.

2. There has been no collusion or complicity of any kind in connection with the negotiations for, or the agreement to, settle these class actions. As illustrated in Plaintiffs' Memorandum, all settlement negotiations in this case were conducted at arm's length by adverse, represented parties. The negotiations were extensive and adversarial, and the parties engaged highly experienced ERISA mediators. The parties' discussions also involved extensive negotiations for non-monetary relief regarding the Plan's provisions, oversight, and administration going forward resulting in substantial additional relief. It is my opinion that the proposed settlement is not only within the range of reasonableness for ERISA cases, but also is fair, reasonable, adequate, and in the best interests of the Plan and its participants in light of the procedural and substantive risks Plaintiffs would face if litigation were to continue.

3. Schlichter Bogard & Denton, LLP has extensive experience in prosecuting ERISA fiduciary breach class actions. The firm has expended significant resources representing the class and prosecuting Plaintiffs' claims, as it has done in all of its prior ERISA fiduciary breach actions. The firm's experience is evidenced by its appointment as class counsel in over 20 large ERISA fiduciary breach class actions.

4. Attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement is a true and accurate copy of the Settlement Agreement between Plaintiffs and Defendants.

5. Each of the named plaintiffs in this litigation have a contract with this firm agreeing to a one-third fee to Schlichter Bogard & Denton, LLP in the event of any recovery.

I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge and that this declaration was executed on November 14, 2022, in St. Louis, Missouri.

/s/ Jerome J. Schlichter
Jerome J. Schlichter