UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

DIEGO CERVANTES, Individually and on Behalf of the Invesco 401(k) Plan and All Others Similarly Situated, Plaintiff, vs. INVESCO HOLDING COMPANY (US), INC., et al., Defendants.	Civil Action No. 1:18-cv-02551-AT CLASS ACTION DECLARATION OF EVAN J. KAUFMAN IN SUPPORT OF: (A) PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND APPROVAL OF PLAN OF ALLOCATION; AND (B) CLASS COUNSEL'S MOTION FOR AN AWARD OF ATTORNEY'S FEES, EXPENSES, AND INCENTIVE AWARD

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I, Evan J. Kaufman, declare and state as follows:

1. I am a Partner of the law firm Robbins Geller Rudman & Dowd LLP ("Robbins Geller"), Counsel for Plaintiff Diego Cervantes ("Plaintiff")[1] in the above-captioned consolidated action (the "Litigation"), and I submit this Declaration in support of the Memorandum of Law in Support of Plaintiff's Motion for Final Approval of Class Action Settlement and Approval of Plan of Allocation ("Settlement Memorandum"), and the Memorandum of Law in Support of Class Counsel's Motion for an Award of Attorneys' Fees, Expenses, and Incentive Award ("Fee Memorandum"). I have personal knowledge of the matters set forth herein based on my active participation in all material aspects of the prosecution and Settlement of this Litigation. If called upon, I could and would competently testify that the following facts are true and correct.

2. Plaintiff brought this Litigation individually, on behalf of a class of all participants in the Invesco Ltd. 401(k) Plan (the "Plan") from May 25, 2012 to the date of the Final Judgment, and on behalf of the Plan, for breach of fiduciary duty

[1] All capitalized terms used in this Declaration that are not otherwise defined herein shall have the meanings provided in the Amended Settlement Agreement, dated April 1, 2020 ("Stipulation")(ECF No. 93-1) or in the Amended Complaint for Liability Under ERISA ("Amended Complaint") (ECF No. 60).

and prohibited transactions under ERISA, as amended, 29 U.S.C. §1001, et seq. against the Defendants.

3. Plaintiff has entered into the Settlement on behalf of himself and the other members of the Class with Defendants, which provides an all-cash recovery of $3,470,000 to resolve this ERISA class action against Defendants (the "Settlement"). The Settlement is contained in the Stipulation.

4. This Declaration sets forth the nature of the claims asserted, the principal proceedings in the Litigation, the legal services provided by Class Counsel or others working at its direction, the Settlement negotiations between the parties, and demonstrates why the Settlement and Plan of Allocation are fair and in the best interests of the Class, and why the application for attorneys' fees, expenses, and Incentive Award is reasonable and should be approved by this Court.

I. PRELIMINARY STATEMENT

5. The proposed $3,470,000 Settlement is a notable achievement derived from the substantial efforts of Class Counsel. It is a superb result for the Class, particularly under the circumstances of the Litigation, and is fair, reasonable, and adequate based on the impediments to recovery, including the legal hurdles and risks involved in opposing Defendants' anticipated motion to dismiss Plaintiff's second

amended complaint, as well as the further risk, delay and expense in ultimately proving liability and damages.

6. The Parties do not agree on the amount of damages that would be recoverable if Plaintiff were to have prevailed on the claims asserted, or that Plaintiff would have prevailed at all. Indeed, Defendants maintain that the Class suffered little or no damages. Plaintiff's second amended complaint, not yet finalized before the Parties reached an agreement to settle the Litigation, faced the significant risk of dismissal by the Court. With many years of litigation ahead at best, and in the face of strong opposition, a recovery of $3,470,000, derived solely from Class Counsel's efforts, represents a highly successful result.

7. Class Counsel thoroughly investigated and vigorously litigated the claims asserted in this Litigation. For example, during the prosecution of this Litigation, Class Counsel: (i) reviewed and analyzed the Plan and Plan documents, as well as the investment performance of each Plan option relative to investment benchmarks and investment alternatives; (ii) researched the applicable law with respect to the claims asserted in the Litigation and the potential defenses thereto; (iii) researched, analyzed, and ultimately drafted the allegations contained in Plaintiff's initial Class Action Complaint, Amended Complaint, and a second amended complaint which would have been filed had the Parties not resolved

Plaintiff's claims; (iv) completed the research and briefing necessary to oppose Defendants' motion to dismiss the Amended Complaint; and (v) vigorously negotiated the Settlement with Defendants. The accumulation of the efforts described above permitted Plaintiff and Class Counsel to be well informed on the strengths and weaknesses of their case and to engage in effective settlement discussions with Defendants.

8. The Settlement was negotiated by experienced counsel and confers substantial and immediate benefits on the Class, eliminating the risk that the Class would recover nothing at all. Even if Plaintiff had successfully opposed Defendants' motion to dismiss the forthcoming second amended complaint, as well as the probable motion for summary judgment, and had prevailed at trial, any recovery would still be years away. Further, some of the Invesco-affiliated funds that Plaintiff alleged were imprudent had improved in performance as the Litigation progressed, limiting damages. Thus, the recovery of $3,470,000, constituting approximately 78% of estimated recoverable damages as originally calculated by Plaintiff's damages consultant, is clearly in the best interests of the Class and should be approved as fair, reasonable, and adequate.

9. Indeed, the Class appears to overwhelmingly approve the Settlement. Pursuant to the Court's Order Preliminarily Approving Settlement and Providing for

Notice, dated April 3, 2020 (the "Notice Order"), the Notice of Pendency and Settlement of Class Action (the "Notice") was mailed to more than 8,000 Class Members. The Notice apprised Class Members of their right to object to the Settlement, the Plan of Allocation or to Class Counsel's application for attorneys' fees of 33% of the Settlement Amount, litigation expenses, and an Incentive Award of up to $5,000. The time to file objections to the proposed Settlement expires on July 17, 2020. To date, there have been no objections from any Class Member.

10. Class Counsel's fee application is fair, reasonable, and adequate and warrants Court approval. Class Counsel has litigated this case for more than two years on a wholly-contingent basis. This fee request is well within the range of fees typically awarded in actions of this type and is wholly justified in light of the benefits obtained, the substantial risks undertaken, and the quality, nature and extent of the services rendered, as more fully set forth in Class Counsel's Fee Memorandum.

11. The following sets forth the principal proceedings in this matter and the major legal services provided by Class Counsel, the negotiation of the Settlement, the terms of the Settlement, why the Settlement and the Plan of Allocation are fair and in the best interests of the Class, and the reasonableness of Class Counsel's request for attorneys' fees, litigation expenses, and the Plaintiff's Incentive Award.

II. SUMMARY OF PLAINTIFF'S ALLEGATIONS

12. Plaintiff alleged that Defendants breached their fiduciary duties of prudence and loyalty with respect to the Plan, and entered into prohibited transactions in violation of ERISA, to the detriment of the Plan and its participants and beneficiaries. Specifically, Plaintiff alleged that Defendants breached their fiduciary duties by: (i) loading the Plan with proprietary investment options; and (ii) restricting the investment options available to participants through a self-directed investment account, offered with the brokerage firm Charles Schwab & Co., Inc. (the "Schwab Account"), so that participants were not permitted to purchase any exchange traded funds ("ETFs") other than those affiliated with Invesco. Plaintiff alleged that Defendants filled the Plan with poorly performing affiliated investment options to benefit Invesco to the detriment of Plan participants and that the Schwab Account should have afforded Plan participants the opportunity to invest ETFs offered by companies other than Invesco.

13. Count I of the Amended Complaint alleged that the Plan Sponsor and IBPC Defendants breached their fiduciary duties in violation of ERISA §404(a) and (b), 29 U.S.C. §1104. Plaintiff alleged that these Defendants violated their duties to act prudently and in the exclusive interest of the Plan participants by stacking investment options with between 55% and 68% Invesco-affiliated options, and in

some categories such as high-yield bond and diversified emerging markets, exclusively Invesco-affiliated options, despite the fact that these Invesco-affiliated options performed worse than readily available alternatives. For example, in 2017, Invesco offered twenty-five total investment options, and of those, fifteen were affiliated with Invesco, and of the fifteen actively-managed options, only one was not Invesco-affiliated. Additionally, between 2012 and 2017, nine investment categories provided only Invesco-affiliated options: High-Yield Bond, World Allocation/Allocation – 30% to 50% Equity, Large Blend, MidCap Growth, Small Value, Small Growth, Foreign Large Growth, Diversified Emerging Markets, and Stable Value/Money market-Taxable.

14. Count II of the Amended Complaint alleged that the Plan Sponsor Defendants breached their fiduciary duties by failing to monitor other fiduciaries of the Plan who inadequately performed their fiduciary duties and by failing to have a process by which Plan investments would be monitored and evaluated.

15. Count III of the Amended Complaint alleged that the Plan Sponsor and IBPC Defendants engaged in prohibited transactions with Investment Manager Defendants, parties in interest to the Plan. Specifically, Plaintiff alleged that the fiduciary defendants "steered participants invested in the Invesco Emerging Market Equity Trust, with an operating expense of 0.21%, into the Invesco Developing

Markets mutual fund with an operating expense of 1.01%," despite the fact that the Developing Markets fund "had a track record of underperformance." Plaintiff also alleged that the Plan Sponsor and IBPC Defendants paid unreasonably high management fees to the parties in interest. As a result, these Defendants cost Class Members millions of dollars in the form of higher fees and lower returns on their investments.

16. Count IV of the Amended Complaint alleged that the Plan Sponsor and IBPC Defendants engaged in prohibited transactions. Notably, the IBPC executives received financial benefits through the Invesco Executive Incentive Bonus Plan for increasing assets under management, which constituted a strong personal incentive for IBPC executives to steer participants' contributions towards Invesco-affiliated investments. As a result, "[b]y December 31, 2016, $569,797,686 or 81% of investments by Plan participants were in Invesco-affiliated funds."

17. Count V of the Amended Complaint alleged that the Plan Sponsor, IBPC, and Investment Manager Defendants knowingly participated in the fiduciary breaches, making them liable for each other's breaches in addition to their own under ERISA §405(a), 29 U.S.C. §1105(a). Plaintiff also alleged that the Investment Manager Defendants, Invesco Advisers and Invesco Trust Co., owed a fiduciary duty

to the Plan and its participants, or were, at minimum, parties in interest within the meaning of ERISA §3(14), 29 U.S.C. §1002(14).

18. Count VI of the Amended Complaint alleged that Invesco Ltd. and the Investment Manager Defendants, even as non-fiduciaries, are subject to liability under ERISA §502(a)(3), 29 U.S.C. §1132(a)(3), because they would have known that the other Defendants were fiduciaries and knowledge possessed by senior executives appointed by Invesco would be imputed to Invesco. Thus, they would have been aware of the fiduciary duty breaches and prohibited transactions, including the charging of excessive fees, conflicts of interest of the IBPC Defendants and Plan Sponsor Defendants, and the selection of investments intended only to increase assets under management and Invesco profits.

19. Overall, Plaintiff's allegations focused on Defendants' actions in promotion of their own interests to the detriment of Plan participants. Instead of carefully examining and selecting the most prudent investment options for the Plan or monitoring the Plan to eliminate its poor investment options, a majority of Plan investments consisted of Invesco-affiliated mutual funds and CITs, and the self-directed Schwab Account was limited to Invesco-affiliated ETFs, enabling Invesco and its subsidiaries to earn lucrative fees, increase their assets under management, and serve business interests unrelated to the benefit of Plan participants.

III. PLAINTIFF'S PROSECUTION OF THE CASE

A. Commencement of the Litigation and Defendants' First Motion to Dismiss

20. Plaintiff filed the initial Class Action Complaint ("Complaint") on May 24, 2018. ECF No. 1. There were no other plaintiffs with competing complaints. Thus, without the efforts of Plaintiff and Class Counsel, there would have been no possibility of recovery for the Class. Before filing the Complaint, Class Counsel undertook extensive and careful investigation into the facts and law to support its allegations and claims. This investigation included examining and evaluating:

(a) The Plan disclosure documents sent to Plan participants detailing fees and expenses and the investment performance of each Plan option relative to investment benchmarks;

(b) Department of Labor filings from the Plan;

(c) Securities and Exchange Commission filings entered by the Plan's investment options and Invesco Management and its affiliates;

(d) the investment structure and fees paid by the Plan in comparison with other types of investments and fees generally; and

(e) investment performance analytics compiled by Morningstar and other sources detailing the investment performance of the Plan's investment options

relative to multiple comparator funds and applicable investment benchmarks both prior to and during the Class Period.

21. Defendants filed their motion to dismiss the Complaint on July 25, 2018 (ECF No. 56), arguing that the Complaint suffered from numerous pleading deficiencies. For example, Defendants argued that they utilized the lowest-cost share class of the funds available to refute Plaintiff's claim regarding excessive fees, and that many of the facts Plaintiff highlighted to support the prohibited transaction claims constituted reasonable compensation for managing 401(k) plan investment funds, explicitly allowed under ERISA.

22. Additionally, Defendants raised a number of strong legal arguments, including: (1) the Complaint failed to state a claim for breach of fiduciary duty because it relied on impermissible hindsight; (2) the Invesco-affiliated funds in the Plan were permitted by ERISA; (3) Plaintiff's claims with respect to twenty-three of the twenty-five challenged investment options were barred by ERISA's three year statute of limitations; and (4) the claims for breach of the duty to monitor, co-fiduciary liability, and/or non-fiduciary participation in fiduciary breach could not survive absent underlying violations of substantive ERISA duties.

B. Plaintiff's Amended Complaint

23. In response to Defendants' motion to dismiss the Complaint, Plaintiff filed the Amended Complaint on September 7, 2018 (ECF No. 60) to address the perceived deficiencies raised by Defendants in their motion to dismiss. The Amended Complaint alleged six counts covering May 25, 2012, until the date of the Judgment (the "Class Period").

24. In drafting the Amended Complaint, Class Counsel utilized the expertise of both internal and external consultants, including Alpha Capital Management, LLC. These efforts included an analysis of: (1) the Plan, including the Plan documents; (2) the mutual funds and collective investment trusts offered by the Plan; (3) the Plan's ETF offerings; (4) the structure and operation of the self-directed Schwab Account; and (5) the mutual funds offered through Schwab. Class Counsel also researched the individual defendants, including their compensation and bonus structure and terms.

25. Additionally, Class Counsel analyzed and compared the investment performance of the Plan's investments with the performance of similar funds available in the marketplace during each year of the Class Period.

26. The Amended Complaint elaborated on and refined the allegations that instead of engaging in a prudent process to benefit the interests of Plan participants,

Defendants used Plan participants as a captive market for Invesco's proprietary investment products to benefit and enrich Invesco and its affiliates. For example, Plaintiff alleged that during the Class Period, between 55% to 68% of the Plan investments were affiliated with Invesco and 100% of the actively-managed Plan investment choices in key investment categories were affiliated with Invesco, even though these Plan investment options performed worse and/or had higher fees than other comparable unaffiliated investment options.

27. Plaintiff also alleged that the Plan fiduciaries violated their fiduciary duties in connection with the self-directed Schwab Account by restricting the investment options available to Plan participants, which benefited Invesco at the expense of Plan participants. The Amended Complaint contained additional details about the poor performance of various proprietary funds and compared the performance to comparable investment alternatives. Additionally, the Amended Complaint alleged facts showing that certain individual defendants stood to reap personal financial benefits as a result of the proprietary investments in the Plan.

28. Furthermore, the Amended Complaint alleged that the Plan's fiduciaries structured the self-directed Schwab Account to prevent Plan participants from purchasing any securities listed on a national exchange other than ETFs affiliated with Invesco. Plan participants were not able to purchase any blue chip

common stocks or ETFs offered by Invesco's largest competitors, like BlackRock, Vanguard and State Street, even though those ETFs may have been more liquid, had lower fees or better track records, or were in investment categories not offered by Invesco.

C. Defendants' Second Motion to Dismiss

29. Defendants filed their motion to dismiss the Amended Complaint on October 5, 2018 (ECF No. 67), arguing that Plaintiff failed to state a claim on all counts, that Plaintiff's prohibited transaction claims were barred by the statute of limitations, 29 U.S.C. §1113, or under exemptions in 29 U.S.C. §1108(b)(2), (c)(2), and that the "monitoring and cofiduciary liability claims," should be dismissed absent an underlying ERISA violation.

30. First, Defendants argued that Plaintiff had no claim at all regarding 16 of the 25 Invesco-affiliated investment options, because the Amended Complaint did not allege facts concerning their performance or fees. Second, Defendants argued that the allegations of underperformance for the nine remaining Invesco-affiliated investments were impermissibly based on hindsight. Third, Defendants argued that Plaintiff failed to state a claim regarding excessive fees because the Amended Complaint did not provide any information concerning the fees of 24 out of the 25 Invesco-affiliated options or how they compared to meaningful benchmarks. Fourth,

Defendants argued that Plaintiff lacked standing to assert claims based on the Schwab Account, as he was never invested in it and thus did not suffer the particular alleged harms associated with it. Fifth, Defendants argued that Plaintiff's prohibited transaction claims, included in Counts III and IV of the Amended Complaint, were barred because the Plan's offering of Invesco-affiliated products fell within ERISA's permitted transactions, which allow reasonable compensation for managing 401(k) plan investment options, or alternatively by the statute of limitations. Finally, Defendants argued that Counts II, V, and VI were derivative in nature and could not survive without an underlying ERISA violation, which was not plausibly alleged.

31. Plaintiff filed his opposition to Defendants' motion to dismiss the Amended Complaint on November 16, 2018 (ECF No. 70), arguing that the Amended Complaint alleged sufficient facts showing that Defendants acted disloyally and imprudently when structuring and managing the Plan. In particular, Plaintiff argued that by loading the Plan with proprietary investment options, many of which were imprudent, and improperly structuring the Schwab Account to benefit Invesco to the detriment of Plan participants, Defendants acted against the interests of the Class. Further, Plaintiff argued that the Amended Complaint alleged multiple alternative, better-performing funds in the same investment categories as the Plan investments, plausibly alleging the Plan investments' were imprudent. Plaintiff

argued that the question of whether certain Invesco funds outperformed some comparable funds presented a premature issue of fact. Further, Plaintiff highlighted that Defendants' hindsight arguments misconstrued Plaintiff's allegations as simply relying on poor performance to demonstrate imprudence, when instead, Plaintiff alleged that Defendants engaged in self-dealing and lacked a prudent process for selecting investments, alleging facts about specific funds to support those allegations for liability under ERISA.

32. Defendants filed their reply in further support of their motion to dismiss on December 7, 2018. ECF No. 71.

33. On September 25, 2019, the Court issued an order granting Defendants' motion to dismiss the Amended Complaint ("MTD Order"), without prejudice, agreeing that Plaintiff's claims were not alleged with sufficient particularity. ECF No. 77. In particular, the Court agreed with Defendants that merely choosing poorly performing funds or generally alleging excessive fees is insufficient to state a claim, and held that with the exception of one fund, the Amended Complaint failed to plausibly plead underperformance, as the Amended Complaint only provided benchmarks for some of the years at issue. The Court also held that with the exception of one fund, Plaintiff did not plead sufficient detail about the fees or

expense ratios of the funds at issue. The Court, however, granted Plaintiff leave to file a second amended complaint.

34. The Court also acknowledged additional issues that were not dispositive on the motion to dismiss, but that would create additional risks as the Litigation continued, namely: (i) Plaintiff's standing to raise claims regarding the Schwab Account, which could impact adequacy and typicality of Plaintiff at class certification; (ii) the possibility that some or all of Plaintiff's claims may be barred by the Secretary of Labor's Prohibited Transaction Exemption (PTE) 77-3, which requires only that the fees charged be the Company's standard fees; and (iii) Defendants' statute of limitations argument, which would be dispositive of Plaintiff's prohibited transaction claims, and could be re-raised at summary judgment or trial.

D. Class Counsel Investigated and Drafted a Second Amended Complaint

35. Following the Court's dismissal of Plaintiff's claims with leave to re-plead, Plaintiff diligently worked to prepare a second amended complaint that would address the deficiencies identified by the Court.

36. To support Class Counsel's efforts to bolster Plaintiff's allegations, Class Counsel worked with outside consultants to analyze the structure of the Plan, its investment options, the performance of the investment options relative to their

benchmarks and comparable funds, and other facts relating to Plaintiff's claims. Portfolio Monitoring, LLC, among other things, (i) reviewed and analyzed the Plan's investment options, evaluated the holdings of the investments, fund performance, and expenses; and (ii) analyzed the investment styles and performance of the Plan's investment offerings and comparable alternative investment options. Portfolio Monitoring, LLC also assisted with the calculation of damages.

37. MJN Fiduciary, LLC, among other things, assisted with the evaluation of Plaintiff's prohibited transaction claim, Defendants' fiduciary duties, and the self-dealing alleged by Plaintiff and provided insight into the overall composition of investment options offered to Plan participants.

38. Plaintiff and Class Counsel were prepared to file the second amended complaint and continue litigating the case had settlement negotiations not culminated in a substantial benefit to the Class.

E. The Parties' Settlement Negotiations

39. As Plaintiff was diligently working on the second amended complaint, the Parties entered into arm's-length settlement discussions. After numerous rounds of negotiations, which took over four weeks, the Parties reached an agreement in principle to resolve Plaintiff's claims on behalf of the Class and the Plan for a cash payment of $3,470,000, filing a Notice of Settlement with the Court on

November 22, 2019. ECF No. 81. As part of the Settlement, in addition to the cash payment, Invesco has agreed to modify the Schwab Account through the Plan to enable Plan participants to purchase shares of non-proprietary ETFs in addition to the proprietary ETFs that were made available to participants during the Class Period.

40. Class Counsel vigorously negotiated the $3,470,000 cash payment, representing approximately 78% of estimated recoverable damages of $4,427.541. The estimated recoverable damages was calculated by Hugh Cohen, Ph.D., of Portfolio Monitoring, LLC, using an objective methodology designed to determine when Defendants should have replaced poorly performing proprietary funds in the Plan, and the damages caused as a result of Defendants' failure to remove those funds. Specifically, Dr. Cohen identified instances during the Class Period where non-proprietary funds were replaced due to poor performance after the three-year trailing performance of those funds had placed them in the bottom third of funds in their respective categories. The Plan replaced those funds with top performing funds in the same categories. Dr. Cohen then reviewed the available data on the funds offered by the Plan and identified those that qualified for removal based on the trailing three year criteria Invesco utilized for non-proprietary funds. Dr. Cohen also

identified the funds that placed in the top ten percent of funds based on trailing three-year returns in the same categories as the proprietary funds.

41. Dr. Cohen then calculated damages by comparing the performance of the proprietary funds with the average performance of top performing funds starting from the date the proprietary funds should have been removed and replaced with the alternative top performing funds. In addition to calculating damages based on performance, Dr. Cohen also quantified damages based on the excess fees that resulted from the Plan switching from the Invesco Emerging Market Equity Trust, with an operating expense of 0.21%, into the Invesco Developing Markets mutual fund with an operating expense of 1.01%.

42. One potential issue identified in connection with the calculation of damages was that certain proprietary Invesco funds that were identified as needing to be replaced based on their trailing three-year returns had sudden reversals and outperformed most comparable alternative funds in the periods thereafter. This caused a reduction in potential damages to Plaintiff and the Class.

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT AND MAILING AND PUBLICATION OF NOTICE OF SETTLEMENT

43. On April 2, 2020, Plaintiff filed a motion for preliminary approval of the Settlement. ECF No. 93. In connection therewith, Plaintiff requested that the Court approve the forms of notice, which, among other things, described the terms

of the Settlement, advised Class Members of their rights in connection with the Settlement, set forth the proposed Plan of Allocation, and informed Class Members that Class Counsel would request attorneys' fees and expenses. Plaintiff also requested that the Court certify the Class for settlement purposes.

44. On April 3, 2020, the Court granted preliminary approval of the Settlement. ECF No. 94.

45. Class Counsel supervised the efforts of the Settlement Administrator, Analytics Consulting LLC, to disseminate Class Notice. Class Counsel also reviewed and approved the information made available to Class Members on the Settlement Website and toll-free telephone support line (1-888-970-3711). Additionally, Class Counsel maintained a separate telephone support line (1-800-449-4900) to respond to inquiries about the Settlement. These telephone numbers were referenced in the Settlement Notice and appear on the Settlement Website.

46. Submitted herewith is the Declaration of Christopher D. Amundson, of Analytics Consulting LLC, the Settlement Administrator for the Settlement, which attests that Notices have been mailed to over 8,000 potential Class Members.

47. The Notice informed Class Members of, among other things, the terms of the Settlement, the Plan of Allocation, and that Class Counsel would apply for an

award of attorneys' fees not to exceed 33% of the Settlement Amount and litigation expenses, and an Incentive Award not to exceed $5,000.

48. The Notice states that objections to any aspect of the Settlement, the Plan of Allocation or the application for attorneys' fees and expenses or Incentive Award to Plaintiff must be filed by July 17, 2020. To date, no objections have been filed by any member of the Class to the Settlement, the Plan of Allocation or to the request for attorneys' fees and expenses or Plaintiff's Incentive Award.

V. FACTORS TO BE CONSIDERED IN SUPPORT OF SETTLEMENT

A. The Settlement Was Fairly and Aggressively Negotiated by Counsel

49. As set forth above, the terms of the Settlement were negotiated by the Parties at arm's length through adversarial, but good faith negotiations. The Settlement was reached only after extensive settlement negotiations over a four-week period.

50. Class Counsel is actively engaged in complex federal civil litigation, particularly the litigation of ERISA class actions. Class Counsel believes that its reputation as attorneys who are unafraid to zealously carry a meritorious case through trial and appeal gave it a strong position throughout settlement negotiations.

51. In negotiating the Settlement, Class Counsel considered the risks of continued litigation, the likelihood of getting past a third motion to dismiss, as well

as a summary judgment motion after extensive fact and expert discovery and, if successful, the risk, expense, and length of time to prosecute the Litigation through trial and the inevitable subsequent appeals. Class Counsel also considered the substantial monetary benefit provided by the Settlement in light of the substantial risks of continuing to litigate the case. Additionally, Plaintiff was a participant in this assessment, and was consulted with and kept apprised of the Settlement negotiations.

52. The volume and substance of Class Counsel's knowledge of the merits and potential weaknesses of Plaintiff's claims are unquestionably adequate to support the Settlement. This knowledge is based on Class Counsel's extensive investigation and analysis during the prosecution of the Litigation (*see* ¶7), which permitted Plaintiff and Class Counsel to be well informed about the strengths and weaknesses of their case and to engage in effective settlement discussions.

B. Serious Questions of Law and Fact Placed the Outcome of the Litigation in Significant Doubt

53. Another factor considered in assessing the merits of class action settlements – whether serious questions of law and fact exist – supports the conclusion that the Settlement is fair, reasonable, and adequate to the Class. Plaintiff and Class Counsel heavily considered and analyzed the potential risks associated

with continued litigation in determining the Settlement's fairness, and, in light of such risks, believe the Settlement is in the best interests of the Class.

54. Defendants continue to assert that they possess absolute defenses to Plaintiff's claims, including, but not limited to, their argument that Plaintiff's allegations were insufficient to state a claim for prohibited transactions in violation of ERISA, and their argument that Plaintiff's prohibited transactions claims are barred by ERISA's reasonable-compensation exemption and the statute of limitations. In the MTD Order, the Court sided with Defendants on many of their arguments. If the case continued, Defendants would likely have moved to dismiss the case for the third time, and Plaintiff faced the risk of defeat. Even if Plaintiff prevailed, the Class would face many years of continued litigation, including the risks of summary judgment and trial. The Settlement is unquestionably better than another distinct outcome – no recovery for the Class.

55. Without this Settlement, Defendants would have continued to argue that Plaintiff could not prevail on his claims, specifically that the facts underlying Plaintiff's allegations are not sufficient to constitute a breach of fiduciary duty. Although Class Counsel believes that it could have countered Defendants' arguments, the motion to dismiss would have been hard-fought and extensive, and Plaintiff would have no guarantee of success. Further, as discussed above (¶¶41-

42), even if Plaintiff's claims were upheld and if Plaintiff established liability with respect to certain proprietary funds, certain of those funds performed strongly after they were identified as needing to be removed, which would have limited potential damages.

56. The Settlement avoids the hurdles Plaintiff would have to clear if the Litigation continued, particularly the risks associated with a forthcoming motion to dismiss, and avoids the significant costs and risk of no recovery associated with further litigation of this complex ERISA action. In view of the significant risks and additional time and expense involved in continuing the Litigation, I respectfully submit that the Settlement is fair, reasonable, and adequate, and is in the best interest of the Class.

C. The Judgment of the Parties that the Settlement Is Fair and Reasonable Provides Additional Support for Approval of the Settlement

57. Another factor in considering whether to approve class action settlements is the judgment of the parties that the settlement is fair and reasonable. Class Counsel strongly believes that the Settlement represents a very good resolution for the Class. As outlined above, the Settlement is the product of arm's-length negotiations between adversaries with significant experience in ERISA class action

litigation. Both sides utilized their prior experience and analysis of the allegations at issue to reach the agreement.

58. Furthermore, copies of the Settlement Notice have been mailed to over 8,000 potential Class Members. The date for objection is July 17, 2020, but at present, no objections to the Settlement or the Plan of Allocation have been submitted by a Class Member. Should any objections be timely filed between the date of this Declaration and the final approval hearing, Class Counsel will address them in a supplemental memorandum to be filed with the Court on or before July 31, 2020.

VI. PLAN OF ALLOCATION

59. As provided in the Stipulation, after deducting Notice and Administration Costs, the attorneys' fees, expenses and any Plaintiff Incentive Award awarded by the Court, and any other Court-approved deductions, the remainder of the Settlement Fund (the "Net Settlement Fund") shall be distributed among Class Members.

60. If approved, the Plan of Allocation will govern how the proceeds of the Net Settlement Fund will be distributed.

61. The Plan of Allocation, set forth in the Notice, was formulated after consultation with Plaintiff's damages consultant, Hugh Cohen, Ph.D., in order to

calculate a fair method to divide the Net Settlement Fund for distribution among the Class Members. The proposed Plan of Allocation is designed to fairly and rationally allocate the proceeds of this Settlement among the Class and to simplify claims administration with attendant reduced cost to the Class.

VII. CLASS COUNSEL'S REQUEST FOR AN AWARD OF ATTORNEY'S FEES, EXPENSES, AND INCENTIVE AWARD ARE REASONABLE AND SHOULD BE APPROVED

62. Despite working on this matter for more than two years, Class Counsel has not received any payment for its services in prosecuting this Litigation, nor has it been paid its expenses incurred in the prosecution of the Litigation. The Notice provides that Class Counsel may apply for an award of attorneys' fees not to exceed 33% of the Settlement Amount, plus expenses incurred in the Litigation, and an Incentive Award of up to $5,000.

63. As set forth in Class Counsel's Fee Memorandum, Class Counsel is requesting attorneys' fees of 33% of the Settlement Amount, expenses of $85,610.50 and an Incentive Award of $5,000. The requested fee award of 33% is well within the range of fees awarded by courts in this District and in other ERISA class actions throughout the country. The prosecution of the Litigation required Plaintiff's counsel and their paraprofessionals to perform 1,763 hours of work, demonstrating

Plaintiff's counsel's tremendous commitment to this Litigation, as compensation for their services rendered was wholly contingent on their success.

64. Plaintiff's counsel have submitted declarations setting forth the amount of the expenses incurred over the course of the Litigation. These declarations are filed concurrently herewith. The expenses include, for example, fees associated with filings, witnesses, consultants, court hearing transcripts, and online legal and financial research. Class Counsel declares that the expenses are reflected in the books and records maintained by the firm, and are an accurate recordation of the expenses incurred. I respectfully submit that these expenses and charges were reasonably incurred, necessary for the successful prosecution of this Litigation, and should be approved by the Court.

65. The resulting lodestar is $1,180,401.45. Plaintiff's counsel's 33% fee represents a 0.97 multiplier to their aggregate lodestar, well within range of multipliers awarded by Courts in this District and in ERISA class actions throughout the country.

66. Class Counsel achieved this result for the Class at great risk and substantial expense. Class Counsel was unwavering in its dedication to the interests of the Class and its investment of the time and resources necessary to bring this Litigation to a successful conclusion against the Defendants. Class Counsel's

compensation for services rendered has always been wholly contingent. The requested fee is reasonable based on the quality of Class Counsel's work and the substantial benefit obtained for the Class.

67. Indeed, the result obtained by Class Counsel for the Class is truly extraordinary given the obstacles that existed to obtaining any recovery. Defendants have maintained throughout this Litigation that they had no liability, and the Court granted their motion to dismiss the Amended Complaint. Even if Plaintiff's forthcoming second amended complaint was upheld by the Court, Plaintiff would likely face substantial opposition at summary judgment and throughout the Litigation. Further, even if Plaintiff obtained a judgment at trial, and such judgment was upheld, it would be years before the Class would obtain any recovery.

68. Additionally, in recognition of Plaintiff's substantial role in obtaining this favorable recovery for the Class, I respectfully submit that Plaintiff should be granted an Incentive Award of $5,000. Plaintiff, as a former Invesco employee, was a Plan participant during the Class Period who invested in the Invesco-affiliated investments offered by the Plan. He devoted substantial time, resources, and effort to prosecuting the Litigation on behalf of the Class, spending time monitoring and overseeing the case, consulting with Class Counsel, and reviewing various documents filed in connection with the Litigation.

69. Plaintiff worked closely with Class Counsel and actively participated in the prosecution of the Litigation. Those efforts included: (i) assisting Robbins Geller with its investigation of the ERISA class action claims, particularly by furnishing Invesco's Plan Disclosure Statement, the Summary Plan Description, and Plaintiff's 401(k) account statements; (ii) discussing the Plan and its investment options; (iii) reviewing the initial complaint, Amended Complaint, briefing associated with Defendants' motion to dismiss, the Court's MTD Order, and other case documents; (iv) remaining updated on case developments throughout the litigation process; and (v) participating in numerous phone calls and corresponding with Class Counsel regarding the Litigation, particularly about the settlement discussions and other important developments. To reward these efforts, an Incentive Award of $5,000 should be granted.

A. Extent of the Litigation

70. As described above (¶¶20-39, 49-52), this case was aggressively litigated and settled only after extensive negotiations. It took hard and diligent work by skilled counsel to develop the facts and theories which persuaded Defendants to enter into serious settlement negotiations before Plaintiff even filed his second amended complaint, and before the upcoming motion to dismiss briefing.

B. Standing and Expertise of Class Counsel

71. The expertise and experience of Class Counsel is described in Exhibit E, attached to the accompanying Declaration of Evan J. Kaufman Filed on Behalf of Robbins Geller in Support of Application for Award of Attorneys' Fees and Expenses. Class Counsel is among the most experienced and skilled practitioners in the complex litigation field. The attorneys at Robbins Geller have years of experience litigating ERISA class actions.

72. Based on Robbins Geller's experience in complex litigation, as well as my personal experience with complex ERISA litigation involving breaches of the fiduciary duties of loyalty and prudence in investing plan assets, Class Counsel is well-qualified to represent the proposed Class in this Litigation. Indeed, in addition to this action, I am serving as counsel in the following pending ERISA class actions: *In re GE ERISA Litig.*, No. 1:17-cv-12123-IT (D. Mass.), and *Orellana v. JPMorgan Chase & Co. et al*, No. 1:17-cv-01575 (S.D.N.Y.). I have also successfully served as one of the lead attorneys in another ERISA class action against GE, *In re Gen. Elec. Co. ERISA Litig.*, No. 1:06-CV-00315 (N.D.N.Y.), and secured a settlement imposing a $40 million cost to GE and significant improvements to GE's employee retirement plan and benefits to GE plan participants valued in excess of

$100 million. Thus, Class Counsel is well-qualified to litigate this action and negotiate on behalf of the Class.

C. Standing and Caliber of Opposition Counsel

73. Defendants are represented by experienced counsel from Skadden, Arps, Slate, Meagher & Flom LLP. Defendants' Counsel vigorously defended their clients in the motion to dismiss briefing, and successfully obtained dismissal of the Amended Complaint, and maintain that they ultimately would not have faced liability. They indicated that they were ready to proceed with a lengthy litigation, potentially lasting years, if a settlement was not reached.

D. The Risks of Litigation and the Need to Ensure the Availability of Competent Counsel in High Risk, Contingent ERISA Cases

74. This Litigation was undertaken by Class Counsel on a wholly-contingent basis. From the outset, Class Counsel understood that it was embarking on a complex, expensive and lengthy litigation with no guarantee of compensation for the enormous investment of time and money the case would require. In undertaking that responsibility, Class Counsel was obligated to ensure that sufficient attorney and paraprofessional resources were dedicated to the prosecution of this Litigation and that funds were available to compensate staff and cover the considerable litigation expenses necessary for a case such as this.

75. Because of the nature of contingent practice in class actions, where cases predominantly last several years, not only do contingent litigation firms have to pay regular overhead, but they also have to advance the expenses of the litigation. With an average lag time of three to four years for these cases to conclude, the financial burden on contingent fee counsel is far greater than on a firm that is paid on an ongoing basis.

76. Further, the mere filing of an action does not ensure that there will be any settlement or fee. As discussed above, from the outset, this Litigation presented a number of unique risks and uncertainties which could have prevented any recovery. Plaintiff faced the significant risk that the second amended complaint would have been dismissed by the Court. Indeed, law firms handling complex contingent litigation such as this often lose. Tens of thousands of hours have been expended in losing efforts, and losses are exceedingly expensive. The fees awarded are used to cover the enormous overhead expenses incurred during the course of the litigation and are taxed by federal, state and local authorities. Moreover, changes in the law through legislation or judicial decree can be catastrophic, frequently affecting contingent counsel's entire inventory of pending cases. Thus, there was a demonstrable risk that the Class and its counsel would receive nothing. The "risks

of litigation" often become a reality for plaintiffs' counsel in contingent cases, where after the expenditure of thousands of hours, they receive no compensation.

77. It serves the public interest to have experienced and able counsel enforce ERISA violations, as ERISA was enacted in recognition of the importance of protecting the country's retirement savings from mismanagement. The fiduciary standard applicable in ERISA cases evidences the importance of acting in the best interests of plan participants and protecting against violations of ERISA. However, vigorous enforcement of ERISA can only occur if individual plaintiffs can obtain representation comparable to that available to large corporate interests. Thus, the courts must adequately compensate plaintiffs' counsel, taking into account the risks undertaken in litigating ERISA class actions and the clear benefits to class members.

78. When Class Counsel undertook to act for Plaintiff and the Class in this matter, it was with the knowledge that it would spend many hours of hard work against some of the best defense lawyers in the United States with no assurance of obtaining any compensation for its efforts. The benefits conferred on the Class by this Settlement are particularly noteworthy due to the vigorous defense mounted by Defendants.

E. The Opinion of the Independent Fiduciary Provides Additional Support for Approval of the Settlement and Class Counsel's Request for Attorneys' Fees

79. Fiduciary Counselors Inc., appointed as an independent fiduciary to review the Settlement, conducted a thorough analysis of the Litigation's key pleadings, decisions, and selected other materials, and interviewed counsel for both Plaintiff and Defendants to assess the strengths and weaknesses of the claims and defenses at issue in the Litigation.

80. In its analysis of the Settlement, Fiduciary Counselors noted that continued litigation would present substantial risks to the Class, and that to prove his claims, Plaintiff would need to rely extensively on several expert witnesses for an analysis of key issues, which would be hotly contested at trial. Thus, Fiduciary Counselors stated that continued litigation would have been complex and time consuming, and any possible recovery for Class Members would be delayed substantially and reduced by substantial additional litigation expenses and additional attorneys' fees.

81. After conducting its review, Fiduciary Counselors concluded that: (i) there is a genuine controversy concerning the Plan; (ii) the terms of the Settlement, including the scope of the release of claims, the amount of cash received by the Plan, the non-monetary consideration, and the amount of any attorneys' fee

award or any other sums to be paid from the recovery, are reasonable in light of the Plan's likelihood of full recovery, the risks and costs of litigation, and the value of claims forgone; (iii) the terms and conditions of the transaction are no less favorable to the Plan than comparable arm's-length terms and conditions that would have been agreed to by unrelated parties under similar circumstances; (iv) the transaction is not part of an agreement, arrangement or understanding designed to benefit a party in interest; (v) the transaction is not described in Prohibited Transaction Exemption 76-1; (vi) all terms of the Settlement are specifically described in the written settlement agreement; and (vii) the Settlement includes non-monetary consideration that is in the interest of the Plan's participants and beneficiaries.

82. Fiduciary Counselors stated that the Settlement Amount of $3,470,000 is a fair and reasonable recovery considering the results in numerous similar cases in the last several years, the defenses that Defendants would have asserted, the risks involved in proceeding to trial, and the possibility of reversal on appeal of any favorable judgment.

83. Fiduciary Counselors found that Class Counsel's requested attorneys' fees and the lodestar multiplier are reasonable in light of the work performed, the result achieved, the litigation risk assumed by Plaintiff's counsel, and the combination of the percentage and the lodestar multiplier, and are within the range

of attorney fee awards for similar ERISA cases. Additionally, Fiduciary Counselors concluded that an award for Class Counsel's expenses in the amount of $85,610.50 is reasonable, as it represents consultants, attorney service fee, and legal research and messenger expenses.

84. Furthermore, Fiduciary Counselors concluded that an Incentive Award of $5,000 for Plaintiff Cervantes, who took on the risk of litigation and committed to spending the time necessary to bring the case to conclusion, is within the range of similar awards in ERISA cases, is not material in comparison to the total Settlement Amount, and is reasonable.

85. Based on these findings, Fiduciary Counselors did not object to any aspect of the Settlement, and: (i) authorized the Settlement in accordance with PTE 2003-39; (ii) approved and authorized the settlement of Released Claims on behalf of the Plan; and (iii) gave a release in its capacity as a fiduciary of the Plan, for and on behalf of the Plan.

VIII. CONCLUSION

86. For the reasons set forth above and in the accompanying Settlement Memorandum, and Fee Memorandum, I respectfully submit that: (a) the Settlement is fair, reasonable, and adequate and should be granted final approval; (b) the Plan of Allocation represents a fair method for the distribution of the Net Settlement Fund

among Class Members and should also be approved; and (c) the application for attorneys' fees of 33% of the Settlement Amount, expenses of $85,610.50, and an Incentive Award to Plaintiff Diego Cervantes of $5,000 should be granted in its entirety.

Pursuant to 28 U.S.C. §1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed in Melville, New York, this 28th day of July, 2020.

EVAN J. KAUFMAN

CERTIFICATE OF SERVICE

I hereby certify that on July 28, 2020, I electronically filed the above document with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered counsel.

s/ John C. Herman
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