IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION _____ THIS DOCUMENT RELATES TO: ALL ACTIONS	**MASTER FILE NO. 6:12-CV-06051-DGL** JURY TRIAL DEMANDED

PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs respectfully request that the Court enter an Order and Final Judgment (1) certifying the Settlement Class; (2) finding that the Settlement Class has received proper notice of the litigation and Settlement; (3) granting final approval to the Settlement and the Plan of Allocation.

Dated: July 8, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th Day of July, 2016, I electronically filed the foregoing Plaintiffs' Motion for Final Approval of Class Action Settlement with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ *Jules L. Smith*

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION _____ THIS DOCUMENT RELATES TO: ALL ACTIONS	**MASTER FILE NO. 6:12-CV-06051-DGL**

DECLARATION OF GERALD D. WELLS, III IN SUPPORT OF PLAINTIFFS' MOTIONS FOR APPROVAL OF CLASS ACTION SETTLEMENT AND MOTION FOR AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES AND CLASS REPRESENTATIVE AWARDS

I, Gerald D. Wells, III, declare as follows:

1. I am a founding member of the law firm of Connolly Wells & Gray, LLP (the "Firm"). I am personally involved in all aspects of the prosecution of this matter.

2. The Firm was founded in October, 2013. Prior to this, I was with the law firm of Faruqi & Faruqi, LLP ("F&F"). I became a partner at F&F in January 2012. While at F&F, I was either chair or co-chair of the firm's employment practices group.

3. I have been involved in all aspects of this litigation from the initial investigation through its resolution.

4. I make this Declaration in support of Plaintiffs' Motion for Final Approval of Class Action Settlement (the "Approval Motion") and Motion for Approval of Attorneys' Fees,

Reimbursement of Expenses and Case Contribution Awards (the "Fee and Expense Motion").[1] The matters set forth herein are stated within my personal knowledge.

5. I am submitting this declaration to put before the Court certain documents and facts supporting final approval of the Settlement.

6. Attached hereto as Exhibit 1 is a true and correct copy of the Declaration of Christina Peters-Stasiewicz, detailing the dissemination of class notice and other work performed by the claims administrator in this matter.

7. Attached hereto as Exhibit 2 is a true and correct copy of the firm resume of Connolly Wells & Gray, LLP.

8. Attached hereto as Exhibit 3 is a true and correct copy of the firm resume of Izard, Kindall & Raabe, LLP.

9. Attached hereto as Exhibit 4 is a true and correct copy of the Declaration of Mark Gedek.

10. Attached hereto as Exhibit 5 is a true and correct copy of the Declaration of Allen Harter.

11. Attached hereto as Exhibit 6 is a true and correct copy of the Declaration of Sandy Paxton.

12. Attached hereto as Exhibit 7 is a true and correct copy of the Declaration of Susan Toal.

[1] All capitalized, undefined terms not otherwise defined in this declaration shall have the same meaning ascribed to them in the Parties' Settlement Agreement previously filed with the Court at Dkt. No. 122-3.

13. Attached hereto as Exhibit 8 is a true and correct copy of the Declaration of Thomas W. Greenwood.

14. Attached hereto as Exhibit 9 is a true and correct copy of the Declaration of Mark J. Nenni.

15. Attached hereto as Exhibit 10 is a true and correct copy of the Declaration of Katherine L. Bolger.

FACTS AND PROCEDURAL BACKGROUND

Litigation History

16. On January 27, 2012, following Kodak's filing for Chapter 11 bankruptcy, Plaintiff Mark Gedek filed the initial class action against certain Defendants alleging violations of ERISA. Shortly thereafter, six additional complaints, all alleging violations of ERISA, were also filed against Defendants: *Greenwood v. Perez,* No. 6:12-cv-06056, *Bolger v. Perez,* No. 6:12-cv-06067, *Coletta v. Perez,* No. 6:12-cv-06071, *Mauer v. The Eastman Kodak Savings & Investment Plan Committee,* No. 6:12-cv-06078, *Toal v. Perez,* No. 6:12-cv-06080, and *Hartter v. Perez,* No. 12-cv-06146. Dkt. No. 40, at 2.

17. On May 10, 2012, the Court entered an order consolidating the cases. Dkt. No. 39. Thereafter, on August 1, 2012, the Court entered an order appointing Izard, Kindall & Raabe, LLP (then known as Izard Nobel, LLP) and Faruqi & Faruqi interim co-lead counsel. Dkt. No. 43. On May 5, 2015, the Court entered an order substituting Connolly Wells & Gray, LLP for Faruqi & Faruqi, LLP as interim co-lead counsel. Dkt. No. 92.

18. Plaintiffs filed their operative complaint on September 14, 2012. Dkt. No. 48. In this Action, Plaintiffs allege that Defendants were the fiduciaries of the Eastman Kodak

Employees' Savings and Investment Plan (the "SIP") and/or the Kodak Employee Stock Ownership Plan (the "ESOP") (the SIP and ESOP are collectively referred to herein as the "Plans") who breached their ERISA-mandated duties by offering Kodak stock as a retirement investment when the stock was an imprudent retirement investment due to the company's dire financial condition and ultimate bankruptcy.

19. Plaintiffs assert that the Plans' fiduciaries violated their statutory ERISA duties of prudence and care, through their management, oversight and administration of the Plans' continued investment in Kodak stock during the Class Period.

20. Plaintiffs allege that Defendants knew or should have known that Kodak Stock was an imprudent retirement investment for the Plans during the Class Period because: (a) Kodak depended on a dying technology and the sale of antiquated products; (b) it was unable to generate sufficient cash-flow from its short term business strategy of initiating lawsuits that would garner settlements; (c) it was suffering from a severe lack of liquidity; and (d) its bonds – which take priority of stock in bankruptcy – had been downgraded to "junk" status, and it stock price collapsed due to these circumstances.

21. Plaintiffs allege that the Defendants, who were obligated to prudently and loyally manage the Plans, violated ERISA Sections 409 and 502, 29 U.S.C. §§ 1109, 1132 when they breached these fiduciary duties.

22. Defendants filed Motions to Dismiss the complaint on October 29, 2012. After extensive briefing, including submissions regarding supplemental authority, and oral argument, the Court denied Defendants' motions on December 17, 2014.

23. Hard-fought discovery commenced in February 2015. Plaintiffs propounded Requests for Production and Interrogatories, and the Kodak Defendants served Requests for Production as well as three separate sets of interrogatories and Requests for Admissions over the course of the six months between April and October of 2015. In response to said discovery, both sides engaged in multiple meet and confers and filed contested motions to compel production of documents and interrogatory responses.

24. In November of 2015, Judge Payson heard oral argument on the Kodak Defendants' Motion to Compel, issuing a ruling the next day granting the motion in part, denying it in part, and reserving in part. Dkt. Nos. 109-110.

25. Plaintiffs' Motion to Compel was fully briefed (Dkt. Nos. 111, 114 & 116), but prior to the scheduled oral argument in December of 2015, the Plaintiffs and the Kodak Defendants agreed to formal mediation in an attempt to amicably resolve this matter.

Bankruptcy Proceedings

26. As this Court is well aware, Kodak's downward spiral into bankruptcy help precipitate this Action.

27. Prior to consolidation, counsel for Plaintiffs worked together to ensure that their client's and the Plans' claims were not adversely affected in Kodak's bankruptcy proceeding.

28. To further these efforts, Plaintiffs retained experienced bankruptcy counsel, Lowenstein Sandler LLP ("Lowenstein Sandler"), in order to assist counsel in ensuring that the Plans' (and concomitantly their participants) claims survived Kodak's bankruptcy petition.

29. At the direction of Class Counsel, Lowenstein Sandler engaged in hard-fought negotiations within the bankruptcy framework. Through these efforts, Plaintiffs were able to

achieve a carve-out of Plaintiffs' claims brought on behalf of the Plans thereby ensuring that *Kodak's* bankruptcy would not diminish or abolish Plaintiffs' ability to recover in this Action.

30. While Lowenstein Sandler contributed significantly to this effort, Class Counsel recognized that their efforts were taking place in a separate forum and involved specialized expertise. Accordingly, Class Counsel paid them at their normal hourly rate, treating their bills as an expense as opposed to lodestar. The total amount of fees paid to Lowenstein Sandler for their work on behalf in the Class in the bankruptcy proceeding was $83,063.30.

Mediation

31. When the Parties agreed to mediation in December 2015, they agreed to utilize David Geronemus, Esq., a well-respected mediator with significant experience mediating and resolving complex class actions, including ERISA cases.

32. The Parties scheduled their mediation for February 2016, one of the earliest possible date that all Parties and Mr. Geronemus were available.

33. Documents produced by Defendants in response to Plaintiffs' discovery requests, including data on the purchase and sale of Kodak stock on a Plan-wide level as well as data concerning the performance of other investment options in the 401k plan, permitted Plaintiffs to make an informed decision regarding the relative strength of their claims, and to assist Plaintiffs in calculating damages.

34. To prepare for the mediation, Class Counsel retained Cynthia Jones, CFA, a Vice President of Management Planning, Inc., to perform an analysis of class-wide damages, taking into account transactional information on the daily purchases and sales of Kodak stock by the Plans as well as the performance of all of the other investment options.

35. Prior to mediating with Mr. Geronemus, Plaintiffs submitted a detailed presentation of the best evidence supporting Plaintiffs' claims and engaged in a telephonic pre-mediation session.

36. The Plaintiffs and the Kodak Defendants engaged in an all-day mediation before Mr. Geronemus on February 24, 2016.

37. At the end of that all-day mediation session, the Plaintiffs and the Kodak Defendants had an agreement in principle and executed an initial term sheet. Thereafter, BNY Mellon was contacted to determine whether it wished to participate in the proposed settlement. Ultimately, after several weeks of further discussion, including multiple iterations of proposed revisions to the term sheet, a formal, finalized term sheet was executed by the parties on March 14, 2016.

38. Thereafter, the Parties began to work on preparing a formal Settlement Agreement and its ancillary documents. These discussions led to conference calls and drafts being circulated by both sides.

39. Ultimately, on April 22, 2016, the Parties executed the Settlement Agreement.

40. Pursuant to its terms, a Class Settlement Amount of $9,700,000.00 will be deposited into an interest-bearing escrow account for the benefit of the Settlement Class.

41. The Class Settlement Amount, less the costs of notice and settlement administration, any Case Contribution Awards for the Plaintiffs, and Court approved attorneys' fees and expenses, shall be for the benefit of the Settlement Class members – the Plans' participants and beneficiaries.

42. In our view the Settlement represents an excellent result that will provide significant benefits to the Settlement Class while removing the risk and delay associated with further litigation.

43. On April 27, 2016, the Court granted preliminary approval to proposed Settlement.

THE PROPOSED SETTLEMENT MERITS FINAL APPROVAL

44. As this Court has recognized, a class action settlement should be approved when it is "'fair, adequate, and reasonable, and not a product of collusion.'" *Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 184 (W.D.N.Y. 2005) (quoting *Joel A. v. Giuliani,* 218 F.3d 132, 138–39 (2d Cir. 2000).

45. As discussed above, the proposed settlement was reached only after years of contentious litigation, with the assistance of an able third-party mediator. Accordingly, collusion is not an issue. Moreover, there are no obvious deficiencies in the Settlement – it is similar to the form and format of numerous ERISA settlements that have been approved over the course of the last several years. In addition, the proposed Settlement is, in Class Counsel's view, favorable with respect to its terms and in light of the risks of continued litigation.

46. Importantly, the Plan of Allocation is specifically designed to treat the losses of all members of the Settlement Class in exactly the same way, with no preferential treatment for class representatives or any segments of the Settlement Class.

47. The $9.7 million comprising the Class Settlement Amount is well within the range of possible approval. It represents more than 20 percent of Plaintiffs' damages estimate, and a *much* greater percentage of the Kodak Defendants' damages estimate.

48. In light of the fact that continued litigation would have taken a very considerable amount of time, during which the Settlement Class (most of whom are retirees) would have had to wait for resolution of their claims, and the real risk that at the end of the day the Settlement Class might have recovered less, or might have recovered nothing at all, this proposed Settlement represents an outstanding result.

CLASS COUNSEL BELIEVES THAT THE PROPOSED SETTLEMENT SATISFIES THE APPLICABLE FACTORS CONSIDERED BY COURTS IN THIS CIRCUIT WHEN REVIEWING PROPOSED CLASS ACTION SETTLEMENTS FOR FINAL APPROVAL

49. Before agreeing to the proposed Settlement, Class Counsel assessed its merits using various factors typically used by counsel in this type of case including the factors used by courts in the Second Circuit to assess proposed class action settlements. Class Counsel believes that the proposed Settlement is fair, reasonable, and adequate when the applicable factors are considered. Those factors, set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d at 463 (2d Cir. 1974), include the following: (1) the complexity, expense, and likely duration of the litigation; (2) the reaction of the class to the settlement; (3) the stage of the proceedings and the amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation.

50. A review of each factor justifies final approval of the Settlement.

51. The complexity, expense, and likely duration of the litigation justify final approval of the Settlement. This Action has gone on for more than four years and will require significant expense and additional litigation should the Settlement not be approved.

52. Indeed, fact discovery (including deposition discovery) has not yet been completed, and expert discovery has yet to commence. Class certification and dispositive motions in these cases are typically time-consuming endeavors, as would the trial. Further, given the current state of ERISA jurisprudence, any trial would have – in all likelihood – resulted in appeals by the non-prevailing parties. It would certainly take even more years to obtain a final judgment through litigation. Accordingly, all of these facts weigh in favor of the Settlement.

53. The reaction of the class to the Settlement has been positive. Because the deadline for Class Members to object to the Settlement is August 1, 2016, it is too soon to make a definitive statement with respect to this *Grinnell* factor. However, to date, no objections to any aspect of the Settlement have been filed. Further, all surviving named Plaintiffs and Class Representatives support the Settlement. Therefore, this factor appears to weigh in favor of the Settlement.

54. The stage of the proceedings and the amount of discovery completed justifies approval of the Settlement. The Parties have exchanged a significant amount of discovery and financial information, have engaged in extensive motion practice, and engaged in formal mediation.

55. Hence, Class Counsel have developed a comprehensive understanding of the merits of the case through our work on the case. In Class Counsel's view, when agreeing to the

Settlement, we had obtained sufficient information about the strengths and weaknesses of the claims and defenses to make a reasoned judgment about the desirability of settling the case on the terms proposed. Therefore, the state of litigation and amount of discovery weigh in favor of approving the Settlement.

56. The risks of establishing liability and damages also counsel approval of the Settlement. Liability would be hotly contested should this Action continue to be litigated in the absence of the Settlement reached by the Parties, and critical case law governing the applicable standards remains unsettled. While the Supreme Court' recent decision in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), eliminated the so-called "presumption of prudence" argument, certain dicta in that decision raises issues regarding the proper pleading requirements of an ERISA action regarding claims of imprudent investment in company stock have lent support to arguments by defendant fiduciaries in similar circumstances.

57. Indeed, the Second Circuit recently affirmed dismissal of a suit against the fiduciaries of the Lehman Brothers retirement plan based on the *Dudenhoeffer* dicta. *Rinehart v. Lehman Bros. Holdings Inc.,* No. 15-2229, 2016 WL 1077009, at *2 (2d Cir. Mar. 18, 2016). While the *Lehman* court agreed that this Court's denial of Defendants' motions to dismiss was distinguishable (*Id.* at *4, n. 3), the *Dudenhoeffer* and *Lehman* decisions would no doubt have provided some support for arguments that Defendants would advance at summary judgment, trial and appeal.

58. The risks of maintaining the class action through the trial justifies approval of the Settlement as well. Based on my experience litigating class action cases, Defendants likely would have vigorously opposed class certification in the absence of this Settlement. Indeed,

much of Defendants' discovery was focused on confirming that Plaintiffs were aware of the financial condition of Kodak. Thus, although Plaintiffs remain convinced they would prevail on the issue of class certification, the risk, expense and delay inherent to the class certification is eliminated by this Settlement. As such, Class Counsel believes this factor counsels in favor of granting final approval.

59. Defendants' ability to withstand a greater judgment was not a factor in Plaintiffs' determination to agree to the Settlement. Individually, the available insurance here exceeded Plaintiffs' damage estimates. However, Defendants have asserted that should this case proceed, their damage analysis would be significantly lower than Plaintiffs.

60. Nevertheless, the Class Settlement Amount of $9.7 million represents over 20% of Plaintiffs' damages calculation. Had Defendants been successful in establishing that the date of imprudence (if any) was considerably closer to the bankruptcy filing, the maximum amount of damages that could have been established, even using Plaintiffs' methodology, would have been much lower.

61. The range of reasonableness of the settlement fund in light of the best possible recovery and all the attendant risks of litigation strongly counsels in favor of approval of the Settlement. As noted above, the $9.7 million to the Settlement Class as a result of this Settlement represents a significant recovery of the damages Plaintiffs might obtain after a trial on the merits, based on Plaintiffs' internal damage calculation. Of course, this assumes that Plaintiffs would have prevailed on liability completely, successfully defeated Defendants' affirmative defenses, and convinced the Court to accept their damages model in full.

62. Given the substantial risk of recovering less, or nothing at all, should the Action proceed to trial, the Settlement represents an outstanding result.

63. In addition, as discussed above, this Settlement was the product of extensive negotiations between experienced counsel under the supervision of a respected mediator. Certainly there was nothing collusive about it.

64. Further, Class Counsel have developed a comprehensive understanding of the merits of the case through our work on the case and had obtained sufficient information about the strengths and weaknesses of the claims and defenses to make a reasoned judgment about the desirability of settling the case on the terms proposed. In Class Counsel's view, the stage of litigation and amount of discovery weigh in favor of preliminarily approving the Settlement.

THE COURT SHOULD CERTIFY THE PROPOSED CLASS FOR SETTLEMENT PURPOSES

65. In granting preliminary approval, the Court certified the following Settlement Class:

> All Persons who were participants in or beneficiaries of the SIP at any time between January 1, 2010 to March 30, 2012, and whose accounts included investments in the Kodak Stock Fund, as well as all Persons who were participants in or beneficiaries of the ESOP at any time between January 1, 2010 to March 30, 2012. Excluded are Defendants and their Immediate Family Members, any entity in which a Defendant has a controlling interest, and their heirs, Successors-in-Interest, or assigns (in their capacities as heirs, Successors-in-Interest, or assigns).

66. As set forth below, there is no sound basis for not granting final certification of the Settlement Class.

THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS OF RULE 23(A)

67. In Class Counsel's view the proposed Settlement Class satisfies the requirements of Rule 23 for class certification. Federal Rule of Civil Procedure 23(a) requires that (1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

68. In Class Counsel's view, the class is so numerous that joining all members is impracticable. The list of Class Members provided to the Notice Administrator included 19,485 names. As a result, the Action satisfies the numerosity requirement.

69. Second, there are questions of law or fact common to the Settlement Class because the issues presented in this case are about the Defendants' fiduciary responsibilities owed to all the Plans' participants who held Kodak stock as a retirement investment in the Plans. Thus, in Class Counsel's view, the commonality requirement is met.

70. Third, Plaintiffs' claims are typical of the proposed Settlement Class because Plaintiffs and the Settlement Class seek to prove Defendants' breaches of fiduciary duty through an identical legal theory -- imprudently offering Company Stock as retirement investment in violation of ERISA.

71. Fourth, in Class Counsel's view, Plaintiffs are adequate representatives because their interests are not in conflict with the Settlement Class. Instead, Plaintiffs and members of the Settlement Class share the common goal of maximizing their recovery from Defendants.

THE PROPOSED SETTLEMENT CLASS MEETS THE REQUIREMENTS OF RULE 23(B)

72. Class Counsel also suggest that this Action meet the requirements of either Rule 23(b)(l) or 23(b)(2) for purposes of certifying a Settlement Class.

73. Under Rule 23(b)(1)(B), a class may be certified if separate actions would create a risk of adjudications that would, as a practical matter, be dispositive of the other members who are not party to the proceedings or substantially impair or impede their ability to protect their interests. In Class Counsel's experience, this case is appropriate for class certification under Rule 23(b)(1)(B) because that rule is meant to cover cases in which participants and beneficiaries allege, on behalf of the whole, that a fiduciary has breached its duties. That is exactly what Plaintiffs allege here.

74. This Action is also appropriate for treatment under Rule 23(b)(l)(A) because separate actions would create a risk of incompatible standards of conduct for the defendants. Differing judgments regarding Defendants' fiduciary misconduct with respect to the Plans would hold Defendants to incompatible standards of conduct.

75. Alternatively, this Action is also appropriate for treatment under Rule 23(b)(2) because Defendants have acted or refused to act on grounds that apply generally to the Settlement Class. Indeed, Defendants' alleged fiduciary breaches affected the Plans as a whole and thus, invariably, affected each of the Plans' participants who held Company Stock during the Class Period – effectively the Settlement Class members.

RULE 23(G) IS SATISFIED

76. Finally, certifying a class requires the Court, under Rule 23(g), to examine the capabilities and resources of counsel for the class to determine whether they will provide

adequate representation to the class. Here, Class Counsel have substantial experience handling class actions and other complex litigation, including numerous similar ERISA class actions.

77. For example, my Firm was recently appointed to the executive committee prosecuting the claims in the consolidated action styled *In re 2014 RadioShack ERISA Litig.*, Master File No. 4:14-cv-959-O (N.D. Tex.) and served as class counsel in the action styled *Hellmann v. Cataldo, et al.,* No. 12-cv-2177 (E.D. Mo.)(in ERISA action, obtaining final approval for $800,000 settlement class).

78. Izard, Kindall & Raabe, LLP, the other firm comprising Class Counsel, has served as lead or co-lead counsel in numerous important ERISA company stock cases, with successes including settlements against AOL Time Warner ($100 million), Tyco International ($70.5 million), Merck ($49.5 million), Cardinal Health ($40 million), AT&T ($29 million) and JP Morgan Chase ($23 million). Moreover, IKR was on the Executive Committee in *In re Enron Corporation Securities and ERISA Litig.*, No. 02-13624 (S.D. Tex.), which resulted in a recovery in excess of $250 million.

79. Further information regarding the qualifications of the firms and attorneys comprising Class Counsel can be found in the firm resumes of Connolly, Wells & Gray and Izard, Kindall & Raabe, which are attached hereto.

80. Notably, the Court has already made a preliminary determination that Class Counsel meet or exceed the requirements of Fed. R. Civ. P. 23(g). *See* Dkt. No. 43, Dkt. No. 92. Importantly, Class Counsel have been involved in all aspects of the prosecution and resolution of this Action. Indeed, I was the point person at F&F regarding the pre-suit investigation of Defendants.

81. In short, Class Counsel have done substantial work to investigate potential claims in the Action and have vigorously pursued the interests of the Settlement Class throughout the litigation.

82. For these reasons, the Court should certify the Settlement Class for settlement purposes.

THE CLASS RECEIVED ADEQUATE NOTICE

83. In Class Counsel's view, class notice met or exceeded the standards for due process and Rule 23. AB Data, whom the Court approved as Notice Administrator, has fully complied with the Preliminary Approval Order's notice requirements.

84. AB Data provided notice to 99% of the Settlement Class via direct first-class mail.

85. Based on my experience in analogous ERISA class actions, this notice rate meets or exceeds the notice rate other courts have found acceptable for due process considerations.

86. Nevertheless, and to ensure maximum notice dissemination, and as required by the Preliminary Approval Order, AB Data also implemented publication notice through *PR Newswire*. AB Data also established an informational website and a toll-free informational phone number for Settlement Class Members.

87. Further detail regarding AB Data's work and details regarding the notice process can be found in the Declaration of Christina Peters-Stasiewicz.

88. Accordingly, based on Class Counsel's experience, we believe that notice provided to the Settlement Class met the mandates of due process and the requirements of Rule 23.

THE COURT SHOULD APPROVE THE PLAN OF ALLOCATION

89. Class Counsel modeled the proposed Plan of Allocation on the plans that were used and approved in similar ERISA cases involving claims about losses from holding stock in a company-sponsored retirement plan. Courts around the country have repeatedly approved similar plans of allocation in this type of ERISA case.

90. Indeed, the Plan of Allocation calls for the automatic deposit of the Settlement's proceeds into eligible Settlement Class members account for all current participants in the SIP, and for former participants in the SIP whose allocation is $5000 or more (former participants whose allocations are below $5000 will receive checks).

91. Importantly, the Plan of Allocation does not require any individual complete claim forms or otherwise produce documents in order to benefit from the Settlement. In effect, the Plan of Allocation calls for the expeditious distribution of the Settlement's funds.

92. Finally, no Settlement Class Member or group of Settlement Class Members is singled out for either disproportionately favorable or unfavorable treatment; all participate in recoveries pursuant to the Plan of Allocation in the same manner.

93. In short, based on our collective experience, Class Counsel believes that final approval of the Settlement should be granted, as it is fair, reasonable and adequate, and confers a substantial benefit on the Settlement Class.

ATTORNEYS' FEES, EXPENSES, AND THE CASE CONTRIBUTION AWARDS

94. Class Counsel requests fees in the amount of $2,910,000.00, representing thirty percent (30%) of the $9,700,000.00 common fund created by the Settlement.

95. Importantly, this fee request is below the amount Class Counsel could seek pursuant to the Settlement Agreement and is less than the amount set forth in the notice distributed to the Settlement Class Members.

96. To date, not a single objection to the fee request has been filed, though Class Members still have additional time to file objections should they choose to do so.[2]

97. Because this is a common fund case, Class Counsel is "entitled to a reasonable fee – set by the court – to be taken from the fund." *Goldberger v. Integrated Res., Inc*., 209 F.3d 43, 47 (2d Cir. 2000), *citing Boeing Co. v. Van Gemert*, 444 U.S. 472, 478, 100 S. Ct. 745, 62 L. Ed. 2d 676 (1980).

98. In determining a reasonable fee, the trend in the Second Circuit is to use the percentage of the recovery method because, among other things, it provides an incentive to attorneys to resolve the case efficiently and to create the largest common fund.

GOLDBERGER FACTORS ARE MET

99. In making their fee request, Class Counsel has analyzed the factors relied on by courts in the Second Circuit to determine whether a fee requests is fair and reasonable. These factors, set forth in *Goldberger v. Integrated Res., Inc*., 209 F.3d 43, 47 (2d Cir. 2000) are: (1) The time and labor expended by counsel; (2) the magnitude and complexities of the litigation; (3) the risk of litigation; (4) the quality of representation; (5) the requested fee in relation to the settlement; and (6) public policy considerations.

[2] In the event that any Settlement Class Member files an objection to any aspect of the Settlement or the motions before the Court, Class Counsel will address it in accordance with Paragraph 15 of the Preliminary Approval Order, Dkt. No. 124.

100. A review of each factor confirms that Class Counsel's fee request is fair and reasonable and should be approved by the Court.

101. The time and labor expended by Class Counsel clearly justifies their fee request. Over the past four years, Class Counsel investigated and litigated this matter thoroughly.

102. Class Counsel collectively expended 1580 hours carrying out the efforts which led to this Settlement, and other Plaintiffs' Counsel have spent an additional 666.55 hours since August 1, 2012, when the Court appointed Class Counsel as interim co-lead counsel for the Class.

103. Among other things, Class Counsel and other Plaintiffs' Counsel: (i) investigated the legal claims available to Plaintiffs; (ii) drafted and filed the initial complaint; (iii) requested and analyzed complex plan documents; (iv) drafted and filed the consolidated amended complaint; (v) fully briefed and argued the motion to dismiss; (vi) conducted written discovery; (vii) briefed and argued motions to compel production of discovery; (viii) reviewed thousands of documents produced by Defendants; (ix) retained a damages expert; prepared a mediation statement and engaged in a full day mediation; (x) negotiated and finalized the Settlement Agreement; (xi) prepared motions for preliminary and final approval of the Settlement; (xii) retained and supervised bankruptcy counsel to ensure that the claims at issue in this case were in no way extinguished by Kodak's bankruptcy.

104. Analysis of the magnitude and complexities of this litigation also supports approval of Class Counsel's fee request.

105. ERISA litigation, by its nature, presents complex factual and legal issues with limited judicial precedent for guidance. This case was no exception.

106. Defendants vigorously opposed Plaintiffs' claims alleging breach of fiduciary duty, and skillfully presented a motion to dismiss all claims.

107. While the Court's ruling on Defendants' motion to dismiss was pending, the Supreme Court decided *Dudenhoeffer*, a case which directly impacted the prudence standard in ERISA cases, thereby adding even more complexity to this case.

108. Combined with thorny issues relating to discovery, which was hotly contested, and damages, the magnitude and complexities of this litigation support Class Counsel's fee request.

109. The risk of the litigation was also very high in this case and supports approval of Class Counsel'*s* fee request.

110. The ERISA case law, particularly in the context of company stock actions involving 401(k) plans, is limited, unsettled and changing.

111. It was with full knowledge of this unsettled legal landscape and its inherent risks that Class Counsel accepted this case on a contingent basis and chose to file and litigate this matter.

112. Further, given the financial condition of Kodak, which had filed for bankruptcy protection, Class Counsel had no way of knowing at the time of filing whether Defendants would have sufficient funds to satisfy a successful outcome for Plaintiffs.

113. The Court, of course, is best qualified to determine the quality of representation displayed by Class Counsel in this case. Class Counsel submit that the quality of representation is evidenced by the pleadings, briefs and arguments made to the Court over the course of the

litigation, as well as the ultimate result achieved on behalf of the Class in a challenging legal environment.

114. Class Counsel is comprised of attorneys and law firms that are national leaders in class action litigation, including those involving ERISA matters. As noted above, Class Counsel have been lead- or co-lead counsel in numerous large ERISA class actions around the country involving the imprudence of various company stock funds in 401(k) plans. Combined, the attorneys comprising Class Counsel have achieved many notable successes in ERISA class action cases, resulting in the recovery of hundreds of millions of dollars for settlement class members in those cases. Counsel's firm resumes are attached as Exhibits 2 and 3.

115. The quality of Class Counsel's representation is also evident when considering that they achieved this favorable result against Defendants who were represented by attorneys from Gibson Dunn & Crutcher, LLP, and Goodwin Procter, LLP, firms that are nationally recognized for excellence, including within the field of ERISA litigation.

116. The requested fee in relation to the settlement is a fair percentage and supports Class Counsel's fee request.

117. The requested fee of $2,910,000.00 is 30% of the $9,700,000.00, which compares favorably to fee awards in other common fund class actions in the Second Circuit.

118. Finally, public policy considerations strongly support approval of Class Counsel's fee request.

119. ERISA was enacted in recognition of the important public interest of protecting workers' retirement funds from abuse, and the statute itself encourages enforcement through private actions like the one brought here by Class Counsel on behalf of Plaintiffs.

120. Further, it is an important, as courts in the Second Circuit have found, to award reasonable fee awards in cases like this one in order to encourage private attorneys to continue to bring contingency fee class actions representing the public interest.

121. Thus, application of the *Goldberger* factors to this case clearly supports approval of Class Counsel's fee request.

LODESTAR CROSS CHECK

122. The fee request here is also supported by a cross check of Class Counsel's lodestar. Pursuant to the Court's August 1, 2012 Order, Izard, Kindall & Raabe, LLP and my firm (originally Faruqi & Faruqi and, subsequent to my move and the Court's May 5, 2015 Order, Connolly, Wells & Gray LLP) acted as co-lead counsel throughout the litigation, with Blitman & King, LLP serving as liaison counsel. As set forth below, these firms collectively spent 1580 hours prosecuting this case, with a combined lodestar of $1,015,659.20.

123. Looking solely at Class Counsel's lodestar, the fee request represents a lodestar multiplier of 2.86, which is well below lodestar multipliers approved by this Court. *See, e.g., Davis v. J.P. Morgan Chase & Co.,* 827 F. Supp. 2d 172 (W.D.N.Y. 2011) (approving lodestar multiplier of 5.3 in employment litigation matter).

124. However, looking only at Class Counsel's lodestar would present an inaccurate view in this case. As the Court recognized in its August 1, 2012 Order, Class Counsel are required to direct, coordinate and supervise the prosecution of the litigation, but may delegate to other plaintiffs' counsel, assigning work "as necessary and appropriate under the circumstances." Dkt. No. 40, at ¶ 7. In accordance with this directive, Class Counsel requested that counsel for each named Plaintiff in the litigation assume primary responsibility for keeping

their client or clients informed about the progress of the litigation and ensuring compliance with discovery requests. In addition, counsel for each Plaintiff reviewed and provided comments on the Consolidated Complaint and participated in the mediation session to ensure maximum transparency and effective communication with all Plaintiffs.

125. Two firms representing Plaintiffs in this action, Kessler, Topaz, Meltzer & Check LLP ("KTMC") and Berger & Montague, LLP ("Berger & Montague") were given additional tasks by Class Counsel. KTMC had primary responsibility for monitoring the work of bankruptcy counsel during the lengthy proceedings in bankruptcy court, as well as drafting Plaintiffs' Opposition to Defendants' Motion to Compel Discovery (Dkt. No. 100), and providing valuable input into the mediation submission and other briefs filed with the Court. At the direction of Class Counsel, Berger & Montague performed specific tasks including the initial drafting of the opposition to the motion to dismiss (Dkt. No. 60), Plaintiffs' motion to compel discovery (Dkt. No. 111), and the motion for preliminary approval (Dkt. No. 122).

126. Subsequent to the August 1, 2012 Order appointing Class Counsel, KTMC and Berger & Montague spent a combined total of 486.55 hours on the litigation, for a combined lodestar of $374,451.50.

127. Firms representing additional Plaintiffs spent over 180 hours subsequent to the appointment of Class Counsel, with lodestar in excess of $110,000. These firms acted as the primary client contact for each of the respective Plaintiffs/Class Representatives, helping to ensure proper coordination of responses to voluminous discovery requests propounded by Defendants.

128. In addition, one representative of each Plaintiff/Class Representative attended the mediation, while two individuals from each of the two firms comprising Class Counsel attended.

129. Combined, Class Counsel and all other Plaintiffs' Counsel spent over 2,200 hours, with lodestar in excess of $1.5 million. This time was expended by or at the direction of Class Counsel in order to ensure the efficient and expedient prosecution of this complex matter.

130. Therefore, the requested fee of $2.91 million provides a modest 1.94 multiple over the lodestar for all of Plaintiffs' Counsel.

131. Notably, this time does not include any time subsequent to June 30, 2016, devoted by Plaintiffs' counsel for preparing and filing Plaintiffs' memorandum in support of Class Counsel's fee request, or the instant declaration,

132. Class Counsel's lodestar also does not include any estimated time for providing anticipated future assistance to Settlement Class Members with respect to the administration of the Settlement.

133. Based on my experience in analogous ERISA class-actions, Class Counsel can reasonably expect to receive numerous inquiries from Settlement Class Members both subsequent to final approval and post distribution of the Settlement's proceeds.

134. Thus, when the Court takes into consideration all time that has been expended in the prosecution of this matter (including time spent by non-Class Counsel prior to August 1, 2012 and time still to be expended in stewarding this Action to conclusion), the total lodestar is well below the requested 1.94 multiplier.

Connolly Wells & Gray, LLP

135. Connolly Wells & Gray, LLP, is the firm I co-founded with Robert J. Gray and Stephen E. Connolly after I left F&F at the end of August 2013.

136. CWG succeeded F&F as co-lead counsel in this case in May 2015.

137. CWG incurred a total lodestar of $290,301.00, which is based on 527.82 hours of work by its attorneys. The rates listed below are the current hourly rates regularly charged by each of the attorneys who assisted in the prosecution of the Litigation. The hourly rates for the attorneys are the same as the regular current rates charged for their services.

Name	Position	Hours Billed	Hourly Rate	Total Lodestar
Gerald D. Wells, III	Partner	384.32	$550	$211,376.00
Gerald D. Wells, III (Document Review)	Partner	5.5	$300	$3,025.00
Robert J. Gray	Partner	22.75	$550	$12,512.50
Stephen E. Connolly	Partner	115.25	$550	$63,387.50
Total		**527.82**		**$290,301.00**

138. The hourly rates charged here are the same rates that have been accepted by courts in other complex class actions.

139. As a member of Class Counsel, CWG was involved in all aspects of prosecuting this Action. Nevertheless, I conferred with my co-counsel, Mark Kindall of Izard, Kindall & Raabe, LLP, to ensure that tasks were appropriately assigned between our firms so as to avoid a duplication of effort. For example, tasks regarding propounding and responding to discovery was divided amongst our firms.

Faruqi & Faruqi, LLP

140. Faruqi & Faruqi, LLP ("F&F") formerly served as co-lead counsel in this case, prior to substitution by CWG.

141. F&F incurred a total lodestar of $169,271.25 based on a total of 286.49 hours of work by its attorneys and paralegals. The rates listed below are the current hourly rates regularly charged by each of the attorneys who assisted in the prosecution of the Action. The hourly rates for the attorneys are the same as the regular current rates charged for their services.

Name	Position	Hours Billed	Hourly Rate	Total Lodestar
Nadeem Faruqi	Partner	10	$950	$9,500.00
Gerald D. Wells, III	Partner	151.39	$625	$94,618.75
Jacob Goldberg	Partner	3.2	$725	$2,320.00
Robert Gray	Associate	93.50	$585	$54,697.50
Derek Behnke	Paralegal	2.5	$375	$937.5
Jessica Jenks	Paralegal	18.9	$275	$5,197.50
Joy Williams	Paralegal	5.5	$275	$1,512.50
Daniela Mercado	Paralegal	1.5	$325	$487.50
Total		**286.49**		**$169,271.25**

142. The hourly rates charged here are the same rates that have been accepted by courts in other complex class actions.

143. A review of F&F's time records demonstrates that the vast majority of time incurred by F&F was prior to my leaving the firm to form CWG in the Fall of 2013.

144. Nevertheless, subsequent to my departure, F&F remained committed to the Action and conferred regularly with the me. Indeed, F&F contributed to the overall expenses of this Action including the payment of fees incurred by bankruptcy counsel.

Izard, Kindall & Raabe, LLP

145. Izard, Kindall & Raabe, LLP (formerly known as Izard Nobel, LLP at the time of the filing of the consolidated complaint in this case) is co-lead counsel in this case.

146. Izard, Kindall & Raabe, LLP incurred a total lodestar of $513,012.50, which is based on 765.75 hours of work by its attorneys. The rates listed below are the current hourly rates regularly charged by each of the attorneys who assisted in the prosecution of the Litigation. The hourly rates for the attorneys are the same as the regular current rates charged for their services.

Name	Position	Hours Billed	Hourly Rate	Total Lodestar
Robert Izard	Partner	219	$775.00	$169,725.00
Mark Kindall	Partner	435.5	$700.00	$304,850.00
Mark Kindall (Document Review)	Partner	17.5	$300.00	$5,250.00
Jeff Nobel	Partner	1.25	$650.00	$812.50
Wayne Boulton	Associate	21.25	$350.00	$7437.50
Nancy Kulesa	Associate	70.5	$350.00	$24,675.00
Nicole Veno	Associate	0.75	$350	$262.50

Total		**765.75**		**$513,012.50**

147. The hourly rates charged here are the same rates that have been accepted by courts in other complex class actions.

148. As a member of Class Counsel, Izard, Kindall & Raabe, LLP was involved in all aspects of prosecuting this Action. To avoid the duplication of efforts, Mark Kindall of Izard Kindall & Raabe, LLP and I coordinated regularly so as to ensure that tasks were appropriately assigned between our firms.

Blitman and King, LLP

149. Blitman and King, LLP served as liaison counsel in this case.

150. Blitman and King, LLP incurred a total lodestar of $43,074.50 based on a total of 114.45 hours of work by its attorneys. The rates listed below are the current hourly rates regularly charged by each of the attorneys who assisted in the prosecution of the Litigation. The hourly rates for the attorneys are the same as the regular current rates charged for their services.

Name	Position	Hours Billed	Hourly Rate	Total Lodestar
Jules Smith	Partner	103	$390.00	$40,170.00
Brian LaClair	Partner	10.55	$250.00	$2,637.50
Daniel Brice	Partner	0.3	$390.00	$117.00
Nolan Lafler	Associate	0.6	$250.00	$150.00
Total		**114.45**		**$43,074.50**

151. The hourly rates charged here are the same rates that have been accepted by courts in other complex class actions.

152. The work performed by Blitman and King, LLP included such tasks as the review and filing of motions and other memoranda.

Kessler Topaz Meltzer & Check, LLP

153. Kessler Topaz, Meltzer & Check, LLP ("KTMC") is a member of Plaintiffs' Counsel in this case.

154. KTMC incurred a lodestar of $214,037, which is based on 410.75 hours of work by its attorneys and paralegals. The rates listed below are the current hourly rates regularly charged by each of the attorneys who assisted in the prosecution of the Action. The hourly rates for the attorneys are the same as the regular current rates charged for their services.

Name	Position	Hours Billed	Hourly Rate	Total Lodestar
Edward Ciolko	Partner	52.4	$725.00	$37,990.00
Peter Muhic	Partner	15.6	$750.00	$11,700.00
Virginia Chentis-Stevens	Associate	15.6	$345.00	$5,382.00
Julie Siebert-Johnson	Associate	158.20	$475.00	$75,145.00
Mark Gyandoh	Associate	97.8	$650.00	$63,570.00
Donna Siegel Moffa	Of Counsel	3.8	$650.00	$2,470.00
Tracey Shrieve	Staff Attorney	6.5	$395.00	$2,567.50
Ron Muchnick	Paralegal	8.05	$250.00	$2,012.50

Susan Neis	Paralegal	11.3	$250.00	$2,825.00
Lacey Russo	Paralegal	12	$250.00	$3,000.00
Julie Wotring	Paralegal	29.5	$250.00	$7,375.00
Total		410.75		**$214,037.00**

155. The hourly rates charged here are the same rates that have been accepted by courts in other complex class actions.

Berger & Montague, P.C.

156. Berger & Montague, P.C. serves as a member of Class Counsel in this case.

157. Berger & Montague, P.C. incurred a total lodestar of $160,414.50 based on a total of 275.80 hours of work by its attorneys and paralegals. The rates listed below are the current hourly rates regularly charged by each of the attorneys who assisted in the prosecution of the Litigation. The hourly rates for the attorneys are the same as the regular current rates charged for their services.

Name	Position	Hours Billed	Hourly Rate	Total Lodestar
Todd Collin	Managing Shareholder	8.8	$925	$8,140.00
Shanon Carson	Managing Shareholder	47.90	$750	$37,122.50
Michael Dell'Angelo	Shareholder	1.80	$700	$1,260.00
Ellen Noteware	Senior Counsel	137.00	$625	$85,625.00
Patrick Madden	Associate	17.60	$465	$8,184.00
Alexandra Koropey	Associate	.20	$405	$81.00

Adreinne Beatty	Associate	53.60	$330	$17,688.00
Deanna Kemler	Paralegal	8.90	$260	$2,314.00
Total		**275.80**		**$160,414.50**

158. The hourly rates charged here are the same rates that have been accepted by courts in other complex class actions.

159. The time and services provided by Plaintiffs' Counsel for which fees are sought in the petition are reflected in contemporaneously maintained records of the firms. All of the services performed by Plaintiffs' Counsel in connection with this Action were reasonable and necessary in the prosecution of this case.[3] Class Counsel allocated work in this case to maximize efficiency, assigning tasks both amongst the firms and within each of their respective firms with the goal of minimizing duplication of effort. Throughout the litigation, Class Counsel balanced resources – again within each of their firms themselves – to ensure that the matter was litigated in the most efficient manner. Had such efforts not been made, the number of hours devoted to the prosecution of the Action would have been significantly higher.

EXPENSES

160. Plaintiffs' Counsel incurred a total of $119,100.88 in unreimbursed expenses while prosecuting this Action. These expenses consist of filing fees, service fees, expert expenses, travel expenses, and expenses incurred related to the Parties' mediation.

[3] As noted above, several other firms retained by individual Plaintiffs in the consolidated action provided valuable assistance to the litigation, particularly with respect to coordinating discovery responses from Plaintiffs. In the interests of brevity, Class Counsel has not provided a detailed breakout of the time and lodestar for each of these firms, but they can be provided if the Court believes that the additional detail would be helpful.

161. Class Counsel reviewed the expense reimbursement requests of Plaintiffs' Counsel to ensure that no firm expense reimbursement request included requests for (i) office staff, (ii) computer-assisted legal research, (iii) in-house copying/printing, (iv) telephone/facsimile, or (v) transportation/meals not connected with intercity travel.

162. All of the expenses listed below are reflected on the books and records of each of the law firms.

163. Below is a summary of the expenses incurred by all firms in the litigation, as reviewed and approved by Class Counsel.

Category	**Amount**
Bankruptcy Counsel	$83,063.30
Expert Expenses	$11,316.30
Court Fees/Service fees	$6,230.79
Mediation Fees	$8,048.33
Out-of-Town Meals/Hotels/Transportation	$4,450.04
Postage & Delivery	$3,644.10
eDocument Hosting	$1,879.90
Transcripts	$286.15
Outside Photocopies	$181.90
Total	**$119,100.88**

164. Each of the expenses for which Class Counsel is seeking reimbursement were reasonable and necessary to prosecute this class action.

165. Notably, over 85 percent of the total expenses incurred relate to (i) the payment of bankruptcy counsel (which, as noted above, was necessary to ensure the claims were not adversely affected by the bankruptcy proceeding), (ii) experts regarding the computation of applicable damages models, and (iii) mediation fees.

166. Finally, pursuant to the Settlement Agreement, the Class Notice indicated that Plaintiffs' Counsel would seek reimbursement of litigation expenses not to exceed $175,000. The total amount for which counsel seeks reimbursement is significantly below the ceiling in the Notice. As of the date of this filing, at least, no Class Member has objected to the amount sought for litigation expenses.

CASE CONTRIBUTION AWARDS

167. As set forth in greater detail in the accompanying memorandum, Plaintiffs also respectfully request that the Court grant an award of $5,000.00 to each of the Class Representatives, as Case Contribution Awards in recognition of their time and efforts expended in order to help achieve this Settlement.

168. Federal courts often exercise their discretion under Rule 23(d) and (e) to approve enhancement awards to plaintiffs who institute and prosecute an action on the theory that there would be no class-wide benefit absent their suit. The trial court has discretion to recognize the benefit of the plaintiff's actions with such an award.

169. Throughout this litigation, the surviving Plaintiffs, as well as Class Representatives Sandy Paxton and Susan Toal (on behalf of the estate of her late husband, lead plaintiff Dale Toal), remained fully informed of the details of the litigation, and provided invaluable input, information, and assistance at every stage. *See* Declaration of Mark Gedek;

Declaration of Allen Harter ¶¶ 6-9; Declaration of Sandy Paxton ¶¶ 6-9; Declaration of Susan Toal ¶¶ 8-11; Declaration of Thomas W. Greenwood ¶¶ 6-9; Declaration of Mark J. Nenni ¶¶ 6-9; Declaration of Katherine L. Bolger ¶¶ 7-12. Significantly, the Kodak Defendants propounded requests for production as well as three separate sets of requests for admissions and interrogatories. Plaintiffs and the Class Representatives diligently worked with Plaintiffs' Counsel to respond to the requests, as well as working to schedule depositions (which ultimately were postponed as a result of settlement discussions).

170. The favorable result achieved by Class Counsel here would likely not have been possible without the assistance of the Plaintiffs and Class Representatives.

171. Accordingly, I believe the requested Case Contribution Awards are eminently appropriate.

CONCLUSION

172. Plaintiffs and Class Counsel respectfully submit that the Settlement is an excellent result for the Settlement Class in this case. Class Counsel recommend the Settlement as fair, reasonable, and adequate, and they request that this Court: (1) finally approve the Settlement Agreement, (2) certify the proposed class, (3) approve Class Counsel's requested fees and expenses, and (4) award the requested Case Contribution Awards to the Class Representatives.

I declare under penalty of perjury that the foregoing is true and correct. This Declaration was executed on July 8, 2016, in King of Prussia, Pennsylvania.

/s/ Gerald D. Wells, III
Gerald D. Wells, III

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	MASTER FILE NO. 6:12-CV-06051-DG3
THIS DOCUMENT RELATES TO: ALL ACTIONS	

DECLARATION OF CHRISTINA PETERS-STASIEWICZ

I, Christina Peters-Stasiewicz, declare pursuant to 28 U.S.C. § 1746 as follows:

1. I am a Senior Project Manager with A.B. Data, Ltd.'s Class Action Administration Division ("A.B. Data") in Milwaukee, Wisconsin. My business address is 600 A.B. Data Drive, Milwaukee, WI 53217. My direct telephone number is 414-961-7527.

2. This declaration ("Declaration") is based upon my personal knowledge and information provided by my associates and staff.

3. A.B. Data serves as Settlement Administrator in connection with the settlement of the above-captioned action (the "Action").

4. This Declaration reports the implementation of the notice program outlined in the Class Action Settlement Agreement and the Order Granting Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order"), which consisted of the following:

a. Disseminating the Notice of Class Action Settlement (the "Class Notice"), annexed hereto as Exhibit A, to Settlement Class members by United States Postal Services (USPS) First-Class Mail, postage paid;

b. Establishing a case-specific toll-free telephone line with an interactive voice response (IVR) system and live operators;

c. Establishing the case-specific website KodakERISAsettlement.com (the "Website");

d. Coordinating the release of the summary notice via PR Newswire.

NOTICE EFFECTUATION

5. On or about April 27, 2016, A.B. Data received two files (one for Kodak ESOP stock participants and one for Kodak SIP stock participants) which were compiled to prepare a list of names and last-known addresses of Settlement Class members.

6. A.B. Data combined and de-duplicated the Settlement Class member data; the resulting list of Settlement Class members contained 19,485 records (the "Class List").

7. On or about April 27, 2016, A.B. Data received the Court-approved draft of the Class Notice and formatted it for printing.

8. Prior to mailing, A.B. Data standardized and updated the Class List addresses using NCOALink, a national database of address changes compiled by the USPS.

9. On May 18, 2016, A.B. Data caused Class Notices to be mailed via first-class mail, postage prepaid, to the 19,485 Settlement Class members on the Class List.

10. As of the date of this Declaration, 625 Class Notices were returned by the USPS to A.B. Data as undeliverable-as-addressed (UAA). Of these Class Notices, six included forwarding addresses and were re-mailed. None of these six Class Notices were returned as undeliverable.

11. For the 619 Settlement Class members for whom Class Notices were returned without forwarding addresses, A.B. Data conducted address update research utilizing LexisNexis. As a result, A.B. Data located 465 updated addresses and re-mailed Class Notices to those addresses.

12. As of the date of this Declaration, 32 of the re-mailed Class Notices have been returned as undeliverable.

13. Cumulatively, AB Data was unable to mail Class Notice to 186 individuals on the Class List due to either a bad address on the initial mailing or attempted remailing to an updated address.

14. In total, Class Notices were successfully mailed or re-mailed to 19,299 Settlement Class members representing approximately 99% of the Class List. Based on my experience, this success rate compares very favorably to other notice rates in other class actions.

IVR

15. On or about May 15, 2016, a case-specific toll-free number, 866-797-0862, was established with an IVR system. An automated attendant answers phone calls and presents callers with a series of choices in response to basic questions. If callers need further help, wish to request a Class Notice, or request a call back from a live operator, they have the option to be transferred to voicemail.

16. From May 15, 2016, through the date of this Declaration, there were a total of 26 calls received.

WEBSITE

17. On or about May 15, 2016, the Website was established. The Website includes general information regarding the case, answers to frequently asked questions, and the following case-related documents available for download: the long form class notice (attached hereto as Exhibit B); the Class Action Settlement Agreement; and the Preliminary Approval Order. As of the date of this Declaration, a total of 1,250 unique visits have been recorded at the Website.

SUMMARY NOTICE

18. On June 1, 2016, in accordance with the Class Action Settlement Agreement, A.B. Data caused the Summary Notice (attached hereto as Exhibit C) to be released over PR Newswire.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 1st day of July, 2016.

Christina Peters-Stasiewicz

EXHIBIT A

If, between January 1, 2010 and March 31, 2012, you had an account in the Eastman Kodak Employees' Savings and Investment Plan and your Plan account included investments in the Kodak Stock Fund, and/or you had an account in the Kodak Employee Stock Ownership Plan, you could be entitled to a payment under a proposed class action Settlement.

THIS NOTICE MAY AFFECT YOUR LEGAL RIGHTS. PLEASE READ IT CAREFULLY.

This is an official court notice from the United States District Court for the Western District of New York *In re Eastman Kodak ERISA Litigation,* Civil Action No. 12 06051-DGL

This notice has been delivered to you to notify you of a proposed $9.7 million cash settlement of an ERISA class action.

Records show that, between January 1, 2010 and March 31, 2012, you were a participant in the Kodak Employee Stock Ownership Plan (the "ESOP"), and/or you were a participant in the Eastman Kodak Employees' Savings and Investment Plan (the "SIP") and that your SIP Plan account held investments in the Kodak Stock Fund. As a result, you may be entitled to a payment pursuant to a proposed class action settlement in *In re Eastman Kodak ERISA Litigation,* Civil Action No. 12-06051-DGL.

Kodak ERISA Litigation Settlement
c/o A.B. Data, Ltd. Settlement Administrator
PO Box 170500
Milwaukee, WI 53217

PRESORTED
FIRST-CLASS MAIL
U.S. POSTAGE
PAID
MILWAUKEE WI
PERMIT NO. 3780

Postal Service: Please do not mark barcode
Date: May 18, 2016

In this case, the Plaintiffs claim that certain individuals and entities (collectively the "Defendants") breached their fiduciary duties owed the ESOP and the SIP (together, the "Plans"), under the Employee Retirement Income Security Act of 1974 ("ERISA") in connection with their administration of the Plans by continuing the Plans' investment in the Kodak stock when Defendants knew or should have known based solely on publicly available information that Kodak stock was an imprudent investment option for the Plans. The Defendants deny any and all wrongdoing and have asserted many defenses, which they believe would have been ultimately successful. However, the Parties have reached agreement to settle the dispute and the proposed Settlement is under review by the Court. As part of the proposed Settlement, qualified Settlement Class Members from either or both of the Plans who are current participants in the SIP and who show a loss under the proposed Plan of Allocation will receive payment to their SIP account. (Those without a current SIP Plan account will either receive payments directly or will have a new SIP Plan account established for receipt of their share of the Settlement, depending on the total amount of their net loss.) ***You do not need to do anything to receive a payment under the Settlement but your rights will be affected. The Settlement includes a release of claims related to the administration of the Plans and the selection of investment options under the Plans.***

The Court will hold a Fairness Hearing on ***August 22, 2016, at 2:00 p.m.*** to consider whether to approve the Settlement, the proposed Plan of Allocation, Plaintiffs' Counsel's application for up to one third of the Settlement Fund in attorneys' fees and expenses not to exceed $175,000, and Case Contribution Awards for each of the plaintiffs who have been appointed by the Court to represent the Settlement Class, which award shall not exceed $5,000 each. You cannot exclude yourself from the Settlement. You can, however, file written comments or objections with the Court and appear and speak at the Fairness Hearing at your own expense. To do so, you must submit your comments no later than ***August 1, 2016***. Detailed instructions can be found on the Settlement Website at **www.KodakERISAsettlement.com**, where you can also obtain a more detailed notice about the terms of the Settlement and how the payments will be calculated, as well as the Settlement Agreement and related materials. Additional information, including Plaintiffs' Counsel's application for attorneys' fees, will be posted on the Settlement Website as they are filed with the Court. You may also write to *Kodak ERISA Litigation Settlement,* c/o A.B. Data, Ltd., Settlement Administrator, PO Box 170500, Milwaukee, WI 53217 to request copies of these materials. This notice is only a summary.

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION THIS DOCUMENT RELATES TO: ALL ACTIONS	**MASTER FILE NO. 6:12-CV-06051-DGL**

NOTICE OF CLASS ACTION SETTLEMENT

To all members of the following class:

All Persons who, at any time between January 1, 2010 and March 31, 2012 (the "Class Period"), (a) were participants in or beneficiaries of the Kodak Employee Stock Ownership Plan (the "ESOP") and/or (b) were participants in or beneficiaries of the Eastman Kodak Employees' Savings and Investment Plan (the "SIP"), and whose SIP Plan accounts included investments in the Kodak Stock Fund.

PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.
A FEDERAL COURT AUTHORIZED THIS NOTICE.
THIS IS NOT A SOLICITATION.

- If you are a member of the Settlement Class, your legal rights will be affected by a proposed settlement in a class action lawsuit entitled *In re Eastman Kodak ERISA Litigation*, Civil Action No. 12-06051-DGL, in the United States District Court for the Western District of New York (the "Action").

- The Settlement resolves a class action lawsuit over whether certain entities and individuals alleged to be fiduciaries of the ESOP and/or the SIP (together, the "Plans") breached their fiduciary duties by violating the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, et seq. ("ERISA") with respect to the Plans' investment of assets in Kodak stock.

- The proposed Settlement will result in the creation of a $9.7 million Settlement Fund.

- The Court has scheduled a hearing on **August 22, 2016** to consider whether to approve the Settlement and certain other related matters. If approved, the Settlement would result in payments to qualifying members of the Settlement Class. See Question 11 below.

- This Notice is intended to provide information about how this lawsuit and the proposed Settlement may affect your rights and what steps you may take in that regard. This Notice does not express the Court's opinion on the merits of the claims or the defenses asserted in the lawsuit.

- If the Settlement is approved, your legal rights will be affected whether you act or not. Please read this Notice carefully.

YOUR LEGAL RIGHTS AND OPTIONS	
DO NOTHING	You do not need to do anything in response to this Notice. If the Settlement is approved by the Court and you are a member of the Settlement Class, you will receive whatever payment you may be entitled to under the Settlement without having to file a claim or take any other action.
FILE A COMMENT OR AN OBJECTION Deadline: August 1, 2016	If you want to submit comments about or objections to any aspect of the Settlement, you may submit your comments or objections in writing to the Court and the parties' attorneys by **August 1, 2016**. *See* Question 16 below.
GO TO A HEARING Scheduled: August 22, 2016	If you submit comments or objections to the Settlement to the Court, you and/or your attorney may appear at the Fairness Hearing. The Hearing is scheduled to take place at **2:00 p.m.** on **August 22, 2016**, at the U.S. District Court for the Western District of New York, Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614. *See* Question 19 below.

- These rights and options – **and the deadlines you must comply with to exercise them** – are explained in detail in this Notice.

- The Court will decide whether to approve the Settlement. Payments to Settlement Class Members will be made only if the Court approves the Settlement and only after any appeals are resolved and calculations under the Plan of Allocation are completed. Please be patient.

GENERAL INFORMATION

1. Why did I get this notice?

This Notice provides a summary of a class action lawsuit, the terms of a proposed Settlement of that lawsuit, and the ways in which that settlement will affect the legal rights of those individuals who are members of the Settlement Class.

You are receiving this Notice because you are a potential member of the Settlement Class. This means that you or someone in your family is or was a participant in either or both of the ESOP or the SIP at any time between January 1, 2010 and March 31, 2012 (the "Class Period"). In the case of SIP participants, their SIP account(s) must have included investments in the Kodak Stock Fund.

The Court directed that this Notice be sent to potential members of the Settlement Class because they have a right to know about the proposed Settlement of this lawsuit, and about all of their options before the Court decides whether to approve the Settlement. If the Court approves the Settlement, and after any appeals are resolved, the net Settlement proceeds will be distributed pursuant to a Court-approved "Plan of Allocation."

2. What is this lawsuit about?

This class action lawsuit is called *In re Eastman Kodak ERISA Litigation*, Civil Action No. 12-06051-DGL (the "Action"). It is pending in the United States District Court for the Western District of New York before U.S. District Judge David G. Larimer.

The people who brought the lawsuit are called the Plaintiffs. The Plaintiffs in this case are Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni, Sue Toal, and Sandy Paxton. For purposes of the proposed Settlement, they have been appointed to represent the Settlement Class.

The people and entities the Plaintiffs sued are called the Defendants. In this case, investment committees for the Plans, the members of the committees during the Class Period, and the Trustee for the SIP are the Defendants.

The Action claims that the Defendants were fiduciaries of the Plans and violated the fiduciary duties of loyalty, care, and prudence under ERISA that they owed to participants in the Plans regarding investment of the assets of the Plans in Kodak stock. In the Complaint, Plaintiffs asserted causes of action for the losses they allege were suffered by the Plans as the result of the alleged breaches of fiduciary duties by the Defendants.

Participants in the SIP (but not the ESOP) were able to allocate their account balances among various investment funds. The investment funds included a fund invested in Kodak common stock ("Kodak Stock Fund"). Participants in the ESOP were invested solely in shares of Kodak stock. This Action concerns only SIP investments in the Kodak Stock Fund, as well as the ESOP's investment in Kodak stock.

The case has been litigated for several years. The Consolidated Class Action Complaint was filed on September 14, 2012. The Consolidated Class Action Complaint asserts claims under ERISA for breaches of fiduciary duties by Defendants for failing to prudently and loyally manage the Plans and the Plans' assets (Counts I and II) and also alleges co-fiduciary liability against all the Defendants (Count III). By this Action, Plaintiffs sought to recover the alleged losses due to investment of Plan assets in Kodak stock, as well as equitable, injunctive and other monetary relief, including attorneys' fees. The Defendants have denied beach of any fiduciary duty, violation of ERISA, or any other wrongdoing, and have asserted various defenses that they believe would have been ultimately successful.

On October 29, 2012, Defendants moved to dismiss Plaintiffs' claims on the grounds that Plaintiffs failed to state a viable legal claim. All Parties filed legal briefs and supporting documents with the Court, which held a hearing on the motion in 2013. On December 17, 2014, the Court issued a ruling denying the Motion to Dismiss, finding that Plaintiffs had adequately pleaded claims for breach of fiduciary duties of prudence and co-fiduciary liability based on those breaches. *See Gedek v. Perez*, 66 F. Supp. 3d 368 (W.D.N.Y. Dec. 17, 2014).

Plaintiffs' Counsel have conducted an extensive investigation of the allegations in the Action and of the losses allegedly suffered by participants and/or beneficiaries of the Plan. In addition, through that investigation and through discovery of information in the Action, Plaintiffs' Counsel have obtained and reviewed documents from Defendants, including Plan governing documents and materials, communications with Plan participants, internal Kodak documents regarding the Plan, SEC filings, press releases, public statements, news articles and other publications, and other documents regarding the underlying issues that the Plaintiffs allege made investment of the Plans' assets in the Kodak stock and the Kodak Stock Fund imprudent.

The proposed Settlement is the product of hard-fought negotiations between Plaintiffs' Counsel and the Defendants' Counsel, with the assistance of an experienced mediator. Throughout the negotiations, Plaintiffs' Counsel and Defendants' Counsel were advised by individuals with expertise in the estimation of potential losses or damages in cases involving ERISA fiduciary liability.

All Defendants deny the claims in the Action and have vigorously defended the litigation. The Defendants have expressly denied any wrongdoing or liability of any kind, and believe that they would have been ultimately successful.

Plaintiffs do not concede in settling this Action that their claims lack merit.

3. Why is the Action a class action?

In a class action, one or more people called class representatives (in this case Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni, Sue Toal, and Sandy Paxton), sue on behalf of other people who have similar claims. All of the people who have similar claims make up a "class" and are referred to individually as "class members." Bringing a lawsuit as a class action allows the court to consider and resolve all at once many similar individual claims that might be economically too small to bring individually. The Action at issue here alleges wrongful conduct that affects a large group of people in a similar way. Accordingly, the Plaintiffs filed this action as a class action.

4. Why is there a Settlement?

By agreeing to a settlement, both sides avoid the risks and costs of a trial, and the Settlement Class will benefit from the creation of a $9.7 million Settlement Fund. *See* Question 9 below. The terms of the proposed Settlement will be reviewed by the Court.

The Plaintiffs and their attorneys think the settlement is fair, reasonable, and adequate. They also believe that the significant monetary benefits of the proposed Settlement are a good result for the Settlement Class – especially given the possibility that Plaintiffs and the proposed class could otherwise recover nothing if the claims were dismissed by the Court, the uncertainty of the law surrounding Plaintiffs' legal theories, the disputed issues of fact, and the likelihood that litigation of the Action would continue for many years.

5. How do I know if I am affected by the Settlement?

All Persons who, at any time during the period from January 1, 2010 through March 31, 2012, (a) were participants in or beneficiaries of the ESOP and/or (b) were participants in or beneficiaries of the SIP, and whose SIP Plan accounts included investments in the Kodak Stock Fund are members of the Settlement Class and are therefore affected by the Settlement. This definition is subject to the conditions set forth under Question 6, below.

6. Are any Plan participants excluded from the Settlement Class?

Yes. Excluded from the Settlement Class are Defendants and their Immediate Family Members, any entity in which a Defendant has a controlling interest, and their heirs, Successors-in-Interest, or assigns (in their capacities as heirs, Successors-in-Interest, or assigns). Additionally, SIP participants who did not hold an investment in the Kodak Stock Fund at some time between January 1, 2010 and March 31, 2012 are not members of the Settlement Class.

7. What if I am still not sure if I am included?

If you are still not sure whether you are a member of the Settlement Class, you can consult with an attorney of your own choosing or you can call 1-866-797-0862 or visit www.KodakERISAsettlement.com for more information. Please do not call the Court or Kodak.

8. Can I exclude myself from the Settlement Class?

No. You will be bound by any judgments or orders that are entered in the Action, whether favorable or unfavorable.

THE SETTLEMENT BENEFITS

9. What does the proposed Settlement provide?

As part of the proposed Settlement, Defendants have agreed to create a $9.7 million Settlement Fund. After payment of the costs associated with administering the Settlement Fund, associated taxes, any award to Plaintiffs' Counsel for attorneys' fees and expenses, and any awards to the Settlement Class Representatives for their contributions to the Action, as decided by the Court, the balance of the Settlement Fund will be distributed to qualifying Settlement Class Members in accordance with a Court-approved "Plan of Allocation." The proposed Plan of Allocation is discussed in Question 11 below.

10. How do I get a payment?

You do not need to file a claim or take any other action to receive a payment in connection with the proposed Settlement. All necessary calculations will be made using the Plan's records.

Payments to Settlement Class Members who are current SIP participants will be credited to their existing SIP Plan accounts and allocated in their entirety to the Plan's current default investment option. Current SIP Plan participants may reallocate their Settlement payment if and as permitted by the Plan.

Payments to Settlement Class Members who liquidated their SIP Plan accounts before the "Effective Date" of the proposed Settlement will be processed in one of two ways. For such Settlement Class Members whose Final Individual Dollar Recovery under the Plan of Allocation, as described in Question 11 below, is greater than or equal to $5000.00, their share of the Settlement will be credited to a new Plan account established for them by the SIP Recordkeeper and allocated in their entirety to the Plan's current default investment option. Such accounts will be subject to all of the SIP Plan's rules. Former Plan participants will receive notice that the new SIP Plan account has been established along with further instructions and options. Settlement Class members who liquidated their SIP Plan accounts before the Effective Date of the Proposed Settlement whose Final Individual Dollar Recovery under the Plan of Allocation is less than $5000.00 will receive their share of the Settlement by check. Settlement Class members who receive a check are urged to consult promptly with their financial advisors regarding any tax consequences of such payment and/or how to roll over such payment to your current retirement account.

The ESOP was liquidated in 2012. With respect to Settlement Class Members who were ESOP Participants during the Class Period and are Participants in the SIP as of the date that the Settlement becomes Final, any payment they are entitled to receive for their ESOP account will be added to any payment they may be due for the SIP account and deposited into their existing SIP account. With respect to Settlement Class Members who were ESOP Participants during the Class Period and are not Participants in the SIP as of the date that the Settlement becomes Final, any payment they are entitled to receive for their ESOP account will be treated in the same manner as payments for former SIP Plan participants as described in the preceding paragraph.

All payments to Settlement Class Members will be made as promptly as possible after all costs, taxes, and other required disbursements are taken out of the Settlement Fund and the balance is transferred to the SIP Plan. Please be patient.

If any of the following applies to you, please contact the Settlement Administrator as soon as possible: (1) your status as a current Plan participant has recently changed or may change in the near future; (2) your mailing address has recently changed or may change in the near future; or (3) you did not receive a mailed notice of the proposed Settlement but believe that you are a Settlement Class Member. The Settlement Administrator can be contacted by phone at the Kodak ERISA Settlement Help Line at 1-866-797-0862, or by mail at:

In re Eastman Kodak ERISA Litigation Settlement
c/o A.B. Data, Ltd.
Settlement Administrator
P.O. Box 170500
Milwaukee, WI 53217

11. How much will my payment be?

Your share of the Settlement Fund will be calculated as part of the implementation of the Settlement pursuant to a Court-approved Plan of Allocation summarized herein and available at www.KodakERISAsettlement.com. The amount of your payment, if any, will depend on the amount of your "Net Loss," as calculated pursuant to the Plan of Allocation, and how that amount compares with the Net Losses of the other qualifying Settlement Class Members. Whether you have a Net Loss under the Plan of Allocation depends on whether and when you bought and/or sold shares of the ESOP or the Kodak Stock Fund in your SIP account between January 1, 2010 and March 31, 2012. You are not responsible for calculating the amount you may be entitled to receive under the proposed Settlement. This calculation will be done by the Settlement Administrator as part of the implementation of the Settlement.

The summary below is not intended to be either an estimate of the amount that a qualifying Settlement Class Member might have been able to recover from Defendants after a trial of the Action. Given the factors above, and because the Court may require changes to the proposed Plan of Allocation before the Settlement is approved, it is also not intended to be an estimate of the amount that will be paid to qualifying Settlement Class Members pursuant to the Settlement if the Settlement is approved by the Court.

Summary of the Proposed Plan of Allocation

The formula summarized below is the proposed basis upon which the balance of the Settlement Fund (after payment of costs, taxes, attorneys' fees, and expenses) will be proportionately allocated to qualifying Settlement Class Members. Your payment, if any, will be equal to your proportionate share of the total Net Losses of all qualifying Settlement Class Members multiplied by the Net Settlement Fund (subject to certain limitations, also described below). Your payment will be calculated as follows:

The Settlement Administrator shall determine each Settlement Class Member's Net Loss with respect to each Settlement Class Member's account in each of the Plans. The Net Loss for each Settlement Class Member's account in each Plan account (SIP Kodak Stock Fund or ESOP) is equal to A + B – C – D, where:

A = the dollar value of his or her investment in the relevant Plan account at the opening of trading on the first day of the Class Period, January 1, 2010;
B = the dollar value of his or her new investments in the relevant Plan account

during the period between January 1, 2010, and March 31, 2012, valued at the time of transaction;

C = the dollar value of his or her dispositions of shares in the relevant Plan account during the period between January 1, 2010, and March 31, 2012, valued at the time of transaction; and

D = the dollar value of his or her investment in the relevant Plan account at the close of trading on the last day of the Class Period, March 31, 2012.

To the extent a Settlement Class Member has a zero Net Loss or a market gain in the relevant Plan account, the total Net Loss will be $0.00 for that account.

For Settlement Class Members that had accounts in both the SIP-Kodak Stock Fund and in the ESOP, the Net Loss for each account will be separately determined, and gains in one will not be offset against losses in the other.

The Settlement Administrator shall determine each Settlement Class Member's Preliminary Individual Dollar Recovery for each relevant Plan Account. The sum of all Settlement Class Members' total Net Losses is the loss of each of the Plans as a whole over the Class Period (the "Plan's Net Loss"). The ratio of each Settlement Class Member's total Net Loss to the Plan's Net Loss equals his or her Net Loss Percentage. Each Settlement Class Member's Preliminary Individual Dollar Recovery equals the product of his or her Net Loss Percentage and the Net Settlement Fund.

The Settlement Administrator shall then identify all Former Plan Participants whose Preliminary Individual Dollar Recovery is less than or equal to $25.00 (the "De Minimis Amount"), who shall be deemed to have a Final Individual Dollar Recovery of $0.00.[1]

The Settlement Administrator shall then recalculate the Net Loss Percentages of the remaining Settlement Class Members by omitting from the calculation of the Plan's Net Loss the total Net Losses of all Former Plan Participants whose Preliminary Individual Dollar Recoveries are equal to or less than the De Minimis Amount. Each remaining Settlement Class Member's Final Individual Dollar Recovery equals the product of his or her Net Loss Percentage and the Net Settlement Fund.

The foregoing is subject to applicable Plan provisions and procedures regarding inactive accounts, participants who cannot be located, deceased participants, and Qualified Domestic Relations Orders.

12. When would I get my payment?

The Court has scheduled a hearing on **August 22, 2016**, to decide whether to approve the Settlement. If the Court approves the Settlement, there may be appeals. It is always uncertain whether these appeals can be resolved, and resolving them can take time, perhaps more than a year. It also takes time to make all the required calculations. For these reasons, a payment date cannot be provided at this stage. Please be patient. If for any reason the Settlement is terminated, there will be no payments.

13. What am I giving up in exchange for the Settlement payment?

[1] Subject to Court approval, the Parties may agree to modify the *De Minimis Amount* at any time before entry of the Final Order based on information they may receive from the Plan's recordkeepers, the Trustee and/or the Settlement Administrator.

Upon the "Effective Date" of the Settlement, all Settlement Class Members will release and forever discharge, and be forever enjoined from prosecuting, any "Released Plaintiffs' Claims" (as defined below) against any of the "Released Parties" (as defined below).

"Released Plaintiffs' Claims" is defined in the proposed Settlement Agreement to mean any and all claims, demands, rights, liabilities, and causes of action of every nature or description whatsoever, fixed or contingent, known or unknown, accrued or unaccrued, liquidated or unliquidated, at law or in equity, matured or unmatured, whether class or individual in nature, asserted or that might or could have been asserted in any forum (i) by *Plaintiffs* individually, (ii) by *Plaintiffs* on behalf of the *Plans* or by their participants, fiduciaries, or beneficiaries, (iii) by the *Settlement Class*, and (iv) by the *Plans* themselves or by any participant, fiduciary, or beneficiary in or of the Plans on behalf of the Plans, against any or all of the *Released Parties* that: (a) were brought or could have been brought in the *Action* and arise out of the same or substantially similar facts, circumstances, situations, transactions, or occurrences as those alleged in the *Action* during the *Class Period*; or (b) were brought or could have been brought under *ERISA* with respect to the *Plans'* offering or holding of *Company Stock* during the *Class Period,* including, but not limited to, the offering or retaining of the *Kodak Stock* Fund in the *SIP*, or *Company Stock* in the *ESOP* as an investment option, or the investment, acquisition, retention, or disposition of the *Kodak Stock Fund* (or the exercise of any right ancillary or appurtenant to ownership of the *Kodak Stock Fund*) in the *SIP* or *Company Stock* in the *ESOP* under the *Plans*, or at a participant's or beneficiary's direction by or through the *Plans*.

"Released Parties" is defined in the proposed Settlement Agreement to mean each of the *Defendants* and each of the *Defendants'* respective past, present, and future directors, officers, fiduciaries, employees, employers, partners, principals, agents, members, independent contractors, registered *Representatives*, underwriters, issuers, insurers, co-insurers, insureds, reinsurers, controlling shareholders, attorneys, accountants, auditors, investment bankers, advisors, consultants, trustees, investment managers, fiduciaries, committee members, personal *Representatives*, predecessors, service providers, successors, *Successors-in-Interest*, parents, subsidiaries, divisions, assigns, heirs, executors, administrators, associates, related or *Affiliated* entities, and Immediate *Family Members.* Also included in this definition is the *Company* and the *Plans'* trustees, *BNY Mellon Defendants*, T. Rowe Price, and any of their respective subsidiaries, affiliates, predecessor companies, affiliates, and subsidiaries, as well as their respective directors, officers, employees, agents, attorneys, and/or *Representatives*, and against anyone else who could be deemed a fiduciary of the *SIP* or the *ESOP*.

The "Effective Date" will occur when the order entered by the Court approving the Settlement becomes Final and not subject to appeal.

The above definitions include certain other terms that are separately defined in the proposed Class Action Settlement Agreement ("Settlement Agreement") but are not reproduced here. For more information, please see the Settlement Agreement dated April 22, 2016, available on the Settlement website at www.KodakERISAsettlement.com.

THE LAWYERS REPRESENTING YOU

14. Do I have a lawyer in this case?

In its order directing distribution of Class Notice to the Class Members and scheduling the final Settlement hearing, the Court appointed the law firms of Connolly Wells & Gray, LLP and Izard Nobel LLP to

represent the Settlement Class. These lawyers are called Class Counsel. If you want to be represented by your own attorney, you may hire one at your own expense.

15. How will the lawyers be paid?

The Court will determine the amount of any award to Plaintiffs' Counsel to compensate them for their work on the Action and to reimburse them for associated expenses. Plaintiffs' Counsel intends to ask the Court to award them fees not to exceed one-third of the Settlement Fund and expenses not to exceed $175,000.00. Any award by the Court will be paid out of the Settlement Fund. You are ***not*** responsible for paying Plaintiffs' Counsel.

Plaintiffs' Counsel also intends to ask the Court to award Case Contribution Awards of up to $5,000.00 each for the Settlement Class representatives for their contributions to the prosecution and Settlement of the Action. Any such awards will be paid out of the Settlement Fund.

Copies of Plaintiffs' Counsel's applications for attorneys' fees, expenses, and case contribution awards may be accessed (after they are filed) at the Settlement website at www.KodakERISAsettlement.com before the objection deadline.

OBJECTING TO THE SETTLEMENT

You can tell the Court that you do not agree with the settlement or some part of it.

16. How do I tell the Court that I do not like the proposed Settlement?

If you are a Settlement Class Member, you can tell the Court that you do not agree with the proposed Settlement or some part of it, including the proposed Plan of Allocation, the request for attorneys' fees and reimbursement of expenses, and/or the request for case contribution awards.

To object, you must send a letter or other writing stating that you object to the settlement in *In re Eastman Kodak ERISA Litigation*, Civil Action No. 12-06051-DGL. Be sure to include the following: (i) the name of the Action; (ii) the case number; (iii) your full name, address, and telephone number; (iv) a statement that you are a Settlement Class Member and an explanation for the basis for your being a Settlement Class Member (for example, that you were a participant in the SIP and had some of your SIP account assets invested in the Kodak Stock Fund in 2011 and early 2012); (v) all grounds for your objection; (vi) a statement as to whether you or your counsel intends to appear and would like to speak at the Fairness Hearing; and (vii) a list of any persons you or your counsel may call to testify at the Fairness Hearing in support of your objection. **Your objection must be signed by you or your attorney and must be submitted to the Court and sent to all the following counsel at the following addresses on or before August 1, 2016**:

TO THE COURT:
Clerk of the U.S. District Court for the Western District of New York
2120 Kenneth B. Keating Federal Building
100 State Street
Rochester, NY 14614
Re: *In re Eastman Kodak ERISA Litigation*, Civil Action No. 12-06051-DGL

TO CLASS COUNSEL:
Gerald Wells III
Connolly Wells & Gray, LLP
2200 Renaissance Boulevard
King of Prussia, PA 19406

Mark P. Kindall
Izard Nobel LLP
29 South Main Street, Suite 305
West Hartford, CT 06107

TO COUNSEL FOR THE KODAK DEFENDANTS:
William J. Kilberg
Paul Blankenstein
Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5306

TO COUNSEL FOR THE BNY MELLON DEFENDANTS:
James O. Fleckner
Alison V. Douglass
Goodwin Procter LLP
Exchange Place
53 State Street
Boston, MA 02109

You do not need to go to the Fairness Hearing to have your written objection considered by the Court. If you do file an objection with the Court, however, you may appear in person or arrange, at your expense, for a lawyer to represent you at the hearing. See Question 19 below. If you intend to appear at the Fairness Hearing, or have an attorney appear on your behalf, please confirm with Class Counsel that the time and date of the Fairness Hearing have not changed. If you do file an objection, you may be subject to discovery by the Parties to the Action on the issues related to your objection, including having your deposition taken.

THE COURT'S FAIRNESS HEARING

17. When and where will the Court decide whether to approve the proposed Settlement?

The Court will hold a hearing to decide whether to approve the proposed Settlement. This hearing is called a "Fairness Hearing." The Fairness Hearing is scheduled to take place at **2:00 p.m.** on **August 22, 2016**, at the U.S. District Court for the Western District of New York, Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable and adequate. The Court will also consider the proposed Plan of Allocation and the applications for attorneys' fees, expenses and case contribution awards. The Court will take into consideration any written objections filed in accordance with the instructions at Question 16. The Court may also allow any person who has objected and timely filed a Notice of Appearance to speak at the Fairness Hearing. After the Fairness Hearing, the Court will decide whether to approve the Settlement and whether to award any attorneys' fees, expenses and/or case contribution awards. We do not know how long these decisions will take.

The Court may change the date and time of the Fairness Hearing. If that happens, the Settlement Administrator will post the new date and time for the Fairness Hearing on the Settlement website at www.KodakERISAsettlement.com and will notify any Settlement Class Members who have filed objections to the proposed Settlement *as of that date*, but will not notify any other Settlement Class Members, including those who file objections after the Fairness Hearing is rescheduled. Accordingly, if you submit an objection to the Court and you or your counsel intends to attend the Fairness Hearing, please be sure to check the Settlement website regularly to confirm the date and time.

18. Do I have to come to the Fairness Hearing?

No. Class Counsel will answer any questions the Court may have about the proposed Settlement, the proposed Plan of Allocation, and the applications for attorneys' fees, expenses, and case contribution awards. You and/or your counsel are welcome to attend the Fairness Hearing at your own expense, but you do not have to, even if you filed an objection. The Court will consider every timely filed objection even if the objectors are not present at the Fairness Hearing.

19. May I speak at the Fairness Hearing?

If you are a Settlement Class Member and you file an objection to the proposed settlement or any of its terms before the deadline and in accordance with the instructions at Question 16, you and/or your counsel may ask the Court for permission to speak at the Fairness Hearing. To do so, you must state in your written objection that you intend to appear and would like to speak at the Fairness Hearing. See Question 16 above.

IF YOU DO NOTHING

20. What happens if I do nothing at all?

You do not have to take any action in response to this Notice in order to participate in the Settlement. If the Settlement is approved by the Court, you will receive any payment to which you are entitled under the Court-approved Plan of Allocation. *See* Questions 9 through 12 above.

GETTING MORE INFORMATION

21. Where can I get more details about the proposed Settlement?

This Notice summarizes the proposed Settlement. The actual terms and conditions of the proposed Settlement are set forth in the Settlement Agreement dated April 22, 2016. You can get a copy of the Settlement Agreement, as well as copies of the Court's Preliminary Approval Order, and Plaintiffs' Counsel's applications for attorneys' fees, expenses, and case contribution awards (after they are filed) at www.KodakERISAsettlement.com or by writing to Class Counsel at the addresses listed above. All other papers that have been filed in the Action may be inspected at the office of the Clerk of the Court, U.S. District Court for the Western District of New York, 2120 Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614, during regular business hours.

Dated: Rochester, New York
April 27, 2016

By Order of the Court
CLERK OF THE COURT

EXHIBIT C

Connolly Wells & Gray, LLP and Izard Nobel LLP Announce a Proposed $9.7 Million Cash Settlement of an ERISA Class Action on Behalf of Certain Participants in the Kodak Employee Stock Ownership Plan and the Eastman Kodak Employees' Savings and Investment Plan

NEW YORK – (PR Newswire) – June 1, 2016

In the United States District Court for the Western District of New York, in *In re Eastman Kodak ERISA Litigation*, Civil Action No. 12-06051-DGL, a Settlement Notice has been mailed as well as published on the Settlement website at www.KodakERISAsettlement.com, a summary of which follows:

Summary Notice of Proposed Class Action Settlement
and Scheduling of Fairness Hearing

To: *All Persons who, at any time during the period from January 1, 2010, through March 31, 2012 (the "Class Period"), (a) were participants in or beneficiaries of the Kodak Employee Stock Ownership Plan (the "ESOP") and/or (b) were participants in or beneficiaries of the Eastman Kodak Employees' Savings and Investment Plan (the "SIP"), and whose SIP Plan accounts included investments in the Kodak Stock Fund.*

If you are a member of the class described above, your rights will be affected and you may be entitled to a payment from the Settlement Fund. Please read carefully.

YOU ARE HEREBY NOTIFIED, pursuant to Rule 23 of the Federal Rules of Civil Procedure and an Order of the Court, that the above-referenced action has been certified as a class action for purposes of a proposed $9.7 million cash settlement, subject to review and final approval by the Court. As part of the proposed Settlement, Settlement Class Members who show a loss under the proposed Plan of Allocation may be entitled to a payment under the terms of the Settlement. *You do not need to do anything to receive a payment under the Settlement if you are entitled to one, but your rights will be affected. The Settlement includes a release of claims related to the administration of the ESOP and SIP (together, the "Plans") and the selection of investment options under the Plans.*

A Fairness Hearing has been scheduled before Judge David G. Larimer of the United States District Court for the Western District of New York in the Kenneth B. Keating Federal Building, 100 State Street, Rochester, NY 14614, at 2:00 p.m., on August 22, 2016, to determine whether the proposed Settlement should be approved by the Court as fair, reasonable, and adequate, and to consider the proposed Plan of Allocation and Plaintiffs' Counsel's applications for attorneys' fees, expenses, and Case Contribution Awards.

You cannot exclude yourself from the Settlement. You can, however, file written comments or objections with the Court. You or your lawyer may also appear and request the opportunity to speak at the Fairness Hearing at your own expense. To do so, *you must send your comments and/or objections to the Court and the Parties' attorneys no later than* ***August 1, 2016***. Detailed instructions can be found on the Settlement website at www.KodakERISAsettlement.com, where you can also obtain a more detailed Class Notice about the terms of the Settlement, how the existence of a qualifying loss will be determined, and how the payments will be calculated, along with the Class Action Settlement Agreement and related materials. Additional information and materials, including Class Counsel's application for attorneys' fees, will be posted on the Settlement website as they are filed with the Court. You may also write to *In re Eastman Kodak ERISA Litigation* Settlement, c/o A.B. Data, Ltd., Settlement Administrator, P.O. Box 170500, Milwaukee, WI 53217 to request copies of these materials.

All other inquiries may be made by writing to Class Counsel at the following addresses:

Gerald Wells III
Connolly Wells & Gray, LLP
2200 Renaissance Boulevard
King of Prussia, PA 19406
gwells@cwg-law.com

Telephone: (610) 822-3700

Mark P. Kindall
Izard Nobel LLP
29 South Main Street, Suite 305
West Hartford, CT 06107
mkindall@izardnobel.com

Telephone: (860) 493-6294

Published by Order of the U.S. District Court for the Western District of New York

CONTACT: Gerald Wells III, (610) 822-3700
Mark Kindall, (860) 493-6294

Source: Connolly Wells & Gray, LLP and Izard Nobel LLP

EXHIBIT 2

CONNOLLY
WELLS &
GRAY, LLP

FIRM RESUME

Connolly Wells & Gray, LLP ("CWG") is a nationally recognized class action law firm. It was founded in 2013 by Stephen E. Connolly, Gerald D. Wells, III, and Robert J. Gray, attorneys with over forty-five years of combined experience representing plaintiffs in class action litigation. CWG has a national presence in complex civil litigation. The firm's attorneys have significant experience prosecuting class actions in state and federal courts nationwide, including cases involving violations of the Employee Retirement Income Security Act (ERISA), the Sherman Antitrust Act, the Fair Labor Standards Act (FLSA), and various consumer protection statutes.

Since its inception, CWG's experience and expertise have been recognized by courts throughout the country who have appointed the firm to leadership positions in a variety of class action matters. CWG has achieved many notable successes and helped recover significant monetary sums for class members while serving as lead counsel and co-lead counsel in a range of cases.

REPRESENTATIVE CASES

***In re Chickie's and Pete's Wage and Hour Litigation*, No. 12-cv-06820 (E.D. Pa.):**

CWG, along with co-counsel, obtained a settlement of over $1.32 million, plus attorneys' fees and costs, for a group of ninety current and former tipped employees (waiters, waitresses, bussers, barbacks & bartenders) based on, among other things, allegations that defendants violated state and federal wage laws by failing to pay the proper minimum wage and engaged in an improper tip pooling arrangement. Importantly, this settlement represented a recovery of 100% of back wages allegedly owed.

***Hellman v. Cataldo*, *et al.* (*In re CPI ERISA Litig.*), No. 12-cv-2177 (E.D. Mo.):**

CWG obtained final approval of a settlement of $800,000.00 for a class of approximately 1,000 participants in an employer sponsored 401(k) retirement plan based on claims of breaches of fiduciary duty due to defendants' continued investment of retirement savings in company stock when such investment was allegedly imprudent due to the company's downward spiral and eventual bankruptcy.

***Kotchmar v. Movie Tavern Partners, L.P.*, Case No. 15-cv-04061 (E.D. Pa.):**

As co-lead counsel, CWG assisted in obtaining a settlement of $750,000.00 on behalf of a class of over 700 tipped employees based on, among other things, allegations that defendant violated state and federal wage laws by failing to satisfy the notice requirements of the tip credit provisions of the FLSA and the Pennsylvania Minimum Wage Act.

***Bergman v. Kindred Healthcare, Inc., et al.*, No. 10-cv-0191 (N.D. Ill.):**

In its role as co-lead counsel, CWG helped to obtain a settlement of $700,000.00 on behalf of more than 1,500 class members who alleged they were not paid for all hours worked, in violation of the FLSA and Illinois state wage and hour laws.

***Magness v. Walled Lake Credit Bureau, et al*, No. 12-CV-06586 (E.D. Pa.):**

As co-lead counsel, CWG helped to obtain a settlement of $550,000.00 for a class of approximately 31,000 individuals nationwide based on allegations that defendants' loan modification package violated the Fair Debt Collection Practices Act ("FDCPA"). Notably, the settlement amount was in excess of the FDCPA's statutory cap on damages.

PRACTICE AREAS

Americans with Disabilities

The attorneys at CWG represent individuals with disabilities who have been harmed by violations of the Americans with Disabilities Act (ADA). The ADA is the federal law that guarantees equal treatment and access for disabled persons, including individuals with severe vision impairment or blindness, severe hearing impairment or deafness, and those who require the use of a wheelchair or other mobility device. To date, CWG has been successful in challenging policies, procedures, and physical barriers on behalf of clients that have been denied access to public accommodations in violation of Section III of the ADA.

ERISA

CWG represents participants and beneficiaries of employee benefit plans covered by the Employee Retirement Income Security Act of 1974 ("ERISA"). In such cases, the firm protects the interests of current and former employees, as well as beneficiaries, in retirement savings plans against the wrongful conduct of plan fiduciaries. Often, these retirement savings plans constitute a significant portion of an employee's retirement savings, and thus any losses can be devastating to employees' retirement plan. ERISA, which codifies one of the highest duties known to law, requires an employer to act in the best interests of the plan's participants, including the selection and maintenance of retirement investment vehicles. For example, an employer who administers a retirement savings plan such as a 401(k) plan or Employee Stock Ownership Plan ("ESOP") has a fiduciary duty to ensure that the retirement plan's assets (including employee and any company matching contributions to the plan) are directed into appropriate and prudent investment vehicles.

Most recently, CWG was appointed as a member of the Class Counsel Committee in the action styled *In re 2014 RadioShack ERISA Litig.*, Master File No. 4:14-cv-959-O (N.D. Tex.). In this matter, CWG and their co-counsel are prosecuting claims under ERISA alleging of breach of fiduciary duty on behalf of participants in a 401(k) retirement plan. To date, CWG and its co-counsel have obtained a settlement of $900,000.00 against one of the defendants in the case.

Wage & Hour

The attorneys at CWG fight to protect the rights of employees across the nation to make sure they are compensated properly for all time worked on behalf of their employer. State and federal wage and hour laws, including the Fair Labor Standards Act ("FLSA"), protect workers by requiring that all hourly employees are fully compensated for each of the hours they work. The

FLSA requires that each employee receive the full minimum wage as well as overtime (1.5 times their hourly rate) for all hours worked in excess of forty in a workweek, unless the employee falls within one of the FLSA's enumerated exemptions. Some states offer additional protections.

Recently, CWG along with co-counsel, obtained preliminary approval for a settlement of $300,000.00 on behalf of a class of tipped employees based on, among other things, allegations that defendants violated the FLSA and state wage laws by failing to meet the requirements of the tip credit provisions of the FLSA and failing pay the proper minimum wage. That matter is styled *Graudins v. KOP Kilt, LLC d/b/a/ The Tilted Kilt Pub*, Case No. 14-cv-02589 (E.D. Pa.).

Consumer Protection

The attorneys of CWG protect the rights of consumers nationwide against unscrupulous business practices. CWG's Consumer Protection practice encompasses a variety of litigation, including cases brought under state consumer protection laws against companies engaged in deceptive business practices, or false advertising designed to take advantage of unsuspecting individuals and businesses. Such practices include false advertising and/or misrepresentation of products and services; hidden or unnecessary fees charged to consumers; and the sale of dangerous, or defective products.

In the matter styled *Volyansky v. Hayt, Hayt & Landau, LLC*, No. 13-cv-3360 (E.D. Pa.), CWG, along with co-counsel, obtained favorable rulings and a settlement on behalf of a class of 1,383 individuals who alleged novel claims involving when a debtor can collect costs on a judgment entered in the Philadelphia Court of Common Pleas. Notably, the settlement obtained maximum statutory amount available under the FDCPA. More recently, CWG and their co-counsel obtained preliminary approval for a settlement of $500,000.00 on behalf of a class of more than 177,000 individuals based on allegations that defendants' debt collection mailing policy violated the FDCPA. Notably, the settlement amount was the largest allowed by statute. The case is styled *Ebner v. United Recovery Systems, LP., et al.*, Case No. 14-cv-06881 (E.D. Pa.).

ATTORNEYS

Stephen E. Connolly is a founding member of Connolly Wells & Gray, LLP. Mr. Connolly has extensive experience representing individuals and corporations in complex class action litigation throughout the United States involving violations of the federal and state antitrust

laws, state consumer-protection statutes, and the federal securities laws. In addition, Mr. Connolly represents workers alleging violations of state and federal wage laws.

Notable cases in which Mr. Connolly served as class counsel include *Marchbanks Truck Service, Inc. v. Comdata Network, Inc*., Case No. 07-1078 (E.D. Pa.), which settled in January 2014 for $130 million; *In re Titanium Dioxide Antitrust Litigation*, No. 1:10-cv-00318-RDB (D. Md.), an antitrust class action against the major producers of titanium dioxide, which settled in 2013 for $163.5 million; and *In re NCAA Student-Athlete Name & Likeness Licensing Litigation*, No. 4:09-cv-1967 (N.D. Cal.). Mr. Connolly currently represents several labor union health benefit funds against pharmaceutical manufacturers for delaying the entry of generic drugs in violation of antitrust laws.

Mr. Connolly graduated summa cum laude from Penn State University and received his law degree from the Villanova University School of Law in 2000. He is a member of the bar of the Commonwealth of Pennsylvania, the United States District Court for the Eastern District of Pennsylvania, the United States Court of Appeals for the Third Circuit, and United States District Court for the Eastern District of Michigan.

Gerald D. Wells, III is a founding member of Connolly Wells & Gray, LLP. Mr. Wells has substantial experience in prosecuting class actions on behalf of aggrieved employees and consumers. This experience includes ERISA class actions, which involve claims against fiduciaries of a company's 401k plan for making imprudent investments. Mr. Wells has spoken at ERISA conferences on such topics as fiduciary liability and developments in ERISA jurisprudence. In addition, he has significant experience in litigating state and federal wage and hour claims against companies for failing to pay their employees all wages due and owing. He

has been counsel of record in numerous notable decisions including the Supreme Court's decision in the action styled *Genesis Healthcare Corp. v. Symcyzk*, 133 S. Ct. 1523 (2013). His experience and expertise in wage and hour litigation is well recognized, having been chosen to speak at a conference on recent developments in the field of wage and hour law.

Mr. Wells has served as class counsel in numerous cases, including *Avangard Auto Finance, Inc. v. Great American Ins. Co.,* No. 10-cv-06849 (E.D. Pa.) (settlement of a consumer class action that provided for full relief for participating class members, who included individuals and business entities); *In re Bristol-Myers Squibb ERISA Litig.*, No. 02-cv-10129 (S.D.N.Y.) (settlement of ERISA claims of 40,000 class members for $41.22 million plus structural plan changes valued at up to $52 million); *Weaver v. Edward D. Jones & Co., L.P.*, Nos. 08-cv-529, 08-cv-540 (N.D. Ohio) (settlement of state and federal wage and hour claims for up to $19 million); *In re Janney Montgomery Scott Financial Consultant Litig.*, No. 06-cv-3202 (E.D. Pa.) (settlement of state and federal wage and hour claims for up to $2.88 million).

Mr. Wells is a graduate of both Temple University and Temple University School of Law (J.D. 2001). While in law school, he served as the Symposium Editor for the Environmental Law & Technology Journal. Mr. Wells is licensed to practice law in Pennsylvania, New Jersey, and California. In addition, Mr. Wells is admitted to practice before the United States Supreme Court, the United States Court of Appeals for the Third, Eighth, Ninth, and Eleventh Circuits, the United States District Courts for the Eastern District of Pennsylvania, Eastern District of Michigan, Northern District of Illinois, Northern, Southern, Central and Eastern Districts of California and the District Court of New Jersey.

Robert J. Gray is a founding member of Connolly Wells & Gray, LLP. Mr. Gray concentrates his practice in the areas of ERISA, Consumer Protection, FLSA/Employment Law and fiduciary litigation, and has substantial experience in prosecuting class actions on behalf of aggrieved employees and consumers nationwide. Notably, Mr. Gray has significant experience representing employees in prosecuting claims for unpaid wages pursuant to the Federal Fair Labor Standards Act (the "FLSA") and analogous state wage and hour laws. Mr. Gray has successfully represented employees and attained results on their behalf for companies failing to pay all wages due to: (i) improperly classifying its employees as exempt; (ii) requiring employees to work "off-the-clock;" or (iii) failing to pay restaurant employees proper minimum wages and/or all their tips. He has been counsel of record in numerous notable decisions conferring federal jurisdiction over hybrid actions involving claims under both federal and state wage law within the Third Circuit. In addition, Mr. Gray is experienced in prosecuting ERISA class actions, which involve claims against fiduciaries of a company's 401k plan for making imprudent investments. Mr. Gray also considerable experience representing consumers nationwide for claims involving unfair debt collection practices, unfair trade practices – including violation of consumer protection laws, and violations of the Americans with Disabilities Act.

Mr. Gray has handled mediations before some of the most respected mediators in the nation and has served as class counsel in numerous class and collective actions nationwide, including *In re: Staples, Inc., Employment Practices Wage & Hour Litigation*, MDL 2025 (D.N.J.) ($42 million settlement on behalf of over 5,000 employees – representing one of the largest retail misclassification cases outside of California; *In re AXA Wage and Hour Litigation*, No. 06-

cv-4291 (N.D. CA) ($6.5 Million Settlement on behalf of nationwide class of financial representatives; *In re Janney Montgomery Scott Financial Consultant Litig.*, No. 06-cv-3202 (E.D. Pa.) (settlement of state and federal wage and hour claims for up to $2.88 million).

Mr. Gray is a graduate of Temple University School of Law (J.D. 2000). While in law school, he received class distinctions for legal writing and trial advocacy. Mr. Gray received his Bachelor of Science from La Salle University with a dual major in Accounting and Finance. Prior to practicing law Mr. Gray worked as a Certified Public Accountant, specializing in forensic accounting. Prior to starting Connolly Wells & Gray, Mr. Gray worked for one of the largest plaintiff class action firms in the country.

EXHIBIT 3

IZARD KINDALL &RAABE LLP

FIRM RESUME

Izard, Kindall & Raabe LLP ("IKR")[1] is one of the premier firms engaged in class action litigation under the Employee Retirement Income Security Act of 1974 (ERISA) and the securities laws. We have served as lead or co-lead counsel in many large ERISA class actions, including cases against AT&T, AOL Time Warner, Cardinal Health, JDS Uniphase, Merck, Sprint, Tyco International, JP Morgan Chase and Eastman Kodak, as well as over 30 securities class actions, including cases involving shares of Campbell Soup Company, Citizens Utilities Company, Newmont Mining Corporation, SS&C Technologies, Inc., SureBeam Corporation, and Veritas Corporation.

ERISA Cases where IKR has been formally appointed as sole or co-lead counsel, or serves as lead or co-lead counsel, include:

- *Overby v. Tyco Int'l, Ltd.,* No. 02-CV-1357-B (D.N.H.);
- *In re Reliant Energy ERISA Litig.,* No. H-02-2051 (S.D. Tex.);
- *In re AOL Time Warner, Inc. Sec. and ERISA Litig.,* MDL Docket No. 1500 (S.D.N.Y.);
- *Furstenau v. AT&T,* Case No. 02 CV 8853 (D.N.J.);
- *In re AEP ERISA Litig.,* Case No. C2-03-67 (S.D. Ohio);

[1] Formerly known as Izard Nobel LLP (2008-2016), Schatz Nobel Izard, P.C. (2006-2008), and Schatz & Nobel, P.C. (1995-2006).

- *In re JDS Uniphase Corp. ERISA Litig.,* Civil Action No. 03-4743-CW (N.D. Cal.);
- *In re Sprint Corporation ERISA Litig.,* Master File No. 2:03-CV-02202-JWL (D. Kan.);
- *In re Cardinal Health, Inc. ERISA Litig.,* Case No. C 2-04-642 (S.D. Ohio);
- *Spear v. Hartford Fin. Svcs Group. Inc.,* No. 04-1790 (D. Conn.);
- *In re Merck & Co., Inc. Sec., Derivative and ERISA Litig.,* MDL No. 1658 (D.N.J.);
- *In re Diebold ERISA Litig.* No. 5:06-CV- 0170 (N.D. Ohio);
- *In re Bausch & Lomb, Inc. ERISA Litig.,* Master File No. 06-CV-6297-MAT-MWP (W.D.N.Y.);
- *In re Dell, Inc. ERISA Litig.,* Case No. 06-CA-758-SS (W.D. Tex.);
- *In re First American Corp. ERISA Litig.,* SA-CV07-1357 (C.D. Cal.);
- *In re Hartford Fin. Svcs Group. Inc. ERISA Litig.,* No. 08-1708 (D. Conn.);
- *In re Merck & Co., Inc. Vytorin ERISA Litig.*, MDL No. 1938, 05-CV-1974 (D.N.J.);
- *Mayer v. Administrative Committee of Smurfit Stone Container Corp.*, 09-CV-2984 (N.D. IL.);
- *In re YRC Worldwide ERISA Litig.,* Case No. 09-CV-02593 (D. Kan);
- *Board of Trustees v. JP Morgan Chase Bank*, Case No. 09-cv-9333 (S.D.N.Y.);
- *White v. Marshall & Ilsley Corp.*, No. 10-CV-00311 (E.D. Wis.);
- *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.);
- *In re Eastman Kodak ERISA Litig.*, Master File No. 6:12-cv-06051-DGL (W.D.N.Y.);
- *Kemp-DeLisser v. Saint Francis Hospital and Medical Center*, Civil Action No. 3:15-cv-01113-VAB;
- *Tucker v. Baptist Health System, Inc.*, Case No. 2:15-cv-00382-SLB (N.D.AL.);
- *Malone v. TIAA*, No. 1:15-cv-8038 (PKC)(S.D.N.Y.);

- *Wood v. Prudential Retirement Insurance and Annuity Company*, No. 3:15-cv-1785 (VLB) (D.Conn.);
- *Lau v. Metropolitan Life Insurance Company*, No. 1:15-cv-9469 (SAS) (S.D.N.Y.);
- *Wittman v. New York Life Insurance Company*, No. 15-cv-9596 (AKH) (S.D.N.Y.);
- *Bishop-Bristol v. Massachusetts Mutual Life Insurance Company*, No. 3:16-cv-139(SRU) (D. Conn.); and
- *Matthews v. Reliance Trust Company*, No. 1:16-cv-04773 (N.D. Ill.).

Moreover, IKR was also appointed to the Steering Committee in *Tittle v. Enron Corp.,* No. H-01-3913 (S.D. Tex.); *In re Electronic Data Systems ERISA Litig.,* 3:02-CV-1323 (E.D. Tex.); and *In re Marsh ERISA Litig.*, Master File No. 04 CV 8157 (S.D.N.Y.).

Our notable successes include settlements against AOL Time Warner ($100 million); Tyco International ($70.5 million); Merck ($49.5 million); Cardinal Health ($40 million); and AT&T ($29 million). Moreover, IKR was on the Executive Committee in *In re Enron Corporation Securities and ERISA Litig.*, No. 02-13624 (S.D. Tex.), which resulted in a recovery in excess of $250 million.

Numerous courts have recognized IKR's superior expertise in ERISA actions of this type. In particular, in *In re Merck Sec., ERISA and Deriv. Litig.*, the court stated, "[w]hat is clear is that Schatz & Nobel [now IKR] does have substantial experience in this area and much more experience than other contenders." *In re Merck Sec., ERISA and Deriv. Litig.*, No. 05 1157, (D.N.J.) (Transcript of proceedings on Apr. 18, 2005). Similarly, the court in *In re Tyco International, Ltd., Securities Litig.* found that IKR and its co-counsel "have the necessary resources, skill and commitment to

effectively represent the proposed class" and "extensive experience in both leading class actions and prosecuting ERISA claims." *In re Tyco International, Ltd. Sec. Litig.*, Case No. 02 1335, slip op. at 2 (D.N.H. Dec. 18, 2002). In *Cardinal Health*, the court also noted IKR's "extensive experience in ERISA litigation," the "high level of ERISA expertise" and "several well-argued briefs . . . on a range of issues." *In re Cardinal Health, Inc. ERISA Litig.*, 225 F.R.D.552, 555-556 (S.D. Ohio Jan. 14, 2005).

Courts have recognized the superior results that IKR has obtained as a result of its experience. In approving the *Sprint ERISA Litig.* settlement, the court found, "[t]he high quality of [IKR's] work culminated in the successful resolution of this complex case" and that "the results obtained by virtue of the settlement are extraordinary. . . ." *In re Sprint Corp. ERISA Litig.*, No. 03 2202, slip op. at 33, 35 (D. Kan. Aug. 3, 2006).

In the AOL Time Warner ERISA case, the Independent Fiduciary retained to review the $100 million settlement on behalf of the AOL Time Warner retirement plans expected the case to settle for only $70 million. *In re AOL Time Warner, Inc. Sec. and ERISA Litig.*, No. 02-CV-1500 (S.D.N.Y), Report & Recommendation of Special Master dated August 7, 2007 at 7, approved by the Court by Memorandum Opinion dated October 26, 2007. The Special Master reviewing an application for attorneys' fees found that in addition to the fact that the quality of counsel's work was "impressive," "[e]ven more importantly, they used the mediation process to persuade reluctant and determined defendants to part with settlement dollars well above those expected." *Id.* at 30. According to the Special Master, obtaining an additional $30 million for the class stands out as "some of the hardest work and

most outstanding results" obtained by IKR and its co-counsel. *Id*. at 37. In negotiating this extraordinary settlement, IKR "stretched the defendants' settlement tolerances beyond their limits." *Id*. Moreover, the Court found that IKR worked with great efficiency. After conducting a "moderately detailed examination of counsels' actual time records," the Special Master lauded the efficiency with which counsel litigated such a large case which inherently tends to produce inefficiencies. *Id*. at 26, 43.

In approving the $49.5 million settlement in *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, in which IKR served as Chair of the Lead Counsel Committee, the Court stated that it was an "extremely successful and extremely appropriate and reasonable settlement." *In re Merck & Co., Inc. Securities, Derivative & ERISA Litig.*, No. 05-2369, (D.N.J.) (Transcript of proceedings on Nov. 29, 2011 at 15).

In the *Tyco ERISA* case, the court stated that the $70.525 million settlement in an "extraordinarily complex case factually" was "outstanding," and "an extraordinary settlement given the circumstances of the case and the knowledge that [the Court] has about the risks that the plaintiff class faced in pursuing this matter to verdict." *In re Tyco International, Ltd., Securities Liti*g., No. 02-1335-B, (D. N.H.)(Transcript of proceedings on Nov. 18, 2009 at 11, 31, 41, 61).

Similarly, in the *Flagstar* case, Court found that the settlement that represented 85% of likely recoverable damages was an "excellent result" as a result of the unquestionable "skill and expertise of [IKR and its co-counsel] who are nationally known for their successful representation of ERISA clients in class action

matters." *Griffin v. Flagstar Bancorp, Inc.*, No. 2:10-CV-10610 (E.D. Mich.) (Order and Opinion dated Dec. 12, 2013 at 8, 15-16.)

IKR's ERISA team is led by Robert A. Izard. In approving the *Tyco* settlement, Judge Paul Barbadoro, Chief Judge of the District of New Hampshire, stated with respect to Mr. Izard:

> I have a high regard for you. I know you to be a highly experienced ERISA class action lawyer. You've represented your clients aggressively, appropriately and effectively in this litigation, and I have a high degree of confidence in you so I don't think there's any question that the quality of counsel here is a factor that favor's the Court's endorsement of the proposed settlement....
>
> I have enjoyed working with you in this case. You've always been helpful. You've been a gentleman. You've been patient when I've been working on other matters....

In re Tyco International, Ltd., Securities Litig., No. 02-1335-B, (D. N.H.)(Transcript of proceedings on Nov. 18, 2009 at 74-75).

ATTORNEYS

Robert A. Izard heads the firm's ERISA team and is lead or co-lead counsel in many of the nation's most significant ERISA class actions, including cases against Merck, Tyco International, Time Warner, AT&T and Sprint among others. Mr. Izard has substantial experience in other types of complex class action and commercial litigation matters. For example, he represented a class of milk purchasers in a price fixing case. He also represented a large gasoline terminal in a gasoline distribution monopolization lawsuit.

As part of his twenty plus years litigating complex commercial cases, Mr. Izard has substantial jury and nonjury trial experience, including a seven-month jury trial

in federal district court. He is also experienced in various forms of alternative dispute resolution, including mediation and arbitration, and is a Distinguished Neutral for the CPR Institute for Dispute Resolution.

Mr. Izard is the author of Lawyers and Lawsuits: A Guide to Litigation published by Simon and Schuster and a contributing author to the Mediation Practice Guide. He is the former chair of the Commercial and Business Litigation Committee of the Litigation Section of the American Bar Association.

Mr. Izard received his B.A. from Yale University and his J.D., with honors, from Emory University, where he was elected to the Order of the Coif and was an editor of the Emory Law Journal.

Mark P. Kindall joined the firm in 2005. Since joining the firm, he has represented clients in many significant class action cases, including ERISA litigation against AOL Time Warner, Kodak and Cardinal Health, consumer fraud cases against Johnson & Johnson, Unilever and Neutrogena, securities fraud litigation against SupportSoft, American Capital and Nuvelo, and bank overdraft fee litigation against Webster Bank and People's United Bank. Mr. Kindall successfully argued the 2008 appeal of *Berson v. Applied Signal Tech. Inc.*, 527 F.3d 982 (9th Cir. 2008), and the 2015 appeal of *Balser v. The Hain Celestial Group,* No. 14–55074, 2016 WL 696507 (9th Cir. 2016), which clarified standards for victims of securities and consumer fraud, respectively.

Mr. Kindall was a lawyer at Covington & Burling in Washington, D.C. from 1988 until 1990. In 1990 he joined the United States Environmental Protection Agency as an Attorney Advisor. He represented the U.S. government in international

negotiations at the United Nations, the Organization for Economic Cooperation and Development and the predecessor of the World Trade Organization, and was a member of the U.S. Delegation to the United Nations Conference on Environment and Development (the "Earth Summit") in Rio de Janeiro in 1992. From 1994 until 2005, Mr. Kindall was an Assistant Attorney General for the State of Connecticut, serving as lead counsel in numerous cases in federal and state court and arguing appeals before the Connecticut Supreme Court and the United States Court of Appeals for the Second Circuit.

Mr. Kindall has taught courses in appellate advocacy, administrative law and international environmental law at the University of Connecticut School of Law. He is admitted to practice in Connecticut, California, and the District of Columbia. He is also a member of the bar of the United States Supreme Court, the U.S. Courts of Appeals for the Second, Ninth, and D.C. Circuits, and the United States District Courts for Connecticut, the District of Columbia, the Eastern District of Wisconsin and all District Courts in New York and California.

Mr. Kindall is a 1988 graduate of Boalt Hall School of Law at the University of California at Berkeley, where he served as Book Review Editor of the California Law Review and was elected to the Order of the Coif. He has a bachelor's degree in history with highest honors from the University of California at Riverside, and he also studied history at the University of St. Andrews in Scotland.

Craig A. Raabe joined the partnership in 2016 from a large, regional law firm, where he previously served as the chair of the litigation department. Mr. Raabe has tried many complex civil and criminal cases. He is a Fellow in the American College

of Trial Lawyers. He has been listed in The Best Lawyers in America© in the areas of Commercial Litigation and Criminal Defense since 2006 (Copyright 2014 by Woodward/White, Inc., Aiken, SC). Mr. Raabe's commercial trial experience is broad and includes areas such as antitrust, government contracting, fraud, intellectual property, and unfair trade practices. He also has tried many serious felony criminal cases in state and federal court and is active in the criminal defense trial bar. In addition to his trial practice, Mr. Raabe counsels clients on compliance issues and the resolution of regulatory enforcement actions by government agencies.

By appointment of the chief judge of the Second Circuit, Mr. Raabe has served on the Reappointment Committee for Connecticut's federal defender, and the chief judge of the Connecticut district court appointed him to chair the United States Magistrate Reappointment Committee in Connecticut. In 2012, the Connecticut district court judges selected Mr. Raabe for the district's Pro Bono Award for his service to indigent clients. In addition, he is listed as one of the Top 50 Lawyers in Connecticut by Super Lawyers® 2012 (Super Lawyers is a registered trademark of Key Professional Media, Inc.).

Mr. Raabe is admitted to practice in the U.S. Supreme Court, the Courts of Appeals for the First, Second, and D.C. Circuits, the U.S. District Courts for Connecticut and the Eastern and Southern Districts of New York, the U.S. Tax Court and the state of Connecticut. He is an honors graduate of Valparaiso University and Western New England College of Law, where he served as Editor-in-Chief of the Law Review. Following graduation, Mr. Raabe served as the law clerk for the Honorable Arthur H. Healey of the Connecticut Supreme Court.

Mr. Raabe is a commercial, instrument-rated pilot and is active in general aviation. He serves as a volunteer pilot for Angel Flight Northeast, which provides free air transportation to people requiring serious medical care.

Seth R. Klein graduated *cum laude* from both Yale University and, in 1996, from the University of Michigan Law School, where he was a member of the Michigan Law Review and the Moot Court Board and where he was elected to the Order of the Coif. After clerking for the Hon. David M. Borden of the Connecticut Supreme Court, Mr. Klein served as an Assistant Attorney General for the State of Connecticut, where he specialized in consumer protection matters and was a founding member of the office's electronic commerce unit. Mr. Klein thereafter joined the reinsurance litigation group at Cadwalader, Wickersham & Taft LLP in New York, where he focused on complex business disputes routinely involving hundreds of millions of dollars. At lKR, Mr. Klein's practice continues to focus on consumer protection matters as well as on complex securities and antitrust litigation.

Douglas P. Needham received his Bachelor of Science degree from Cornell University in 2004 and his Juris Doctorate from Boston University School of Law in 2007. At Boston University, Mr. Needham was the recipient of a merit scholarship for academic achievement and a member of the school's Moot Court Team. Mr. Needham practiced law for six years in Syracuse, New York, devoting his practice to trial and appellate litigation in state and federal court. He moved to Connecticut in May of 2013 to join LeClair Ryan, A Professional Corporation, and became a partner at that firm in 2014. At LeClair Ryan, Mr. Needham prosecuted and defended a

variety of business tort claims, including many for breach of fiduciary duty and fraud, in Connecticut, New York and Massachusetts.

Mr. Needham joined IKR in 2016. His practice focuses on fiduciary litigation under ERISA as well as consumer protection and fraudulent business practices.

Christopher M. Barrett has been an integral member of litigation teams responsible for securing monetary recoveries on behalf of plaintiffs that collectively exceed $150 million. In 2015, he was selected by Super Lawyers magazine as a Rising Star. Super Lawyers Rising Stars recognizes top up-and-coming attorneys who are 40 years old or younger, or who have been practicing for 10 years or less.

Prior to joining the Firm, Mr. Barrett was associated with Robbins Geller Rudman & Dowd, where his practice focused on prosecuting class actions on behalf of plaintiffs, and Mayer Brown, where his practice focused on complex commercial litigation.

Mr. Barrett received his J.D., magna cum laude, from Fordham University School of Law where he served as a member of the Fordham Law Review, and was inducted into the Order of the Coif and the honor society Alpha Sigma Nu. For his work in the law school's law clinic, he was awarded the Archibald R. Murray Public Service Award. He earned his B.S. in Finance from Long Island University. During law school, Mr. Barrett served as a judicial intern to two United States District Judges (S.D.N.Y. and E.D.N.Y.) and a New York Supreme Court Justice.

EXHIBIT 4

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
	JURY TRIAL DEMANDED
THIS DOCUMENT RELATES TO: ALL ACTIONS	

DECLARATION OF PLAINTIFF MARK GEDEK

I, Mark Gedek, declare and state as follows:

- I am one of the named Plaintiffs in this action and a resident of the state of New York. I am a former employee of the Eastman Kodak Company ("Kodak"), where I worked until I retired in October 2014.

- I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and fee and expense application.

- While I was employed by Kodak, I was a participant in both the The Eastman Kodak Employees' Savings and Investment Plan and The Kodak Employees Stock Ownership Plan (the "Plans"). I was a Plan participant during the period from January 1, 2010 to March of 2012. During that period, my Plan accounts contained Kodak's company stock.

- I am represented by Gerald Wells, III of Connolly Wells & Gray, LLP (hereinafter, "my counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs and

that these firms work with my counsel to prosecute this case (together, "Plaintiffs' Counsel"). I believe that these firms will and have vigorously represented the interests of the Class.

- After careful consideration, I agreed to serve as one of the named plaintiffs. It is my understanding that my case was the first case in this matter and that it was subsequently consolidated with other cases that were filed. I understand that among other things, the case was brought as a class action lawsuit against the individuals and entities that were responsible for the Plans to recover losses to the Plans as a result of investment in Kodak stock during the period from January of 2010 through March of 2012.

- After I agreed to serve as a named plaintiff in this case, I conferred regularly with my counsel, including numerous telephone calls and e-mail correspondence. I have also responded to questions and requests for information from counsel.

- During the period from May to November of 2015, I responded to three different sets of interrogatories and three different sets of requests for admissions. In addition, I also searched for documents in response to a request for production of documents, and turned over the responsive documents that I had.

- I understood at the time that I agreed to participate as a named plaintiff that I might have to appear for a deposition and give testimony in this action. On multiple occasions I provided my attorneys with dates regarding my availability to have my deposition taken in Rochester. Each time, my counsel informed me that the deposition was postponed. However, I was willing to go through the process. I was also prepared to give testimony in court if the case had gone to trial.

- During the course of the litigation, I participated in the following activities: reviewing documents such as Plan-related documents and other materials; reviewing other court documents and discussing them with my counsel; engaging in regular communications with counsel concerning the status and strategy of the case; searching my own files for documents related to the case and sending what I found to my counsel; regular updates with my counsel about concerning my responses to discovery requests; discussing deposition dates with counsel and making arrangements to attend; discussing the proposed settlement talks with counsel in advance of the mediation; and approving the proposed settlement.

- In addition, I also received phone calls from other class members asking me about the settlement. In such instances, I directed them to speak with my attorneys.

- Throughout the pendency of this litigation, I performed the above tasks with care and consideration for my role as a representative of a class of persons injured by the Defendants' conduct.

- I believe that the proposed settlement is in the best interests of the Class and would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

- I also respectfully request that the Court award me, and the other proposed Class Representatives, a case contribution award of $5,000.00 each as compensation for the time and effort that we have spent on the case on behalf of the whole class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of July, 2016.

Mark Gedek

Mark Gedek

EXHIBIT 5

Frontier Mail News Sports Finance Weather Groups Answers Flickr More

All Search Search Mail Search Web

Compose Archive Move Delete Spam Collapse All

Inbox (72)
Drafts (2)
Sent
Archive
Spam (380)
Trash (21)
Smart Views
Important
Unread
Starred
People
Social
Shopping
Travel
Finance
Folders
Recent

Eastman Kodak Class Action (3)

aeh1@frontier.com Hi , a announcement was in the news this mor — Apr 28 at 10:07 A

aeh1@frontier.com Yes feel free to call me at 585-8806950 Sent fr — Apr 28 at 11:42 A

Joseph Weeden <weeden2012@yahoo.com> May 18 at 5:24 P
To aeh1@frontier.com

Allen, as discussed, please review, sign and return the attached declaration ASAP. You may return by email here or by fax to (855) 425-2775.

Regards,

-Joe

To; Joe Weeden

> Show original message

1 of 4 Pages

Plaintiff D... .pdf

Reply Reply to All Forward More

Click to reply all

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
	JURY TRIAL DEMANDED
THIS DOCUMENT RELATES TO: ALL ACTIONS	

DECLARATION OF PLAINTIFF ALLEN E. HARTTER

I, Allen E. Hartter, hereby declare and state as follows:

1. I am one of the named Plaintiffs in this action and a resident of the state of New York. I am a former employee of the Eastman Kodak Company ("Kodak"), where I worked from 1991-2014.

2. I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and fee and expense application.

3. While I was employed by Kodak, I was a participant in The Eastman Kodak Employees' Savings and Investment Plan (the "Plan"). I was participant in the Plan during the period from January 1, 2010 to March of 2012. During that period, my Plan account contained Kodak's company stock.

4. I am represented by the law firm of Berger & Montague P.C. (hereinafter, "my counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly, Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs and that these firms work with my counsel to prosecute this case (together, "Plaintiffs' Counsel"). I believe that these firms will and have vigorously represented the interests of the Class.

5. After much thought, I agreed to serve as one of the named plaintiffs. I understand that among other things, this case was brought as a class action lawsuit against the individuals and entities that were responsible for the Plan to recover losses to the Plan as a result of investment in Kodak stock during the period from January of 2010 through March of 2012.

6. After I agreed to serve as a named plaintiff in this case, I conferred regularly with my counsel, including numerous telephone calls and e-mail correspondence. I have also responded to questions and requests for information from counsel.

7. During the period from May to November of 2015, I responded to three different sets of interrogatories and three different sets of requests for admissions. I also searched for documents in response to a request for production of documents and turned over the responsive documents that I had.

8. I understood at the time that I agreed to participate as a named plaintiff that I might have to appear for a deposition and give testimony in this action. On three separate occasions, I arranged a time with my counsel to have my deposition taken. Each time the deposition was postponed. However, I was willing to go through the process each time. I was also prepared to give testimony in court had the case gone to trial.

9. During the course of the litigation, I actively participated in the following activities: (i) reviewing documents such as Plan-related documents and other materials; (ii) reviewing other court documents and discussing them with my counsel; (iii) engaging in regular communications with counsel concerning the status and strategy of the case; (iv) searching my own files for documents related to the case and sending what I found to my counsel; (v) regular updates with my counsel about concerning my responses to discovery requests; (vi) discussing deposition dates with counsel and making arrangements to attend; (vii) discussing the proposed settlement talks

with counsel in advance of the mediation; and (viii) approving the proposed settlement. I performed these tasks with care and consideration for my role as a representative of a class of persons injured by the Defendants' conduct.

10. I believe that the proposed settlement is in the best interests of the Class and would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

11. I also respectfully request that the Court award me, and the other proposed Class Representatives, a case contribution award of $5000 each as compensation for the time and effort that we have spent on the case on behalf of the whole class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 24 day of May, 2016.

Allen E. Hartter

EXHIBIT 6

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
THIS DOCUMENT RELATES TO: ALL ACTIONS	JURY TRIAL DEMANDED

DECLARATION OF CLASS REPRESENTATIVE SANDY PAXTON

SANDY PAXTON declares and states as follows:

1. I am a resident of the State of New York and a former employee of the Eastman Kodak Company ("Kodak"), where I worked from 12/85 until 9/2013.

2. I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and fee and expense application.

3. While I was employed by Kodak, I was a participant in the The Eastman Kodak Employees' Savings and Investment Plan. I was a Plan participant during the period from January 1, 2010 to March of 2012. During that period, my Plan account[s] contained Kodak's company stock.

4. I am represented by Izard Nobel LLP (hereinafter, "my counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly, Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs and that these firms work together and with the attorneys for other plaintiffs to prosecute this case. I believe that these firms will and have vigorously represented the interests of the Class.

5. After careful consideration, I agreed to serve as either a lead plaintiff or a class representative in May of 2015 after speaking with attorneys involved in the case, including Mark Kindall from Izard Nobel. I understand that among other things, this case was brought as a class action lawsuit against the individuals and entities that were responsible for the 401k Plan to recover losses that resulted from investment in Kodak stock during the period from January of 2010 through March of 2012.

6. After I agreed to assist in representing the class in this case, I conferred regularly with my counsel, including numerous telephone calls and e-mail correspondence. I have also responded to questions and requests for information from counsel.

7. During the period from May to November of 2015, I responded to three different sets of interrogatories and three different sets of requests for admissions. I also searched for documents in response to a request for production of documents and sent the responsive documents that I had to my counsel.

8. I understood at the time that I agreed to participate as a named plaintiff that I might have to appear for a deposition and give testimony in this action. I arranged a date in January of 2016 to have my deposition taken. It was ultimately called off by agreement of the attorneys, but I was willing to go through the process. I was also prepared to give testimony in court if the case had gone to trial.

9. During the course of the litigation, I participated in the following activities: (i) reviewing documents such as Plan-related documents and other materials; (ii) reviewing other court documents and discussing them with my counsel; (iii) engaging in regular communications with counsel concerning the status and strategy of the case; (iv) searching my own files for documents related to the case and sending what I found to my counsel; (v) regular updates with

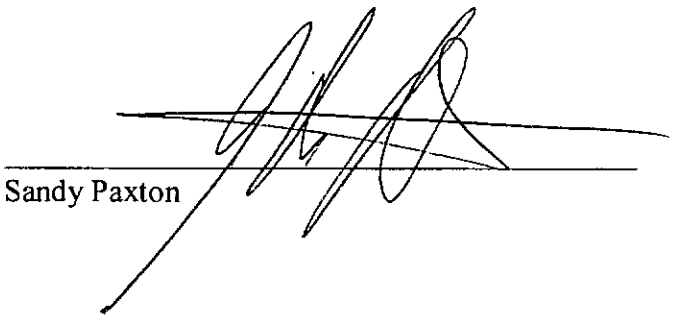
my counsel about concerning my responses to discovery requests; (vi) discussing deposition dates with counsel and making arrangements to attend; (vii) discussing the proposed settlement talks with counsel in advance of the mediation; and (viii) approving the proposed settlement. I performed these tasks with care and consideration for my role as a representative of a class of persons injured by the Defendants' conduct.

10. I believe that the proposed settlement is in the best interests of the Class and would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

11. I also respectfully request that the Court award me, and the other proposed Class Representatives, a case contribution award of $5000 each as compensation for the time and effort that we have spent on the case on behalf of the whole class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of March, 2016.



Sandy Paxton

EXHIBIT 7

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
THIS DOCUMENT RELATES TO: ALL ACTIONS	JURY TRIAL DEMANDED

DECLARATION OF SUSAN TOAL

I, Susan Toal declares and states as follows:

1. I am the surviving spouse of Dale Toal, one of the Named Plaintiffs in this action, and a resident of the state of Colorado.

2. Dale was a former employee of the Eastman Kodak Company ("Kodak"), where he worked from June 1977 until October 2009.

3. I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and fee and expense application.

4. While Dale was employed by Kodak, he was a participant in The Eastman Kodak Employees' Savings and Investment Plan and The Kodak Employees Stock Ownership Plan (the "Plan" or "Plans"). Dale was a participant in the Plans during his employment with Kodak, including during the Class Period. During that period, his Plan accounts contained Kodak's company stock.

5. Dale was represented by Kessler Topaz Meltzer & Check, LLP (hereinafter, "Counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly, Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs, and that these firms work

with his Counsel to prosecute this case (together, "Plaintiffs' Counsel"). I believe that these firms have and will continue to vigorously represent the interests of the Settlement Class.

6. After careful consideration, Dale agreed to serve as one of the Named Plaintiffs. After Dale passed away in January of this year, I agree to be substituted for Dale as a Named Plaintiff. However, because of the agreement to settle the action, I was advised by Plaintiffs' Counsel that there was no need to officially substitute me into the case; rather I would stand in Dale's shoes by virtue of being his Plan beneficiary.

7. I understand that among other things, this case was brought as a class action lawsuit against the individuals and entities that were responsible for the Plan to recover losses to the Plan as a result of investment in Kodak stock during the period from January 1, 2010 through March 30, 2012.

8. After Dale agreed to serve as a Named Plaintiff in this case, he conferred regularly with his Counsel, including numerous telephone calls and e-mail correspondence. He also responded to questions and requests for information from Counsel.

9. During the period from May to November of 2015, he responded to three different sets of interrogatories and three different sets of requests for admissions. He also searched for documents in response to a request for production of documents and turned over the responsive documents that he had.

10. Dale understood at the time that he agreed to participate as a Named Plaintiff that he might have to appear for a deposition and give testimony in this action. He arranged a time with his Counsel to have his deposition taken in Colorado in December 2015, but the deposition was postponed pending the outcome of the mediation. However, he was willing to go through the process. Dale was also prepared to give testimony in Court if the case had gone to trial.

11. During the course of the litigation, Dale participated in the following activities: (i) reviewing documents such as Plan-related documents and other materials; (ii) reviewing other Court documents and discussing them with his Counsel; (iii) engaging in regular communications with his Counsel concerning the status and strategy of the case; (iv) searching his own files for documents related to the case and sending what he found to his Counsel; (v) discussing with his Counsel his responses to Defendants' discovery requests; (vi) discussing deposition dates with his Counsel and making arrangements to be deposed; and (vii) discussing the proposed settlement talks with his Counsel in advance of the mediation. He performed these tasks with care and consideration for his role as a representative of a class of persons injured by the Defendants' conduct.

12. The proposed Settlement was reached after Dale's passing. Dale's Counsel reached out to me to discuss the Settlement offer and seek my approval, which I gave.

13. I believe that the proposed Settlement is in the best interests of the Settlement Class and would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

14. I also respectfully request that the Court award me, and the other proposed Settlement Class representatives, a Case Contribution Award of $5,000 each as compensation for the time and effort that we have spent on the case on behalf of the whole Settlement Class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 31st day of May, 2016.

Susan Toal

Susan Toal

EXHIBIT 8

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
THIS DOCUMENT RELATES TO: ALL ACTIONS	JURY TRIAL DEMANDED

DECLARATION OF PLAINTIFF THOMAS W. GREENWOOD

I, Thomas W. Greenwood, hereby declare and state as follows:

1. I am one of the named Plaintiffs in this action and a resident of the state of New York. I am a former employee of the Eastman Kodak Company ("Kodak"), where I worked from 1967-1999.

2. I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and fee and expense application.

3. While I was employed by Kodak, I was a participant in The Eastman Kodak Employees' Savings and Investment Plan, as well as The Kodak Employees Stock Ownership Plan (the "Plans"). I was participant in the Plans during the period from January 1, 2010 to March of 2012. During that period, my Plan accounts contained Kodak's company stock.

4. I am represented by the law firm of Berger & Montague P.C. (hereinafter, "my counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly, Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs and that these firms work with my counsel to prosecute this case (together, "Plaintiffs' Counsel"). I believe that these firms will and have vigorously represented the interests of the Class.

5. After much thought, I agreed to serve as one of the named plaintiffs. I understand that among other things, this case was brought as a class action lawsuit against the individuals and entities that were responsible for the Plans to recover losses to the Plans as a result of investment in Kodak stock during the period from January of 2010 through March of 2012.

6. After I agreed to serve as a named plaintiff in this case, I conferred regularly with my counsel, including numerous telephone calls and e-mail correspondence. I have also responded to questions and requests for information from counsel.

7. During the period from May to November of 2015, I responded to three different sets of interrogatories and three different sets of requests for admissions. I also searched for documents in response to a request for production of documents and turned over the responsive documents that I had.

8. I understood at the time that I agreed to participate as a named plaintiff that I might have to appear for a deposition and give testimony in this action. On three occasions, I arranged a time with my counsel to have my deposition taken. Each time the deposition was postponed. However, I was willing to go through the process. I was also prepared to give testimony in court had the case gone to trial.

9. During the course of the litigation, I actively participated in the following activities: (i) reviewing documents such as Plan-related documents and other materials; (ii) reviewing other court documents and discussing them with my counsel; (iii) engaging in regular communications with counsel concerning the status and strategy of the case; (iv) searching my own files for documents related to the case and sending what I found to my counsel; (v) regular updates with my counsel about concerning my responses to discovery requests; (vi) discussing deposition dates with counsel and making arrangements to attend; (vii) discussing the proposed settlement talks

with counsel in advance of the mediation; and (viii) approving the proposed settlement. I performed these tasks with care and consideration for my role as a representative of a class of persons injured by the Defendants' conduct.

10. I believe that the proposed settlement is in the best interests of the Class and would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

11. I also respectfully request that the Court award me, and the other proposed Class Representatives, a case contribution award of $5000 each as compensation for the time and effort that we have spent on the case on behalf of the whole class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19TH day of May, 2016.

Thomas W. Greenwood

EXHIBIT 9

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
THIS DOCUMENT RELATES TO: ALL ACTIONS	JURY TRIAL DEMANDED

DECLARATION OF PLAINTIFF MARK J. NENNI

Mark J. Nenni declares and states as follows:

1. I am one of the named Plaintiffs in this action and a resident of the state of New York. I am a former employee of the Eastman Kodak Company ("Kodak"), where I worked from on or about June 13, 1983 (Kodak adjusted date) until on or about December 4, 2004.

2. I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and fee and expense application.

3. While I was employed by Kodak, I was a participant in the Eastman Kodak Employees' Savings and Investment Plan (the "Plan"). I was a Plan participant during the period from January 1, 2010 to March of 2012. During that period, my Plan account contained Kodak's company stock.

4. I am represented by Guin, Stokes & Evans, LLC, Barrett Wylie, LLC, and Cropsey & Cropsey (hereinafter, "my counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly, Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs and that these firms worked with my counsel to prosecute this case (together, "Plaintiffs' Counsel"). I know due to my contact with several of the attorneys involved that

these firms worked diligently on the matter and believe that they will and have vigorously represented the interests of the Class.

5. After careful consideration, I agreed to serve as one of the named plaintiffs. I understand that among other things, this case was brought as a class action lawsuit against the individuals and entities that were responsible for the Plan to recover losses to the Plan as a result of investment in Kodak stock during the period from January of 2010 through March of 2012.

6. After I agreed to serve as a named plaintiff in this case, I conferred regularly with my counsel, including numerous telephone calls and e-mail correspondence. I have also responded to questions and requests for information from Plaintiffs' counsel.

7. During the period from May to November of 2015, I responded to three different sets of interrogatories and three different sets of requests for admissions. Each time I reviewed the documents carefully both on my own and with Plaintiffs' counsel to ensure my answers were complete and accurate. I also conducted a thorough search of my home for relevant documents, in response to requests for the production of documents, so that I could accurately state what I possessed and could provide any I still had in my possession.

8. I understood at the time that I agreed to participate as a named plaintiff that I might have to appear for a deposition and give testimony in this action. On three separate occasions, I arranged a time with my counsel to have my deposition taken in Rochester, N.Y. Counsel postponed all three of the scheduled depositions. However, I was willing to go through the process and had started preparing for it. I was also ready, willing, and able to give testimony in court if the case had gone to trial.

9. During the course of the litigation, I participated in the following activities: (i) reviewing documents such as Plan-related documents and other materials; (ii) reviewing other

court documents and discussing them with my counsel; (iii) engaging in regular communications with counsel concerning the status and strategy of the case; (iv) searching my own files for documents related to the case and sending what I found to my counsel; (v) regular updates with my counsel concerning my responses to discovery requests; (vi) discussing deposition dates with counsel and making arrangements to attend; (vii) discussing the proposed settlement talks with counsel in advance of the mediation; and (viii) approving the proposed settlement. I performed these tasks with care and consideration for my role as a representative of a class of persons injured by the Defendants' conduct.

10. I believe that the proposed settlement is in the best interests of the Class and I would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

11. I respectfully request that the Court award me, and the other proposed Class Representatives, a case contribution award of $5000 each as compensation for the time and effort that we have spent on the case on behalf of the whole class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 19th day of May, 2016.

Mark J. Nenni

Mark J. Nenni

EXHIBIT 10

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION	**MASTER FILE NO. 6:12-CV-06051-DGL**
THIS DOCUMENT RELATES TO: ALL ACTIONS	JURY TRIAL DEMANDED

DECLARATION OF PLAINTIFF KATHERINE L. BOLGER

Katherine L. Bolger declares and states as follows:

1. I am one of the named Plaintiffs in this action and a resident of the State of Michigan.

2. I submit this Declaration in support of Plaintiffs' motion for approval of the proposed settlement and the fee and expense application.

3. I was lawfully married to Plaintiff Barry C. Bolger ("Barry") on June 3, 1972 in the City of Sebewaing, State of Michigan. We remained married uninterrupted until Barry passed away on February 28, 2014.

4. My late husband was a former employee of the Eastman Kodak Company ("Kodak"), where he worked for many years until he was laid off in approximately October of 2010.

5. While Barry was employed by Kodak, he was a participant in The Eastman Kodak Employees' Savings and Investment Plan ("401(k) Plan"). During that period, his 401(k) Plan account contained Kodak's company stock.

6. I am represented by Thomas J. McKenna of Gainey McKenna & Egleston (hereinafter, "my counsel"). I understand that the Court appointed Izard Nobel LLP and Connolly, Wells & Gray, LLP, as Interim Lead Counsel for all of the ERISA Plaintiffs and that these firms work with my counsel to prosecute this case (together, "Plaintiffs' Counsel"). I believe that these firms have vigorously represented the interests of the Class and will continue to do so.

7. I know that after careful consideration, my husband Barry agreed with Mr. McKenna that he would serve as one of the named plaintiffs. Barry explained to me that this case was brought as a class action lawsuit against the individuals and entities that managed the 401(k) Plans to recover losses to the 401(k) Plan as a result of investment in Kodak stock during the period from January of 2010 through March of 2012.

8. After Barry agreed to serve as a named plaintiff in this case, I know he conferred regularly with his attorney, Mr. McKenna, including numerous telephone calls and e-mail correspondence. I know he also responded to questions and requests for information from counsel.

9. After Barry passed away, I was substituted into the case and took over Barry's role.

10. I understood when I agreed to participate as a named plaintiff that I might have to appear for a deposition and give testimony in this action. On several separate occasions, I arranged a time with my counsel to travel from Michigan to have my deposition taken in Rochester, New York. Each time the deposition was postponed. However, I was willing to go through the process. I was also prepared to give testimony in court if the case had gone to trial.

11. After I was substituted into the case as a named plaintiff, I responded to interrogatories served by defendants and several different sets of requests for admissions.

12. During the course of the litigation, in addition to what Barry did, I participated in the following activities: (i) reviewing documents such as Plan-related documents and other materials; (ii) reviewing other court documents and discussing them with my counsel; (iii) engaging in regular communications with counsel concerning the status and strategy of the case; (iv) searching my husband's files for documents related to the case and sending what I found to my counsel; (v) regular updates with my counsel concerning my responses to discovery requests; (vi) discussing deposition dates with counsel and making arrangements to attend; (vii) discussing the proposed settlement talks with counsel in advance of the mediation; and (viii) approving the proposed settlement. I performed these tasks with care and consideration for my role as a representative of a class of persons injured by the Defendants' conduct.

13. I believe that the proposed settlement is in the best interests of the Class and would ask the Court to approve it. I also support the application for attorneys' fees and expenses.

14. I also respectfully request that the Court award me, and the other proposed class representatives, a case contribution award of $5,000 each as compensation for the time and effort that all the named plaintiffs and class representatives spent on the case on behalf of the whole class.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 23 day of June, 2016.

Katherine L. Bolger

Katherine L. Bolger

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION _____ THIS DOCUMENT RELATES TO: ALL ACTIONS	**MASTER FILE NO. 6:12-CV-06051-DGL** JURY TRIAL DEMANDED

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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By Order dated April 27, 2016, the Court granted preliminary approval of a proposed $9.7 million Class Action Settlement,[1] conditionally certified a Settlement Class, appointed members of the Settlement Class and their counsel to represent the Settlement Class, approved the form and content of notice to be given to the Settlement Class, and set a date for a Fairness Hearing (the "PA Order") [Dkt. No. 124]. Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, Interim Class Representatives Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni, Sue Toal and Sandy Paxton (hereinafter "the Class Representatives") respectfully submit this Memorandum of Law in Support of their Motion for Final Approval of Settlement.

I. INTRODUCTION

This case has been vigorously litigated for over four years. At every stage of the litigation, Defendants have asserted aggressive defenses and expressed their belief that Plaintiffs could not prevail on the claims asserted. Prior to reaching the Settlement, Class Counsel: (a) defeated Defendants' motion to dismiss; (b) reviewed and analyzed thousands of pages of documents either produced by Defendants or available in the public domain; (c) worked with Class Representatives to respond to multiple discovery requests propounded by Defendants; (d) both filed and defended Motions to Compel concerning the proper scope of discovery; (e) retained a highly experienced expert to analyze damages; (f) agreed to a mediation process overseen by a respected third-party mediator with extensive experience in ERISA class action litigation; (g) prepared a detailed mediation submission; and (h) engaged in an in-person mediation session in New York.

[1] All capitalized, undefined terms herein shall have the meaning ascribed to them in the Parties' Settlement Agreement previously filed with the Court at Dkt. No. 122-3.

In reaching the Settlement, Class Counsel considered the numerous risks and uncertainties Plaintiffs would face if this litigation continued. Even though Class Counsel believes that the claims asserted have substantial merit, this action involved complex issues and involved substantial risks with respect to issues of both liability and damages. Based on an evaluation of these risks, Class Counsel concluded that the Settlement is a fair and reasonable result for the Settlement Class.

The Settlement Class has received notice of the Settlement and the Plan of Allocation in accordance with the PA Order. As of the date of this submission, no member of the Settlement Class has objected to the Settlement. The final deadline for filing objections is August 1, 2016.

For these reasons, and all of the reasons further discussed herein, Plaintiffs respectfully request that the Court: (a) certify the proposed Settlement Class; (b) determine that the Settlement Class was provided adequate notice of the Settlement and the lawsuit; and (c) grant final approval to the Settlement and the Plan of Allocation.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Factual Allegations

The Class Representatives and the members of the Settlement Class were participants in the Eastman Kodak Employees' Savings and Investment Plan (the "SIP") and/or the Kodak Employee Stock Ownership Plan (the "ESOP") (the SIP and ESOP are collectively referred to herein as the "Plans"), retirement plans sponsored by the Eastman Kodak Company ("Kodak"). The Consolidated Complaint for Breach of ERISA's Fiduciary Duties (Dkt. No. 48) (the "Complaint") alleges that the fiduciaries of the Plans violated their duties under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.* ("ERISA") by permitting the Plans to offer Kodak stock as an investment option after information revealed that Kodak was in

extreme financial distress and that Kodak stock was a risky and imprudent investment option for retirement savings. *See* Declaration of Gerald D. Wells, III in Support of Plaintiffs' Motion for Approval of Class Action Settlement and Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Class Representative Awards ("Wells Decl."), at ¶¶ 19-21. Plaintiffs allege that Defendants failed to act to protect the Plans and their participants from inevitable losses.[2]

B. Investigation and Commencement of Action

Before filing this case, Plaintiffs' Counsel conducted extensive legal, factual, financial and corporate research on the underlying merits of the claims. On January 27, 2012, Plaintiff Mark Gedek initiated these proceedings by filing his complaint (Dkt. No. 1) and additional individuals who were participants in the Plans subsequently filed similar complaints. Wells Decl., ¶ 16. On May 10, 2012, the Court designated the Gedek action as the lead case and consolidated it with the similar cases against the same Defendants. (Dkt. No. 39). The Court appointed Izard, Kindall & Raabe, LLP (then known as Izard Nobel LLP) and Faruqi and Faruqi LLP as Interim Co-Lead Counsel on August 29, 2012 (Connolly Wells & Gray, LLP took the place of Faruqi and Faruqi in the leadership structure on April 10, 2015). On September 14, 2012, Plaintiffs filed their Complaint. (Dkt. No. 48).

C. Motions to Dismiss, Discovery and Discovery Disputes

[2] Defendants in the suit were fiduciaries of the Plans. Defendant SIPCO was the Plan Administrator and named fiduciary of the SIP Plan. Defendant SOPCO was the Plan Administrator and named fiduciary of the ESOP. The members of both SIPCO and SOPCO were some of Kodak's highest ranking executives. Kodak's Chief Financial Officer ("CFO"), Defendant Sklarsky, chaired the SIPCO for a portion of the Class Period, and his replacement as CFO, Defendant McCorvey, later served as SIPCO chair. Defendants Berman (Chief Human Resource Officer), Love (Treasurer), Obstarczyk, (Director of Kodak's Global Benefits and Vice President of Human Resources), Haag (General Counsel pre-2011), Quatela (General Counsel for 2011), all served on both the SIPCO and SOPCO during the Class Period. BNY Mellon Defendants were the trustees of the SIP. *See* Complaint, Dkt. No. 48, ¶¶ 24-35.

From the start, the Parties engaged in highly adversarial litigation. Defendants filed Motions to Dismiss the Complaint on October 29, 2012, which, following extensive briefing and oral argument, the Court denied on December 27, 2014. (Dkt. No. 75). On February 16 and 17, 2015, Defendants answered the Complaint (Dkt. Nos. 80 and 81), after which discovery commenced in earnest. Discovery in this case was particularly hard fought and contentious. Both Plaintiffs and Defendants served detailed document requests and interrogatories. In addition, the Kodak Defendants propounded requests for admissions. Although all Parties produced a significant amount of documents during discovery, both Plaintiffs and the Kodak Defendants objected to the opposing side's discovery requests, resulting in each of these parties filing a motion to compel discovery responses. *See* Wells Decl., ¶ 23. The Court heard oral argument on the Kodak Defendants' motion on November 5, 2015 and Plaintiffs' motion was fully briefed and scheduled for oral argument before the Action was stayed pending mediation between the Parties. Wells Decl., ¶¶ 24-25.

Despite these discovery disputes, Defendants produced numerous key documents, including information regarding the inner workings of the Plans and transactional data regarding the Plans' purchases and sales of Company Stock during the Class Period. As such, Plaintiffs had sufficient information necessary in order to ascertain a comprehensive and thorough understanding of the strengths and weaknesses of their case, as well as develop a comprehensive damages model. Wells Decl., ¶ 33.

D. The Parties' Mediation & Settlement

After receiving and analyzing detailed information from Defendants concerning the investment performance of all of the SIP Plan investment alternatives, Plaintiffs were in a position to discuss possible resolution of the litigation with counsel for Defendants. In December 2015, counsel for Plaintiffs and the Kodak Defendants met and conferred and agreed to pursue private mediation, and after further discussion agreed to retain David Geronemus of JAMS, a highly experienced mediator. After an initial conference with the mediator, the Parties exchanged detailed mediation statements. *See* Wells Decl., ¶¶ 31-35. In preparation for the mediation, Plaintiffs' Counsel also retained Cynthia Jones, CFA, a Vice President of Management Planning, Inc., to perform an analysis of class-wide damages, taking into account transactional information on the daily purchases and sales of Kodak stock by the Plans as well as the performance of all of the other investment options. *Id.*, ¶ 34.

On February 24, 2016, counsel for Plaintiffs and the Kodak Defendants participated in a full-day, in-person mediation session in New York City. *Id.*, ¶ 36. After extensive arms' length negotiations, and with the assistance of the mediator, the Parties agreed to a preliminary term sheet. Over the several weeks that followed, the BNY Mellon Defendants agreed to participate in the proposed settlement and all Parties negotiated modifications to the term sheet, a revised version of which was executed on March 14, 2016. *Id.*, ¶ 37. Then the Parties negotiated the terms of the final Class Action Settlement Agreement ("Settlement Agreement"), which was executed by all Parties on April 22, 2016. *Id.,* ¶¶ 38-39.

III. SUMMARY OF THE SETTLEMENT TERMS

A. The Class

The Settlement Agreement provides that the Settlement Class includes all Persons who, at any time during the Class Period, (a) were participants in or beneficiaries of the ESOP, and/or (b) were participants in or beneficiaries of the SIP, and whose SIP Plan accounts included investments in the Kodak Stock Fund. Settlement Agreement ¶ 1.47. Defendants are excluded from the Settlement Class. As discussed below in Section III.C, there are over 19,000 class members, each of whom were fully advised of this Settlement through the Class Notice, which included direct mail and publication notice, both on May 18, 2016. These forms of notice are attached to the Settlement Agreement.

B. The Settlement Fund and its Distribution

The Settlement Agreement creates a common fund of $9.7 million ($9,700,000.00). Settlement Agreement ¶¶ 1.13, 2.5. This is an all-in Settlement, with a portion of the $9.7 million fund intended to cover the costs of notice and settlement administration, any Court-approved service payments to the Class Representatives,[3] and Court-approved attorneys' fees and costs. In general terms, net of these costs, the balance of the fund will be allocated to Settlement Class members based upon the losses attributable to their holdings of Kodak stock in the ESOP and SIP. Importantly, Settlement Class members do not need to do anything in order to receive their portion of the proceeds of the Settlement. Rather, their portion of the Settlement will be based on individual transactional data provided by the Plans.

C. Notice of the Settlement to Settlement Class Members

A.B. Data, Ltd. ("A.B. Data"), which was approved to serve as the Settlement Administrator in the PA Order, provided notice of the litigation and Settlement to the

[3] The Class Representatives include the Plaintiffs (Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni) as well as Susan Toal and Sandy Paxton.

Settlement Class in accordance with the terms of the Settlement Agreement and the PA Order. On April 27, 2016, the Settlement Administrator was provided a list of the names, last known addresses of all of the Settlement Class members for the purpose of providing notice of the proposed Settlement. Declaration of Christina Peters-Stasiewicz ("Peters-Stasiewicz Decl."), attached to the Wells Declaration as Exhibit 1, at ¶ 5; PA Order, ¶ 8. A.B. Data sent notices to nearly all Class Members by U.S. Mail on May 18, 2016. Peters-Stasiewicz Decl., ¶ 9. Notices to 625 individuals were returned as undeliverable. *Id.* A.B. Data re-mailed 6 notices to addresses that were corrected through the Postal Service, and conducted an address update search utilizing LexisNexis to obtain updated addresses used to re-mail 465 additional notices. *Id.* As of July 7, only 186 mailings appear to still be undeliverable. *Id.* In all, 99% of the Class received notice through first-class mail. In addition, the Settlement Administrator provided publication notice through *PR Newswire* on June 1, 2016, in accordance with Paragraph 8 of the PA Order. *Id.* ¶ 18.

In addition to the mail and publication notices, A.B. Data established an informational website (www.KodakERISASettlement.com) which contained documents and other information regarding the Settlement. This website allowed Class Members to review detailed information about the litigation and the Settlement, including the long-form notice, the Settlement Agreement, the Preliminary Approval Order, and answers to frequently asked questions. Peters-Stasiewicz Decl., ¶ 17. As of July 7, 2016, there have been 1250 unique visits to the website. *Id.* Furthermore, the Settlement Administrator established a toll-free informational phone number for Settlement Class Members, which has received 26 calls as of July 7, 2016. *Id.,* ¶ 15-16. Accordingly, the Settlement Class has received "the best notice practicable under the circumstances . . . ." PA Order, ¶ 8.

Settlement Class members will have more than ten weeks from the time the notice was mailed before the August 1, 2016 deadline for filing objections to the Settlement. Settlement Class members do not need to submit a claim form to participate and will automatically receive their portion of the Settlement Proceeds if the Settlement is approved.

D. Dismissal and Release of Claims

Upon the Effective Date, the Court will dismiss the Complaint against the Defendants with prejudice and will forever release all claims that were or could have been asserted under ERISA against all Defendants. All of the applicable releases for both Plaintiffs and Defendants are set forth in Section 3 of the Settlement Agreement.

IV. ARGUMENT

A. Certification of the Rule 23 Settlement Class Is Appropriate

The Court's April 27, 2016 Order preliminarily certified a Settlement Class. PA Order, ¶ 1. Plaintiffs respectfully request that the Court ratify that preliminary determination and certify the proposed Settlement Class under Rule 23(e) for settlement purposes only. The proposed Settlement Class satisfies the requirements of Rules 23(a) and 23(b)(1) or (b)(2) of the Federal Rules of Civil Procedure.

1. The Settlement Class is Sufficiently Numerous

The proposed Settlement Class satisfies the numerosity requirement of Rule 23(a)(1) because it is composed of thousands of persons, in numerous locations. The list of Settlement Class members provided to the Settlement Administrator included over 19,400 names. Peters-Stasiewicz Decl., ¶ 6. The number of Settlement Class members is so large that joinder of all its members is impracticable and thus, the numerosity element easily satisfied. *See Consolidated*

Rail Corp. v. Town of Hyde Park, 47 F.3d 483 (2d Cir. 1995) ("numerosity is presumed at a level of 40 members").

2. The Settlement Class Seeks Resolution of Common Questions

The proposed Settlement Class also satisfies the commonality requirement, the purpose of which is to test "whether the named plaintiff's claim and the class claim are so interrelated that the interests of the class members will be fairly and adequately protected in their absence." *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 n.13 (1982). "The commonality requirement is met if plaintiffs' grievances share a common question of law or of fact." *Marisol A. v. Giuliani*, 126 F.3d 372, 376 (2d Cir. 1997). It is also satisfied where the injuries complained of by the plaintiffs allegedly resulted from the same practice or policy that allegedly injured or will injure the proposed class members. *See Daniels v. City of New York*, 198 F.R.D. 409, 417 (S.D.N.Y. 2001). Courts construe the commonality requirement liberally, and generally hold that a single question of law or of fact will suffice. *See, e.g.*, *Marisol*, 126 F.3d at 376.

This case involves numerous questions of law or fact common to the Settlement Class and central to the case, including, but not limited to:

a. Whether Defendants caused the Plans to offer, or failed to monitor or remove, the Kodak stock funds at issue;

b. Whether Defendants were fiduciaries responsible for monitoring and making decisions with respect to the investments in the Plans;

c. Whether Defendants were or should have been aware that Kodak was facing severe financial difficulties that were unlikely to be resolved, thereby rendering Kodak stock to be an imprudent retirement plan investment option;

d. Whether Defendants breached their fiduciary duties to the Plans by causing the Plans to continue to invest assets in Kodak stock after it knew that Kodak was in serious financial troubles and on the brink of bankruptcy;

e. Whether the Plans suffered losses as a result of Defendants' fiduciary breaches.

3. The Claims of the Proposed Class Representatives Are Typical of the Settlement Class

Rule 23(a)(3) "requires that the claims of the class representatives be typical of those of the class and 'is satisfied when each class member's claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant's liability.'" *Marisol A.*, 126 F.3d at 376 (quoting *In re Drexel Burnham Lambert Group,* 960 F.2d 285, 291 (2d Cir. 1992)). "The burden is 'fairly easily met so long as other class members have claims similar to the named plaintiff.'" *Alpern v. UtiliCorp United, Inc.*, 84 F.3d 1525, 1540 (8th Cir. 1996) (quoting *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1174 (8th Cir. 1995)). Where "the same unlawful conduct was directed at or affected both the named plaintiff and the class sought to be represented," typicality is satisfied "irrespective of minor variations in the fact patterns underlying individual claims." *Robidoux v. Celani*, 987 F.2d 931, 936-37 (2d Cir. 1993). "The typicality requirement is often met in putative class actions brought for breaches of fiduciary duty under ERISA." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 143 (S.D.N.Y. 2010).

All members of the proposed Settlement Class were participants in at least one of the Plans and invested retirement assets in Kodak stock. Thus, Defendants' alleged misconduct harmed all Settlement Class members in the same way – they lost retirement savings because the Defendants breached their fiduciary duties. Thus, all Settlement Class members' claims arise from the same course of conduct.

4. The Proposed Class Representatives Have and Will Adequately Represent the Settlement Class

The adequacy requirement encompasses two separate inquiries: "(1) whether any substantial conflicts of interest exist between the representatives and the class; and (2) whether the representatives will adequately prosecute the action." *Valley Drug Co. v.*

Geneva Pharm., Inc., 350 F.3d 1181, 1190 (11th Cir. 2003) (internal citations omitted). Moreover, "[o]nly conflicts that are fundamental to the suit and that go to the heart of the litigation prevent a plaintiff from meeting the Rule 23(a)(4) adequacy requirement." *Matamoros v. Starbucks Corp.*, 699 F.3d 129, 138 (1st Cir. 2012).

The proposed Class Representatives all suffered losses as participants in one or more of the Plans and have no interests that are antagonistic to the interests of any of the members of the proposed Settlement Class. *See* Wells Decl., ¶ 71. All Settlement Class members shared a common goal: participating in a well-run retirement plan that provided them with an array of prudent investment options. Here, all Settlement Class members will benefit from the substantial relief obtained by the Settlement. The proposed Class Representatives thus stand in the same shoes as the other members of the proposed Settlement Class with the same incentives to pursue and consummate a fair and reasonable settlement.

5. The Requirements of Rule 23(b)(1) and/or (b)(2) are Satisfied

Rule 23(b)(1) authorizes certification of a class where "prosecuting separate actions by or against individual class members would create a risk of (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests." FED. R. CIV. P. 23(b)(1). "[T]he Advisory Committee Notes to the 1966 Amendment of Rule 23(b)(1)(B) specifically state that certification is especially appropriate in cases charging breach of trust by a fiduciary to a large class of beneficiaries." *In re Marsh ERISA Litig.*, 265 F.R.D. 128, 142 (S.D.N.Y. 2010). Courts

routinely certify class actions alleging breach of ERISA fiduciary duties pursuant to Rule 23(b)(1).[4]

Further, because Defendants have acted or refused to act on grounds applicable to the Settlement Class as a whole, certification is also appropriate under FED. R. CIV. P. 23(b)(2). In *In re Elec. Data Sys. Corp. "ERISA" Litig.*, the court certified plaintiffs' prudence claim under Rule 23(b)(2) because "the monetary relief is for the Plan's losses" and was, thus, "in the nature of a group remedy." 224 F.R.D. 613, 629 (E.D. Tex. 2004), *vacated on other grounds sub nom. Langbecker v. Electronic Data Systems Corp*., 476 F.3d 299 (5th Cir. 2007). Similarly, in approving a settlement in an analogous case, the court in *Broadwing* held that certification was appropriate under Rule 23(b)(2) "because it cannot reasonably be disputed that the conduct was 'generally applicable to the class.'" *In re Broadwing, Inc. ERISA Litig.*, 252 F.R.D. 369, 379 (S.D. Ohio 2006) (quoting FED. R. CIV. P. 23(b)(2)); *see also Neil v. Zell,* 275 F.R.D. 256, 269 (N.D. Ill. 2011) (finding certification also appropriate under Rule 23(b)(2) because "incidental damages sought can be calculated mechanically").

As an ERISA breach of fiduciary duty action such as this Action is a typical 23(b)(1) or (b)(2) class action. Prosecution of separate actions by individual members would create the risk of inconsistent or varying adjudications. Thus, a class-wide settlement is the superior method for the fair and efficient resolution of this controversy. Joinder of all members of the proposed

[4] *See, e.g.*, *Krueger v. Ameriprise Financial, Inc.*, 304 F.R.D. 559, 575-578 (D. Minn. 2014); *Pashchal v. Child Development, Inc.*, No. 4:12-CV-0184, 2014 WL 112214, at *6 (E.D. Ark. Jan. 10, 2014); *In re Beacon Assocs. Litig.*, 282 F.R.D. 315, 341-42 (S.D.N.Y. 2012); *Jones v. NovaStar Financial, Inc.*, 257 F.R.D. 181, 192-194 (W.D. Mo. 2009); *In re Marsh ERISA Litig.*, 265 F.R.D. at 142-44; *In re Polaroid ERISA Litig.*, 240 F.R.D. 65, 74-77 (S.D.N.Y. 2006); *Banyai v. Mazur*, 205 F.R.D. 160, 165 (S.D.N.Y. 2002) (same). *See generally In re Schering Plough Corp. ERISA Litig*., 589 F.3d 585 (3d Cir. 2009) ("breach of fiduciary claims brought under 502(a)(2) are paradigmatic examples of claims appropriate for certification as a Rule 23(b)(1) class, as numerous courts have held").

Settlement Class is impracticable. Moreover, Defendants, as alleged fiduciaries of the Plans, were obligated to treat all Settlement Class members similarly as the Plans' participants pursuant to written plan documents and ERISA, which impose uniform standards of conduct on fiduciaries. Individual proceedings, therefore, would pose the risk of inconsistent adjudications. Given the nature of these allegations, no Settlement Class member has an interest in individually controlling the prosecution of the case, and Plaintiffs are not aware of any difficulties likely to be encountered in the management of the case as a class action. Finally, it cannot be credibly disputed that Defendants' conduct was "generally applicable to the class," nor can it be argued that damages cannot be mechanically calculated.

Accordingly, Plaintiffs respectfully request that the Court certify the Settlement Class for settlement purposes and appoint Interim Class Representatives Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni, Sue Toal and Sandy Paxton as representatives of the Settlement Class. Furthermore, the Court should confirm co-lead counsel for Plaintiffs Izard, Kindall & Raabe, LLP and Connolly, Wells & Gray, LLP, together with liaison counsel Blitman & King, as Class Counsel pursuant to Federal Rule 23(g). As attested by their four years spearheading this litigation from its inception to the present, these firms possess the requisite skill, experience and resources to represent the Settlement Class. [5]

B. The Settlement Class Received Adequate Notice

The Preliminary Approval Order approved the selection of A.B. Data as Settlement Administrator and approved both the process for notifying the Settlement Class as well as the

[5] The firm resumes of Izard, Kindall & Raabe and Connolly, Wells & Gray are attached to the Wells Declaration as Exhibits 2 and 3. The firms' experience and credentials are also described in more detail in both the Wells Declaration at paragraphs 77 and 28, and in Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards to Class Representatives, filed concurrently.

substance of that notice. PA Order, ¶¶ 5-8. A.B. Data has fully complied with the Preliminary Approval Order's notice requirements, having provided notice to ninety-nine percent of the Settlement Class by first-class mail as well as timely publication notice through *PR Newswire*. *See* Peters-Stasiewicz Decl., ¶¶ 9-14 & 18. Moreover, as discussed above, A.B. Data established an informational website (www.KodakERISASettlement.com) and a toll-free informational phone number for Settlement Class Members. *Id.*, ¶¶ 15-17. Accordingly, the Settlement Class has received "the best notice practicable under the circumstances . . . ." PA Order, ¶ 8.

The Class Notice approved by the Court complied fully with due process and Federal Rule of Civil Procedure 23, which requires that notice provide:

> the best notice practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. The notice must clearly and concisely state in plain, easily understood language: (i) the nature of the action; (ii) the definition of the class certified; (iii) the class claims, issues, or defenses; (iv) that a class member may enter an appearance through an attorney if the member so desires; (v) the court will exclude from the class any member who requests exclusion; (vi) the time and manner for requesting exclusion; and (viii) the binding effect of a class judgment on members under Rule 23(c)(3).

FED. R. CIV. P. 23(c)(2)(B). The Class Notice described the claims and defenses at issue in the case and the terms of the Settlement, informed the Settlement Class about attorneys' fees and Case Contribution Awards, provided the date, time, and place of the Fairness Hearing, and described the process for filing an objection. Peters-Stasiewicz Decl., Exhs. A-C. While courts have approved class notices even when they only provided general information about a settlement (*see, e.g.*, *In re Michael Milken & Assocs. Sec. Litig.*, 150 F.R.D. 57, 60 (S.D.N.Y. 1993) (class notice "need only describe the terms of the settlement generally")), the detailed information in the Class Notice goes far beyond this bare minimum. Accordingly, the Court should determine that the Class received proper notice of the Settlement.

C. The Court Should Approve the Settlement

The law favors compromise and settlement of class action suits. *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 116-177 (2d Cir. 2005) (noting the strong judicial policy in favor of settlements, particularly in the class action context); *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (there is a "strong judicial policy in favor of settlements, particularly in the class action context"). Although approval of a class action settlement is a matter of discretion, "[i]n exercising this discretion, courts should give weight to the parties' consensual decision to settle class action cases because they and their counsel are in unique positions to assess potential risks." *Yuzary v. HSBC Bank USA, N.A.*, No. 12 Civ. 3693, 2013 WL 1832181, at *1 (S.D.N.Y. Apr. 30, 2013).

A class action settlement should be approved when it is "'fair, adequate, and reasonable, and not a product of collusion.'" *Frank v. Eastman Kodak Co.,* 228 F.R.D. 174, 184 (W.D.N.Y. 2005) (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138–39 (2d Cir. 2000)). This determination requires an examination of the procedural and substantive fairness of the proposed settlement, considering both the process by which the settlement was achieved and the actual terms of the agreement. *Id.*; *see also Wal–Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d at 116 (citing *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001)); *Graff v. United Collection Bureau, Inc*., 132 F. Supp. 3d 470, 478 (E.D.N.Y. 2016) (citing *Hayes v. Harmony Gold Mining Co.*, 509 Fed. Appx. 21, 22 (2d Cir. 2013)). For the reasons set forth below, the Settlement here is procedurally and substantively fair and should be approved.

1. The Settlement Is Procedurally Fair

The procedural fairness inquiry "requires the court to scrutinize the negotiation process 'in light of the experience of counsel, the vigor with which the case was prosecuted, and the

coercion or collusion that may have marred the negotiations themselves.'" *Graff*, 132 F. Supp. 3d at 478 (quoting *Payment Card Interchange Fee & Merch. Discount Antitrust Litig.,* 986 F. Supp. 2d 207, 221 (E.D.N.Y. 2013)). Where settlement has been reached "in arm's-length negotiations between experienced, capable counsel after meaningful discovery," the Court may presume that the settlement is fair, reasonable and adequate. *Wal-Mart Stores*, 396 F.3d at 116 (quoting Manual for Complex Litigation, Third, § 30.42 (1995)); *accord Frank*, 228 F.R.D. at 184; *Sierra v. Spring Scaffolding LLC*, No. 12-CV-05160 (JMA), 2015 WL 10912856, at *4 (E.D.N.Y. Sept. 30, 2015). Importantly, "the Second Circuit has noted that a 'mediator's involvement in pre-certification settlement negotiations helps to ensure that the proceedings were free of collusion and undue pressure.'" *Waterford Twp. Police & Fire Ret. Sys. v. Smithtown Bancorp, Inc*., No. 11-cv-864, 2015 U.S. Dist. LEXIS 73276, at *19 (E.D.N.Y. Apr. 17, 2015) (citing *D'Amato*, 236 F.3d at 85).

The lengthy and sometimes contentious history of this four-year litigation should dispel any concern that the Settlement resulted from collusion. The litigation commenced through the filing, by different plaintiffs, of several complaints, each of which was the result of many hours of extensive and careful research and analysis. Following consolidation of the actions and appointment of interim lead counsel, Plaintiffs prepared and filed the Complaint, which provided extensive detail, through hundreds of paragraphs and citations to original source material, concerning the condition of Kodak and the Plans throughout the Class Period. The Parties then prepared, briefed and thoroughly argued motions to dismiss the Complaint filed by both BNY Mellon and the Kodak Defendants. Following this Court's decision denying the Motion to Dismiss, the Parties engaged in substantial discovery, including the production of thousands of pages of documents by Defendants and the exchange of interrogatory responses

and requests for admissions. Indeed, the Kodak Defendants alone served three different sets of interrogatories and requests for admissions on Plaintiffs as well as requests for documents. As the Court is well aware, this discovery was, at times, contentious, and both Plaintiffs and the Kodak Defendants briefed motions to compel. Wells Decl., ¶¶ 23-25, 33, 103, 169.

Settlement discussions did not occur at all until after significant discovery had been produced and analyzed. Moreover, the Settlement was achieved through extensive, arm's length settlement negotiations under the guidance of David Geronemus, a long-time JAMS mediator, who is experienced in mediating complex class actions, including several ERISA class actions involving fiduciary breach claims.[6] Prior to the mediation, Plaintiffs retained a damages expert who, utilizing plan-wide transactional data provided by Defendants detailing the purchases and sales of Kodak stock during the Class Period, prepared a comprehensive damages model that considered the price of Kodak stock at numerous dates, including dates prior to, and after Kodak had retained counsel specializing in bankruptcy. Plaintiffs' damages model considered, inter alia, Defendants' arguments with respect to what, if any, effect the announcement of forced liquidation might have on stock price. In addition to the expert's analysis, Plaintiffs' counsel prepared a detailed mediation submission setting out the facts and law supporting their claims and their damages analysis. Counsel for Plaintiffs and the Kodak Defendants attended a full day of mediation with Mr. Geronemus where their respective positions and arguments were subjected to vigorous questioning and analysis by the mediator. Eventually, they reached an agreement in principle. After the agreement was reached, the Parties continued to engage in extensive negotiations about the Settlement's terms, finalizing and executing the Settlement Agreement on April 22, 2016. Wells Decl., ¶¶ 31-39.

[6] Mr. Geronemus' biography is available at: https://www.jamsadr.com/geronemus/.

There can be no question, accordingly, that the settlement resulted from "arm's-length negotiations . . . after meaningful discovery." *Wal-Mart Stores*, 296 F.3d at 116. Moreover, all parties were represented by "experienced, capable counsel." *Id.* Defendants were represented by Gibson, Dunn & Crutcher and by Goodwin Procter LLP, both top-notch defense firms with national reputations. Plaintiffs were represented by Co-Lead Counsel Izard, Kindall & Raabe, LLP ("IKR") and Connolly, Wells & Gray, LLP ("CWG"), whose counsel have long and substantial experience in ERISA class actions involving company stock funds in 401(k) plans. *See* Wells Decl., Exhibits 2-3 (firm resumes of IKR and CWG). Accordingly, the Settlement has all of the indicia of procedural fairness needed to support a presumption that it is fair, reasonable and adequate.

2. The Substance of the Proposed Settlement is Fair, Reasonable and Adequate

In evaluating the substantive fairness of a class action settlement, courts in the Second Circuit consider the nine factors[7] set forth in *City of Detroit v. Grinnell Corp.*, 495 F.2d 448 (2d Cir. 1974). The *Grinnell* analysis supports approval of the Settlement here.

(a) Litigation Through Trial Would Be Complex, Costly & Long (*Grinnell* Factor 1)

By reaching a favorable settlement prior to summary judgment and trial, Plaintiffs seek to avoid significant expense and delay and ensure a speedy, risk-free recovery for the Settlement Class. "Most class actions are inherently complex and settlement avoids the costs,

[7] The *Grinnell* factors are: (1) the complexity, expense and likely duration of the litigation; (2) the reaction of the class; (3) the stage of the proceedings and amount of discovery completed; (4) the risks of establishing liability; (5) the risks of establishing damages; (6) the risks of maintaining the class action through the trial; (7) the ability of the defendants to withstand a greater judgment; (8) the range of reasonableness of the settlement fund in light of the best possible recovery; and (9) the range of reasonableness of the settlement fund to a possible recovery in light of all the attendant risks of litigation. 495 F.2d at 462.

delays and multitude of other problems associated with them." *In re Austrian & German Holocaust Litig.*, 80 F. Supp. 2d 164, 174 (S.D.N.Y. 2000). This ERISA case with thousands of *Settlement Class* members, complex corporate, financial and fiduciary issues is no exception.

Further litigation here would cause massive amounts of additional expense, delay and uncertainty. *See* Wells Decl., ¶¶ 42, 58. The Parties were on the precipice of engaging in voluminous deposition discovery. Moreover, given the cross-motions to compel discovery, it is likely that had this case proceeded, every step forward would have been hard fought and contentious. The Parties would have likely expended considerable additional resources establishing liability and proving and contesting damages. Indeed, during the mediation, the Kodak Defendants apprised Plaintiffs that their damage model varied significantly from Plaintiffs, asserting that their damage model demonstrated significantly less damages suffered by the proposed Settlement Class.

Had this Action not settled, the Parties would have likely filed additional motions for discovery and merits determinations, and Plaintiffs would have filed a motion for class certification. There is no certainty as to the outcome of those motions for either side. And had the case not been resolved at the summary judgment stage, a fact-intensive trial, requiring numerous expert witnesses, would have likely followed, as well as an appeal. The proposed Settlement, on the other hand, makes monetary relief available to Settlement Class members in a prompt and efficient manner. Therefore, the first *Grinnell* factor heavily favors approval.

(b) The Reaction of the Class Has Been Positive (*Grinnell* Factor 2)

The deadline for Class Members to object to the Settlement is August 1, 2016, to permit Class Members to review this Motion, as well as Plaintiffs' Motion for Award of Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards to Class Representatives before

taking a position on the Settlement. Accordingly, it is too soon to make a definitive statement with respect to this *Grinnell* factor. However, as of this point in the litigation, over seven weeks after the Settlement Class received notice of the Settlement, no objections to the Settlement have been filed. Moreover, the seven members of the Settlement Class who have been driving the litigation, including all of the surviving named Plaintiffs or their heirs or successors in interest, have expressed their approval of the Settlement terms. *See* Declarations of Mark Gedek, Sandy Paxton, Mark Nenni, Sue Toal, Thomas Greenwood, Allen Harter and Katherine Bolger, attached to the Wells Decl. as Exhibits 4-10. To date, therefore, it appears that this factor should weigh in favor of the Settlement.

(c) Sufficient Discovery Allows Responsible Case Resolution (*Grinnell* Factor 3)

The pertinent question is "whether counsel had an adequate appreciation of the merits of the case before negotiating." *In re Warfarin Sodium Antitrust Litig.*, 391 F.3d 516, 537 (3d Cir. 2004). "[T]he pretrial negotiations and discovery must be sufficiently adversarial that they are not designed to justify a settlement . . . but an aggressive effort to ferret out facts helpful to the prosecution of the suit." *In re Austrian & German Bank*, 80 F. Supp. 2d at 176. The Parties' discovery meets this standard. As discussed above, the Parties have engaged in substantial adversarial litigation, exchanging thousands of pages of discovery and financial information and moving to compel additional information. The Parties have also conducted analysis of the claims based on publicly-available materials. The Complaint in this case was not based on allegations that Defendants fraudulently concealed negative inside information about the Company or misrepresented its condition to the Plans' participants and beneficiaries (the very individuals comprising the Settlement Class); instead, it was based solely on the claim that

Kodak stock was an objectively imprudent investment for the Plans in light of publicly-available information. *See generally* Complaint, Dkt. No. 48. During the course of the mediation process, the Kodak Defendants provided Plaintiffs with significant material that countered their claims that all analysts and market participants objectively thought Kodak was doomed from the start of the Class Period. As such, the Parties were well-equipped to evaluate the strengths and weaknesses of the case. This factor also favors final approval of the Settlement.

(d) *Plaintiffs* Face Real Risk if the Case Proceeded (*Grinnell* Factors 4 &5)

Although Plaintiffs believe that their case is strong, "[l]itigation inherently involves risks." *In re PaineWebber Ltd. P'ships Litig.*, 171 F.R.D. 104, 126 (S.D.N.Y. 1997). Indeed, "[i]f settlement has any purpose at all, it is to avoid a trial on the merits because of the uncertainty of the outcome." *In re Ira Haupt & Co.*, 304 F. Supp. 917, 934 (S.D.N.Y. 1969). Plaintiffs' Counsel are experienced and realistic, and understand that the substantive and damage issues either at summary judgment or at trial and the inevitable appeals process are inherently uncertain in terms of outcome and duration. The instant settlement alleviates these concerns as Settlement Class members would all be compensated proportionally for their losses.

Although the facts in the case are largely a matter of public record, the governing law is unsettled and changing. While the Supreme Court' recent decision in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014), eliminated the so-called "presumption of prudence" argument, certain language in that decision raises issues regarding the viability of an ERISA action regarding claims of imprudent investment in company stock based upon publicly available information, and thus have lent support to arguments by defendant-fiduciaries in similar circumstance in other cases. Indeed, the Second Circuit recently affirmed dismissal of a

suit against the fiduciaries of the Lehman Brothers retirement plan based on the *Dudenhoeffer* language. *Rinehart v. Lehman Bros. Holdings Inc.*, No. 15-2229, 2016 WL 1077009, at *2 (2d Cir. Mar. 18, 2016). *Lehman* would no doubt feature prominently in Defendants' briefs and arguments at summary judgment and trial in this case. Consequently, had this Action proceeded, the Parties would have engaged in significant briefing regarding the precise parameters of *Dudenhoffer* and *Lehman*.

Further, given the fact that several other courts have relied on *Dudenhoffer* to find that defendants in analogous actions are not liable under ERISA,[8] it is likely that the relatively new legal landscape of a post-*Dudenhoffer* world would have meant the inevitable appeal. Of course, this assumes that Plaintiffs would have been victorious at trial. Class Counsel are aware of at least four analogous cases where plaintiffs have lost at trial where their claims were based on breaches of fiduciary duty under ERISA. This Settlement alleviates these concerns as well.

(e) Maintaining the Class Through Trial

Plaintiffs are convinced that they would prevail on the issue of class certification. Nevertheless, Plaintiffs anticipate that Defendants would dispute class certification, should the case continue, and that the Court would make a determination on class certification only after extensive briefing and, possibly, interlocutory appeal. Indeed, there is no guarantee that any favorable class certification decision would be for the entire period proposed in the Complaint, and a significantly shorter Class Period could dramatically cut Plaintiffs' claim for damages. *See*

[8] *See, e.g., In re 2014 RadioShack ERISA Litig.*, Master File No. 14-cv-959 (D. Tex.) (Dkt. No. 153) (opinion and order granting dismissal of plaintiffs' complaint based on *Dudenhoffer* but allowing plaintiffs to replead).

infra subsection (g). The proposed Settlement eliminates all of the risks and delays that permeate that process. Therefore, this factor also favors approval.

(f) *Defendants'* Ability to Withstand a Greater Judgment (*Grinnell* Factor 7)

This factor can be relevant to a court's decision to approve a settlement. *In re PaineWebber*, 171 F.R.D. 104. However, "a defendant's ability to pay more than provided through the settlement cannot undercut the overall assessment of fairness, reasonableness, and adequacy of a proposed settlement." *D.S. v. N.Y.C. Dep't of Educ.*, 255 F.R.D. 59, 78 (E.D.N.Y. 2008) (*citing In re PaineWebber*, 171 F.R.D. at 129). While there is no dispute that Defendants had significant insurance coverage available to settle any claim, that fact is not dispositive. As noted above, Plaintiffs faced numerous hurdles (including demonstrating imprudence from the inception of the Class Period). Given the changing and uncertain nature of ERISA litigation, the recovery of a substantial amount of damages for the Class is an excellent result. As one court aptly noted, a "settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution." *In re Train Derailment Near Amite Louisiana*, MDL No. 1531, 2006 WL 1561470, at *24 (E.D. La. May 24, 2006) (quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liab. Litig.*, 55 F.3d 768, 806 (3d Cir. 1995)).

(g) The Settlement Fund is Substantial, Even in Light of the Best Possible Recovery and the Attendant Risks of Litigation (*Grinnell* Factors 8 & 9)

Defendants have agreed to pay a substantial amount, $9.7 million to the Settlement Class. This amount represents considerable value given the attendant risks of establishing damages. Based on Plaintiffs' damage model and depending on the alleged date of imprudence, the Settlement represents a recovery of between approximately twenty to fifty

percent of the total damages suffered. Stated another way, had Plaintiffs been able to demonstrate imprudence from the start of the Class Period, the Settlement represents approximately twenty percent (20%) of the total damages suffered. *See* Wells Decl., ¶ 47. However, had Plaintiffs been able to prove imprudence only a few months before Kodak filed for bankruptcy, then the Settlement represents a much greater percentage of the total damages suffered. *Id.*

The determination of whether a settlement amount is reasonable "does not involve the use of a 'mathematical equation yielding a particularized sum.'" *Frank*, 228 F.R.D. at 186 (quoting *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d at 178). "Instead, 'there is a range of reasonableness with respect to a settlement – a range which recognizes the uncertainties of law and fact in any particular case and the concomitant risks and costs necessarily inherent in taking any litigation to completion.'" *Id.* (quoting *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972)). "It is well-settled that a cash settlement amounting to only a fraction of the potential recovery will not per se render the settlement inadequate or unfair." *Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 628 (9th Cir. 1982); *see also Cagan v. Anchor Sav. Bank FSB,* No. 88 Civ. 3024, 1990 WL 73423 at *12-13 (E.D.N.Y. May 22, 1990) (approving $2.3 million class settlement over objections that the "best possible recovery would be approximately $121 million").

Consequently, these *Grinnell* factors weigh heavily in favor of granting final approval of the Settlement. In light of the substantial risk that the Settlement Class would have recovered less, or potentially nothing at all, this is an outstanding result. Because the Settlement, on its face, is "fair, adequate, and reasonable, and not a product of collusion," *Frank*, 228 F.R.D. at 184 (quoting *Joel A. v. Giuliani*, 218 F.3d at 138-39), the Court should grant final approval.

D. The Court Should Approve the Plan of Allocation

The standard governing approval of a plan of allocation is ultimately the same as the one that governs approval of a settlement:

> "To warrant approval, the plan of allocation must also meet the standards by which the settlement was scrutinized – namely, it must be fair and adequate." *Maley v. Del Global Technologies Corp.,* 186 F. Supp. 2d 358, 367 (S.D.N.Y. 2002) (internal citation and quotations omitted). "An allocation formula need only have a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *Id.* "In determining whether a plan of allocation is fair, courts look primarily to the opinion of counsel. That is, as a general rule, the adequacy of an allocation plan turns on whether counsel has properly apprised itself of the merits of all claims, and whether the proposed apportionment is fair and reasonable in light of that information." *Chavarria v. New York Airport Serv., LLC, No*.10–cv–1930(MDG), 2012 WL 2394797, at *8 (E.D.N.Y. June 25, 2012) (internal quotations marks and citations omitted). "Courts also consider the reaction of the class to a plan of allocation." *Id.*

In re Sturm, Ruger, & Co., Inc. Sec. Litig., No. 3:09CV1293 VLB, 2012 WL 3589610, at *8 (D. Conn. Aug. 20, 2012); *accord, In re IMAX Sec. Litig.*, 283 F.R.D. 178, 192 (S.D.N.Y. 2012).

Here, Class Counsel drafted a Plan of Allocation that reflects their damage theory of the case in a simple and straightforward manner and that prorates damages among Settlement Class members according to loss incurred. The Net Settlement Amount will be allocated to Settlement Class Members on a *pro rata* basis such that the amount received by each Settlement Class member will depend on his or her Class Period loss in either the ESOP or in the Kodak Stock Fund in the SIP (or both, in the case of employees who had losses in both). Those who suffered a loss less than $25 (the "*de minimis* amount") do not receive a recovery. (The *de minimis* amount is proposed in order to limit the costs of administration in relation to the Settlement benefits to be distributed).

The Plan of Allocation provides a recovery to Settlement Class members, net of administrative expenses, attorneys' fees and other expenses that the Court may choose to award, on a *pro rata* basis according to their recognized claims of damages. No Settlement Class member or group of Settlement Class members is singled out for either disproportionately favorable or unfavorable treatment; all participate in recoveries pursuant to the Plan of Allocation in the same manner. This is substantially the same plan of allocation approved and used in the vast majority of company stock fund ERISA cases.[9] Accordingly, the Court should approve the Plan of Allocation as fair and reasonable.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court certify the Settlement Class, find that the Settlement Class has received proper notice, appoint Class Representatives and Class Counsel, and give final approval to the Settlement and the Plan of Allocation.

[9] *See*, *e.g.*, *In re Delphi Corp. Secs., Derivative & "ERISA" Litig.*, 248 F.R.D. 483, 491-93 (E.D. Mich. 2008) (approving a materially similar plan of allocation); *In re AOL Time Warner ERISA Litig.*, No. 02-cv-8853, 2006 WL 2789862, at *10 (S.D.N.Y. Sep. 27, 2006) (approving materially identical plan of allocation where "Class members will have their recovery calculated according to the decrease in value of their Plan holdings during the Class Period. All Class members are treated equally under the formula, and all members qualifying for recovery will have their share of the funds automatically distributed to their Plan accounts or, if they are no longer Plan members, an account created for them under the terms of the Settlement."); *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1262 (D. Kan. 2006) (approving plan of allocation virtually identical to that here where the plan administrator would calculate "each participant's and former participant's net loss, then exclude those with a net gain, calculate each participant's and former participant's preliminary fractional share, use that to calculate the preliminary dollar recovery, exclude those with a *de minimis* preliminary dollar recovery of less than twenty-five ($25), then recalculate as many times as necessary so as to arrive at a final fractional share and final dollar recovery for each participant and former participant who is entitled to receive more than a *de minimis* amount until the sum of the final dollar recoveries equals the cash settlement fund.").

Dated: July 8, 2016

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By: */s/ Jules L. Smith*

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

IN RE EASTMAN KODAK ERISA LITIGATION _____ THIS DOCUMENT RELATES TO: ALL ACTIONS	**MASTER FILE NO. 6:12-CV-06051-DGL**

[PROPOSED] ORDER AND FINAL JUDGMENT

On the ___ day of _____, 2016, this Court held a hearing to determine (1) whether the terms and conditions of the Class Action Settlement Agreement dated _____, 2016 ("the Settlement Agreement") are fair, reasonable and adequate for the settlement of all claims asserted by all members of the Settlement Class against Defendants in the class action captioned *In re Eastman Kodak ERISA Litigation,* Civil Action No. 12-06051-DGL (the "Action"), including the release of all Defendants from the Released Plaintiffs' Claims, and should be approved; (2) whether final judgment should be entered dismissing the Complaint against Defendants with prejudice; (3) whether to approve the proposed Plan of Allocation as a fair and equitable method to allocate the Settlement Fund among all Settlement Class members; (4) whether and in what amount to award Plaintiffs' Counsel fees and expenses; and (5) whether and in what amount to award each of the proposed Plaintiffs a Plaintiffs' Case Contribution Award in recognition of the time and effort they contributed while representing the members of the Settlement Class.

The Court having considered all matters submitted to it at the hearing and otherwise, and it appearing that a notice of the hearing substantially in the form approved by the Court was mailed to all persons reasonably identifiable as Settlement Class members and that a

summary notice substantially in form approved by the Court was published on the *PR Newswire* and a website has been maintained by a notice administrator; and the Court having considered and determined the fairness, reasonableness and adequacy of the Settlement, the proposed Plan of Allocation, and the fairness and reasonableness of the award of attorneys' fees and expenses requested; and all initial capitalized terms used herein having the meanings set forth in the Settlement Agreement,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Court has jurisdiction over the subject matter of the Action and over all parties to it, including all members of the Settlement Class.

2. The Court finds for the purposes of the Settlement only that the prerequisites for certification of this Action as a class action under Rules 23(a) and (b)(1) of the Federal Rules of Civil Procedure have been satisfied in that in this Action: (a) the number of Settlement Class members herein is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the members of the Settlement Class herein; (c) the claims of the Class Representatives designated herein are typical of the claims of the Settlement Class sought to be represented; (d) the Class Representatives have fairly and adequately represented, and will fairly and adequately represent, the interests of the Settlement Class herein. The Court also finds for purposes of settlement only, as required by FED. R. CIV. P. 23(b)(1),that the prosecution of separate actions by individual members of the Settlement Class would create a risk of: (i) inconsistent or varying adjudications as to individual Settlement Class members that would establish incompatible standards of conduct for the parties opposing the claims asserted in this Action or (ii) adjudications as to individual

Settlement Class members that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede the ability of such persons to protect their interests.

3. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for purposes of Settlement only, the Court hereby finally certifies this Action as a class action, with the Settlement Class being defined as follows:

> All Persons who, at any time during the Class Period, (a) were participants in or beneficiaries of the Kodak Employee Stock Ownership Plan (the "ESOP"), and/or (b) were participants in or beneficiaries of the Eastman Kodak Savings and Investment Plan (the "SIP"), and whose SIP Plan accounts included investments in the Kodak Stock Fund. Excluded are Defendants and their Immediate Family Members, any entity in which a Defendant has a controlling interest, and their heirs, Successors-in-Interest, or assigns (in their capacities as heirs, Successors-in-Interest, or assigns).

4. Pursuant to Rule 23 of the Federal Rules of Civil Procedure and for the purposes of the Settlement only, the Court appoints Settlement Class members Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni, Sandy Paxton, and Sue Toal as representatives for the Settlement Class and Izard, Kindall & Raabe, LLP and Connolly Wells & Gray LLP as co-counsel for the Settlement Class. Class Counsel who seek to represent the Settlement Class in the Action have done sufficient work and are sufficiently experienced in ERISA class action litigation to represent the interests of the Settlement Class.

5. The Court determines that the Class Notice transmitted to the Settlement Class and the published Summary Notice provided pursuant to the Preliminary Approval Order concerning the Settlement and the other matters set forth therein are the best notice practicable under the circumstances and, in the form of the Class Notice, included individual

notice to all members of the Settlement Class who could be identified through reasonable efforts. Such Notice provided valid, due, and sufficient notice of these proceedings and of the matters set forth therein, including the Settlement described in the Settlement Agreement and the Plan of Allocation, to all persons entitled to such notice, and such Notice has fully satisfied the requirements of Fed. R. Civ. P. 23 and the requirements of due process.

6. The Court determines that the Settlement Agreement was negotiated vigorously and at arm's-length by Plaintiffs and their counsel on behalf of the SIP and the ESOP (collectively, the "Plans") and the Settlement Class and further finds that, at all times, Plaintiffs have acted independently and that their interests are identical to the interests of the Plans and the Settlement Class. If settlement of Plaintiffs' claims had not been achieved, both Plaintiffs and Defendants faced the expense, risk, and uncertainty of extended litigation. The Court further finds that the settlement complies with the terms of the Department of Labor's Class Exemption for the Release of Claims and Extensions of Credit in Connection with Litigation PTE 2003-39, and is supported by a determination from an independent fiduciary that the settlement is appropriate for the Plan. Accordingly, the Court determines that the negotiation and consummation of the Settlement by the Plaintiffs on behalf of the Plan and the Settlement Class do not constitute "prohibited transactions" as defined in ERISA §§ 406(a) or (b).

7. Pursuant to Fed. R. Civ. P. 23(e), the Court hereby approves and confirms the Settlement embodied in the Settlement Agreement as being a fair, reasonable, and adequate settlement and compromise of the Action and in the best interests of the Settlement Class. The Court orders that the Settlement Agreement shall be consummated and implemented in accordance with its terms and conditions.

8. The Court hereby finds that the Plan of Allocation provides a fair and equitable basis upon which to allocate the proceeds of the Settlement Fund among the Settlement Class members. A full and fair opportunity was accorded to all Settlement Class members to be heard with respect to the Plan of Allocation. Accordingly, the Court hereby approves the Plan of Allocation.

9. The Action is hereby dismissed with prejudice, each party to bear its own costs, except as provided herein.

10. The Court having certified the Action as a non-opt-out class action under Fed. R. Civ. P. 23(a) and 23(b)(1), Settlement Class members shall be bound by the Settlement.

11. Upon the Effective Date of the Settlement, the Plans, by and through the Independent Fiduciary retained pursuant to Section 2.4 of the Settlement Agreement, and by operation of this Order, both on the behalf of the Plans and on behalf of the Plans' participants who are members of the Settlement Class, absolutely and unconditionally release and forever discharge each and all of the Released Parties from the Released Plaintiffs' Claims. Nothing herein, however, shall preclude any action or claim related to the implementation and/or enforcement of the Settlement Agreement.

12. Upon the Effective Date of the Settlement, Plaintiffs and Settlement Class members, and all Successors-in-Interest of any of the foregoing, absolutely and unconditionally release and forever discharge the Released Parties from the Released Plaintiffs' Claims. Nothing herein, however, shall preclude any action or claim related to the implementation and/or enforcement of the Settlement Agreement.

13. Upon the Effective Date of the Settlement, Defendants and the other Released Parties absolutely and unconditionally release and forever discharge the Plaintiffs, the Plan, the Settlement Class, Plaintiffs' Counsel, and all Successors-in-Interest of any of the foregoing from the Released Defendants' Claims. Nothing herein, however, shall preclude any action or claim related to the implementation and/or enforcement of the Settlement Agreement. The Parties intend the Settlement to be a final and complete resolution of all disputes asserted or which could have been asserted by Plaintiffs, the Settlement Class, the Plan, and Plaintiffs' Counsel against the Released Parties with respect to the Released Plaintiffs' Claims. Accordingly, Plaintiffs and Defendants shall not assert in any forum that the claims asserted in the Action were brought or defended in bad faith or without a reasonable basis. The Parties shall not assert any contention regarding a violation of Rule 11 of the Federal Rules of Civil Procedure relating to the prosecution, defense or settlement of the Action. Except as expressly set forth in the Settlement Agreement, each party shall bear his, her or its own costs and expenses, including attorneys' fees.

14. In the event that the Settlement does not become effective in accordance with the terms of the Settlement Agreement, the Final Order shall be rendered null and void and shall be vacated *nunc pro tunc*, and the Action shall proceed in the manner provided in the Settlement Agreement and the Order of Preliminary Approval.

15. Upon the Effective Date of the Settlement, Plaintiffs, the Plans, and all Settlement Class members are permanently enjoined and barred from commencing or prosecuting any action asserting any of the Released Plaintiffs' Claims against any of the Released Parties.

16. The Settlement Agreement and this Final Order, whether or not consummated, do not and shall not be construed, argued, or deemed in any way to be (a) an admission or concession by Defendants with respect to any of the Released Plaintiffs' Claims or evidence of any violation of any statute or law or other wrongdoing, fault, or liability by Defendants, or (b) an admission or concession by Plaintiffs or any member of the Settlement Class that their claims lack merit or that the defenses that have been or may have been asserted by Defendants have merit. Absent written agreement of the parties, in the event the final judgment approving the Settlement is reversed, vacated, or modified in any respect by the Court or any other court, the certification of the Settlement Class shall be vacated, the Action shall proceed as though the Settlement Class had never been certified, and no reference to the prior Settlement Class or any documents related thereto shall be made for any purpose. Nothing herein shall be deemed to preclude Defendants from contesting class certification for any other purpose.

17. The Settlement Agreement and the Final Order shall not be offered or received in evidence by any class member or party to this action in any civil or administrative action or proceeding other than proceedings necessary to approve or enforce the terms of the Settlement Agreement and this Order and Final Judgment.

18. Plaintiffs Katherine Bolger, Mark Gedek, Thomas W. Greenwood, Allen E. Hartter, Mark J. Nenni, Sandy Paxton, and Sue Toal are each awarded $_____ as a Plaintiff Case Contribution Award, as defined in the Settlement Agreement, in recognition of their contributions to this Action, to be paid from the Settlement Fund in accordance with the Settlement Agreement.

19. The attorneys' fees sought by Plaintiffs' Counsel are fair and reasonable in light of the successful results achieved by Plaintiffs' Counsel, the monetary benefits obtained in this Action, the substantial risks associated with the Action, Plaintiffs' Counsel's skill and experience in class action litigation of this type, and the fee awards in comparable cases. Accordingly, attorneys' fees are awarded in the amount of _____% of the Gross Settlement Fund to be paid in accordance with the Settlement Agreement.

20. The litigation expenses incurred by Plaintiffs' Counsel in the course of prosecuting this action are fair and reasonable. Accordingly, expenses are awarded in the amount of $_____, to be paid from the Settlement Fund in accordance with the Settlement Agreement.

21. As required by Fed. R. Civ. P. 23(h)(3), the Court has considered and finds as follows in making this award of attorneys' fees and expenses:

a. The Settlement created a gross settlement fund of $9.7 million in cash, plus interest, for distribution to the Plan, and numerous Settlement Class members will benefit from the Settlement pursuant to the Plan of Allocation;

b. More than 19,000 copies of the Mail Notice were sent to putative Settlement Class members notifying them that Plaintiffs' Counsel would be applying to the Court for up to one third of the Gross Settlement Fund in attorneys' fees and up to $175,000 in expenses;

c. The Mail Notice advised Settlement Class members that more information would be made available on the Settlement Website. Pursuant to the Preliminary Approval Order, Plaintiffs' Counsel's filing in support of final approval of the Settlement, the

proposed Plan of Allocation, and the applications for attorneys' fees, expenses, and case contribution awards was posted to the Settlement Website at least three weeks prior to the deadline for Settlement Class members to review and serve objections thereto;

d. _____ objections were filed against the terms of the Settlement, the proposed Plan of Allocation, or Plaintiffs' Counsel's applications for attorneys' fees, expenses and case contribution awards;

e. The Action involved complex factual and legal issues, was actively prosecuted for more than three years and, in the absence of a settlement, would involve further lengthy proceedings with uncertain resolution of the complex factual and legal issues;

f. Had Plaintiffs' Counsel not achieved the Settlement there would remain a significant risk that Plaintiffs and the class they sought to represent would recover less or nothing from the Defendants;

g. Plaintiffs' Counsel's fee and expense application indicates that they devoted over 2200 hours, with a lodestar value of approximately $1,500,000, to achieve the Settlement; and

h. The amount of attorneys' fees and expenses awarded by the Court is fair and reasonable and consistent with such awards in similar cases.

22. Without affecting the finality of this Judgment, the Court retains jurisdiction for purposes of implementing the Settlement Agreement and reserves the power to enter additional orders to effectuate the fair and orderly administration and consummation of the Settlement Agreement and the Settlement, as may from time to time be appropriate, and resolution of any and all disputes arising thereunder.

SO ORDERED this _____ day of_____, 2016.

_____
DAVID G. LARIMER
UNITED STATES DISTRICT JUDGE