UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

Johnny Cruz, on behalf of himself and all others similarly situated,

Plaintiff,

v.

Raytheon Company, Kelly B. Lappin, in her capacity as Plan Administrator for the Raytheon Company Pension Plan for Hourly Employees, the Raytheon Company Pension Plan for Salaried Employees, the Raytheon Non-Bargaining Retirement Plan, the Raytheon Bargaining Retirement Plan, and the Raytheon Retirement Plan for Engineers & Contractors, Inc. and Aircraft Credit Employees, and John/Jane Does 1-10,

Defendants.

Civil Action No.: 1:19-cv-11425

DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR ATTORNEYS' FEES, EXPENSES, AND A CASE CONTRIBUTION AWARD

INTRODUCTION

Defendants Raytheon Company and Kelly B. Lappin (collectively, "Defendants") hereby object to Class Counsel's request for an award of attorneys' fees in excess of $8.5 million, which, if granted by the Court, would reduce class members' recovery from the settlement by nearly 15%.

To be clear, Defendants do not contest the number of hours that Class Counsel devoted to the case, nor the reasonableness of their standard hourly rates. Class Counsel are skilled and experienced advocates. But, counsel's request for an $8.5 million fee award is higher than the fees that courts typically approve in this District, especially when counsel's request is judged against the number of hours its attorneys have billed to the case and their respective hourly rates. This so-called "lodestar" amount is just over $1.5 million, yet Class Counsel seeks an award that is over five-and-a-half times that recorded value. Such a significant enhancement is well beyond the multipliers that courts in this District typically apply. *See, e.g.*, *Bettencourt v. Jeanne D'Arc Credit Union*, 2020 WL 3316223, at *3 (D. Mass. June 17, 2020) (explaining that the "range of multipliers typically allowed by this Court" is "1x to 2.7x"). Indeed, were the Court to grant Class Counsel's request, counsel would receive an hourly rate of more than $3,800 per hour—an amount that far exceeds any conceivable range of reasonableness.

For these and other reasons, Defendants submit that Class Counsel's request for an $8.5 million fee should be rejected and the Court should approve an alternative fee award that more closely aligns with the relevant lodestar value.

ARGUMENT

I. CLASS COUNSEL'S REQUESTED FEE EXCEEDS THE AWARDS TYPICALLY GRANTED IN THIS DISTRICT.

When evaluating a request for attorneys' fees, a court must carefully balance class counsel's interest in fair compensation with the need "to safeguard the corpus of the [settlement] fund for the benefit of the plaintiff class." *In re Fidelity/Micron Sec. Litig.*, 167 F.3d 735, 736 (1st Cir. 1990). In keeping with this principle, Rule 23(h) permits class counsel to receive only "reasonable" fees and costs in connection with their services, so as not to dilute class members' recovery from a settlement. Fed. R. Civ. P. 23(h).

While Class Counsel is correct that courts often use a percentage of fund ("POF") method to evaluate fees, the POF method is not the *only* way of assessing the reasonableness of attorneys' fees. Instead, courts often employ other methods—including the lodestar method—either "alone or as a check on the appropriateness of a POF calculation." *Bezdek v. Vibram USA Inc.*, 79 F. Supp. 3d 324, 350 (D. Mass.), *aff'd* 809 F.3d 78 (1st Cir. 2015).

Under the lodestar method, a court assesses the reasonableness of a fee request by first "determin[ing] the number of hours reasonably expended" by counsel and then multiplying that number "by a reasonable hourly rate for attorneys of similar skill within that geographic area." *In re Relafin Antitrust Litig.*, 231 F.R.D. 52, 77 (D. Mass. 2005). The calculation is then "subject to a multiplier or [a] discount," depending on the circumstances of the case. *Bezdek*, 79 F. Supp. 3d at 350 (quoting *In re Compact Disc Minimum Advertised Price Antitrust Litig.*, 216 F.R.D. 197, 215–16 (D. Me. 2003)).

Contrary to Class Counsel's suggestion, courts do not apply a multiplier as a matter of right. Dkt. 84, at 17. Instead, there is a "strong presumption" in this Circuit that "the lodestar represents a reasonable fee," *McLaughlin by McLaughlin v. Boston Sch. Comm.*, 976 F. Supp.

53, 63 (D. Mass. 1997), and thus "[t]he practice of multiplying the lodestar figure by an enhancement is seldom entertained." *Connolly v. Harrelson*, 33 F. Supp. 2d 92, 98 (D. Mass. 1999); *see also Lipsett v. Blanco*, 975 F.2d 934, 942 (1st Cir. 1992) ("[W]e have repeatedly cautioned that [lodestar] enhancements will be rare.")

When courts *do* apply a multiplier, they typically select a factor between one and three times the lodestar amount. *See, e.g.*, *Bettencourt*, 2020 WL 3316223, at *3 (the "range of multipliers typically allowed by this Court" is "1x to 2.7x"); *see also* 4 Newberg on Class Actions § 14.7 (4th ed. 2002) ("Generally, multipliers from 1–3 are the norm."); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1051 n.6 (9th Cir. 2002) (charting attorneys' fees awards and multipliers in common fund cases of $50–$200 million, and noting "a range of 0.6–19.6 with most (20 of 24, or 83%) from 1.0–4.0 and a bare majority (13 of 24, or 54%) in the 1.5–3.0 range").

More conservative multipliers are generally applied in ERISA cases. This is because, unlike in other class actions, the amount comprising an ERISA settlement fund is best "thought of as [the] 'earnings' of the class members"—not a "windfall" from some "miscreant defendant"—and thus courts should be cautious when approving awards that reduce class members' recovery. *Branch v. F.D.I.C.*, 1998 WL 151249, at *3 (D. Mass. Mar. 24, 1998). For this reason, courts typically apply multipliers between 1.5 and 2.5 times the lodestar amount when awarding fees in ERISA class actions. *See id.* (observing that multipliers in ERISA class actions "usually center[] around 1.5"); *see also In re Colgate-Palmolive Co. ERISA Litig.*, 36 F. Supp. 3d 344, 353 (S.D.N.Y. 2014) (charting attorneys' fees awards in 96 ERISA class actions and concluding that "[t]he median multiplier was 2.1").

Here, Class Counsel's $8.5 million fee request is more than 5.5 times the lodestar amount. Dkt. 84, at 17. This multiplier is nearly double the upper "range of multipliers typically allowed by this Court," *Bettencourt*, 2020 WL 3315223, at *3, and more than three times the median factor typically permitted in ERISA class actions, *Branch*, 1998 WL 151249, at *3. Indeed, as a matter of pure dollars and cents, Class Counsel seeks to be paid more than $3,800 per hour for each person who worked on the case—even junior attorneys, with little experience, and paralegals. Dkt. 84, at 17; Dkt. 85, ¶ 35; Dkt. 86, ¶ 6. Such an award far exceeds the bounds of reasonableness and should not be approved under Rule 23(h).

II. CLASS COUNSEL PROVIDES NO JUSTIFICATION FOR DEVIATING FROM ESTABLISHED PRECEDENT.

Class Counsel provides no justification for seeking a fee award that is well outside the range of requests that courts typically approve in this District. In its motion, Class Counsel primarily argues that a high fee award is merited in this case because the matter involves a "novel and highly technical legal theory that Class Counsel pioneered." Dkt. 84, at 7. While Defendants do not dispute that the case involves some novel (and so far, untested) legal theories, they also note that this case is one of at least nine others that Class Counsel has filed against other plan sponsors, which raise substantially the same issues.[1] As a result, the work performed in this case benefits Class Counsel's other cases—and vice versa. There is no reason why Defendants' retirees should foot the bill in this case for work that benefits a plethora of class actions.

[1] *See Belknap v. Partners Healthcare Sys., Inc.*, No. 1:19-cv-11437 (D. Mass.); *Berube v. Rockwell Automation, Inc.*, No. 2:20-cv-01783 (E.D. Wis.); *Brown v. United Parcel Serv. of Am., Inc.*, No. 1:20-cv-00460 (N.D. Ga.); *Duffy v. Anheuser-Busch Cos.*, No. 4:19-cv-01189 (E.D. Mo.); *Herndon v. Huntington Ingalls Indus., Inc.*, No. 4:19-cv-00052 (E.D. Va.); *Masten v. Metro. Life Ins. Co.*, No. 1:18-cv-11229 (S.D.N.Y.); *Smith v. U.S. Bancorp,* No. 0:18-cv-03405 (D. Minn.); *Smith v. Rockwell Automation, Inc.*, No. 2:19-cv-00505 (E.D. Wis.); *Torres v. Am. Airlines, Inc.*, No. 4:18-cv-00938 (N.D. Tex.)

Class Counsel also ignores the history of this litigation. At the outset of the case, the parties agreed to a streamlined process for resolving a "threshold issue"—*i.e.*, the reasonableness of the conversion factor used by one of Defendants' pension plans to convert a single life annuity into a joint and survivor annuity—before they turned to "other issues, including class certification, damages[,] [and] affirmative defenses." Dkt. 33. In keeping with this streamlined process, the parties exchanged only "targeted" discovery and took only one deposition each before the case settled. *Id*. at 2. There were no "scorched earth" litigation tactics that often merit the approval of a sizeable fee award. *See, e.g.*, *Fire & Police Retiree Healthcare Fund, San Antonio v. Smith*, 2020 WL 6826549, at 7 (D. Md. Nov. 20, 2020) (in evaluating a fee request, courts should consider "the amount of motions practice prior to settlement, and the amount and nature of discovery").

The cases cited by Class Counsel are not to the contrary. For example, in *Conley v. Sears, Roebuck & Co.*, 222 B.R. 181 (D. Mass. 1998), the court approved a fee award that reflected an 8.9x multiplier. *Id.* at 189. In doing so, however, the court emphasized that the particular award would *not* come out of the common settlement fund and thus would not reduce class members' recovery. *Id.* Here, by contrast, Class Counsel's fee award *will* come out of the settlement fund, reducing class members' recovery by nearly 15%.

New England Carpenters Health Benefits Fund v. First Databank, Inc., 2009 WL 2408560 (D. Mass. Aug. 3, 2009), is also distinguishable. There, the court approved a fee request that reflected an 8.3x multiplier, but noted that such a high award was merited in that case because of the "complex, hard-fought" nature of the litigation, which included a "contentious" fight over class certification as well as an interlocutory appeal. *Id.* at *2. Here, by contrast, the parties agreed to a streamlined discovery process, which focused on the key issues

in the case and resulted in a more efficient resolution of Plaintiff's claims. Dkt. 33. *New England Carpenters* is thus inapposite.[2]

Defendants emphasize that they do not impugn Class Counsel's skill or their dedication to this matter. They nonetheless submit that a fee award in excess of $8.5 million is unreasonable under the circumstances and does not serve the best interests of the class. Defendants submit that a fee award that more closely aligns with First Circuit precedent should be provided to Class Counsel instead.

CONCLUSION

For the reasons above, Class Counsel's fee request should be granted in modified form only.

[2] Class Counsel also cites *Bekker v. Neuberger Berman Grp. 401(k) Plan Investment Committee*, 2020 WL 7043869 (S.D.N.Y. Dec. 1, 2020), an out-of-Circuit case in which the court approved a fee award reflecting an 5.85 multiplier. *Id.* at *3. *Bekker*'s analysis, however, is both non-binding and unpersuasive. For example, while *Bekker* concluded that a 5.85 multiplier was "within the range of reasonableness" for ERISA class actions, *id.*, the cases the court cited for that proposition affirmed the propriety of fee awards that applied multipliers closer to 2.5x. *See, e.g.*, *Sewell v. Bovis Lend Lease, Inc.*, 2012 WL 1320124, at *13 (S.D.N.Y. Apr. 16, 2012) (approving a multiplier of 2.93x); *Colgate-Palmolive*, 36 F. Supp. 3d at 353 (in a review of 96 ERISA class action settlements, "[t]he median multiplier was 2.1").

Dated: May 12, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Kline C. Moore, hereby certify that the foregoing Opposition to Plaintiff's Motion for Attorneys' Fees, Expenses, and a Client Contribution Award, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on May 12, 2021.

Dated: May 12, 2021

/s/ Kline C. Moore
Kline C. Moore