UNITED STATES DISTRICT COURT
OF MASSACHUSETTS

Johnny Cruz, on behalf of himself and all others similarly situated, Plaintiff, vs. 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.	**Case No.: 1:19-cv-11425-PBS** CLASS ACTION

MEMORANDUM OF LAW IN FURTHER SUPPORT OF PLAINTIFF'S MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

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INTRODUCTION

The Settlement Class consists of over 10,000 people, each of whom received a detailed notice that described the nature of the lawsuit, the structure of the settlement, and the amount of re-calculated benefits they would be entitled to each month if the Court approved the Settlement. Only two Class Members have objected to the Settlement, while many others have responded positively to the relief that the Settlement will provide. For example, one Class Member even asked for Mr. Cruz's email address so he could thank him for his efforts.[1] The small number of objections is evidence both that the Class as a whole favors the Settlement and that it is fair. *See, e.g.*, *Bussie v. Allmerica Fin. Corp.*, 50 F. Supp. 2d 59, 77 (D. Mass. 1999) ("favorable reaction of class to settlement, albeit not dispositive, constitutes strong evidence of fairness of proposed settlement and supports judicial approval"), *enforcement granted*, No. CIV.A. 97-40204-NMG, 2006 WL 8201933 (D. Mass. Sept. 19, 2006); *Hill v. State St. Corp.*, No. CIV.A. 09-12146-GAO, 2015 WL 127728, at *8 (D. Mass. Jan. 8, 2015) (quoting *Bussie*). Neither of the objections should prevent the Court from granting final approval.

ARGUMENT

Two Class Members have objected to the Settlement. Stephen Kertis objects that the Settlement recovers too small a percentage of the best-case damages calculated by Plaintiff's actuarial expert (Kertis Objection, ECF No. 91, at 1-2), while Daniel Moore objects that the Settlement does not include compensation for claims that Plaintiff did not bring (Moore Objection, ECF No. 90, at 4-8). For the reasons set forth below, the Court should overrule both objections.

[1] *See* Declaration of Douglas Needham ("Needham Decl."), at ¶ 5.

A. The Court Should Overrule Mr. Kertis' Objection

Mr. Kertis objects to the amount of the Settlement because his re-calculated benefit "is reduced to about 33% of what seems fair and reasonable to expect," that the additional amount is "worth fighting for" and that the case should go to trial. ECF No. 91, at 1-2. But expecting a settlement to recover 100% of Plaintiff's expert's best-case scenario for the Class is not realistic. It ignores both the risk that Plaintiff would not prevail on liability and the risk that the Court might credit Defendants' expert, who opined that Class Members suffered ***no*** damages. Assuming Plaintiff prevailed on liability, the Court would have had broad authority to craft appropriate relief, and could have provided a smaller recovery than the Settlement.

As discussed in Plaintiff's Memorandum in Support of Plaintiff's Motion for Final Approval of Class Settlement ("FA Br."), ECF No. 82, a 40% recovery is an "excellent result in this case because it was based on a novel theory; in securities fraud cases, where the law is 'extremely well-developed' and '[e]very nuance has been litigated,' settlements rarely approach 40% of losses." *Id.* at 15-16 (quoting the Declaration of Professor Charles Silver). By way of comparison, in *Hochstadt v. Bos. Sci. Corp.,* 708 F. Supp. 2d 95, 109 (D. Mass. 2010), Judge Woodlock approved an $8.2 million ERISA settlement where plaintiff's initial damages estimate was $160 million and a more conservative estimate was $30 million, finding the settlement to be reasonable in light of the class's risk of obtaining less, or nothing at all, if the case was litigated further.

A settlement — any settlement, in any case — is a compromise that takes into account not only the best-case scenario, but also the risk of achieving less than that, or nothing at all. *In re Lupron Mktg. & Sales Pracs. Litig.*, 228 F.R.D. 75, 98 (D. Mass. 2005) ("settlement is a compromise, a yielding of the highest hopes in exchange for certainty and resolution") (internal quotations and citations omitted). Further, "inherent in compromise is a yielding of absolutes and

an abandoning of highest hopes." *Milstein v. Werner*, 57 F.R.D. 515, 524-25 (S.D.N.Y. 1972). Mr. Kertis is clearly willing to roll the dice and abide by the outcome of a trial and subsequent appeals, but many other Class Members would prefer the certainty and immediacy of the Settlement, especially since it affects their pension benefits. The fact that no other Class Members have expressed similar sentiments strongly suggests that Mr. Kertis' risk tolerance is not widely shared.

Importantly, Plaintiff and Class Counsel ***did*** "fight for" all of the damages Mr. Kertis seeks. Indeed, Mr. Kertis' estimates concerning the additional amount that he might receive each month if Plaintiff prevailed at trial are based solely on the report Plaintiff's actuarial expert prepared, which Plaintiff submitted in support of his case and in opposition to Defendants' Motion for Summary Judgment. Mr. Kertis' suggestion that the Settlement demonstrates a lack of "fight" is entirely wrong. The Settlement was only possible ***because*** Plaintiff and Class Counsel fought hard and effectively. Accordingly, the Court should overrule Mr. Kertis' objection to the Settlement.

B. The Court Should Overrule Mr. Moore's Objections

In contrast to Mr. Kertis, Mr. Moore's objection concerns claims that Plaintiff did not bring, could not have litigated and did not settle. Class action settlements rarely end all disputes between class members and defendants. This is particularly true in ERISA class actions because employers and employees have multi-faceted relationships touching many areas of statutory, regulatory, and common law. Instead, class action settlements may only release a limited set of claims — those shared by the class that were the subject of the litigation, together with any claims that arise from the identical factual predicate. To assess whether the Settlement is fair, reasonable, and adequate, the relief obtained must be measured against the value of the released claims. Properly measured against claims that share the identical factual predicate with Mr. Cruz's claims, the Settlement is fair, reasonable, and adequate.

1. Moore's Claims Are Unrelated to the Claims in this Litigation

Mr. Moore challenges the adequacy of the Settlement because it does not address a constellation of widely varying claims. But, Plaintiff's Complaint is tightly focused on a common issue that unifies the participants in each of the five pension Plans included in the Settlement: Whether, based on reasonable and current actuarial assumptions about mortality and interest rates, their joint and survivor annuities ("JSAs") are actuarially equivalent to the single life annuities ("SLA") they could have taken at retirement (and, if applicable, their pre-retirement survivor annuities ("PSAs") are not less than the amounts that would be paid to the surviving spouse of a participant under their plan's default JSA).[2] That is the case that Plaintiff has litigated from the outset of the case.[3] The Settlement is fair, reasonable and adequate with respect to these claims, and Moore has not asserted otherwise.

Instead, Moore appears to be suggesting that the Settlement releases different claims that he has investigated and litigated since retiring in 2015. However, claims released in a class action

[2] *See* Compl., ECF No. 1, at ¶¶ 1, 3, 41, 46, 51, 55, 59, 63–65, 75, 84–89, 94, 95, 97, 103, 109, 113, 118, 124, 130, 138 (comparing SLA to JSA/PSA benefits); ¶¶ 4, 5, 7, 51, 59, 63, 69–74, 76, 78, 79, 85, 87, 89–92, 94–96, 99, 101, 105, 107, 108 (discussing mortality assumptions); ¶¶ 4, 6, 52, 59, 63, 66–68, 80–82, 85, 87, 89, 90, 93, 95, 96, 100, 101, 106–108 (discussing interest rate assumptions).

[3] *See, e.g.,* Opposition to Defendants' Motion to Dismiss, ECF No. 19, at 5–15 (arguments concerning selection of reasonable mortality and interest rates) and 15-18 (arguments concerning the need to update outdated mortality and interest rate assumptions); Memorandum of Law in Support of Plaintiff's Motion for Summary Judgment, ECF No. 54, at 30–35 (arguing that Plaintiff was entitled to summary judgment on liability because he established, through his expert, that his JSA was not actuarially equivalent to the SLA he could have selected when he retired when the two benefits are compared using reasonable mortality and interest rate assumptions); Opposition to Defendants' Motion for Summary Judgment at 10–13 (arguing that Plaintiff's claims related to the comparison of the SLA he could have taken when he retired, not the SLA he could have taken at the Plan's normal retirement age of 65), 16–18 (arguing that actuarial equivalence can only be determined using reasonable interest and mortality assumptions); and 19-34 (describing the disagreements between Plaintiff's and Defendants' experts concerning reasonable mortality and interest rate assumptions).

must "arise[] out of the '***identical factual predicate***' as the settled conduct." *Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396 F.3d 96, 107 (2d Cir. 2005) (emphasis added); *see also Reppert v. Marvin Lumber & Cedar Co.*, 359 F.3d 53, 59 (1st Cir. 2004) ("'a court may permit the release of a claim based on the identical factual predicate as that underlying the claims in the settled class action'") (quoting *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 377 (1996)); *accord, City P'ship Co. v. Atl. Acquisition Ltd. P'ship*, 100 F.3d 1041, 1044 (1st Cir. 1996). Claims do ***not*** have an "identical factual predicate" when they require "proof of further facts" that go beyond the questions "at the core of a class action." *City P'ship* cite *TBK Partners, Ltd. v. W. Union Corp.*, 675 F.2d 456, 462 (2d Cir. 1982). The *TBK* court further emphasized that, while a class action settlement may release "claims relying on a legal theory different from that relied upon," it may only do so for claims "***depending upon the very same set of facts***." *Id.* (emphasis added).[4] The claims that Moore describes do not share the same factual predicate as the claims in this case.

In his objection, Moore "begs the Court to issue an injunction against Defendants' recently revealed plans to 'freeze out' all *contributory* benefit-structure Plan participation for all of its as yet unretired, Plan-participating employees." ECF 90, at 6. These "unretired, Plan-participating

[4] Numerous courts have cited *TBK's* analysis of the identical factual predicate doctrine, including the Supreme Court in *Matsushita*, 516 U.S. at 377, and the First Circuit in *City P'ship*, 100 F.3d at 1044, and in *Nottingham Partners v. Trans-Lux Corp.*, 925 F.2d 29, 33 (1st Cir. 1991), where the court found that the settlement in a class action properly extended to claims in a later case that "arose out of the same transaction as the claims in the class action." The use of the "same transaction" and "common gravamen" language in *Nottingham Partners* demonstrates that the scope of the "identical factual predicate" doctrine is aligned with *res judicata* and claim preclusion. *See, e.g., Thomas v. Blue Cross & Blue Shield Ass'n*, 333 F. App'x 414, 417 (11th Cir. 2009) (equating identical factual predicate with the common nucleus of operative fact test used to determine scope of res judicata/claim preclusion) (citing *Adams v. S. Farm Bureau Life Ins. Co.*, 493 F.3d 1276, 1289 (11th Cir. 2007)); *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prod. Liab. Litig.*, No. MDL 2672 CRB, 2018 WL 1588012, at *5 (N.D. Cal. Mar. 30, 2018) (same) (citing *Hesse v. Sprint Corp.*, 598 F.3d 581, 590 (9th Cir. 2010)).

employees" are not part of the existing Class, which consists solely of plan participants and beneficiaries who have retired and are already receiving benefits.

Moore's objection also indicates that his JSA benefit is not actuarially equivalent to other unidentified optional forms of benefits (*Id.*, at 4), and suggests that there are unique features to his Plan's contributory benefit structure (*Id.* at 5), but he does not identify those features or describe whether they relate to the methodology used to determine whether an SLA is actuarially equivalent to a JSA.[5] Nothing in the generalized description of the factual and legal bases for the Objection suggests that the claims Moore seeks to pursue share the identical factual predicate with the claims alleged in this case.[6]

Moore's additional claims appear to be more clearly articulated in the exhibits that he attached to his objection, including a place-holder exhibit (ECF No. 90-1, at 11) referring to "all documents of record" in prior lawsuit that he filed in 2016, entitled *Moore v. Raytheon*, No. 4:16-cv-00470-RM (D. Az.). Moore's Corrected Second Amended Complaint ("SAC") in that lawsuit, which is attached to the Declaration of Douglas P. Needham as Exh. A, asserted claims under ERISA (Count I) and the Labor Management Relations Act (Count II). The SAC also indicated that Plaintiff sought to represent three separate classes of retirees. *Id.* at ¶ 170. This was the

[5] ERISA's requirements actuarial equivalence requirements for JSAs apply equally to accrued benefits derived from employee and employer contributions. 26 C.F.R. § 1.401(a)-20, Q&A 11.

[6] The Court is not required to speculate as to claims that might or might not be brought in the future; it is only required to determine whether the terms of the Settlement are fair, reasonable and adequate. *James v. Glob. Tel*Link Corp.*, No. 2:13-cv-4989, 2020 WL 6197511, at *7 (D.N.J. Oct. 22, 2020). As the *James* court noted, ruling on the preclusive effect of a release on claims that might be brought in another case at the time a settlement is approved "would require the Court to engage in a far-reaching analysis of hypothetical issues that are not properly before it." *Id.* Whether a settlement bars a later action depends upon a careful analysis of the specific facts in each case, and can only be made by the court where the later action is brought. *Id.; accord, In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 344 (S.D.N.Y. 2005).

operative complaint when Moore voluntarily dismissed the case without prejudice on January 30, 2018.

Moore's SAC consists of three main sections. The first concerned allegations that, because Moore remained in his Plan's contributory benefit structure, he was guaranteed medical coverage from Raytheon when he retired (SAC ¶¶ 31-69), and the last section challenged Raytheon's claims process and failure to provide plan documents. *Id.* at ¶¶ 128-143. Since this case has nothing to do with medical coverage, Raytheon's claims process or the production of Plan documents, these claims obviously do not share the identical factual predicate with the claims in this case and are not released under the Settlement.

The middle section of the SAC alleged that Moore's 50% JSA was not actuarially equivalent to a 5 Year Temporary Modified Cash Refund he could have selected (which would have provided him with benefits for just five years instead of the rest of his life), because of how cost of living adjustments (COLAs) would affect his benefits in the future. *Id.* at ¶¶ 70-127.[7] Although these allegations concern the amount of Moore's pension, they do not share the identical factual predicate with the claims in this case and are not released.

Unlike Moore's SAC, Plaintiff's case alleges that a JSA must be actuarially equivalent to a "single annuity for the life of a participant" (29 U.S.C. §§ 1055(d)(1)(B) and 1055(d)(2)(A)(ii)), and that PSAs may not be less than the amounts that would be paid to the surviving spouse of a participant who had elected the Plan's default JSA (29 U.S.C. § 1055(e)(1)(A). The factual predicate for Plaintiff's claims was that the Plans used outdated mortality and interest rate assumptions (or tabular factors based on outdated assumptions), resulting in JSA benefits that were

[7] This section of the SAC also alleged that the disclosure forms Moore received before he retired were ambiguous and misleading. *Id.* at ¶¶ 83-87, 101, 105-118. Again, however, nothing in the *Cruz* complaint relates to plan disclosures.

not actuarially equivalent to the SLA that participants and beneficiaries could have selected when they began receiving benefits, and PSA survivor benefits that were lower than they should be because they were based on a JSA that was not actuarially equivalent to the SLA. *See*, fn. 1, *supra.*

In contrast, Moore's SAC does not allege any facts concerning whether his JSA is actuarially equivalent to the SLA he could have chosen at retirement, nor does it allege any facts concerning mortality or interest rate assumptions that are the core of this case. Perhaps for this reason, Moore did not bring a claim under ERISA § 205, 29 U.S.C. § 1055, like Plaintiff did. Instead, to the extent that Moore's SAC addresses benefit calculations at all, it focuses exclusively on whether his JSA is less valuable than the 5 Year Temporary Modified Cash Refund as the result of COLAs. *See, e.g.*, Needham Decl. at Ex. A, SAC, at ¶ 79. In contrast, the Complaint in this case alleges nothing about COLAs, and only references the Bargaining Plan's 5 Year Temporary Modified Cash Refund option in passing (*see* ECF No. 1, at ¶ 50), to illustrate ***appropriate*** mortality and interest rate assumptions used to calculate certain benefit options subject to the requirements of Tax Code § 417(e)), *i.e.*, those used to calculate lump sums.

In summary, *Moore v. Raytheon* challenged whether a JSA is actuarially equivalent to the 5 Year Temporary Modified Cash Refund based on how future payments under those forms of benefits will increase due to COLAs, whereas ***this*** case challenges whether a JSA is actuarially equivalent to the SLA based on mortality and interest rate assumptions. In *In re Lehman Bros. Securities and ERISA Litig.*, No. 09-md-2017, 2012 WL 2478483 (S.D.N.Y. June 29, 2012), the court held that the FINRA arbitrations were not barred by a release in a class action settlement because the FINRA claims were based on different legal theories that "require[d] proof of entirely different facts" than the claims in the class action. *Id*. at **6–8. The same is true here. Any claims that Moore may bring concerning whether COLAs caused his JSA to be less valuable than a 5

Year Temporary Modified Cash Refund would require proof of what COLAs were applied, what COLAs should have been applied, and how the COLAs affected the calculation of both his JSA and the 5 Year Temporary Modified Cash Refund. Plaintiff's claims in this case do not require proof of any of these facts.[8]

The Settlement is entirely consistent with the identical factual predicate doctrine (as, indeed, it must be).[9] The Settlement specifically provides that "[i]t is the intent of the Parties that this Settlement shall provide to Class Members increases in their benefits under the Covered Plans equivalent to 40% of the increase to which they would have been entitled had their benefits been calculated in accordance with the Adjustment Assumptions rather than the terms set forth in the Covered Plans," and defines the "Adjustment Assumptions" as the mortality and interest rate assumptions that would be used to recalculate the conversion from the SLA at retirement to the JSA or PSA under the terms of the Settlement. Settlement Agreement, ECF No. 85-1, at 4-5 and 14. Consistent with that intent, the Settlement release provides:

> Upon entry of the Judgment by the Court, Plaintiff and each Settlement Class Member will be deemed to forever release and discharge Defendants and the Related Parties from any and all Claims arising on or before December 31, 2020 (1) that were brought, or could have been brought, arising out of or relating to the allegations in the Complaint, or (2) relating to the actuarial assumptions or factors used by the Covered Plans to calculate benefits (collectively, the "Released Claims"). . . . Notwithstanding the foregoing, "Released Claims" do not include

[8] Moore's claims are also based on a different legal theory than Plaintiff's statutory claims here, since Section 205 of ERISA only discusses actuarial equivalence in relation to SLAs.

[9] *See, e.g., In re WorldCom, Inc. Sec. Litig.*, 388 F. Supp. 2d 319, 342 n.36 (S.D.N.Y. 2005) (although class action release did not specifically state that its application was bounded by the identical factual predicate doctrine, releases must conform to the law). The First Circuit has determined that release language focused on claims "based upon any allegations that were or could have been asserted" in the complaint is consistent with the identical factual predicate doctrine. *Reppert*, 359 F.3d at 59. The present release contains the same language.

> individual claims by Class Members (other than Plaintiff) that are not related to the conversion of an SLA to a JSA or a PSA.

Id. at 20-21. Moore's claim — that his JSA was not the actuarial equivalent of a 5 Year Temporary Modified Cash Refund because of COLAs — was not raised in the Complaint, nor could it have been since Plaintiff's Plan does not even have COLAs. Indeed, if Plaintiff had attempted to allege a COLA claim, Raytheon presumably would have moved to dismiss it on standing grounds. Nor do Moore's claims relate to "actuarial assumptions and factors used to calculate benefits" as set forth in the Settlement Agreement — the mortality assumptions, interest rate assumptions and "tabular factors" used to convert the SLA a plan participant was entitled to take at retirement into an actuarially equivalent JSA or PSA benefit, as alleged in the Complaint. Class Counsel have confirmed that Defendants agree the Settlement does not release Moore's claim that his JSA was not the actuarial equivalent of the 5 Year Temporary Modified Cash Refund because of COLAs.

The Settlement Agreement provides 40% of the value of the claims that Plaintiff brought, litigated, and settled. Moore has not challenged the adequacy of that percentage recovery. Instead, he has only argued that the case should have encompassed additional claims. That is no basis for rejecting the Settlement.

2. Moore's Suggestion that Plaintiff and Class Counsel Have Not Adequately Represented the Interests of the Class as a Whole Is Incorrect

Moore argues that the value of his additional claims "begs objections as to Mr. Cruz's suitability to serve as sole (proposed) Class Representative" as well as the suitability of proposed Class Counsel. Moore Obj., ECF No. 90, at 5. A determination of whether Plaintiff and Class Counsel have adequately represented the Class, however, should be measured by their success with respect to the claims that are the focus of ***this*** case, not the claims Mr. Moore would have included. *See, e.g., James*, 2020 WL 6197511, at *8 (where a settlement is fair and the release is

appropriate, the court should not "second guess Class Counsel's evaluation of the claims against [defendant] or their litigation strategies in determining which claims to pursue or settle").

Class action litigation necessarily focuses on common claims, and Plaintiff has done so here. As set out in Plaintiff's Complaint, Class Members in ***each*** of the Covered Plans had JSA and PSA benefits calculated under formulas that directly or indirectly incorporated outdated and unreasonable mortality and interest rate assumptions, resulting in benefits that were not the actuarial equivalent of the SLA they could have selected instead. While it is possible that each Class Member has additional claims against Raytheon and/or its various benefit plans related to their employment or benefits, every theoretical individual claim that 10,000 class members may have cannot be brought in a class action. Plaintiff and Class Counsel decided to focus only on the common claims that Plaintiff shared with thousands of Raytheon retirees.

The strategy Plaintiff and Class Counsel pursued was successful. Plaintiff and Class Counsel filed this action in June 2019, and successfully opposed a Motion to Dismiss, which the Court denied on January 17, 2020. ECF No. 28. Plaintiff and Defendants then engaged in targeted fact discovery. Plaintiff retained a highly credentialed actuarial expert who prepared a detailed report comparing the JSA benefits Plaintiff is receiving to the SLA he could have selected using reasonable and current mortality and interest rate assumptions. ECF No. 56-10. Defendants also retained a highly credentialed actuarial expert who reached the opposite conclusion. Counsel deposed Defendants' expert and defended the deposition of Plaintiff's expert. Counsel then filed motions to disqualify Defendants' expert and for partial summary judgment (ECF No. 53) and opposed Defendants' motion for summary judgment (ECF No. 64), thoroughly briefing each motion and supporting them with numerous exhibits. After they completed this briefing, Plaintiff and Counsel engaged in successful settlement discussions that generated a Settlement worth $59

million, which will provide Class Members with increased pension benefits, including Mr. Moore, for decades. Thus, Moore's claim that Plaintiff and Class Counsel are not adequate is without merit.

The *Moore v. Raytheon* litigation demonstrate the pitfalls of attempting to cast too wide a net in a class action case.[10] Unlike Plaintiff in this case, *Moore v. Raytheon* challenged a broad range of claims against several corporations on behalf of three classes. The docket sheet indicates multiple versions of the complaint, multiple extensions of time to respond to motions to dismiss, and two sets of petitions by plaintiff's counsel petition to withdraw.[11] The case was ultimately voluntarily dismissed without prejudice when the court would not extend the motion to dismiss hearing for 180 days so that Moore could retain new counsel; the court found "no evidence or concrete facts indicating that he will successfully obtain legal representation from . . . any other law firm that he deems satisfactory, even if he is afforded a six-month extension in this case." *Moore* Docket, ECF No. 78, at 4. Moore dismissed his case over three years ago and has not re-filed it. The *Moore* litigation lasted about the same amount of time as the present case. Despite Moore's efforts, neither he, nor any member of the three classes he sought to represent, appear to have obtained any benefit from that lawsuit.

There is no question that Moore has put considerable effort into vindicating not only his own grievances but those of his co-workers. Moore's desire to revive his unrelated claims and to

[10] A copy of the docket report for the *Moore* litigation is attached to the Needham Declaration as Exhibit B.

[11] Moore's original counsel withdrew "due to the considerable complexity of the case and the high cost that will be incurred to litigate such multiple claims" (*Moore* Docket, ECF No. 25, at 1) and his second counsel withdrew "[d]ue to fundamental disagreements between counsel and Plaintiff and because continued representation of Plaintiff has become unreasonably difficult." *Id.*, ECF No. 68 at 2.

recoup the expenses he incurred in his earlier case is entirely understandable.[12] However, it is not a basis for finding that Plaintiff or Class Counsel have not adequately represented the Class or for rejecting the proposed Settlement. Class Members should be able to enjoy the benefits of the Settlement Mr. Cruz has obtained with respect to the claims in ***this*** case without delay. The Court should, accordingly, overrule Moore's objection.

CONCLUSION

For the reasons set forth above and in Plaintiff's prior briefs and supporting documents, the Court should certify the Settlement Class and grant the pending Motion for Final Approval.

Dated: May 26, 2021

Respectfully submitted,

/s/ Douglas P. Needham

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[12] Moore suggested that appointing him as a class representative would allow him to "recover significant personal expenses he has already incurred, by way of his persistent and still ongoing attempts to have all such JSA/QJSA harms remedied." Moore Objection, ECF No. 90, at 6.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon counsel of record through the Court's ECF system, and upon all other persons appearing *pro se* by first-class mail, postage pre-paid, this twenty-sixth day of May, 2021.

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