

EXHIBIT 2

Joint Declaration of Ron Kilgard and Michelle Yau

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

STARLA ROLLINS and PATRICIA
WILSON, on behalf of themselves,
individually, on behalf of all others similarly
situated, and on behalf of the Dignity Plan,

Plaintiffs,

MICHELLE HALL, JENIFER HEINER, and
CHRISTINE MONTOYA,

Intervenor Plaintiffs,

v.

DIGNITY HEALTH, a California Non-profit
Corporation, HERBERT J. VALLIER, an
individual, DARRYL ROBINSON, an
individual, the Dignity Health Retirement
Plans Subcommittee, and JOHN and JANE
DOES, each an individual, 1-20,

Defendants.

Case No: 13-cv-01450-JST

Date: March 3, 2022

Time: 2:00 PM

Ctrm: 6 – 2nd Flr.

Judge: Hon. Jon. S. Tigar

**JOINT DECLARATION
OF RON KILGARD AND MICHELLE YAU IN SUPPORT OF:**

(1) Plaintiffs’ and Intervenor Plaintiffs’ Motion for Final Approval of Settlement Agreement and Certification of Settlement Class; and

(2) Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Incentive Awards.

Ron Kilgard and Michelle Yau declare under penalty of perjury under the laws of the
United States of America:

1. I, Ron Kilgard, am a partner in the law firm of Keller Rohrback L.L.P. (“Keller
Rohrback”), and a member in good standing of the Bars of the States of Arizona and New York
and the District of Columbia. I am one of the lawyers who represents Plaintiffs Starla Rollins and

1 Patricia Wilson and the proposed Settlement Class¹ in the above-captioned action.

2 2. I, Michelle Yau, am a partner in the law firm of Cohen Milstein Sellers & Toll,
3 PLLC (“Cohen Milstein”), and a member in good standing of the Bars of the District of Columbia
4 and the Commonwealth of Massachusetts. I am one of the lawyers who represents Plaintiffs Starla
5 Rollins and Patricia Wilson and the proposed Settlement Class in the above-captioned action.

6 3. Neither of us has first-hand knowledge of all that has occurred in this lengthy
7 litigation. We have both been deeply involved in this case since the outset, and we don’t believe
8 any other lawyer at our respective firms has more familiarity with this case than we do. As to
9 matters in the case that we were not personally involved in (e.g., the depositions), we have
10 confirmed the accuracy of our statements below by conferring with other lawyers working on the
11 case in our firms and by checking the underlying documents.

12 I. PROCEDURAL HISTORY

13 4. This case has a complicated procedural history. For clarity, we have divided it into
14 four phases as it has made its way through District Court, the Ninth Circuit Court of Appeals, the
15 Supreme Court, and then to the current proceedings on remand to the District Court.

16 A. Phase One: Initial Proceedings in District Court.

17 5. On April 1, 2013, Plaintiff Rollins filed a putative class action complaint in the
18 Northern District of California against Dignity Health—a non-profit healthcare provider—and
19 various other defendants (collectively, the “Defendants”), alleging violations of ERISA and
20 improper operation of the Dignity Health Pension Plan (“Dignity Plan” or the “Plan”) as an
21 ERISA-exempt “church plan.” ECF No. 1. Defendants moved to dismiss on June 17, 2013,
22 ECF No. 41, and on December 12, 2013, after full briefing and argument, the Court denied the
23 motion and held that a “church plan” under ERISA must be established by a church. ECF No. 84.
24 Defendants moved the Court to certify that order for interlocutory appeal (“First § 1292 Motion”)

25 ¹ Capitalized terms not otherwise defined in this Joint Declaration shall have the same meaning
26 ascribed to them in the Second Restated and Amended Class Action Settlement Agreement
27 (“Settlement” or “Settlement Agreement”). A copy of the Settlement Agreement is attached as
28 Exhibit 1 to Plaintiffs’ and Intervenor Plaintiffs’ Notice of Motion, Motion for Final Approval of
Settlement Agreement and Certification of Settlement Class, and Supporting Memorandum
 (“Final Approval Motion”). References to Exhibits in this Joint Declaration are to Exhibits
 attached to the Final Approval Motion.

1 on January 13, 2014, ECF No. 85, and after full briefing and argument, on March 17, 2014, the
2 Court denied Defendants' motion. ECF No. 102.

3 6. While the First § 1292 Motion was pending, on February 20, 2014, Plaintiff moved
4 for partial summary judgment that the Dignity Plan was not a church plan. ECF No. 91. On April
5 21, 2014, Defendants responded to Plaintiff's motion for partial summary judgment, ECF No. 114,
6 and also moved for partial summary judgment that the Dignity Plan was a church plan, ECF No.
7 115.² On July 22, 2014, after full briefing and argument on both motions, the Court granted
8 Plaintiff partial summary judgment that the Dignity Plan was not a church plan and denied
9 Defendant's motion for partial summary judgment in its entirety. ECF No. 175.

10 7. On November 10, 2014, Defendants filed a new motion for interlocutory appeal of
11 the Court's partial summary judgment order ("Second § 1292 Motion") and sought a stay of
12 proceedings. ECF No. 197.³ After expedited briefing, on November 26, 2014, the Court granted
13 Defendants' motion, certified its order for interlocutory appeal, and stayed further proceedings in
14 the case. ECF No. 205. After the Ninth Circuit accepted the interlocutory appeal, the Court
15 continued the stay of District Court proceedings pending resolution of the appeal. ECF No. 210.

16 8. Before the case was stayed, the parties had submitted three Joint Case Management
17 Statements (ECF Nos. 54, 75, 186), participated in four in-person or telephonic case management
18 conferences (ECF Nos. 55, 77, 103, 191), and participated in mandatory Alternative Dispute
19 Resolution conferences (*see* unnumbered docket entries dated 7/18/13, 1/16/14, and 5/27/14). They
20 had also engaged in extensive discovery. Following the exchange of initial Rule 26(a) disclosures
21 in September, October, and November, 2013, Plaintiff Starla Rollins served, and Defendants
22 responded and objected to, two sets of interrogatories, four sets of requests for production of
23 documents, and one set of requests for admissions. Defendants' production of documents to
24 Plaintiffs was ongoing when proceedings were stayed. For their part, Defendants served, and

25 ² Defendants' partial summary judgment motion was later modified and re-asserted. ECF No. 137.

26 ³ In the interim, pursuant to the Court's grant of partial summary judgment, Plaintiffs had moved
27 for a permanent injunction and partial judgment against Defendants requiring that the Dignity
28 Plan comply with ERISA, ECF No. 180, and had also moved for class certification, ECF No.
183. Because of the stay pending interlocutory appeal, those motions were denied without
prejudice. ECF No. 238.

1 Plaintiff responded to, one set of interrogatories and one set of requests for production of
 2 documents. Plaintiff also took the depositions of two Dignity Health witnesses and was seeking to
 3 schedule the deposition of a third when the case was stayed. The parties briefed two discovery
 4 disputes that were ultimately resolved without a hearing (ECF Nos. 161, 172), and held numerous
 5 conferences among themselves to resolve disputes over discovery issues.

6 **B. Phase Two: Ninth Circuit Appeal.**

7 9. On February 26, 2015, over Plaintiff's objection, the Ninth Circuit agreed to hear
 8 Defendants' interlocutory appeal. Order, *Dignity Health v. Rollins*, No. 14-80177 (9th Cir. Feb. 26,
 9 2015), Appeal Dkt. No. 11. After full briefing (nine *amici curiae* also filed briefs), the appeal was
 10 argued to the Ninth Circuit on February 8, 2016. The parties filed post-argument briefs on issues
 11 raised at the oral argument. Letter Briefs, *Rollins v. Dignity Health*, No. 15-15351 (9th Cir.),
 12 Appeal Dkt. Nos. 91-92. The law was developing rapidly on the church plan cases, and following
 13 argument, the parties also submitted additional briefing on subsequently-issued opinions. Letter
 14 Briefs, *Rollins v. Dignity Health*, No. 15-15351 (9th Cir.), Appeal Dkt. Nos. 93-95. On July 26,
 15 2016, the Ninth Circuit unanimously affirmed the District Court's conclusion that only a church
 16 could establish a church plan. *Rollins v. Dignity Health*, 830 F.3d 900 (9th Cir. 2016), *rev'd sub*
 17 *nom*, *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (2017).

18 **C. Phase Three: Supreme Court Review.**

19 10. On July 15, 2016, Defendants petitioned the Supreme Court for a writ of
 20 *certiorari*,⁴ and the Supreme Court, after full briefing, granted review on December 2, 2016 in this
 21 case (S. Ct. No. 16-258) and two other church plan cases which had also held for the plaintiffs,
 22 also represented by Plaintiffs' counsel, in the Third Circuit (*Saint Peter's Healthcare Sys. v.*
 23 *Kaplan*, S. Ct. No. 16-86) and the Seventh Circuit (*Advocate Health Care Network v. Stapleton*,
 24 S. Ct. No. 16-74). All three appeals were consolidated for argument under the *Advocate* case
 25 number. After full briefing (including briefs filed by eighteen *amici curiae*), the Supreme Court
 26

27 ⁴ While the petition for writ of certiorari to the Supreme Court was pending, the parties also made
 28 a concerted effort to settle this case. On September 29, 2016, the parties participated in a one-day
 mediation before an experienced mediator, Robert Meyer of JAMS, but were unable to reach a
 consensual resolution at that time.

1 heard argument on March 27, 2017, and issued its decision on June 5, 2017. In brief, the Court
 2 reversed the decisions of the Ninth Circuit and the District Court and held that pension plans need
 3 not be established by churches in order to qualify as ERISA-exempt church plans, as long as they
 4 otherwise meet the requirements to be church plans. *Advocate*, 137 S. Ct. 1652 (2017). Since the
 5 interlocutory appeal had resolved only one of the issues raised by Plaintiff, this case was remanded
 6 for further proceedings on Plaintiff's other claims. ECF No. 234.

7 **D. Phase Four: Proceedings Following Remand to District Court.**

8 11. Following the remand, the parties returned to active litigation. Pursuant to Court
 9 order the parties prepared and filed an updated Joint Case Management Statement on September
 10 28, 2017, ECF No. 237, whereupon the Court ordered the filing of an amended complaint,
 11 ECF No. 238. On October 1, 2017, the Court formally lifted the stay of proceedings, ECF No. 239,
 12 and on November 3, 2017, Plaintiff Rollins, joined by new plaintiff Patricia Wilson, filed an
 13 Amended Class Action Complaint. ECF No. 243. On December 22, 2017, Defendants moved to
 14 dismiss the Amended Complaint (ECF No. 249); after full briefing and argument, the Court on
 15 September 6, 2018 denied the motion to dismiss in part and granted it in part with leave to amend.
 16 ECF No. 267. On September 27, 2018, Plaintiffs filed their Second Amended Class Action
 17 Complaint (the "Complaint" or "SAC"), ECF No. 268.

18 12. The Complaint, as amended, expands on Plaintiff Rollins' initial complaint. It
 19 alleges that Defendants denied ERISA protections to the participants and beneficiaries of the Plan,
 20 a defined benefit pension plan sponsored by Dignity Health, by claiming that the Plan qualifies as
 21 an ERISA-exempt "church plan." *See* 29 U.S.C. § 1002(33). The claimed ERISA violations
 22 include: breaches of fiduciary duty (SAC ¶¶ 215–47); underfunding the Plan as of June 2017 by
 23 over \$1.5 billion (*id.* ¶ 76); failing to provide ERISA-compliant three-year vesting for Dignity
 24 Health's cash balance plans (*id.* ¶ 64); failing to give notice of a change in a "backloaded" benefit
 25 formula that adversely affected a group of class members (*id.* ¶¶ 109–21); and failing to furnish
 26 Plaintiffs or any member of the class with required statements, reports, and notices (*id.* ¶¶ 176–90).
 27 The Complaint also alleges, in the alternative, that if the Dignity Health Plan is within the church
 28 plan exemption, then, to that extent, the exemption violates the Establishment Clause of the First

1 Amendment and the Plan is still subject to ERISA. *Id.* ¶¶ 266–76 (Count X). Aside from these
2 federal law claims, the Complaint also asserts alternative claims for breach of contract, unjust
3 enrichment, and breach of fiduciary duty pursuant to state law. *Id.* ¶¶ 277–321 (Counts XI, XII
4 and XIII).

5 13. Defendants answered the Complaint on October 25, 2018. ECF No. 272. Pursuant
6 to the Court’s Case Management Order of November 13, 2018, ECF No. 275, the parties
7 recommenced discovery, and Plaintiffs served additional document requests.

8 **E. Mediation.**

9 14. Concurrently with the recommencement of discovery, the parties also agreed to
10 make another effort to settle the case. They engaged the services of Jill S. Sperber, a Judicate West
11 mediator with offices in Los Angeles, California, who has substantial experience mediating
12 complex cases, in late November 2018. In the run-up to the mediation during December 2018 and
13 early January 2019, in light of the four years that had elapsed since discovery had been stayed, the
14 parties exchanged confidential information and documents for mediation purposes on an expedited
15 basis, and prepared and submitted confidential comprehensive mediation statements to the
16 mediator. Plaintiffs engaged the services of Daniel Cassidy, a highly regarded, published, actuary
17 at River and Mercantile Solutions in Boston, Massachusetts to assist them in analyzing
18 information, and preparing for and participating in the mediation.

19 15. The settlement negotiations took place over the course of several months. The
20 process was adversarial, professional, and thorough. The parties attended a day-long in-person
21 mediation session in Los Angeles on January 15, 2019. They were unable to reach a settlement,
22 but they agreed to continue to work towards settlement and scheduled a second mediation session
23 with Ms. Sperber for February 6, 2019. Prior to that session, with the assistance of the mediator,
24 Plaintiffs continued to communicate with Defendants, analyze and evaluate their position, and
25 work on the terms of a possible settlement.

26 16. On February 6, 2019, the parties participated in a second day-long in-person
27 mediation session with Ms. Sperber in Los Angeles, but were again unable to reach agreement.
28

1 17. Nevertheless, while pushing forward with discovery in the litigation pursuant to the
2 Court's order, the parties, at Ms. Sperber's urging and with her assistance, also continued to work
3 towards settlement. On March 5, 2019, after innumerable phone conferences, more than a dozen
4 drafts, and after considering all relevant factors, the parties finally accepted a mediator's proposal
5 and reached an agreement in principle to settle the case. The key terms of the settlement were
6 memorialized in a term sheet that was signed by Plaintiffs' counsel on March 5, 2019, and
7 subsequently approved by Dignity Health's Board on or about March 27, 2019. The parties then
8 began negotiating a definitive settlement agreement. The parties jointly notified the Court of the
9 settlement on April 23, 2019. ECF No. 278.

10 **F. Settlement Approval Proceedings.**

11 18. Plaintiffs sought preliminary approval of the settlement they had reached with
12 Defendants in June 2019 (the "Original Settlement"), ECF No. 284. On October 28, 2019, the
13 Court denied that motion without prejudice, ECF No. 289 ("First Denial Order"), identifying as
14 areas of concern certain features of the provisions for payment of attorneys' fees, expenses, and
15 Incentive Awards, *id.* at 10–15; whether payments to the subgroups that are now described as the
16 "PEP Plus Claimants" and the "Vesting Subclass" were appropriate without subclass certification,
17 *id.* at 15–16; and the need for additional evidence of the value of the settlement and the claims
18 being settled, *id.* at 16. Plaintiffs obtained an additional expert report from an actuarial expert to
19 address some of the Court's concerns. With the guidance of the First Denial Order, Plaintiffs and
20 Defendants engaged directly in further negotiations, once again, adversarial, professional, and
21 thorough, and amended their settlement agreement.

22 19. On November 25, 2019, Plaintiffs filed a Renewed Unopposed Motion for
23 Approval of Settlement Agreement and Certification of Settlement Class, ECF No. 290, which the
24 Court on June 12, 2020 again denied without prejudice. ECF No. 292 ("Second Denial Order").
25 The Court concluded that the subgroup that has now been preliminarily certified as the Vesting
26 Subclass would require separate representation, because the Court could not otherwise determine
27 whether the recovery for the Vesting Subclass was adequate. *Id.* at 16.
28

20. On August 28, 2020, in response to the Court’s Second Denial Order, the Intervenor Plaintiffs—three members of the vesting subgroup, represented by Vesting Subclass Counsel, Mark Kindall of Izard, Kindall & Raabe LLP (“IKR”)—moved for and were granted permission to intervene in this matter. ECF Nos. 294, 297. After months of exchanges of information and negotiations between Defendants and Intervenor Plaintiffs—negotiations in which Plaintiffs and Class Counsel were not involved—Defendants and Intervenor Plaintiffs were able to reach an agreement as to the Vesting Subclass that did not adversely affect any other Settlement Class members. That agreement has been incorporated into the final Settlement Agreement that has now been approved by the Preliminary Approval Order. ECF No. 307.

II. INVESTIGATION, RESEARCH, AND ANALYSIS

21. Prior to instigating suit, and throughout the course of the litigation and the parties’ negotiations, Class Counsel worked with Plaintiff Starla Rollins (and, later, additional Plaintiff Patricia Wilson) to investigate the facts, circumstances, and legal issues associated with the allegations and defenses in the action.

22. Class Counsel’s investigation included, inter alia, (a) inspecting, reviewing, and analyzing financial statements, corporate records, and other documents publicly available and/or produced by Defendants in discovery, or otherwise relating to Defendants, the Plan, and the administration and funding of the Plan; (b) reviewing confidential documents produced by Defendants and protected by Fed. R. Evid. 408 during mediation discovery; (c) reviewing, analyzing, and researching the applicable law with respect to the claims asserted in this case and the possible defenses thereto; (d) researching and analyzing governmental and other publicly-available sources concerning the Defendants and the industry; and (e) consulting with experts. During the mediation, Defendants provided Plaintiffs with confidential copies of actuarial valuation reports and annual plan contribution reports for the Plan, which Plaintiffs reviewed with their actuarial expert, Daniel Cassidy.

23. Throughout the course of the litigation and during the parties’ negotiations, the Plaintiffs collected and produced documents, reviewed and approved the complaints and other

major filings,⁵ maintained contact with Class Counsel, stayed abreast of settlement negotiations, attended oral arguments in San Francisco and Washington, D.C., and advised on the settlement of this litigation.

III. EXPERIENCE AND OPINION OF CLASS COUNSEL

24. The two law firms representing the Plaintiffs and proposed Settlement Class in this case—Keller Rohrback and Cohen Milstein—are well-versed in class action litigation, are among the leading litigators of ERISA actions on behalf of plaintiffs, possess specific and extensive experience litigating the ERISA “church plan” exemption, and have in-depth knowledge of the unique legal and factual issues in this case.

25. Keller Rohrback and Cohen Milstein have been litigating church plan cases since 2010. *See Thorkelson v. Publ’g House of the Evangelical Lutheran Church in Am.*, No. 0:10-cv-01712-MJD-JSM (D. Minn. filed Apr. 21, 2010).

26. Keller Rohrback and Cohen Milstein served as co-lead counsel in the interlocutory appeal in this matter to the Ninth Circuit Court of Appeals and the review proceeding in the Supreme Court.

27. In addition to this case, Keller Rohrback and Cohen Milstein serve, or have served, as co-counsel in seventeen cases across the country since 2013 involving claims by other hospital systems that their plans qualify as “church plans.”

28. A true and correct copy of the firm resume detailing the experience of Keller Rohrback in ERISA cases and church plan cases is attached hereto as Exhibit 2-A.

29. A true and correct copy of the firm resume detailing the experience of Cohen Milstein in ERISA cases and church plan cases is attached hereto as Exhibit 2-B.

30. Based on our experience, the facts of this case, and the Supreme Court’s ruling in *Advocate*, and the post-*Advocate* decisions, we have concluded that the Settlement is fair, reasonable, and adequate.

⁵ Plaintiff Wilson became a client in 2015, but because of the stay pending appellate review, she was not named as a plaintiff until 2017.

IV. VALUE OF CLAIMS AND VALUE OF SETTLEMENT

31. A full “win” for Plaintiffs would include declaratory and injunctive relief that the Plan is subject to, and must be reformed and administered consistent with, ERISA. This would include properly funding the Plan as required by ERISA, purchasing insurance from the Pension Benefit Guaranty Corporation (“PBGC”), providing ERISA-required reports and information, and following ERISA’s vesting and benefit accrual rules. Plaintiffs also asserted claims for making the Plan whole for any losses and disgorging any profits on account of fiduciary breaches, making the PEP Plus Claimants whole for any losses incurred on its claims, and assessing penalties for failure to provide beneficiaries and participants with certain ERISA-mandated funding notices and pension benefit statements.

32. Dignity Health’s financial obligations, if it were ordered to comply with ERISA, would be: to purchase insurance from the PBGC, which for the first year would cost approximately \$56 million, Ex. 6 (First Cassidy Decl.) ¶ 36; to fully fund the Plan, which under the ERISA standards is currently 92% funded and underfunded by approximately \$400 million, or eight percent (8%), according to Plaintiff’s actuary (*id.*); and to make the Plan whole for losses and disgorge improper benefits, which as a practical matter Plaintiffs believe would not exceed the amount necessary to fully fund all benefits under the Plan.⁶ The *financial* recovery under ERISA over the life of the Plan is difficult to estimate as it is subject to numerous variables (logistical, financial, statutory, and regulatory) and, of course, the Plan has no specific end date. For purposes of comparison, using the same five-year period of time covered by the Settlement as a benchmark, PBGC premiums would be approximately \$230 million, which together with the dollar amount necessary to fully fund the plan on an ERISA basis at this moment, approximately \$400 million, yields a dollar amount of \$630 million.

A. The Settlement Mitigates the Costs, Risks, and Delay of Trial and Appeal.

33. In Class Counsel’s opinion, and considering the time and expense necessary to litigate the ancillary issues surrounding whether this particular Plan is properly maintained as an

⁶ This analysis does not include penalties that are within the Court’s discretion to award. SAC ¶¶ 186, 188, 190.

ERISA-exempt church plan, this Settlement represents a particularly strong and expedited resolution for the Settlement Class. Plaintiffs have entered into the Settlement with an understanding of the strengths and weaknesses of their claims. This understanding is based on: (1) the dialogue in mediation sessions and other settlement discussions; (2) investigation and research; (3) the likelihood that Plaintiffs would prevail at trial; (4) the range of possible recovery; and (5) the substantial complexity, expense, and duration of litigation necessary to prosecute this Action through trial, post-trial motions, and likely appeal, and the significant uncertainties in predicting the outcome of this complex litigation.

34. While this Action was progressing, the threshold issue of whether a church plan must be established by a church reached, and was decided by, the Supreme Court. *Advocate*, 137 S. Ct. 1652 (2017). The Supreme Court held that pension plans need not be established by churches in order to qualify as ERISA-exempt church plans. *Id.* During the pendency of this case, the Tenth Circuit issued an opinion in a separate but similar church plan case, *Medina v. Catholic Health Initiatives*, 877 F.3d 1213 (10th Cir. 2017), holding that the plan at issue qualified as a church plan because it met the requirements of ERISA § 3(33)(C)(i), 29 U.S.C. § 1002(33)(C)(i).

35. Since *Medina*, the case law has been mixed with very strong opinions for plaintiffs in this case, *Rollins v. Dignity Health*, 338 F. Supp. 3d 1025 (N.D. Cal. 2018), and *Owens v. St. Anthony Medical Center, Inc.*, No. 14-cv-4068, 2018 WL 4682337 (N.D. Ill. Sept. 29, 2018), and defense outcomes in *Feather v. SSM Health*, No. 4:16CV1669HEA, 2018 WL 3536613 (E.D. Mo. July 23, 2018), *Boden v. St. Elizabeth Medical Center, Inc.*, 404 F. Supp. 3d 1076 (E.D. Ky. 2019), *Sheedy v. Adventist Health System Sunbelt Healthcare Corp.*, No. 6:16-cv-1893-Orl-31GJK, 2020 WL 70976 (M.D. Fla. Jan. 7, 2020); and *Sanzone v. Mercy Health*, 326 F. Supp. 3d 795 (E.D. Mo. 2018), 954 F.3d 1031 (8th Cir. 2020), 499 F. Supp. 3d 627 (E.D. Mo. 2020).

36. Class Counsel are very experienced in litigating such claims, and have every confidence that they would ultimately prevail, but they cannot deny that in the wake of *Advocate* there is significant risk in further litigation. Following *Advocate* and the remand, additional factual and legal issues remain in this litigation, including: how the Supreme Court's ruling will apply to the specific facts of this case; class certification; liability; and damages. Continued litigation of this

1 matter would necessitate additional formal discovery (including document discovery and many
 2 depositions) and extensive motion practice. Additionally, trial preparation would require great
 3 effort, both by the parties and the Court. The Settlement eliminates that risk.

4 **B. The Work of Plaintiffs and Class Counsel.**

5 37. Prior to instigating the Action, and throughout the course of the Action and the
 6 parties' negotiations, Class Counsel worked with the Plaintiffs to investigate the facts,
 7 circumstances, and legal issues associated with the allegations and defenses in the Action.

8 38. Class Counsel's investigation and work in this Action included, *inter alia*:
 9 (a) inspecting, reviewing, and analyzing financial statements, corporate records, bond offerings,
 10 and other documents publicly available and/or produced by Defendants or otherwise relating to
 11 Defendants, the Plan, and the administration and funding of the Plan; (b) reviewing documents and
 12 information produced by Plaintiffs and tens of thousands of pages of documents produced by
 13 Defendants; (c) researching and analyzing the applicable law with respect to the claims asserted in
 14 this Action and the possible defenses thereto, and following the Supreme Court's decision in
 15 *Advocate*, researching additional state law claims; (d) twice amending the complaint;
 16 (e) propounding and responding to written discovery requests; (f) preparing discovery disputes for
 17 resolution by the Court; (g) briefing Defendants' motion to dismiss and motion for summary
 18 judgment; (h) handling the appeal to the Ninth Circuit and the *certiorari* proceeding in the
 19 Supreme Court; and (i) exploring potential remedies.

20 39. Throughout the course of the Action and during the parties' negotiations, the
 21 Plaintiffs collected documents, contributed to the factual development of the case, reviewed and
 22 approved the complaints, reviewed and responded to discovery, reviewed and approved other
 23 major filings in the Action, maintained contact with Class Counsel, stayed abreast of the mediation
 24 and settlement negotiations, and advised on the settlement of this Action. *See* Ex. 8 (Declaration of
 25 Starla Rollins); Ex. 9 (Declaration of Patty Wilson).

V. PRELIMINARY APPROVAL

40. The Court granted preliminary approval of the Settlement on October 19, 2021. ECF No. 307. As part of this process, Class Counsel took the lead on drafting the Class Notice to be sent to current and former participants and beneficiaries of the Plan.

41. In accordance with the Preliminary Approval Order, the Settlement Class has been provided with ample and sufficient notice of this Settlement, including an appropriate opportunity to voice objections, which are due to be submitted by January 28, 2022.

42. The Class Notice contains detailed information about the Settlement, including: (1) a comprehensive summary of the Settlement's terms; (2) notice of Class Counsel's and Intervenor's Counsel's intent to request attorneys' fees, reimbursement of expenses, and Incentive Awards to Plaintiffs for the services performed in this Action; and (3) detailed information about the Released Claims. *See* Ex. 4-D. In addition, the Class Notice provided information about the Final Approval Hearing date, rights of Settlement Class Members to object (and deadlines and procedures for objecting), and the procedure to receive additional information. *Id.* The Class Notice provided Settlement Class Members with contact information for Class Counsel, information on the toll-free phone number for inquiries, an email address for inquiries (Dignitysettlement@kellerrohrback.com), and three website addresses for further information regarding the settlement (www.kellersettlements.com, www.cohenmilstein.com/Dignity-settlement or <https://ikrlaw.com/file/DignityHealth>). *Id.* Thus, the Class Notice fully informed Settlement Class members of the Action and proposed Settlement and enabled them to make an informed decision about their rights.

43. By December 2, 2021, Class Counsel at Keller Rohrback posted the Settlement Agreement, the Class Notice, the Preliminary Approval Motion, the Preliminary Approval Order, and other case documents on a website identified in the Class Notice: <http://www.kellersettlements.com>.

44. By December 2, 2021, Class Counsel at Cohen Milstein posted the Settlement Agreement, the Class Notice, the Preliminary Approval Motion, the Preliminary Approval Order,

1 and other case documents on the second website identified in the Class Notice:

2 www.cohenmilstein.com/Dignity-settlement.

3 45. By December 2, 2021, Intervenor's Counsel at IZARD KINDALL posted the Settlement
4 Agreement, the Class Notice, the Preliminary Approval Motion, the Preliminary Approval Order,
5 and other case documents on the third website identified in the Class Notice:

6 <https://ikrlaw.com/file/DignityHealth>.

7 46. Defendant Dignity Health retained Angeion Group to serve as Settlement
8 Administrator to disseminate Notice to the Settlement Class and Vesting Subclass members. To
9 prepare to mail Class Notice, Angeion obtained from Dignity Health the names, mailing addresses
10 and email address information where available for members of the Settlement Class. Angeion
11 initially identified 117,969 records. After analyzing and de-duplicating the data, Angeion
12 determined that 114,325 records could be issued notice, with 58,872 records with mailing
13 addresses only and 55,453 records with valid mailing and email addresses.

14 47. Pursuant to the Preliminary Approval Order, on December 2, 2021, Class Notice
15 was mailed to 58,872 Settlement Class members by Angeion Group. Ex. 4 (Angeion Decl.) ¶¶ 7–9.
16 As of December 16, 2021, Angeion received 3,368 Notices returned from USPS as undeliverable.
17 For 275, the USPS automatically forwarded them to an updated address. For 60 of them, the USPS
18 provided an updated address to which Angeion will remail the Notice. For the remaining 3,033,
19 Angeion will conduct address verification searches, or skip tracing, in an attempt to locate updated
20 address information. Notices will be remailed to any updated addresses identified. *Id.*

21 48. Pursuant to the Preliminary Approval Order, on December 2, 2021, Email Notice
22 was emailed to 55,453 Settlement Class members for whom an email address was available. *Id.* ¶¶
23 7–9; *see also* Ex. 4-E (Email Notice). The Email Notice was a shorter form of the Class Notice.
24 In discussions with counsel over the Email Notice, Angeion recommended that the Email Notice
25 not contain any attachments, and not be lengthy, in order to maximize the likelihood that it would
26 be received. Angeion observed and told Class Counsel that a large number of hyperlinks in a
27 Notice may cause it to be inadvertently diverted to a Class Member's spam or junk folder.
28 Angeion recommended that Class Counsel modify the Class Notice to reduce the risk of it being

1 filtered to a recipient's spam or junk folder by reducing the number of hyperlinks and shortening
 2 the Notice to the form sent as Email Notice. Ex. 4 (Angeion Decl.) ¶ 11. All Settlement Class
 3 members who were sent Email Notice also received a live hyperlink to access the full Class Notice
 4 at the settlement websites described at paragraphs 43–45, above. Ex. 4-E (Email Notice). After
 5 sending the Email Notice on December 2, 2021, Angeion identified 53 records for which Email
 6 Notice was undeliverable. Angeion then located mailing addresses for these records in the
 7 provided files and on December 9, 2021, mailed the Notice to these records. Ex. 4 (Angeion Decl.)
 8 ¶ 12.

9 49. As of December 21, 2021, Class Counsel at Keller Rohrback had received and
 10 responded to 169 inquiries (either by phone or e-mail) from Settlement Class Members.

11 **VI. FEES, EXPENSES, AND INCENTIVE PAYMENTS**

12 50. With respect to the statements in this Section, the two declarants each make their
 13 declarations only with respect to the attorneys' fees and expenses incurred by their respective law
 14 firms. As of the filing of this Joint Declaration, Class Counsel have received no objections to the
 15 Settlement itself or to the requested awards of fees, expenses, or incentive payments.

16 51. Payment of Plaintiffs' attorneys' fees and expenses was negotiated separately from
 17 the other terms of the Settlement. Pursuant to the Settlement Agreement, the parties have agreed
 18 that, subject to Court approval, Plaintiffs will seek no more than Six Million One Hundred Fifty
 19 Thousand Dollars (\$6,150,000) in a petition for attorneys' fees and expenses ("Fee Request").
 20 Defendants are free to oppose the Fee Request, and any amount not awarded will be added to the
 21 consideration paid to the Class; it will not revert to Defendants. Ex. 1 (Settlement Agreement)
 22 §§ 7.1.8, 7.1.9. The parties have further agreed that Plaintiffs will seek incentive awards of
 23 Ten Thousand Dollars (\$10,000) each for Plaintiffs Rollins and Wilson, to be paid out of the Fee
 24 Request. Payment will be made by Dignity in addition to the payments and other relief provided
 25 for in the Settlement. *Id.* § 7.1.8.
 26
 27
 28

A. Data Concerning Attorney Fees.

1. Overview

52. From 2012 to the present, Class Counsel, expended over 10,789 professional hours litigating and settling this Action. This includes time spent on the following: (1) researching the law bearing on the church plan exemption and concluding large hospital systems such as Dignity Health were not entitled to the exemption, and investigating the non-profit hospital business as it bore on liability and defenses; (2) investigating the facts of this case and drafting, filing, and amending the complaint; (3) reviewing thousands of pages of documents, including publicly available information about the Plan and documents produced by Defendants; (4) conducting factual and legal research, including review of Named Plaintiffs' documents and information; (5) propounding and responding to written discovery and addressing discovery disputes; (6) briefing the motion to dismiss; (7) reviewing and analyzing actuarial data for the Plan made available by Defendants; (8) briefing the motion for summary judgment; (9) defending an appeal to the Ninth Circuit Court of Appeals; (10) opposing the certiorari petition in the Supreme Court and, once certiorari was granted, defending the review proceeding on the merits; (11) negotiating and crafting a comprehensive Settlement Agreement after arm's-length negotiations overseen by a mediator; (12) moving for preliminary approval of the June 2019 settlement, the November 2019 settlement, and the April 2021 settlement; (13) drafting the Class Notice materials and posting them on dedicated settlement websites; and (14) individually responding to 169 inquiries of Settlement Class Members as of December 21, 2021, concerning the Class Notice, the Settlement, and this Action.

53. As this Action moves ahead through final approval proceedings, Class Counsel expects that they will continue to devote at least another 100 hours to this Action. Indeed, Class Counsel still need to: (1) Prepare the reply memorandum due in February; (2) prepare for and attend the final approval hearing; (3) research, draft, and prepare any additional submissions requested by the Court; (4) assist Settlement Class Members with their inquiries; (5) respond to any objections that may arise; (6) respond to what promises to be an avalanche of inquiries about the case and the settlement; and (7) handle any resulting appeal.

2. Summary of Data

54. The first preliminary approval motion was filed on June 27, 2019. As of June 25, 2019, the work completed in this matter, including developing, investigating, and prosecuting claims in this Court, proceedings in the Ninth Circuit Court of Appeals and the Supreme Court,⁷ and on remand in this Court represents 9,438.7 hours from professionals at Keller Rohrbach, and 1350.5 hours from professionals at Cohen Milstein, for a total of 10,789.2 hours. At the firms' current rates, the dollar value of this work (the lodestar) is \$7,113,199.50, \$956,835.00, and \$8,070,034.50, respectively.

55. These figures differ somewhat from the figures submitted in connection with the first preliminary approval memorandum, which asserted total hours of 12,424 and lodestar of \$8,864,690. The difference is due to the deletion of the hours of timekeepers with less than 20 hours in the case, the deletion of certain hours as a matter of billing judgment, and the use of current 2021 rates instead of 2019 rates. The figures do *not* include any time incurred in the settlement approval proceedings themselves, *i.e.*, the period after June 2019, although that dollar value of that time was substantial (valued at more than \$1,000,000 at current hourly rates).

56. Exhibits 2-C through 2-E analyze these figures in the following ways:

Exhibit 2-C (Keller Rohrbach Lodestar Calculations) and Exhibit 2-D (Cohen Milstein Lodestar Calculations) separately report the hours recorded, by professional, in each of the four distinct phases of the case (described *supra* ¶ 4). Each professional's time is further divided into task categories describing the type of legal work in that category during each phase (*see also* Keller Rohrbach category descriptions on Exhibit 2-E). The total number of hours spent by all professionals on each category in the phase is shown in the bottom cell of the column for each category. The last three columns of each exhibit show the total number of hours each professional recorded for the phase; the professional's

⁷ Because the Supreme Court consolidated the *Dignity*, *Advocate*, and *Saint Peter's* appeals, each firm recorded much of the time spent on the Supreme Court proceedings under a single consolidated billing number. A portion of that time has been allocated to *Dignity* and does not duplicate time allocated to either of the other two Supreme Court matters.

1 current billing rate; and the lodestar calculated by multiplying total hours by
 2 billing rate. The total of all hours recorded for the phase, and the total lodestar
 3 for the phase, are shown in the bottom cells of those columns

4 Exhibit 2-F summarizes the totals in Exhibit 2-C (Keller Rohrback
 5 Lodestar Calculations) and 2-D (Cohen Milstein Lodestar Calculations) and
 6 provides Class Counsel's total hours and lodestar for each phase and the case as
 7 a whole.

8 **3. The Time Spent Is Accurate and Reasonable**

9 57. Class Counsel kept time records contemporaneously with the work performed and
 10 documented all time spent developing, investigating, and prosecuting the claims in this case, and
 11 recorded their time worked to the nearest tenth or quarter of an hour as reflected in Exhibits 2-C
 12 and 2-D.

13 58. The 10,789.2 hours collectively expended on this Action were reasonably spent,
 14 especially given the high-stakes, high-risk nature of this litigation, and the rapidly evolving area of
 15 law.

16 59. Work was allocated by Class Counsel to maximize efficiency. Class Counsel
 17 distributed work to minimize the fees in this Action; thus, to the extent practicable, senior
 18 attorneys did not do the work that could be accomplished by more junior attorneys, and attorneys
 19 did not do the work that could be completed by paralegals. Class Counsel assigned tasks
 20 depending on a number of considerations, with the goal of minimizing duplication of effort. If
 21 Class Counsel had not undertaken these efforts, the lodestar for this case would have been higher.

22 60. Presenting an ERISA case of this type on the merits invites substantial risks,
 23 expense, and delay. Defendants have defended their actions vigorously with respect to the Plan to
 24 date, and there is no reason to believe they would not continue to do so through trial and on a
 25 second appeal if necessary. Defendants' various counsel in this case are formidable adversaries,
 26 deeply experienced in complex litigation, including defending complex ERISA class actions.

1 Their expertise and the resources available to their law firms was one of the reasons Class Counsel
2 were obliged to devote substantial time and resources to this case.⁸

3 61. Class Counsel have served in leadership positions in ERISA class actions in the
4 past, and the hours spent on this Action are consistent with Class Counsel's experience in those
5 cases.

6 **4. The Rates Used for the Lodestar Are Reasonable**

7 62. Keller Rohrback's rates range from \$250 to \$1,035 per hour, and Cohen Milstein's
8 rates range from \$290 to \$1,035 per hour. The lower end represents rates charged by support staff
9 such as paralegals, while the higher end represents rates charged by the senior partners.

10 63. The regular billing rates charged by Keller Rohrback and Cohen Milstein in this
11 Action are similar to rates that have been approved by courts across the country in other church
12 plan cases and class action cases in other judicial settlement hearings.

13 64. Class Counsel have been awarded fees based upon similar hourly rates in other
14 church plan cases which they litigated jointly. *See* Amended Order & Final Judgment ¶ 8, *Owens*
15 *v. St. Anthony Med. Ctr., Inc.*, No. 14-4068 (N.D. Ill. Aug. 23, 2019), ECF No. 309; Amended
16 Final Judgment ¶ 23, *Feather v. SSM Health*, No. 16-1669 (E.D. Mo. Jul. 17, 2019), ECF No. 135;
17 Order & Final Judgment ¶ 20, *Holcomb v. Hospital Sisters Health Sys.*, No. 16-441 (C.D. Ill. Feb.
18 25, 2019), ECF No. 67; Order & Final Judgment ¶ 18, *In re Mercy Health ERISA Litig.*, No. 16-
19 441 (S.D. Ohio Nov. 28, 2018), ECF No. 107; Order & Final Judgment ¶ 21, *Carver v. Presence*
20 *Health Network*, No. 15-2905 (N.D. Ill. July 10, 2018), ECF No. 137; Order & Final Judgment ¶
21 19, *Stapleton v. Advocate Health Care Network & Subsidiaries*, No. 14-1873 (N.D. Ill. June 27,
22 2018), ECF No. 172; Order & Final Judgment ¶ 21, *Garbaccio v. St. Joseph's Hosp. & Med. Ctr.*
23 *& Subsidiaries*, No. 16-2740 (D.N.J. Mar. 6, 2018), ECF No. 116; Order & Final Judgment ¶ 21,
24 *In re Wheaton Franciscan ERISA Litig.*, No. 16-4232 (N.D. Ill. Jan. 16, 2018), ECF No. 107;
25 Order & Final Judgment ¶ 9, *Hodges v. Bon Secours Health Sys., Inc.*, No. 16-1079 (D. Md. Dec.

27 ⁸ Defendants are now represented by Manatt Phelps & Phillips LLP, Nixon Peabody LLP, and
28 Tucker Huss, PC. They were previously represented by Morgan Lewis & Brockius LLP and
David Shapiro (Harvard Law School).

21, 2017), ECF No. 117; Order & Final Judgment ¶ 21, *Butler v. Holy Cross Hosp.*, No. 16-5907 (N.D. Ill. June 29, 2017), ECF No. 52; Order & Final Judgment ¶ 10, *Lann v. Trinity Health Corp.*, No. 14-2237 (D. Md. May 31, 2017), ECF No. 111; Order Finally Approving Class Settlement ¶ 10, *Griffith v. Providence Health & Servs.*, No. 14-1720 (W.D. Wash. Mar. 21, 2017), ECF No. 69; Order & Final Judgment ¶ 8, *Overall v. Ascension Health*, No. 13-11396 (E.D. Mich. Sept. 17, 2015), ECF No. 115.

65. District courts have also granted final approval and awarded fees to Keller Rohrback based on the firm's then-current rates in other, non-church plan ERISA cases. *See, e.g.*, Order Granting Class Counsel's Motion for Attorneys' Fees, Reimbursement of Expenses & Plaintiffs' Service Awards ¶ 3, *Beach v. JPMorgan Chase Bank*, No. 17-cv-563 (S.D.N.Y. Oct. 7, 2020), ECF No. 232 (awarding then-current attorneys' rates between \$400 and \$1,035); Final Judgment & Approving Class Action Settlement at 15, *Spires v. Schools*, No. 16-616 (D.S.C. Sept. 5, 2018), ECF No. 152 (awarding then-current attorneys' rates between \$230 and \$940); Order Awarding Attorneys' Fees, Service Awards, & Reimbursement of Litigation Expenses ¶ 5, *In re Bank of N.Y. Mellon Corp. Forex Transactions Litig.*, MDL No. 2335 (S.D.N.Y. Sept. 24, 2015), ECF No. 637 (awarding then-current attorneys' rates between \$475 and \$895); Order Approving Attorney's Fees, Expenses & Incentive Awards ¶ 5, *Diebold v. N. Tr. Invs., N.A.*, No. 09-1934 (N.D. Ill. Aug. 10, 2015), ECF No. 285 (awarding then-current attorneys' rates between \$395 and \$895); Order & Final Judgment ¶ 8, *In re Bear Stearns Cos. ERISA Litig.*, No. 08-2804 (S.D.N.Y. Sept. 20, 2012), ECF No. 163 (awarding then-current attorneys' rates between \$295 and \$785); Order Granting Plaintiffs' Motion for Final Approval ¶ 10, *In re Ford Motor Co. ERISA Litig.*, No. 06-11718 (E.D. Mich. Feb. 15, 2011), ECF No. 291 (awarding then-current attorneys' rates between \$331 and \$740).

66. District courts have also granted final approval and awarded fees to Cohen Milstein based on the firm's then-current rates in many non-church plan ERISA and other class actions. *See, e.g.*, Final Order & Judgment at 10 (¶ 21), *In re SunTrust Banks, Inc. 401(k) Plan Affiliated Funds ERISA Litig.*, No. 11-00784 (N.D. Ga. Jul. 20, 2020), ECF No. 302 (order awarding attorney fees); Order & Judgment Granting Motion for Final Approval of Class Settlement &

Awarding Attorneys' Fees, Costs, & Service Awards ¶ 7, *LLE One, LLC v. Facebook*, No. 16-6232 (N.D. Cal. June 26, 2020), ECF No. 211 (approving attorneys' fee award based on then-current rates between \$250 and \$940); Notice of Entry of Final Judgment & Order of Dismissal at 20 (¶ 10), *In re Wynn Resorts, Ltd. Derivative Litig.*, No. 18-769630-B (Dist. Ct., Clark County, Nev. Mar. 10, 2020) (approving attorneys' fee award based on then-current rates between \$290 and \$1,045)⁹; Order Granting Direct Purchaser Plaintiffs' Revised Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, & Service Award for the Class Representative at 3 (¶ 1), *In re Resistors Antitrust Litig.*, No. 15-3820 (N.D. Cal. Mar. 24, 2020), ECF No. 587 (approving attorneys' fee award based on then-current rates); Order on Lead Counsel's Motion for an Award of Attorneys' Fees, Reimbursement of Litigation Expenses & Reimbursement of Lead Plaintiff's Costs & Expenses ¶ 6, *Constr. Workers Pension Tr. Fund v. Navistar Int'l Corp.*, No. 13-2111 (N.D. Ill. Nov. 1, 2016), ECF No. 183 (approving then-current attorneys' rates between \$475 and \$945 on a lodestar cross-check); Memorandum Opinion & Order at 6–7, 10, *Severstal Wheeling, Inc. Ret. Comm. v. WPN Corp.*, No. 10-954 (S.D.N.Y. Apr. 21, 2016), ECF No. 300 (awarding then-current attorneys' rates between \$450 and \$665); Order Granting Plaintiffs' Motion for Final Approval of the Class Action Settlement ¶ 24, *Dooley v. Saxton*, No. 12-1207 (D. Or. Oct. 19, 2015), ECF No. 187 (awarding then-current attorneys' rates between \$375 and \$790); Order Granting Lead Counsel's Motion for an Award of Attorneys' Fees & Reimbursement of Litigation Expenses ¶ 2, *In re Bear Stearns Mortg. Pass-Through Certificates Litig.*, No. 08-8093 (S.D.N.Y. May 27, 2015), ECF No. 287 (awarding then-current attorneys' rates between \$210 and \$915); and Order on Lead Counsel's Motion for an Award of Attorneys' Fees & Reimbursement of Litigation Expenses ¶ 6, *N.J. Carpenters Health Fund v. Residential Capital, LLC*, No. 08-8781 (S.D.N.Y. July 31, 2015), ECF No. 353 (awarding then-current attorneys' rates between \$240 and \$915).

⁹ See Notice of Entry of Final Judgment and Order of Dismissal, *In re Wynn Resorts, Ltd. Derivative Litig.*, No. A-18-769630-B ((D. Nev., Clark Cty. Mar. 10, 2020), <https://www.cohenmilstein.com/sites/default/files/Wynn%20Order%20Re%20Final%20Judgment%20and%20Order%20of%20Dismissal%2003102020.pdf>.

67. Additionally, Class Counsel's rates are on a par with, or even below, other plaintiffs' firms performing similar work. *See, e.g., In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672, 2017 WL 1047834, at *5 (N.D. Cal. Mar. 17, 2017) (finding a lodestar cross-check supports the reasonableness of Class Counsel's requested fees and approving partner billing rates ranging from \$275 to \$1,600); Order Awarding Attorneys' Fees & Litigation Expenses at 2–3, *La. Firefighters Ret. Sys. v. N. Tr. Invs., N.A.*, No. 09-7203 (N.D. Ill. Aug. 5, 2015), ECF No. 499 (approving fee award, including rates for attorneys ranging from \$340 to \$975 per hour); Order Awarding Attorneys' Fees & Expenses ¶ 3, *In re Fannie Mae 2008 Sec. Litig.*, No. 08-7831 (S.D.N.Y. Mar. 3, 2015), ECF No. 552 (approving rates for attorneys ranging from \$300 to \$975 per hour); Order Awarding Attorneys' Fees & Expenses ¶ 3, *In re Massey Energy Co. Sec. Litig.*, No. 10-689 (S.D. W. Va. June 4, 2014), ECF No. 203 (approving fees for attorneys ranging from \$275 to \$975 per hour).

68. Class Counsel's rates are also comparable to those of the major national defense firms, such as defense counsel in this matter. For example, the 2020 billing rates for partners at Morgan Lewis & Brockius LLP, Dignity Health's counsel for the first phase of this case, ranged from \$1,025 to \$1,250.¹⁰

5. The Requested Fee Award is Substantially Less Than Class Counsel's Lodestar

69. The total lodestar for the hours requested, which, again, excludes hours deleted because of billing judgment and all hours after the filing of the first preliminary approval motion in 2019, more than two years ago, amounts to \$8,070,034.50. If the Court awards the full amount requested, Class Counsel will receive, net of expenses and incentive fees, \$5,766,193.12. Thus, Counsel will receive well under their lodestar for this matter, reflecting a fractional multiplier of **0.71**—nearly a 30% reduction.

¹⁰ *See* Application of Official Committee of Unsecured Creditors at 8 of 49, ¶ 19, *In re Covia Holdings Corp.*, No. 20-33295 (S.D. Bankr. Tex. Aug. 14, 2020), ECF No. 416.

B. Data Concerning Expenses.

70. As of December 19, 2021, Keller Rohrbach had incurred expenses of \$172,247.64 and Cohen Milstein had incurred expenses of \$191,559.24, for a total of \$363,806.88.¹¹ Summaries of each firms' expenses are attached hereto as Exhibit 2-G (Keller Rohrbach Expenses) and Exhibit 2-H (Cohen Milstein Expenses). The expenses incurred in developing and prosecuting this litigation are commercially reasonable and are reflected on the books and records of each firm. These books and records are prepared from expense vouchers, check records, and other source materials and represent an accurate recordation of the expenses incurred.

71. The categories of expenses for which Class Counsel seek reimbursement are the type of expenses routinely charged to hourly clients and should therefore be reimbursed here. These costs included, *inter alia*: filing fees; process service fees; printing and copying charges; postage and delivery charges; telecommunications charges; computer-based research; Relativity database services and licensing costs; other research costs; travel expenses (transportation, meals, lodging, and parking) for client meetings, court appearances, and mediation; mediator's charges; fees for Supreme Court counsel; actuarial expert consulting expenses. These expenses are typically billed by attorneys to paying clients and are calculated based on the actual expenses of these services in the markets in which they have been provided. Class Counsel maintains appropriate back-up documentation for each expense. These expenses incurred were necessary to secure the resolution of this litigation.

72. On a firm-by-firm basis, the expenses incurred are as follows:

Firm	Expenses
Keller Rohrbach	\$172,247.64
Cohen Milstein	\$191,559.24
TOTAL	\$363,806.88

See Exs. 2-G and 2-H.

73. These expenses were advanced with no guarantee of recovery. As a result, Class Counsel had a strong incentive to keep costs to a reasonable level and did so.

¹¹ In the same manner as described in note 7, *supra*, expenses incurred in the Supreme Court appeal were made on a consolidated basis and have been allocated among the three cases.

1 **C. Data Concerning Incentive Awards.**

2 74. Class Counsel also wish to note the efforts made on behalf of the Settlement Class
3 by the two Plaintiffs—Starla Rollins and Patricia Wilson.

4 75. The Plaintiffs have actively worked with Class Counsel throughout the litigation.
5 They collected documents relating to their employment at Dignity Health and their participation in
6 the Plan and assisted with the case investigation and factual development of the case; reviewed
7 drafts of the pleadings and approved the filing of the final versions of the complaints; reviewed
8 and responded to written discovery, stayed abreast of the filings and settlement negotiations; and
9 were involved in the mediation and ultimate settlement of this litigation. The Plaintiffs
10 communicated with Class Counsel throughout this lawsuit. They contributed time that could
11 otherwise have been devoted to work and family obligations and did so in order to help the
12 members of the Settlement Class secure relief.

13 76. The Class Notice sent to the Settlement Class Members disclosed that Class
14 Counsel would seek Incentive Awards of up to \$10,000 for each of these Plaintiffs, to be deducted
15 from the \$6,150,000 Fee Award described in the Settlement Agreement. Ex. 4-D (Class Notice) at
16 8.

17 77. Class Counsel believe that payment of Incentive Awards to these Plaintiffs is
18 justified in this Action, and that the amounts are fair and reasonable in light of the burdens
19 Plaintiffs undertook and the benefits that Plaintiffs helped achieve for the Settlement Class.

20 78. Starla Rollins has been a client in this litigation for over nine years. As her
21 declaration (Ex. 8 (Rollins Decl.)) explains, she investigated the case and has been very actively
22 involved in all aspects of the litigation. Even compensation at a very modest hourly rate, well
23 below her current rate of \$33.00, would easily exceed \$10,000. In the opinion of Class Counsel she
24 has earned the incentive fee.

25 79. Patricia Wilson has been a client in this litigation for a shorter time, but from
26 2015 to the present she has been very actively involved in the PEP Plus side of the case. In fact,
27 Ms. Wilson spotted the PEP Plus issue and contacted the lawyers about it. As explained in her
28 declaration (Ex. 9 (Wilson Decl.)), she herself mapped out the “backloading” issue in this case.

As a current employee of Dignity Health she has also been subjected to some friction at her work. Her work on the case, like that of Ms. Rollins, has been hugely valuable. Again, as with Ms. Rollins, even a modest hourly rate, well below her compensation as a Registered Nurse, would easily exceed \$10,000.

VII. CONCLUSION

80. For the reasons discussed herein, Class Counsel has concluded that the Settlement is a fair, reasonable, and adequate resolution of the claims against Defendants in this ERISA class action. The requested attorneys' fees, reimbursement of expenses, and incentive awards to the Plaintiffs are warranted as well. Plaintiffs and Class Counsel respectfully request that the Court approve: (1) Plaintiffs' and Intervenor Plaintiffs' Unopposed Motion for Final Approval of Settlement Agreement and Certification of Settlement Class; and (2) Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards, and enter the [Proposed] Order and Final Judgment, attached as Exhibit 13 to the Final Approval Motion, in its entirety.

We declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 22nd day of December 2021, in Phoenix, Arizona and Washington, D.C.

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Attorney for Plaintiffs

EXHIBIT 2-A

Keller Rohrback Firm Resume



ERISA LITIGATION

ABOUT KELLER ROHRBACK



Devoted to Justice

"[Keller Rohrback] has performed an important public service in this action and has done so efficiently and with integrity...[Keller Rohrback] has also worked creatively and diligently to obtain a settlement from WorldCom in the context of complex and difficult legal questions..." *In re WorldCom, Inc. ERISA Litigation*, No. 02-4816 (S.D.N.Y.) (Judge Cote).

Keller Rohrback's lawyers excel by being prepared and persuasive. It's a simple formula that combines our strengths: outstanding writing and courtroom skills, together with unparalleled passion and integrity. We have recovered billions of dollars for our clients, and have served as lead counsel in many prominent cases. Our lawyers are widely recognized as leaders in their fields who have dedicated their careers to combating corporate fraud and misconduct. We have the talent as well as the financial resources to litigate against Fortune 500 companies—and do so every day.

Who We Are

Keller Rohrback's Complex Litigation Group has a national reputation as the go-to plaintiff's firm for large-scale, complex individual and class action cases. Attorneys in our Employee Benefits and Retirement Security practice group represent employees and retirees, public and private investors, businesses, governments, and individuals in a wide range of actions, including fiduciary breach, securities fraud, manipulation, and other illegal practices relating to financial services and products, ERISA, antitrust, whistleblower, environmental, and product liability cases. Our approach is straightforward—we represent clients who have been harmed by conduct that is wrong, and we litigate with passion and integrity to obtain the best results possible. Every case is different, but we win for the same reason: we are persuasive. When you hire us, you hire smart, creative lawyers who are skilled in the courtroom and in negotiations.



Founded in 1919, Keller Rohrback's over 70 attorneys and 100 staff members are based in six offices across the country in Seattle, Oakland, Santa Barbara, Phoenix, New York, and Missoula. Over the past century, our firm has built a distinguished reputation by providing top-notch representation. We offer exceptional service and a comprehensive understanding of federal and state law nationwide. We also are well known for our abilities to collaborate with co-counsel to achieve outstanding results—essential skills in large-scale cases in which several firms represent plaintiffs. We pride ourselves on our reputation for working smartly with opposing counsel, and we are comfortable and experienced in coordinating high-stakes cases with simultaneous state and federal government investigations.

We have won verdicts in state and federal courts throughout the nation and have obtained judgments and settlements on behalf of clients in excess of \$23.25 billion. Courts around the country have praised our work, and we are regularly appointed lead counsel in nationally prominent class action cases. Our work has had far-reaching impacts for our clients in a variety of settings and industries, creating a better, more accountable society.



EMPLOYEE BENEFITS

ATTORNEYS

Lynn Lincoln Sarko
 Laurie Ashton
 Gretchen Freeman Cappio
 Juli Farris
 Laura R. Gerber
 Matthew Gerend
 Gary Gotto
 Benjamin Gould
 Christopher Graver
 Garrett Heilman
 Ron Kilgard
 David Ko
 Cari Campen Laufenberg
 Jeffrey Lewis
 Derek Loeser
 Gretchen Obrist
 David Preminger
 Erin Riley
 Chris Springer
 Havila C. Unrein
 Amy Williams-Derry

Keller Rohrback L.L.P. is a pioneer in litigation under the Employee Retirement Income Security Act of 1974 (ERISA), recovering to date over two billion dollars of retirement and other benefits for our clients. And this is not merely a matter of money, as important as that is. Attorneys in Keller Rohrback's Employee Benefits and Retirement Security practice group have worked tirelessly to shape ERISA law, so that the statute protects the interests of participants and beneficiaries, rather than their employers and service providers. We have seen time and again fiduciaries attempt to use ERISA to thwart participants' interests, whether in the design of 401(k) plans, the structuring of Employee Stock Ownership Plans (ESOPs), the investments in defined benefit plans, or the attempt to read ERISA's exceptions broadly to favor the employers' and service providers' interests, not the participants' interests. We have successfully opposed all these efforts in scores of cases.

Keller Rohrback attorneys have done this since the statute was enacted in 1974. In that year, David Preminger, of our New York office, wrote two of the first scholarly articles on ERISA. Jeff Lewis, across the country and now in our Oakland office, began practice the year after ERISA was adopted and has been representing plaintiffs in pension and other benefit matters ever since. He served for many years as the co-chair of the Board of Senior Editors of Employee Benefits Law, the major ERISA practitioner's treatise, used daily by benefits lawyers throughout the country. David and Jeff are only two of our ERISA lawyers, albeit the most senior. We have a very deep bench in ERISA matters. Lawyers at Keller Rohrback have testified before Congress, served as editors of numerous employee benefits books and manuals, and written scholarly ERISA articles, amicus briefs, and comments to regulatory agencies overseeing ERISA plans. We frequently are invited to make presentations at national legal education seminars regarding employee benefit class actions and ERISA. We have also served as fiduciaries and mediators.

We are involved in all aspects of ERISA litigation, from administrative reviews to district court trials to circuit court appeals to handling cases and filing amicus briefs in the U.S. Supreme Court. We are proud of our history, but we don't rest on our laurels, we listen carefully to employees' stories and craft cases that enforce ERISA's longstanding duties—which are the highest known to the law.

Attorneys at Keller Rohrback have pioneered application of ERISA to the evolving manifestations of waste and abuse affecting retirement savings nationwide. For example, Gary Gotto and Ron Kilgard brought the first successful defined contribution company stock case, *Whetman v. IKON Office Solutions*, spawning an entire area of litigation that resulted in billions of dollars being recovered around the country for employees and their retirement plans. Keller Rohrback's Managing Partner and Complex Litigation Group Leader, Lynn Sarko, along with Derek Loeser, Erin Riley, and many others, pushed this area of the law forward with the *WorldCom* and *Enron* ERISA class actions—the latter of which resulted in the largest settlement in such a case, at over \$264 million. More recently, we have led the charge with private ESOP, church plan, excessive and conflicted fees in 401k plan cases, as well as litigation against manufacturers and Pharmacy Benefit Managers ("PBMs") due to overpriced pharmaceuticals. We have even represented public employees in successfully striking down as unconstitutional cut-backs to their retirement benefits.

Keller Rohrback is routinely appointed lead or co-lead counsel in major employee benefit class actions. Our work in this

EMPLOYEE BENEFITS



complex and rapidly developing area has been praised by our clients, our co-counsel, and federal courts throughout the country. Keller Rohrback has excelled in managing complex employee benefits cases by developing a deep understanding of employee benefits law and by drawing on our attorneys' experience in numerous related practice areas, including securities, accounting, corporate, insurance coverage, bankruptcy, financial institution regulation, financial products and services, mergers and acquisitions, contracts, employment law, executive compensation, professional malpractice, constitutional law, and class action law.

We are proud to represent employees in connection with their retirement and other benefits. The following pages summarize the breadth of our expertise and experience in these areas.





EMPLOYEE BENEFITS

PENSION PLANS

Congress enacted ERISA in light of several highly publicized failures of private pension plans which left long-term employees at the end of their careers without their promised benefits. ERISA “seek[s] to ensure that employees will not be left empty-handed once employers have guaranteed them certain benefits.” *Lockheed Corp. v. Spink*, 517 U.S. 882, 887 (1996). Attorneys at Keller Rohrback have filed numerous cases on behalf of ERISA plan participants in order to make sure that the fiduciaries manage the plans’ assets prudently and that pensioners and their beneficiaries receive the benefits that they were promised. Keller Rohrback further supports ERISA pension plan participants and beneficiaries through writing amicus briefs related to pension issues. *E.g.*, Brief for The Pension Rights Center as Amicus Curiae in Support of Respondent, *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.); Brief for the Pension Rights Center as Amicus Curiae in Support of Petitioner, *Pundt v. Verizon Communications, Inc.*, No. 15-785 (U.S.).



REPRESENTATIVE CASES

Mertens v. Kaiser Steel Retirement Plan, 829 F. Supp. 1158 (N.D. Cal.)

A firm attorney served as co-counsel for a putative class of retirees of Kaiser Steel whose benefits were drastically reduced when the plan was terminated in an underfunded position. Plaintiff alleged that following an outside takeover of Kaiser, the company systematically underfunded the company’s pension plan so that the new owners could instead take profits from the company. The lawsuit also alleged that the Kaiser retirement plan’s actuaries also contributed to the underfunding by committing malpractice. The court held that the malpractice claims against the actuaries were not preempted by ERISA. The case ultimately settled, resulting in the payments of millions of dollars to the class members.

Canseco v. Construction Laborers Pension Trust, 93 F.3d 600 (9th Cir.)

A firm attorney served as co-counsel for a class of pension plan retirees in a case challenging the plan’s failure to pay retroactive benefits to retirees who were eligible for full benefits under the plan, but did not immediately apply for their benefits. The U.S. court of appeals’ opinion reversed the district court’s judgment for defendants and resulted in the payment of millions of dollars in retroactive benefits to class members. The case also established the principle that it is an abuse of discretion for a plan fiduciary to interpret a plan contrary to its plain meaning.

McDaniel v. National Shopmen Pension Fund, 889 F.2d 804 (9th Cir.)

A firm attorney served as co-counsel for a class of pension plan participants in a case challenging the plan’s reduction in vested benefits based on the fact that their employer had withdrawn from the plan. The Ninth Circuit held that the reduction was improper and benefits were restored to the participants.

Kayes v. Pacific Lumber Co., 51 F.3d 1449 (9th Cir.)

A firm attorney served as co-counsel for a class of retirees and employees of Pacific Lumber Co. The complaint alleged that defendants’ selection of Executive Life Insurance Company to provide annuities to pension plan participants (upon termination of the plan) violated ERISA’s fiduciary standards. The Ninth Circuit decision upheld plaintiffs’ standing to pursue the claims, affirmed the lower court finding that defendant corporate officers were fiduciaries, and broadly defined term “plan asset” for purposes of ERISA’s prohibited transaction provisions. On remand, the case settled, resulting in the payment of approximately \$7 million to the class.

EMPLOYEE BENEFITS



PENSION PLANS

Cleary v. Retirement Plan for Employees of Northern Montana Hospital, No. 16-00061 (D. Mont.)

Keller Rohrback brought this class action on behalf of the participants in, and/or beneficiaries of, the Retirement Plan for Employees of Northern Montana Hospital. The complaint alleges that the members of these classes have been, or will be denied, certain retirement benefits to which they are entitled under the terms of the Plan and/or ERISA with respect to vesting and accrual of benefits. The complaint also alleges that Defendants failed to comply with ERISA's rules for claims procedures. A settlement on behalf of 175 people whose benefits were miscalculated and injunctive relief concerning claims procedures and recordkeeping received Final Approval by the Court on November 7, 2018.

Judy Hunter v. Berkshire Hathaway, Inc., No. 14-663 (N.D. Tex.)

Keller Rohrback serves as co-counsel in this class action filed on behalf of the participants and beneficiaries of two ERISA plans: a pension plan and a 401(k) plan. The complaint alleges that the corporate parent company caused its subsidiary to reduce future benefits despite explicit plan language prohibiting that action. The trial court initially granted Berkshire Hathaway's motion to dismiss, but on appeal Keller Rohrback persuaded the United States Court of Appeals for the Fifth Circuit to reverse and remand. The case is currently headed towards trial.

Fletcher v. ConvergeX, No. 13-9150 (S.D.N.Y.)

Keller Rohrback serves as co-counsel in this lawsuit filed in the Southern District of New York that alleges Defendants violated ERISA by "double-charging" for transition management and brokerage services. Defendants funneled trade orders to an offshore subsidiary broker located in Bermuda, which created a "spread" between the actual price and the reported price by adding mark-ups/mark downs. While the reported price was confirmed with customers, the actual prices were undisclosed and unauthorized additional compensation. After the trial court dismissed the case, the United States Court of Appeals for the Second Circuit reversed and reinstated plaintiffs' claims. The case is back in front of the district court.

Monper v. Boeing, No. 13-1569 (W.D. Wash.)

Keller Rohrback served as Counsel in this lawsuit that alleged Defendants violated ERISA by misrepresenting to plaintiffs that their pension benefit accruals would not change if they transferred their work locations from California to Washington.

In re Bakery & Confectionery Union & Industry Int'l Pension Fund Pension Plan, No. 11-1471 (S.D.N.Y.)

Keller Rohrback and co-counsel filed this action alleging that an amendment to the Bakery & Confectionery Union & Industrial Pension Fund Pension Plan violated ERISA's anti-cutback provisions. Plaintiffs prevailed at both the district court and appellate levels, and Defendants implemented adjustments to reinstate the benefits due to eligible employees.

Palmason v. Weyerhaeuser, No. 11-695 (W.D. Wash.)

Keller Rohrback and co-counsel filed this action alleging that Weyerhaeuser and other fiduciaries caused its pension plan to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A settlement was reached for injunctive relief on behalf of the Plans' participants and beneficiaries.

Buus v. WaMu Pension Plan, No. 07-903 (W.D. Wash.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Washington Mutual's defined benefit pension plan whose benefit accrual was frozen under the existing pension formula and replaced with a new "cash balance plan" accrual system that reduced the rate of future benefit accrual. In conjunction with Washington Mutual's bankruptcy proceedings, a settlement of \$20 million was approved.



EMPLOYEE BENEFITS

PENSION PLANS: CHURCH PLANS

For certain employees participating in pension plans, **ERISA does not apply**. If a plan is not subject to ERISA, there is no federal law requiring a sponsor to keep funding the plan or requiring participants to get timely and accurate information about the plan, and there is no pension benefit insurance through the Pension Benefit Guaranty Corporation (PBGC). One of the few kinds of plans exempt from ERISA is the “church plan.” For years, Keller Rohrback has been representing employees in federal lawsuits against large healthcare organizations that claim their pension plans are “church plans.” These healthcare organizations are non-profit corporations, but they often have assets on par with Fortune 100 companies. The lawsuits ask the courts to determine that these pension plans are not “church plans” at all, force the employers to properly fund the plans, and give their employees the safety and security of ERISA protections.



REPRESENTATIVE CASES

Griffith v. Providence Health & Services, No. 14-01720 (W.D. Wash.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the Providence Health & Services Cash Balance Retirement Plan was improperly claiming an exemption from ERISA as a “church plan.” In 2017, the Court granted final approval of a class settlement of \$350 million to the Plan and a guarantee that the Plan’s trust will have sufficient assets to pay benefits as they come due; and additional administrative protections and other equitable relief for Plan participants.

Hodges v. Bon Secours Health System, Inc., No. 16-01079 (D. Md.)

Keller Rohrback served as co-counsel in this lawsuit alleging that Bon Secours Health System’s seven defined benefit pension plans were improperly claiming an exemption from ERISA as “church plan(s).” In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$98 million to the Plans.

Lann v. Trinity Health Corporation, No. 14-02237 (D. Md.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Trinity Health Corporation and Catholic Health East were improperly claiming an exemption from ERISA as “church plan.” In 2017, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$76 million to the Plan.

Garbaccio v. St. Joseph’s Hospital & Medical Center & Subsidiaries, No. 16-02740 (D.N.J.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the St. Joseph’s Hospital and Medical Center Plan was improperly claiming an exemption from ERISA as a “church plan.” On March 6, 2018, the Court granted final approval of a settlement providing for equitable relief, plus payment of over \$42.5 million to the Plan.



EMPLOYEE BENEFITS

PENSION PLANS: CHURCH PLANS

In re Wheaton Franciscan ERISA Litigation, No. 16-04232 (N.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that the Wheaton Franciscan Plan was improperly claiming an exemption from ERISA as a “church plan.” On January 16, 2018, the Court granted final approval of a settlement providing for equitable relief, plus a guarantee payment of the first \$29.5 million of benefits that are distributable from the Plan to Class Members in the event trust assets attributable to the Plan become insufficient to pay such benefits.

Carver v. Presence Health Network, No. 15-02905 (N.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit. On July 10, 2018, the Court granted final approval of a settlement providing for equitable relief, plus a guarantee of payment of the first \$20 million of benefits that are distributable from the Plans’ trusts to Class members if either of the Plans is unable to pay such benefits.

Stapleton v. Advocate Health Care Network, No. 14-01873 (N.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the Advocate Health Care Pension Plan. On June 27, 2018, the Court granted final approval of a settlement providing for a guarantee that the Plan trust will have sufficient funds to pay benefits in the Plan for the period of ten (10) years.

In re Mercy Health ERISA Litigation, No. 16-00441 (S.D. Ohio)

Keller Rohrback served as counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the Mercy Plans. On November 28, 2018, the Court granted final approval of a settlement providing for equitable relief, and guarantee that the Plans’ trusts will have sufficient funds to pay benefits for a period of nine (9) years, and payments to class members who took lump sum distributions.

Holcomb v. Hospital Sisters Health System, No. 16-03282 (C.D. Ill.)

Keller Rohrback served as Co-Lead Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the Hospital Sisters’ Pension Plan. On February 22, 2019, the Court granted final approval of a settlement providing for equitable relief, plus a guarantee of funding accrued benefits through fiscal year 2022, or as such time as \$62.5 million has been contributed to the Plan.

Feather v. SSM Health, No. 16-01669 (E.D. Mo.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the SSM Health Plans. On June 6, 2019, the Court granted final approval of a settlement providing for contributions of up to \$60 million to the Plans, plus equitable guarantees of benefits and protection of benefits from cutbacks for ten years. The settlement also provides for payments to class members who took lump-sum distributions.

Owens v. St. Anthony Medical Center, Inc., No. 14-04068 (N.D. Ill.)

Keller Rohrback serves as Interim Lead Class Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the St. Anthony Medical Center Retirement Plan. On April 16, 2019, the Court granted preliminary approval of a settlement providing for \$3 million to be paid to the settlement class and allocated based on the amount that each Plan participant’s benefit was reduced in 2012.

Smith v. OSF Healthcare System, No. 16-00467 (S.D. Ill.)

Keller Rohrback served as Class Counsel in this lawsuit alleging that Defendants improperly claimed an exemption from ERISA as a “church plan” for the OSF Plans. On January 15, 2021, the Court granted final approval of a settlement providing for equitable relief, plus cash contributions of \$25 million to the Plans’ Master Trust by fiscal year 2025.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: COMPANY STOCK & PUBLIC ESOPs

ERISA sets minimum standards for the management of employer-sponsored retirement and health benefit plans. Workers and retirees across America depend on their company-sponsored benefit plans to provide them with health insurance and financial security after retirement. Keller Rohrback is a pioneer in ensuring that ERISA's fiduciary duties of prudence and loyalty apply to all plan investment options, including company stock. Ensuring fiduciary responsibility over company stock funds is of paramount importance, given that an employee's livelihood is also tied to the well-being of their employer—thus, if an employer's stock collapses, employees can lose their jobs at the same time that their retirement savings is decimated.

Keller Rohrback's work in this area resulted in numerous pivotal judicial opinions. *E.g.*, *In re WorldCom, Inc.*, 263 F. Supp. 2d 745 (S.D.N.Y.); *In re Enron Corp. Sec., Derivative & "ERISA" Litig.*, 284 F. Supp. 2d 511 (S.D. Tex.); and *In re Syncor ERISA Litig.*, 516 F.3d 1095 (9th Cir.). Additionally, Keller Rohrback has further supported this area of law through presentations at ERISA conferences, as well as amicus briefs. *E.g.*, Brief for Law Professors as Amici Curiae in Support of the Respondents, *Fifth Third Bancorp v. Dudenhoeffer*, No. 12-751 (U.S.).

REPRESENTATIVE CASES

Whetman v. IKON Office Solutions, Inc., MDL No. 1318 (E.D. Pa.).

The wave of 401(k) company stock cases began with *Whetman v. IKON Office Solutions, Inc.* In a first-of-its-kind complaint, we alleged that company stock was an imprudent investment for the plan, that the fiduciaries of the plan failed to provide complete and accurate information concerning company stock to the participants, and that they failed to address their conflicts of interest. This case resulted in ground-breaking opinions in the ERISA 401(k) area of law on motions to dismiss, class certification, approval of securities settlements with a carve-out for ERISA claims, and approval of ERISA settlements providing a total recovery to the Plans of \$111 million.

In re Enron Corp. ERISA Litigation, MDL No. 02-1446 (S.D. Tex.)

Keller Rohrback served as Co-Lead Counsel in this class action. After groundbreaking motions to dismiss decisions, and several years of discovery, Keller Rohrback negotiated five separate settlements with different groups of defendants, resulting in recoveries of over \$264 million for the class.

In re WorldCom, Inc. ERISA Litigation, No. 02-4816 (S.D.N.Y.)

Keller Rohrback served as Lead Counsel and one of the firm's attorneys served as ERISA counsel in this class action on behalf of participants and beneficiaries of the WorldCom 401(k) Salary Savings Plan who invested in WorldCom stock. Settlements providing for injunctive relief and payments of over \$48 million to the plan were approved by Judge Denise Cote.

In re Lucent Technologies, Inc. ERISA Litigation, No. 01-3491 (D.N.J.)

Keller Rohrback served as Co-Lead Counsel in this class action brought on behalf of participants and beneficiaries of the Lucent defined contribution plans who invested in Lucent stock. A settlement providing injunctive relief and the payment of \$69 million to the plan was approved by Judge Joel Pisano.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: COMPANY STOCK & PUBLIC ESOPs

In re AIG ERISA Litigation, No. 04-09387 (S.D.N.Y.) and In re AIG ERISA Litigation II, No. 08-05722 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in these two class actions on behalf of participants and beneficiaries of the AIG 401(k) retirement plans who invested in AIG stock. A settlement providing for the payment of \$25 million to the plans was approved by Judge Kevin T. Duffy in *AIG I*, and a settlement providing for the payment of \$40 million to the plans was approved by Judge Laura Swain in *AIG II*.

In re Merrill Lynch & Co., Inc. Securities, Derivative & ERISA Litigation, No. 07-10268 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action on behalf of participants and beneficiaries of Merrill Lynch's defined contribution plans who invested in Merrill Lynch stock. A settlement providing injunctive relief and a payment of \$75 million to the plans was approved by Judge Jed S. Rakoff.

Alvidres v. Countrywide Financial Corp., No. 07-5810 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of the Countrywide 401(k) plan who invested in Countrywide stock. A settlement providing for injunctive relief and the payment of \$55 million to the plan was approved by Judge John F. Walter.

In re Washington Mutual, Inc. ERISA Litigation, No. 07-1874 (W.D. Wash.)

Keller Rohrback served as Co-Lead Counsel in this ERISA breach of fiduciary duty class action brought on behalf of participants and beneficiaries in the company's retirement plans who invested in Washington Mutual stock. Judge Marsha J. Pechman granted final approval of a \$49 million settlement in the ERISA action.

In re Global Crossing, Ltd. ERISA Litigation, No. 02-7453 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this class action on behalf of participants and beneficiaries of the Global Crossing defined contribution plans who invested in Global Crossing stock. A settlement providing injunctive relief and a payment of \$79 million to the plan was approved by Judge Gerard Lynch.





EMPLOYEE BENEFITS

401(K) & SAVINGS PLANS: PRIVATE ESOPs

An ESOP is a tax-qualified defined contribution employee benefit plan governed by ERISA. ESOPs are intended to invest primarily in the stock of the ESOP participant's employer. Keller Rohrback is a national leader in ESOP cases, and has substantial experience representing ESOPs in breach of fiduciary actions against trustees who approve or permit transactions that favor corporate interests to the detriment of the ESOP despite having a fiduciary duty to act in the ESOP's best interests. Keller Rohrback's attorneys have achieved many notable successes for their ESOP clients, including obtaining seven-figure judgments at trial, and recovering millions of dollars in settlements.

REPRESENTATIVE CASES

Spires v. Schools, No. 16-616 (D.S.C.)

Keller Rohrback and co-counsel represented participants and beneficiaries in the Piggly Wiggly ESOP. The complaint alleged that Defendants breached their fiduciary duties by doing nothing as the value of the Piggly Wiggly stock plummeted by nearly 90%. A settlement providing a payment of between \$7.675 million and \$8.65 million was approved by Judge Richard Gergel.

Schwartz v. Cook, No. 15-3347 (N.D. Cal.)

Keller Rohrback represented a participant in the Buckles-Smith Electric Company ESOP in this lawsuit that alleged that the ESOP's fiduciaries caused Buckles-Smith to redeem the ESOP's shares in that company for less than they were worth, thereby benefitting the remaining shareholders (including the ESOP's fiduciaries) at the expense of the ESOP. The case settled and final approval was granted on June 15, 2017.

Rader v. Bruister, No. 13-1081 (S.D. Miss.)

This case alleged breach of fiduciary duty and prohibited transactions in connection with the purchase by the Bruister Company ESOP of shares from its founder. We obtained a judgment for approximately \$6.5 million after a lengthy bench trial. Defendants appealed the judgment, and the Fifth Circuit affirmed. The Fifth Circuit also affirmed the award of attorneys' fees.

Wool v. Sitrick, No. 10-2741 (C.D. Cal.)

Keller Rohrback served as Lead Counsel in this ESOP valuation action brought on behalf of participants and beneficiaries in the company's ESOP against Defendants who repurchased shares from the ESOP at a price significantly below fair market value. A settlement providing a payment \$6.25 million settlement was approved by Judge Jacqueline Nguyen.

Johnson v. Couturier, No. 05-2046 (E.D. Cal.)

Keller Rohrback obtained a major victory for participants of the Noll Manufacturing Co. ESOP against Defendants who awarded themselves grossly excessive compensation at the expense of the ESOP. In a seminal case frequently cited in ESOP litigation by courts across the country, the Ninth Circuit affirmed a preliminary injunction by the district court which prohibited an ESOP plan sponsor from paying litigation costs to indemnify the ESOP's trustees. *Johnson v. Couturier*, 572 F.3d 1067 (9th Cir.).

Hans v. Tharaldson, No. 05-115 (D.N.D.)

Keller Rohrback served as Lead Counsel for the then-current employees in an ESOP valuation action that alleged the ESOP paid an excessive price for their shares in a transaction approved by Defendants. A settlement providing for a \$15 million settlement fund, including a \$4 million cash payment to all current and former participants and beneficiaries of the ESOP, and an \$11 million credit against the principal owed by the ESOP to the company was approved by Chief Judge Ralph Erikson.



EMPLOYEE BENEFITS

401(K) & SAVINGS PLANS: EXCESSIVE & IMPROPER FEES

Precious retirement savings—particularly in defined contribution or 401(k) plans—are vulnerable to being whittled away by fees associated with investment products. There are as many types of fees as investment products available to retirement plans. Many fees are hidden or undisclosed. Some fees are paid directly by participants, while others are levied indirectly as kickbacks from one service provider or fiduciary to another. In many cases, these fees are charged for improper purposes—to enrich plan fiduciaries or service providers at the expense of hard-working Americans. High fees over time can slash retiree balances by a third, or more. No matter who pays or collects excessive fees or conflicted fees, ERISA provides robust protections and remedies. Specifically, ERISA prohibits fiduciaries from self-dealing and any conduct that puts their own interests—or the interests of their affiliates or third parties—above those of the plan participants to whom they owe fiduciary duties.



Keller Rohrback has successfully litigated ERISA class actions challenging excessive and conflicted fees. Our attorneys have challenged investments that contain many layers of securities and insurance products—and many layers of fees. We have pursued on a class action basis not only claims against multiple entities responsible for the fees charged to participants in a single plan, but also uniform fees charged by service providers to thousands of plans using common investment products.

Keller Rohrback has been selected by federal courts to serve as lead or co-lead counsel in class action cases challenging excessive and self-dealing fees. We have written articles and presented on these topics, and we authored an amicus brief in the first ERISA excessive fee case to reach the U.S. Supreme Court. See Brief for Law Professors as Amici Curiae in Support of the Petitioners, *Tibble, et al. v. Edison International, et al.*, No. 13-550 (U.S.).

REPRESENTATIVE CASES

Braden v. Wal-Mart Stores, Inc., No. 08-3109 (W.D. Mo.)

Keller Rohrback served as Lead Counsel in this class action on behalf of participants and beneficiaries of Wal-Mart's 401(k) plan who invested in retail class mutual funds that charged excessive fees to participants and paid hidden fees to the plan's trustee and recordkeeper, Merrill Lynch. The complaint alleged that the revenue sharing and the other fees were excessive in light of the size of the plan, and that these fees were not properly disclosed. Keller Rohrback's attorneys secured the *first appellate victory* in a fee case of this kind when they obtained an order from the Eighth Circuit reversing dismissal and articulating the pleading standard for process-based breaches of ERISA, see *Braden v. Wal-Mart*, 588 F.3d 585 (2009). A settlement that included \$13.5 million along with injunctive relief was approved by Judge Gary A. Fenner.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: EXCESSIVE & IMPROPER FEES

Beach v. JPMorgan Chase Bank, No. 17-563 (S.D.N.Y.)

Plaintiffs allege that JPMorgan Chase Bank (Chase) breached its fiduciary duties to the participants and beneficiaries of the JPMorgan Chase 401(k) Savings Plan (Plan) in violation of ERISA by, among other things, failing to prudently and loyally manage the Plan's assets by selecting and retaining unduly expensive Core Funds and Target Date Funds as investment options in the Plan and by engaging in prohibited transactions as a result of conflicts of interest. The Court granted preliminary approval of the settlement on May 26, 2020.

In re Regions Morgan Keegan ERISA Litigation, No. 08-2192 (W.D. Tenn.)

Keller Rohrback served as Co-Lead Class Counsel in this ERISA breach of fiduciary duty class action on behalf of participants and beneficiaries in the company's retirement plans as well as customer plans for which Regions served as a fiduciary. A settlement providing injunctive relief and a payment of \$22.7 million was approved by Judge Samuel H. Mays, Jr.

EMPLOYEE BENEFITS



401(K) & SAVINGS PLANS: IMPRUDENT INVESTMENTS

Many times ERISA plans end up in high-risk or other patently imprudent investments due to breaches by the plans' fiduciaries. Depending on the structure of the investment, fiduciaries may have been incentivized by the fees that could be generated to invest plan assets in investments that are simply unacceptably risky for ERISA plans. Keller Rohrback has successfully litigated and resolved numerous cases challenging fiduciaries' imprudent investment of plan assets in high risk investment strategies.

REPRESENTATIVE CASES

Madoff Direct & Feeder Fund Litigation: Hartman v. Ivy Asset Management LLC, No. 09-8278 (S.D.N.Y.)

Keller Rohrback successfully litigated this direct action on behalf of the trustees of seventeen employee benefit plans damaged by the Madoff Ponzi scheme. The action alleged that Ivy Asset Management and J.P. Jeanneret Associates, Inc. breached their fiduciary duties under ERISA by causing the plans to be invested directly or indirectly in Madoff funds. Keller Rohrback obtained a settlement of over \$219 million in this case and related actions, including claims brought by the United States Secretary of Labor and the New York Attorney General.

In re State Street Bank and Trust Co. ERISA Litigation, No. 07-08488 (S.D.N.Y.)

Keller Rohrback served as Co-Lead Counsel in this ERISA case brought on behalf of participants and beneficiaries in a class of retirement plans that had invested in State Street's fixed income bond funds. Plaintiffs alleged that State Street, investment manager of the bond funds, had imprudently invested the purportedly conservative funds in high-risk and/or highly leveraged financial instruments tied to mortgage-backed securities. A settlement providing a payment of \$89.75 million was approved by Judge Richard J. Holwell.



EMPLOYEE BENEFITS

401(K) & SAVINGS PLANS: FOREIGN CURRENCY TRADING

Foreign exchange is a necessary component of all international investment transactions, yet the foreign exchange market is one of the least transparent and least regulated of the international markets. The large banks and other financial institutions that make up this market act as market-makers and trade currencies amongst each other in this \$5.3 trillion-a-day market. The lack of regulation in the marketplace makes it easy for the banks to manipulate transactions and the rates at which they are effected to the banks' advantage—at the expense of their clients. Keller Rohrback's practice has encompassed a range of foreign exchange trading abuses faced by both institutional investors and participants and beneficiaries of retirement plans.

REPRESENTATIVE CASES

Farrell v. JPMorgan Chase & Co., No. 16-2627 (S.D.N.Y.) / *In re Foreign Exchange Benchmark Rates Antitrust Litigation*, No. 13-7789 (S.D.N.Y.)

The complaint alleges that JPMorgan Chase, who sponsored collective investment trusts or provided asset management in connection with foreign investments requiring securities exchange, engaged in a world-wide foreign currency manipulation scheme spanning a decade. The complaint also alleges that JPMorgan is therefore a fiduciary to hundreds of ERISA plans affected by this scheme. The multi-bank scheme is subject to antitrust and commodities act claims as well. Numerous banks, including JPMorgan, have settled the related price-fixing case for over \$2 billion thus far. Keller Rohrback served as ERISA Allocation Counsel with regard to these partial settlements.

Andover Cos. Emp. Savings & Profit Sharing Plan v. State Street Bank & Trust Co., No. 12-11698 (D. Mass.)

This complaint was filed on behalf of a class of all qualified ERISA plans, and their participants, beneficiaries, and named fiduciaries, who suffered losses as a result of State Street Bank and Trust Company's alleged deceptive acts and practices concerning hidden charges for foreign currency exchange transactions between 1998 and 2009. Plaintiffs allege that State Street improperly marked up or marked down currency transactions, and engaged in ERISA prohibited transactions when it failed to disclose fully the details of the foreign currency transactions it was undertaking on behalf of the Plans. A settlement of \$300 million was approved on behalf of the consumer claims and the ERISA claims by Judge Mark L. Wolf.

Bank of New York Mellon Corp. Forex Transactions Litigation, No. 12-2335 (S.D.N.Y.)

Keller Rohrback served as counsel in this foreign currency exchange transaction class action, representing qualified ERISA participants and beneficiaries on behalf of their respective plans. Judge Lewis A. Kaplan granted final approval of a global resolution of the private and governmental enforcement actions against BNY Mellon in which \$504 million will be paid back to BNY Mellon customers (and \$335 million of which is directly attributable to the class litigation).



EMPLOYEE BENEFITS

WELFARE PLANS

In addition to retirement plans, ERISA also governs how employee health care plans are administered. ERISA creates fiduciary responsibilities for those who manage and control health plans, requires that plans provide participants with accurate plan information, and gives plan participants the right to sue for benefits and breaches of fiduciary duty. Therefore, health care plans must be operated in compliance with ERISA's particular standards that were designed to protect the interests of employees, retirees, and other plan beneficiaries, such as family members.

REPRESENTATIVE CASES

Dobson v. Hartford Financial Services Group, Inc., 389 F. 3d 386 (2d Cir.)

A firm attorney served as co-counsel for a putative class of participants in ERISA-covered long-term disability plans challenging Hartford's failure to pay interest on retroactive payments it made to disabled participants after those participants were successful in using the plan's internal review procedure and obtaining reversals of claim denials. The district court granted the named plaintiff's claims on one of his legal theories, but denied class certification and rejected other claims. The court of appeals reversed in these latter respects. After remand and further proceedings in both the district and appeals court, the case settled. The settlement provided for future payment of interest on claims where appeals were favorably decided and for some retroactive payments.

In re EpiPen ERISA Litigation, Case No. 17-cv-1884 (D. Minn.)

This class action was filed against the top four Pharmacy Benefit Managers ("PBMs") on behalf of ERISA plan participants and beneficiaries who paid any portion of the purchase price for EpiPen products through their ERISA health plans. Plaintiffs allege that the PBM Defendants breached their fiduciaries duties in the course of administering and managing health plan benefits and formularies when they engaged in conduct riddled by conflicts of interest, with the purpose of extracting payments from Mylan. This conduct drove up the price of EpiPens. Plaintiffs filed their Consolidated Complaint on April 2, 2018, and on October 26, 2018, the Court largely denied Defendants' Motion to Dismiss. The parties have fully briefed class certification and expect a ruling from the Court in 2020.

In re Express Scripts / Anthem ERISA Litigation, No. 16-3399 (S.D.N.Y.)

Keller Rohrback serves as interim Co-Lead Counsel in this class action filed on behalf of both plan fiduciaries and all participants and beneficiaries of Anthem-insured ERISA plans and self-insured ERISA plans against both Anthem and Express Scripts, Inc. (ESI) for breaches of fiduciary duty and prohibited transactions under ERISA. ESI serves as the exclusive Pharmacy Benefit Manager (PBM) to Anthem-insured and -administered plans under a ten-year agreement, and the claims arise out of Defendants' practice of overcharging the class for pharmaceutical drugs. The case is pending before the Second Circuit Court of Appeals.

In re Cigna Corp. PBM Litigation, No. 16-1702 (D. Conn.)

Keller Rohrback serves on the Plaintiffs' Executive Committee in this ERISA and RICO case against Cigna, its affiliates, and its primary external Pharmacy Benefit Manager (PBM) OptumRx. Plaintiffs here allege that Cigna and its PBMs engage in a "Clawback Scheme" where patients are overcharged for their prescription medications above and beyond the negotiated price of the drug or the retail cash price of the drug charged to someone without health insurance, while Defendants keep the overcharges. Plaintiffs prevailed in large part on Defendants' motion to dismiss in an order issued in March 2018. The case is now in discovery.

EMPLOYEE BENEFITS



WELFARE PLANS

Gates v. United Health, No. 11-3487 (S.D.N.Y.)

Keller Rohrback served as counsel in this lawsuit that alleged Defendants violated ERISA through use of an “estimating policy” which caused Medicare eligible participants and beneficiaries to be paid lower benefits than required by the plan in which they participate for services provided by out-of-network providers. Following an initial dismissal, Keller Rohrback successfully appealed to the Second Circuit Court of Appeals, and the district court then agreed with Plaintiff.

Mohr-Lercara v. Oxford Health Insurance, Inc., No. 18-1427 (S.D.N.Y.)

Keller Rohrback and co-counsel have filed cases against Oxford Health Insurance, Inc. (part of UnitedHealth Group Inc.) and their PBM OptumRx for a billing practice known as a “clawback.” UnitedHealth’s Oxford and OptumRx are overcharging participants for drugs. Via the retail pharmacy counter transaction, OptumRx asks patients to make co-payments that are higher than the real cost of the drug and then “claws back” the difference as profit for itself and its affiliates UnitedHealth and Oxford. On March 28, 2019, the court denied the defendants’ motion to dismiss on all but two claims. Defendants answered the Complaint and the case is now in discovery.

Sohmer v. UnitedHealth Group Inc., No. 18-03191 (D. Minn.)

Keller Rohrback and co-counsel have filed cases against UnitedHealth Group Inc., United Healthcare Services, Inc., United Healthcare Insurance Co., Optum, Inc., and OptumRx, Inc. (collectively, “UnitedHealth”) for a billing practice known as a “clawback.” UnitedHealth is overcharging participants for drugs by asking patients to make co-payments that are higher than the amount specified in their plans and then “clawing back” the difference from pharmacies as profit for itself and its affiliates. Defendants did not move to dismiss the ERISA claim for benefits or the contract claim on behalf of the non-ERISA class, and the case is in discovery.

Turpin v. Consolidation Coal Company, No. 99-1886 (W.D. Pa.)

A firm attorney served as co-counsel for plaintiff in a case alleging that a Blue Cross entity’s use of computer-generated Explanation of Benefits (EOB) forms violated ERISA regulations guaranteeing plan participants a full and fair review of their claims. The class action settlement resulted in significant changes to the forms, including detailed information as to how participants could appeal claim denials and reform of the forms’ denial codes so that they were more understandable to the class members.



ERISA APPELLATE PRACTICE

ERISA appeals require specialized skills and experience, and Keller Rohrback has a seasoned appellate team that includes award-winning brief writers and outstanding oral advocates. Our ERISA appellate expertise is particularly important in large cases, including complex class actions. Keller Rohrback has the experience and talent to handle any issue that arises involving interlocutory appeals and will work to ensure that any judgment or settlement is affirmed on appeal.

REPRESENTATIVE CASES

Hunter v. Berkshire Hathaway Inc., 829 F.3d 357 (5th Cir.)

Keller Rohrback represented retirement plan participants against Acme Brick Company and its sole owner, Berkshire Hathaway Inc., to enforce Berkshire Hathaway's promise, when it acquired Acme, not to cause Acme to reduce retirement plan benefits. At Keller Rohrback's urging, the Fifth Circuit determined that Berkshire Hathaway could be liable for that promise and reversed the trial court's dismissal of claims against Berkshire Hathaway.

Rader v. Bruister, 823 F.3d 250 (5th Cir.)

Keller Rohrback obtained a judgment for approximately \$6.5 million after a lengthy bench trial on ERISA breach of fiduciary duty and prohibited transaction claims. Defendants appealed the judgment, and the Fifth Circuit affirmed. The Fifth Circuit also affirmed the award of attorneys' fees.

Alcantara v. Bakery & Confectionary Union, 751 F.3d 71 (2d Cir.)

Keller Rohrback successfully defended the trial court's decision and judgment that Defendants had unlawfully reduced pension benefits.

Wurtz v. Rawlings Co., 761 F.3d 232 (2d Cir.)

Keller Rohrback filed an amicus brief on behalf of the New York State Trial Lawyers Association, arguing that ERISA did not preempt a New York state law. The Second Circuit agreed with the position advanced by Keller Rohrback and adopted the reasoning and even some of the language of its amicus brief.

Gates v. UnitedHealth Group Inc., 561 F. App'x 73 (2d Cir.)

Keller Rohrback persuaded the Second Circuit to reverse the district court's dismissal of our client's claims for medical coverage.

Braden v. Wal-Mart Stores, Inc., 588 F.3d 585 (8th Cir.)

Keller Rohrback represented a class of Wal-Mart employees who alleged that Wal-Mart's 401(k) plan charged them excessive fees and convinced the Eighth Circuit to reverse the trial court and reinstate the employees' claims.

Fletcher v. ConvergeX Group, L.L.C., No. 13-9150, 2017 WL 549025 (2d Cir.)

Keller Rohrback serves as co-counsel in this lawsuit filed in the Southern District of New York that alleges Defendants violated ERISA by "double-charging" for transition management and brokerage services. After the trial court mistakenly dismissed the case, the Second Circuit reversed and reinstated plaintiffs' claims.

ERISA APPELLATE PRACTICE



Johnson v. Couturier, 572 F.3d 1067 (9th Cir.)

Keller Rohrback obtained a major victory for participants of an ESOP after Defendants awarded themselves grossly excessive compensation at the expense of the ESOP. On appeal, the Ninth Circuit affirmed a preliminary injunction by the district court which prohibited an ESOP plan sponsor from paying litigation costs to indemnify the ESOP's trustees. The opinion is frequently cited in ESOP litigation by courts across the country.

In re Syncor ERISA Litigation, 516 F.3d 1095 (9th Cir.)

Keller Rohrback represented a group of workers who alleged that their employer had violated the law by investing their retirement savings in the employer's stock. Keller Rohrback convinced the Ninth Circuit to reverse the dismissal of the trial court and reinstate the workers' claims.

Tatum v. RJR Pension Investment Committee, 392 F.3d 636 (4th Cir.) and 761 F.3d 346 (4th Cir.)

Attorney Jeff Lewis persuaded the Fourth Circuit to affirm the trial court's decisions that fiduciaries of the R.J. Reynolds 401(k) plan breached their fiduciary duties and that the breaching fiduciaries bore the burden of proof with respect to loss causation. Mr. Lewis further successfully persuaded the Fourth Circuit that the trial court applied an incorrect legal standard in concluding that the breach did not cause the plan's losses.

KELLER ROHRBACK

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LYNN LINCOLN SARKO

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Seattle, WA 98101
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PRACTICE EMPHASIS

- Antitrust & Trade Regulation
- Appeals
- Class Actions
- Constitutional Law
- Commodities & Futures Contracts
- Consumer Protection
- Data Privacy Litigation
- Employment Law
- Environmental Litigation
- Employee Benefits & Retirement Security
- Financial Products & Services
- Government & Municipalities
- Institutional Investors
- Intellectual Property
- International Law
- Mass Personal Injury
- Securities & Financial Fraud
- Whistleblower

Managing Partner Lynn Sarko uses thoughtful innovation to solve

complex issues. Having led Keller Rohrback L.L.P.'s Complex Litigation Group since its inception over 30 years ago, Lynn's work has led to new developments in case law and significant, impactful settlements for his clients.

A dynamic leader with a tenacious dedication to justice, Lynn has been selected by courts across the nation to serve in key leadership roles in a wide variety of cutting-edge cases. Namely, he was appointed Co-Lead counsel for *In re EpiPen (Epinephrine Injection, USP) Mktg., Sales Practices & Antitrust Litigation*, MDL No. 2785 (D. Kan.), the nationwide class action against pharmaceutical company Mylan and others for anticompetitive and unfair business practices in its sale and marketing of the EpiPen Auto-Injector device. He was also selected to serve in a leadership position on behalf of governmental entities and other plaintiffs in the vast litigation regarding the nationwide prescription opioid epidemic, *In re National Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio). The National Law Journal referred to this leadership team as a "Who's Who" in mass torts."

Some of Lynn's other remarkable successes include consumer protection cases aimed at holding automotive companies accountable for wrongdoing. One such case was *In re Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2672 (N.D. Cal.), for which Lynn was appointed to the Plaintiffs' Steering Committee—a group referred to as a "class action dream team." The case settled for over \$17 billion. Lynn was also appointed to the Plaintiffs' Steering Committee for *In re Chrysler-Dodge-Jeep EcoDiesel Marketing, Sales Practices, and Products Liability Litigation*, MDL No. 2777 (N.D. Cal.), which settled for \$307.5 million, including required emissions modifications for 100,000 eligible vehicles. In addition to consumer protection cases, Lynn has also served in leadership positions for cases involving financial fraud and breaches of fiduciary duty. He was selected to lead teams of attorneys representing plaintiffs in the litigations against Enron, Worldcom, and Madoff—three of the biggest financial frauds of our time.

Lynn is widely renowned within the legal community and beyond for his diplomacy and fearless devotion to justice. He was a member of the legal team nominated for the 2016 Nobel Peace Prize for seeking enforcement of the Nuclear Non-Proliferation Treaty on behalf of the Republic of the Marshall Islands. He was also honored to receive the Trial Lawyers for Public Justice Trial Lawyer of the Year Award for his work on the Exxon Valdez Oil Spill trial team, and he was one of four Washington lawyers recognized as one of the 500 "Leading Lawyers in America" by Lawdragon. He is also AV-rated by Martindale-Hubbell and has been consecutively named to the Washington Super Lawyers list for 21 years.

Lynn holds a BBA and an MBA in accounting and finance from the University of Wisconsin, where he also served as an accounting instructor. He graduated with his J.D. from the University of Wisconsin Law school, where he was Editor-

KELLER ROHRBACK

L A W O F F I C E S ♦ L . L . P .

in-Chief of the Wisconsin Law Review and received the faculty award given to the most outstanding member of the graduating class.

Prior to joining Keller Rohrbach, Lynn was an Assistant United States Attorney for the District of Columbia, Criminal Division, an associate at the Washington D.C office of Arnold & Porter, and law clerk to the Honorable Jerome Farris, United States Court of Appeals for the Ninth Circuit, in Seattle.

EDUCATION

University of Wisconsin

B.B.A., 1977

University of Wisconsin

M.B.A., 1978, *Beta Alpha Psi*

University of Wisconsin

J.D., 1981, *Order of the Coif*; Editor-in-Chief, *Wisconsin Law Review*; Salmon Dalberg Award (outstanding graduate)

BAR & COURT ADMISSIONS

1981, Wisconsin

1981, U.S. Court of Appeals for the Ninth Circuit

1983, District of Columbia Court of Appeals

1984, District of Columbia

1984, U.S. District Court for the District of Columbia

1984, United States Supreme Court

1984, U.S. Court of Appeals for the Seventh Circuit

1984, U.S. Court of Appeals for the Fourth Circuit

1984, U.S. Court of Appeals for the Tenth Circuit

1984, U.S. Tax Court

1986, Washington

1986, U.S. District Court for the Western District of Washington

1988, U.S. District Court for the Eastern District of Wisconsin

1989, U.S. District Court for the Eastern District of Washington

1996, U.S. District Court for the Western District of Wisconsin

1997, U.S. District Court for the District of Colorado

2001, U.S. Court of Appeals for the Third Circuit

2002, U.S. District Court for the Eastern District of Michigan

2003, U.S. Court of Appeals for the Fifth Circuit

2003, U.S. Court of Appeals for the Eleventh Circuit

2004, U.S. District Court for the Northern District of Illinois

2008, U.S. Court of Appeals for the Eighth Circuit

2009, U.S. Court of Appeals for the Sixth Circuit

2010, U.S. District Court for North Dakota

2013, U.S. Court of Appeals for the Second Circuit

2016, U.S. District Court for the Central District of Illinois

2016, U.S. District Court for the Southern District of Illinois

2018, U.S. Court of Appeals for the First Circuit

2019, Arizona

HONORS & AWARDS

Selected to Super Lawyers list in *Super Lawyers - Washington*, 1999-2021

National Trial Lawyers: Top 100 Civil Plaintiff Trial Lawyers in Washington

Lawdragon, 500 Leading Lawyers in America, 2018

Fellow of the American Bar Foundation

Avvo Top Tax Lawyer, Washington CEO Magazine

Trial Lawyer of the Year, Trial Lawyers for Public Justice

Salmon Dalberg Award



PROFESSIONAL & CIVIC INVOLVEMENT

American Bar Association, *Member*

Bar Association of The District of Columbia, *Member*

Federal Bar Association, *Member*

King County Bar Association, *Member*

State Bar of Wisconsin, *Member*

Trial Lawyers for Public Justice, *Member*

Washington State Bar Association, *Member*

Washington State Trial Lawyers Association, *Member*

American Association for Justice, *Member*

The Association of Trial Lawyers of America, *Member*

American Academy of Trial Counsel, *Fellow*

Editorial Board, *Washington State Securities Law Deskbook*

Fellow, American Bar Foundation

Human Rights Watch Committee

Washington Athletic Club, *Member*

SELECTED PUBLICATIONS & PRESENTATIONS

Presenter, Colorado County Attorneys Association Virtual Summer Conference, Statewide Opioid Litigation Update, June 11, 2021.

Thomson/West Webinar, "Stock Drop and Roll: Key Supreme Court Rulings and New Standards in ERISA 'Stock Drop' Cases," July 24, 2014

14th Annual Pension Law, Governance and Solvency Conference, 2013

Canadian Institute's 14th Annual Advanced Forum on Pension Law, Governance and Solvency, 2013

ERISA Litigation & Regulatory Compliance Congress, 2013

American Conference Institute's 6th National Forum on ERISA Litigation, 2013

25th Annual ERISA Litigation Conference, 2012

American Conference Institute's 5th National Forum on ERISA Litigation, 2012

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LAURIE ASHTON

CONTACT INFO

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lashton@kellerrohrback.com

PRACTICE EMPHASIS

- Business Reorganizations
- Class Action & Consumer Litigation
- Constitutional Law
- Employee Benefits and Retirement Security
- Fiduciary Breach
- International Law

EDUCATION

University of California, San Diego

B.A., 1987, Economics

Arizona State University College of Law

J.D., 1990, Order of the Coif;
Member, Arizona State Law Journal,
1988-1990; Note and Comment
Editor, *Arizona State Law Journal,*
1989-1990; Student Instructor,
Legal Research and Writing, 1989-
1990.

Laurie Ashton is Of Counsel to Keller Rohrback. Prior to becoming Of Counsel, she was a partner in the Arizona affiliate of Keller Rohrback. Early in her career, as an Adjunct Professor, she taught semester courses in Lawyering Theory and Practice and Advanced Business Reorganizations. She also served as a law clerk for the Honorable Charles G. Case, U.S. Bankruptcy Court, for the District of Arizona for two years.

An important part of Laurie's international work involves the domestic and international legal implications of treaty obligations and breaches. She is a member of the international legal team that represented the Marshall Islands at the International Court of Justice in The Hague. For its work, the team was nominated by the International Peace Bureau for the 2016 Nobel Peace Prize, along with the former Foreign Minister, Tony deBrum. Laurie was also part of the team representing parties impacted by the Trump administration's Muslim travel ban and policies related to it. That work included claims arising out of the United States' failure to reunite refugee families as legally required.

In complex litigation, Laurie was the lead attorney for Keller Rohrback in a series of successful groundwater contamination suits brought in 1996 against multiple international defendants concerning chemical releases spanning over 60 years. She was also the lead attorney for Keller Rohrback in an ERISA class action suit on behalf of over 21,000 employees who lost a material percentage of their retirement assets at the hands of corporate fiduciaries—a case that was, at its time, amongst the largest of its kind. Laurie has led or been a member of the team leading numerous high-profile business reorganizations, including a case in which the Court confirmed a reorganization plan over the objection of the international life insurance company's feasibility expert, based on Laurie's cross examination.

Laurie served on the Ethics Committee of the State Bar of Arizona for six years. She was the coauthor of a textbook on limited liability companies and partnerships, published by West, and she is AV Preeminent rated by Martindale.

Laurie is frequently interviewed and has been cited by Reuters, Newsweek, Fox News, Huffington Post, Slate Magazine, Radio New Zealand, Radio Australia, and others. She currently serves as a Director of the Santa Barbara City College Foundation, a member of the Human Rights Watch Council in Santa Barbara, and as an Advisor of the Global Justice Center in New York, which advances human rights pursuant to various international laws, including the Geneva and Genocide Conventions, as well as customary international law.

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L A W O F F I C E S ♦ L . L . P .

BAR & COURT ADMISSIONS

1990, Arizona
1999, Colorado
2007, Washington, D.C.
2013, Eastern District of Michigan
2014, U.S. Court of Appeals for the Sixth Circuit
2015, U.S. Court of Appeals for the Ninth Circuit
2016, U.S. Court of Appeals for the Tenth Circuit
2016, U.S. Supreme Court
International Court of Justice

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*
Colorado Bar Association, *Member*
Washington, D.C. Bar Association, *Member*
Adjunct Professor of Law, *Advanced Chapter 11*, Arizona State University, 1996
Adjunct Professor of Law, *Lawyering Theory & Practice*, Arizona State University, 1997
Committee on the Rules of Professional Conduct ("Ethics Committee"), State Bar of Arizona, *Member*, 1997-2003
Court Appointed Special Advocate, King County, 2007-2009
Global Justice Center, New York, *Advisor*
Human Rights Watch Committee, Santa Barbara, *Member*
Santa Barbara City College Foundation, *Director*

PUBLICATIONS & PRESENTATIONS

Author, Case Note, *Arizona Mortgage and Deed of Trust Anti-Deficiency Statutes: The Underlying Obligation on a Note Secured By Residential Real Property After Baker v. Gardner*, 21 Ariz. St. L.J. 465, 470 (1989).
Co-Author, *Arizona Legal Forms: Limited Liability Companies and Partnerships* (1996-2004).
Guest Lecturer, Harvard Law School, 1997, 1999, 2001-2002.
Guest Lecturer, Stanford Law School, 2003.
Speaker, United Nations 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons; Panel, *Marshall Islands Nuclear Zero Lawsuits*
Speaker, Humanity House, The Hague, "*Legal Obligations for Nuclear Disarmament*," March 2016.
Speaker, Bertha Von-Suttner Master Class, The Peace Palace, The Hague, "*Forward Into Light, The Barbarization of the Sky*."

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.



MATTHEW GEREND

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PRACTICE EMPHASIS

- Class Action
- Employee Benefits and Retirement Security
- Fiduciary Breach
- Securities

EDUCATION

University of Wisconsin

B.A., with distinction, 2005,
Political Science, Phi Beta Kappa

Georgetown University Law Center

J.D., *cum laude*, 2010; Executive
Articles Editor, *Georgetown Journal
on Poverty Law and Policy*

Matthew Gerend practices in the firm's nationally recognized Complex Litigation Group, representing employees and other investors in litigation to enforce securities laws and the Employee Income Retirement Security Act ("ERISA"). Matt has represented plaintiffs in federal courts across the country to redress harms stemming from breaches of fiduciary duties, investment fraud, and other misconduct that threatens employees' retirement security.

Matt became interested in the laws protecting retirement and pension benefits as a clerk with AARP Foundation Litigation, where he helped draft a number of amicus curiae briefs filed in the U.S. Supreme Court and U.S. Courts of Appeals regarding the proper interpretation and implementation of ERISA. During law school, Matt also worked as an intern with the Community Development Project at the Lawyers' Committee for Civil Rights Under Law. Matt believes that lawyers have a unique ability to effect social change, an ethic that has guided his work representing individuals and investors against those engaged in divisive and fraudulent practices.

BAR & COURT ADMISSIONS

2010, Washington
2011, U.S. District Court for the Western District of Washington
2012, U.S. Court of Appeals for the Third Circuit
2013, U.S. District Court for the Eastern District of Michigan
2014, U.S. Court of Appeals for the Sixth Circuit
2014, U.S. Court of Appeals for the Ninth Circuit
2015, U.S. Court of Appeals for the Seventh Circuit
2015, U.S. District Court for the District of Colorado
2016, U.S. Court of Appeals for the Fourth Circuit
2016, U.S. Court of Appeals for the Tenth Circuit
2016, Supreme Court of the United States
2018, U.S. Court of Appeals for the Second Circuit
2018, U.S. District Court for the Eastern District of Wisconsin

PROFESSIONAL & CIVIC INVOLVEMENT

Washington State Bar Association, *Member*



HONORS & AWARDS

Selected to Rising Stars list in *Super Lawyers – Washington*, 2014-2021

PUBLICATIONS & PRESENTATIONS

Contributing Author, *Zanglein et. al., ERISA Litigation* (Bloomberg BNA 2015).

Deborah M. Austin and Matthew M. Gerend, *The Scope and Potential of Section 3 as Currently Implemented*, 19 J. Affordable Housing & Commun. Dev. L. 89 (2009).

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CHRISTOPHER GRAVER

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PRACTICE EMPHASIS

- Business Litigation
- Bankruptcy and Creditors' Rights

EDUCATION

St. John's College

B.A., 1976

University of New Mexico

J.D., *magna cum laude*, 1990
Order of the Coif

Chris is a member of Keller Rohrbach's Complex Litigation and Bankruptcy Groups.

He has represented debtors, creditors, Court-appointed committees, and asset purchasers in Chapter 11 reorganization proceedings and workouts. In recent years he has also focused on representing plaintiffs in ERISA class actions. Chris has wide-ranging experience in complex commercial matters, from corporate restructuring to breach of fiduciary duty, commercial real estate, contracts, patent infringement, and environmental insurance coverage.

Together with colleagues, Chris has represented clients as diverse as pension plan participants in class actions challenging their employers' asserted exemption from ERISA, the committee of victims of clergy sexual abuse in the Chapter 11 reorganization of a Catholic diocese, an American Indian business corporation in a commercial dispute, and a developer restructuring a portfolio of real property interests nationwide.

A graduate of the Great Books liberal arts program at St. John's College in Santa Fe, Chris earned his law degree from the University of New Mexico Law School *magna cum laude* in 1990. While his practice is centered in the Southwest, Chris represents clients in federal courts coast to coast.

BAR & COURT ADMISSIONS

1990, Arizona

1990, United States District Court for the District of Arizona

2004, United States Court of Appeals for the Ninth Circuit

2015, United States Court of Appeals for the Fifth Circuit

2016, United States Court of Appeals for the Tenth Circuit

2017, United States Supreme Court

PROFESSIONAL & CIVIC INVOLVEMENT

Arizona State Bar Association, *Member*

Maricopa County Bar Association, *Member*

PUBLICATIONS & PRESENTATIONS

"Confirming the Catholics: The Diocese of Tucson Experience, Norton Bankruptcy Law Advisor," 2005.

"Representing the Tort Claimants' Committee in the Chapter 11 Case Filed by the Roman Catholic Diocese of Tucson, prepared for the National Conference of Bankruptcy Judges," 2005.

"Decoding the Code," *AzBusiness Magazine*, 2005.

Speaker, Maricopa County Bar Association presentation, *New Bankruptcy Code: Changing the Way Creditors are Treated*, 2006.

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RON KILGARD

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PRACTICE EMPHASIS

- Appeals
- Antitrust & Trade Regulation
- Class Action
- Constitutional Law
- Employee Benefits & Retirement Security
- Fiduciary Breach
- Financial Products & Services

EDUCATION

Harvard College B.A., 1973,
History

Harvard Divinity School M.T.S.,
1975, Old Testament

**Arizona State University College
of Law** J.D., 1979, Editor-in
Chief, *Arizona State Law Journal*,
Armstrong Award (outstanding
graduate)

Ron Kilgard is a 40-year civil litigation lawyer. Over a long career, he has handled all manner of civil cases, from routine automobile accidents and two-party contract disputes of no interest to anyone but the parties, to multi-million dollar class actions covered in *The New York Times* and *The Wall Street Journal*. For the last 20 years, Ron has mostly litigated pension plan class actions. Ron helped Keller Rohrback pioneer company stock ERISA litigation in the late 1990s and early 2000s; he was part of the team that obtained settlements of over \$265 million in the Enron 401(k) litigation. In 2017, after six years of litigation, Ron prevailed in an action challenging as unconstitutional the cutbacks to the pensions of Arizona state court judges. That same year, Ron began representing pro bono, and is still representing, a client fleeing gang-related violence in El Salvador.

Ron is a Phoenix native. He clerked for the Hon. Mary M. Schroeder, U. S. Court of Appeals for the Ninth Circuit, in 1979-80 and has practiced in Phoenix ever since. He was one of the lawyers who formed the Phoenix office of Keller Rohrback L.L.P. in November 2002.

HONORS & AWARDS

Best Lawyers in America, ERISA Practice, 2013-2022

Florence Immigrant & Refugee Rights Project, 2018 Pro Bono Attorney of the Year (adult cases)

PROFESSIONAL & CIVIC INVOLVEMENT

State Bar of Arizona, *Member*

District of Columbia Bar, *Member*

New York State Bar Association, *Member*

National Immigrant Justice Center, *Pro Bono Counsel*

Florence Immigrant & Refugee Rights Project, *Pro Bono Counsel*

KELLER ROHRBACK

L A W O F F I C E S ♦ L . L . P .

BAR & COURT ADMISSIONS

1979, Arizona Supreme Court
1979, U.S. District Court for the District of Arizona
1982, U.S. Court of Appeals for the Ninth Circuit
1995, U.S. Supreme Court
2005, U.S. Court of Appeals for the Second Circuit
2005, U.S. Court of Appeals for the Fifth Circuit
2007, U.S. District Court for the Eastern District of Michigan
2009, District of Columbia Court of Appeals
2010, U.S. Court of Appeals for the Fourth Circuit
2010, U.S. District Court for the District of North Dakota
2011, New York Supreme Court, Appellate Division
2012, U.S. District Court for the Southern District of New York
2013, U.S. District Court for the District of Colorado
2013, U.S. Court of Appeals for the Eighth Circuit
2014, U.S. Court of Appeals for the Sixth Circuit
2014, U.S. Court of Appeals for the Third Circuit
2015, U.S. Court of Appeals for the Seventh Circuit
2015, U.S. Court of Appeals for the Tenth Circuit
2016, U.S. District Court for the Southern District of Illinois
2016, U.S. District Court for the Western District of Oklahoma
2016, U.S. District Court for the Eastern District of Missouri
2016, U.S. District Court of the Central District of Illinois
2016, U.S. District Court of the Northern District of Indiana
2017, Executive Office for Immigration Review
2019, U.S. District Court for the Northern District of New York

PUBLICATIONS & PRESENTATIONS

Speaker, ABA Seminar, After Enron, 2006
Speaker, Chicago Bar Association, Company Stock Litigation, 2006
Speaker, West LegalWorks ERISA Litigation Conference, 2007
Speaker, National Center for Employee Ownership, *Fiduciary Implications of Company Stock Lawsuits*, 2012 and 2013
Speaker, American Conference Institute, *New Developments in Church Plan Litigation*, 2015-2017

KELLER ROHRBACK

LAW OFFICES ♦ L.L.P.

SEATTLE

Keller Rohrback L.L.P.
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PHOENIX

Keller Rohrback L.L.P.
3101 North Central Avenue, Suite 1400
Phoenix, AZ 85012
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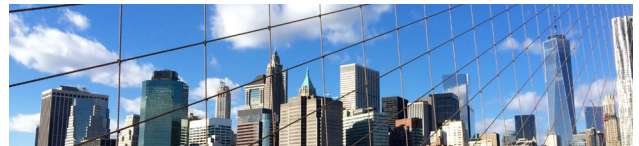
SANTA BARBARA

Keller Rohrback L.L.P.
801 Garden Street, Suite 301
Santa Barbara, CA 93101
P: 805.456.1496 | F: 805.456.1497



NEW YORK

Keller Rohrback L.L.P.
1140 6th Avenue, 9th Floor
New York, NY 10036
P: 646.380.6690 | F: 646.380.6692



OAKLAND

Keller Rohrback L.L.P.
180 Grand Avenue, Suite 1380
Oakland, CA 94612
P: 510.463.3900 | F: 510.463.3901



MISSOULA

Keller Rohrback L.L.P.
3255 Bending Tree Lane
Missoula, MT 59808
P: 406.215.9100 | F: 805.456.1497



EXHIBIT 2-B

Cohen Milstein Firm Resume

COHENMILSTEIN

COHEN MILSTEIN SELLERS & TOLL PLLC

For decades, Cohen Milstein Sellers & Toll PLLC has represented individuals, small businesses, institutional investors, and employees in many of the major class action cases litigated in the United States for violations of the antitrust, securities, consumer protection, civil rights/discrimination, ERISA, employment, and human rights laws. Cohen Milstein is also at the forefront of numerous innovative legal actions that are expanding the quality and availability of legal recourse for aggrieved individuals and businesses both domestic and international. Over its history, Cohen Milstein has obtained many landmark judgments and settlements for individuals and businesses in the United States and abroad. The firm's most significant successes include:

- In re Broiler Chicken Antitrust Litigation No. 1:16-cv-08637 TMD (N.D. Ill.): On June 29, 2021 and August 12, 2021, the Court appointed Cohen Milstein Co-Lead Settlement Counsel and granted preliminary approval to settlements worth \$181 million with six chicken processors, Tyson Foods, Fieldale Farms, Peco Foods, George's Inc., Pilgrim's Price Corp. and Mar-Jac, to resolve consumer claims that they conspired to inflate broiler chicken prices since 2009 and that Agri Stats, Inc., a third-party vendor, facilitated their unlawful scheme. Litigation against the dozen remaining defendants continues.
- L Brands, Inc. Derivative Litigation: Cohen Milstein, in partnership with the State of Oregon, the Oregon Public Employees Retirement Fund, and other shareholders, helped resolve allegations that officers and directors of L Brands, Inc., previous owners of Victoria's Secret, breached their fiduciary duties by maintaining ties with alleged sex offender and pedophile Jeffrey Epstein and fostering a culture of discrimination and misogyny at the company. Following a Delaware General Corporate Law Section 220 books and records demand and an extensive, proprietary investigation, L Brands and the now-standalone company, Victoria's Secret, agreed to stop enforcing non-disclosure agreements that prohibit the discussion of a sexual harassment claim's underlying facts; stop using forced arbitration agreements; implement sweeping reforms to their codes of conduct, policies and procedures related to sexual misconduct and retaliation; and to invest \$45 million each, for a total of \$90 million, in diversity, equity and inclusion initiatives and DEI Advisory Councils. In August 2021, the Court granted preliminary approval of this watershed settlement.
- In re Alphabet Shareholder Derivative Litigation No. 19CV341522 (Sup. Ct. Cal., Santa Clara Cnty.): Cohen Milstein, as Co-Lead Counsel, represented Northern California Pipe Trades Pension Plan and Teamsters Local 272 Labor Management Pension Fund in this shareholder derivative action seeking to hold Alphabet's leadership accountable for a "culture of concealment," which involved covering up pervasive gender discrimination and sexual harassment and approving secretive, multi-million dollar payouts to high-level executives credibly accused of serious sexual misconduct against junior employees. In November 2020, the Court granted final approval of a historic settlement, which includes a \$310 million funding commitment and sweeping reforms to eliminate practices that silence victims and implement new measures to improve workplace equity and board oversight.
- Breen v. U.S. Department of Transportation and Federal Aviation Administration No. 1:05-cv-00654 (D.D.C.): In April 2021, the U.S. Department of Transportation and Federal Aviation Administration agreed to a record-breaking \$43.8 million settlement – the largest age discrimination settlement ever involving the federal government, ending a 16-year-old age discrimination lawsuit involving 670 former Flight Service Specialists, who were laid off in 2005 when the FAA conducted a reduction in force. More than 90% of these workers were over 40 years old and many lost their federal pension benefits.
- In re Flint Water Cases No. 16-cv-10444 (E.D. Mich.): In January 2021, the Court granted preliminary approval of a \$641.25 million settlement between Flint residents and businesses and multiple governmental defendants, including the State of Michigan, Michigan Department of Environmental Quality (DEQ), and individual defendants, including former Governor Rick Snyder, in this environmental toxic tort class action, affecting over 90,000 Flint

residents and businesses. Litigation will continue against other defendants, including two private engineering firms, Veolia North America and Lockwood, Andrews & Newnam (LAN), both charged with professional negligence, and separate litigation against the U.S. Environmental Protection Agency will also continue. Cohen Milstein's is Interim Co-Lead Class Counsel in this litigation.

- Wynn Resorts, Ltd. Derivative Litigation No. A-18-770013-B (Eighth Jud. Dist. Ct., Clark Cnty., Nev.): Cohen Milstein represented New York State Common Retirement Fund and the New York City Pension Funds as Lead Counsel in a derivative shareholder lawsuit against certain officers and directors of Wynn Resorts, Ltd., arising out of their failure to hold Steve Wynn, the former CEO and Chairman of the Board, accountable for his longstanding pattern of sexual abuse and harassment of female employees. In March 2020, the Court granted final approval of a \$90 million settlement in the form of cash payments and landmark corporate governance reforms, placing it among the largest, most comprehensive derivative settlements in history.
- Department of Homeland Security, et al. v. Regents of the University of California, et al. No. 18-587 (U.S. Supreme Court): In June 2020, the Supreme Court blocked the Trump Administration's plan to rescind the Deferred Action for Childhood Arrivals (DACA) program, preserving immigration protections for approximately 650,000 current DACA recipients aka "Dreamers." The Court's 5-4 ruling upheld the partial summary judgment in Cohen Milstein's NAACP case (D.D.C.) – one of three cases consolidated before the Supreme Court. The Opinion stated that the Court's affirmance of the NAACP order vacating the rescission made it unnecessary to examine the propriety of the nationwide preliminary injunctions that were issued in the consolidated cases. Cohen Milstein's case: NAACP, et al. v. Donald J. Trump, as President of the United States, et al., No. 1:17-cv-01907 (D.D.C.) was consolidated with and re-named: Trustees of Princeton University, et al. v. U.S. et al., No. 1:17-cv-02325 (D.D.C.).
- National Association of the Deaf v. Harvard & MIT (D. Mass.): In February 2020 and June 2020, Cohen Milstein and co-counsel successfully settled the second of two groundbreaking class actions on behalf of deaf and hearing-impaired individuals. The landmark settlements are historic because they require two of the most lauded academic research institutions in the world to include closed captioning on all content, including videos and podcasts, available to the public online, establishing a precedent for academia and business worldwide.
- Sutter Health Antitrust Litigation No. CSG 14-538451 (Sup. Ct., San Fran. Cnty., Cal.): Cohen Milstein is part of a small team of firms representing a certified class of self-funded employers and union trust funds against Sutter Health, a large hospital chain in Northern California, for restraining hospital competition through anticompetitive contracting agreements. In October 2019, on the eve of trial, the case settled for \$575 million and comprehensive injunctive relief, subject to approval by the Court.
- In Re Equifax, Inc., Customer Data Security Breach Litigation No. 1:17-md-2800-TWT (N.D. Ga.): On December 19, 2019 the court granted final approval a landmark \$1.5 billion settlement concluding this data breach class action affecting more than 147 million people in the U.S. The settlement consists of a record-breaking \$425 million in monetary and injunctive benefits and requires Equifax to spend \$1 billion to upgrade its security and technology. Cohen Milstein was on the Plaintiffs' Steering Committee.
- New Jersey Carpenters Health Fund v. Royal Bank of Scotland Group PLC et al. No. 1:08-cv-05310-DAB-HBP (S.D.N.Y.): On March 8, 2019, the Honorable Deborah A. Batts granted final approval to a \$165 million all-cash settlement, bringing this lawsuit, the last of 11 MBS class actions Cohen Milstein successfully handled, to conclusion. Cohen Milstein was lead counsel in this certified MBS class action.
- In re Lidoderm Antitrust Litigation No. 3:14-md-02521 (N.D. Cal.): Plaintiffs allege that Endo and Teikoku, manufacturers of the Lidoderm patch, paid Watson Pharmaceuticals to delay its generic launch. The case settled on the eve of trial and on September 20, 2018, plaintiffs obtained final approval of a \$104.75 million settlement –

more than 40% of plaintiffs' best-case damages estimate. This case was ranked by Law360 as "The Biggest Competition Cases Of 2017 So Far" (July 7, 2017).

- In re Domestic Drywall Antitrust Litigation No. 2:13-md-02437 (E.D. Pa.): Cohen Milstein served as co-lead counsel for a class of direct purchasers of drywall against drywall manufacturers for price-fixing. The court approved settlements that total more than \$190 million. The court commented that it had sided with plaintiffs because of counsel's "outstanding work," and that plaintiffs' counsel had a "sophisticated and highly professional approach." It complemented the attorneys as "highly skilled" and noted that their performance on class action issues was "imaginative." It also stated, "Few cases with no government action, or investigation, result in class settlements as large as this one."
- In re Anthem Data Breach Litigation No. 15-MD-02617-LHK (N.D. Cal.): On August 16, 2018, the Honorable Lucy H. Koh in the U.S. District Court for the Northern District of California granted final approval to a \$115 million settlement – the largest data breach settlement in U.S. history – ending claims that Anthem Inc., one of the nation's largest for-profit managed health care companies, put 78.8 million customers' personal information, including social security numbers and health date, at risk in a 2015 data breach. Cohen Milstein was co-lead counsel.
- Relvas v. The Islamic Republic of Iran, et al. No. 1:14-cv-01752-RCL (D.D.C.): On February 28, 2018 U.S. District Court Judge Royce C. Lamberth, for the District of Columbia, ordered the Republic of Iran to pay \$920 million to 80 families of soldiers and other military service members who were killed or injured in the 1983 bombing of the U.S. Marine barracks in Beirut, Lebanon. The Beirut Marine Barracks bombing, which killed 241 American servicemembers and injured numerous others, was the deadliest state-sponsored terrorist attack against United States citizens before September 11, 2001.
- Moody's Litigation: Represented the co-lead state Mississippi and represented New Jersey in the \$864 million consumer fraud settlement achieved in January 2017 by 22 states and the U.S. Department of Justice with Moody's Corporation, Moody's Investors Service, Inc., and Moody's Analytics, Inc. Together with the S&P settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than \$2.2 billion for their conduct contributing to the national housing crisis and the Great Recession.
- S&P Litigation: Represented co-lead state Mississippi in the \$1.375 billion-dollar consumer fraud settlement achieved in 2015 by 20 states and the U.S. Department of Justice with Standard & Poor's. Together with the Moody's settlement, these cases against the nation's two largest credit rating agencies produced key industry reforms that provide greater transparency for consumers and that divested the credit rating agencies of more than \$2.2 billion for their conduct contributing to the national housing crisis and the Great Recession.
- In re BP Securities Litigation No. 4:10-MD-02185 (S.D. Tex.): Cohen Milstein represented the New York State Common Retirement Fund as co-lead plaintiff in a securities class action filed in 2010, alleging that BP injured investors by intentionally downplaying the severity of the Deepwater Horizon oil spill and preventing investors from learning the magnitude of the disaster. After successfully arguing for class certification to the district court, Cohen Milstein presented plaintiffs' defense of that court's decision to the U.S. Court of Appeals for the Fifth Circuit, which affirmed the class. The case settled for \$175 million a few weeks before trial was set to begin.
- Providence Health Services Church Plan Litigation No. 2:14-cv-01720-JCC (W.D. Wash.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Providence's health & Service Case Balance Retirement Plan who alleged that fiduciaries underfunded the pension plan because they improperly operated it under the ERISA "church plan" exemption. In March 2017, the court granted final approval of a \$315.9 million settlement,

one of the largest settlements of its kind, and requires Providence to continue making minimum plan contributions that aim to fully fund the plan by 2029.

- Bon Secours Health System Church Litigation No. 1:16-cv-01079-RDB (D. Md.): Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which improperly operated under the “church plan” exemption of ERISA. In May 2017, the court granted final approval of a settlement of over \$102 million, one of the largest settlements of its kind.
- In re Animation Workers Litigation No. 5:14-cv-04062 (N.D. Cal.): Cohen Milstein served as co-lead counsel representing a class of animation and visual effects workers who alleged that Pixar, Lucasfilm, DreamWorks, Disney and other studios conspired to suppress their pay primarily through no poach agreements. The court granted final approval of \$168.95 million in settlements. To our knowledge, this is the most successful no-poach class action, achieving an average recovery per class member of nearly \$17,000.
- Mincey v. Honda Motor Company, et al. No. 22787197 (Circ. Ct. Duval Cty, Fla.): On July 15, 2016, Cohen Milstein resolved a closely watched lawsuit against the Japanese company and airbag maker, Takata, involving the injury and eventual death of a woman whose car was involved in a minor accident in 2014. The confidential resolution was announced moments before a critical hearing in which a judge in Jacksonville, Fla., could have considered allowing punitive damages and for the company’s chief executive, Shigehisa Takada, to submit a civil deposition.
- HEMT MBS Litigation No. 1:08-cv-05653 (S.D.N.Y.): On May 10, 2016, U.S. District Judge Paul A. Crotty finally approved a \$110 million settlement in the mortgage-backed securities class action brought by investors against Credit Suisse AG and its affiliates. This settlement ends claims brought by the New Jersey Carpenters Health Fund and other investors who claimed that the offering documents for the mortgage-backed securities at issue violated the Securities Act as they contained false and misleading misstatements concerning compliance with underwriting standards.
- In re Urethane Antitrust Litigation (Polyether Polyol Cases) MDL No: 1616 (D. Kan.): Cohen Milstein served as co-lead counsel on behalf of a class of direct purchasers of chemicals used to make many everyday products, from mattress foam to carpet cushion, who were overcharged as a result of a nationwide price-fixing conspiracy. On February 25, 2016, Cohen Milstein reached an agreement with The Dow Chemical Company to settle the case against Dow for \$835 million. Combined with earlier settlements obtained from Bayer, Huntsman, and BASF, the Dow settlement pushed the total settlements in the case to \$974 million. The settlement was approved on July 29, 2016.
- United States of America et al., ex rel. Lauren Kieff, v. Wyeth No. 03-12366 (D. Mass.): Cohen Milstein was co-lead counsel in this False Claims Act whistleblower case against pharmaceutical giant Wyeth (subsequently acquired by Pfizer), in which the whistleblowers alleged that Wyeth defrauded Medicaid, the joint federal/state healthcare program for the poor, when it reported falsely inflated prices for its acid suppression drug Protonix from 2001 through 2006 for Medicaid rebate purposes. Weeks before trial, in February 2016, in one of the largest qui tam settlements in U.S. history, Wyeth agreed to pay \$784.6 million to the U.S. government and the over 35 intervening states.
- RALI MBS Litigation No. 08-8781 (S.D.N.Y.): On July 31, 2015, Judge Katherine Failla gave final approval to a \$235 million settlement with underwriters Citigroup Global Markets Inc., Goldman Sachs & Co., and UBS Securities LLC. She also approved a plan for distribution to investors of those funds as well as the previously approved \$100 million settlement with RALI, its affiliates, and the individual Defendants that was reached in in 2013. This global settlement marks an end to a long and complicated class action over MBS offerings that RALI and certain of its affiliates issued and sold to the New Jersey Carpenters Health Fund and other investors from 2006 through 2007. The case took seven years of intense litigation to resolve.

- In re: Bear Stearns Mortgage Pass-Through Certificates Litigation No. 08-08093 (S.D.N.Y.): On May 27, 2015, U.S. District Judge Laura Taylor Swain finally approved a class action settlement with JPMorgan Chase & Co., which agreed to pay \$500 million and up to an additional \$5 million in litigation-related expenses to resolve claims arising from the sale of \$27.2 billion of mortgage-backed securities issued by Bear Stearns & Co. during 2006 and 2007 in 22 separate public offerings.
- Harborview MBS Litigation No. 08-5093 (S.D.N.Y.): In February 2014, Cohen Milstein reached a settlement with the Royal Bank of Scotland (RBS) in the Harborview MBS Litigation, resolving claims that RBS duped investors into buying securities backed by shoddy home loans. The \$275 million settlement is the fifth largest class action settlement in a federal MBS case. This case is one of eight significant MBS actions that Cohen Milstein has been named lead or co-lead counsel by courts and one of three that were nearly thrown out by the court, only to be revived in 2012.
- In Re Electronic Books Antitrust Litigation No. 11-md-02293 (S.D.N.Y.): In August 2014, a New York federal judge approved a \$400 million antitrust settlement in the hotly contested ebooks price-fixing suit against Apple Inc. Combined with \$166 million in previous settlements with five defendant publishing companies, the final settlement totaled more than \$560 million. The settlement resolves damages claims brought by a class of ebook purchasers and attorneys general from 33 U.S. states and territories.
- Countrywide MBS Litigation No. 2:10-cv-00302 (C.D. Cal.): In April 2013, plaintiffs in the landmark mortgage-backed securities (MBS) class action litigation against Countrywide Financial Corporation and others, led by Lead Plaintiff, the Iowa Public Employees' Retirement System (IPERS), agreed to a \$500 million settlement. It is the nation's largest MBS-federal securities class action settlement. The settlement was approved in December 2013 and brings to a close the consolidated class action lawsuit brought in 2010 by multiple retirement funds against Countrywide and other defendants for securities violations involving the packaging and sale of MBS. The settlement is also one of the largest (top 20) class action securities settlements of all time.
- In re Beacon Associates Litigation No. 09-cv-0777 (S.D.N.Y.): Class action settlement of \$219 million for trustees and participants in ERISA-covered employee benefit plans whose assets were lost through investments made on their behalf by Beacon Associates LLC I & II in the investment schemes of Bernard Madoff.
- In re Plasma-Derivative Protein Therapies Antitrust Litigation No. 09 C 7666 (N.D. Ill.): After four years of litigation, in October of 2013, CSL Limited, CSL Behring LLC, CSL Plasma, Inc. (collectively, "CSL"), and the Plasma Protein Therapeutics Association ("PPTA") agreed to pay \$64 million dollars to settle a lawsuit brought by the University of Utah Hospital and other health care providers alleging that CSL, the PPTA, and Baxter agreed between 2003-2009 to restrict the supply of immunoglobulin and albumin and thereby increase the prices of those therapies. Two months later, Baxter International Inc. and Baxter Healthcare Corp. (collectively "Baxter") agreed to pay an additional \$64 million to settle these claims – bringing the total recovery to the class to \$128 million.
- Keepseagle v. Vilsack Civil Action No. 1:99CV03119 (D.D.C.): A class of Native American farmers and ranchers allege that they have been systematically denied the same opportunities to obtain farm loans and loan servicing that have been routinely afforded white farmers by the USDA. A class was certified in 2001 by Judge Emmet Sullivan, District Judge for the U.S. District Court for the District of Columbia, and the D.C. Circuit declined USDA's request to review that decision. On October 19, 2010, the case reached a historic settlement, with the USDA agreeing to pay \$680 million in damages to thousands of Native American farmers and ranchers and forgive up to \$80 million worth of outstanding farm loan debt.
- In re Parmalat Securities Litigation No. 1:04-md-1653 (S.D.N.Y.): Cohen Milstein, as co-lead counsel, successfully negotiated several settlements totaling approximately \$90 million, including two settlements with Parmalat's

outside auditors. Judge Lewis A. Kaplan remarked that plaintiffs' counsel "did a wonderful job here for the class and were in all respects totally professional and totally prepared. I wish I had counsel this good in front of me in every case." Parmalat's bankruptcy filing was the biggest corporate bankruptcy in Europe, and in December 2003, the U.S. Securities and Exchange Commission filed a suit charging Parmalat with "one of the largest and most brazen corporate financial frauds in history." During the litigation, the company subsequently emerged from bankruptcy, as a result we added "New Parmalat" as a defendant because of the egregious fraud committed by the now-bankrupt old Parmalat. New Parmalat strenuously objected and Judge Kaplan of the Southern District of New York ruled in the class plaintiffs' favor, a ruling which was affirmed on appeal. This innovative approach of adding New Parmalat enabled the class to obtain an important additional source of compensation, as we subsequently settled with New Parmalat for shares worth approximately \$26 million.

- Dukes v. Wal-Mart Stores, Inc. No. C-01-2252 (N.D. Cal.): Cohen Milstein is co-lead counsel in this sex discrimination case. In 2004, the U.S. District Court certified a nationwide class action lawsuit for all female employees of Wal-Mart who worked in U.S. stores anytime after December 26, 1998. This was the largest civil rights class action ever certified against a private employer, including approximately 1.5 million current and former female employees. That ruling was appealed, and while affirmed by the Ninth Circuit, was reversed by the Supreme Court in June 2011. Cohen Milstein argued the case for the plaintiffs-respondents in the Supreme Court. Since then, the *Dukes* action has been amended to address only the Wal-Mart regions that include stores in California, and other regional class cases have been or are soon to be filed. This litigation to resolve the merits of the claims – whether Wal-Mart discriminates against its female retail employees in pay and promotions – continues.
- Rubin v. MF Global, Ltd. No. 08-CV-02233 (S.D.N.Y.): Acting as co-lead counsel in this class action, the Firm represented the Central States, Southeast and Southwest Areas Pension Fund which was one of the co-lead plaintiffs in the case. In September 2010, as a result of Plaintiffs' decision to appeal, the U.S. Second Circuit Court of Appeals vacated in part the lower court's dismissal of the case and remanded the case for further proceedings. In overturning the District Court decision, the Second Circuit issued a decision which differentiated between a forecast or a forward-looking statement accompanied by cautionary language -- which the Appellate Court said would be insulated from liability under the bespeaks caution doctrine -- from a factual statement, or non-forward-looking statement, for which liability may exist. Importantly, the Second Circuit accepted Plaintiffs' position that where a statement is mixed, the court can sever the forward-looking aspect of the statement from the non-forward-looking aspect. The Court further stated that statements or omissions as to existing operations (and present intentions as to future operations) are not protected by the bespeaks caution doctrine. Mediation followed this decision and resulted in a settlement comprised of \$90 million in cash.
- Hughes v. Huron Consulting Group No. 09-CV-04734 (N.D. Ill.): Cohen Milstein represented lead plaintiffs the Public School Teachers' Pension & Retirement Fund of Chicago and the Arkansas Public Employees Retirement System ("APERS") in this case against Huron Consulting Group, founded by former Arthur Anderson personnel following its collapse in the wake of the Enron scandal. In August 2010, the District Court for the Northern District of Illinois denied defendants' motions to dismiss in their entirety and upheld plaintiffs' allegations that defendants intentionally improperly accounted for acquisition-related payments, which allowed plaintiffs to move forward with discovery. The case was settled for \$40 million, comprised of \$27 million in cash and 474,547 shares in Huron common stock, with an aggregate value at the time of final approval in 2011 of approximately \$13 million.
- In re Lucent Technologies Securities Litigation No. 00-621 (D.N.J.): A settlement in this massive securities fraud class action was reached in late March 2003. The class portion of the settlement amounts to over \$500 million in cash, stock and warrants and ranks as the second largest securities class action settlement ever completed. Cohen Milstein represented one of the co-lead plaintiffs in this action, a private mutual fund.

- Nate Pease, et al. v. Jasper Wyman & Son, Inc., et al. No. 00-015 (Knox County Superior Court, Me.): In 2004, a state court jury from Maine found three blueberry processing companies liable for participating in a four-year price-fixing and non-solicitation conspiracy that artificially lowered the prices defendants paid to approximately 800 growers for wild blueberries. The jury ordered defendants Cherryfield Foods, Inc., Jasper Wyman & Son, Inc., and Allen's Blueberry Freezer, Inc. to pay \$18.68 million in damages, the amount which the growers would have been paid absent the defendants' conspiracy. After a mandatory trebling of this damage figure under Maine antitrust law, the total amount of the verdict for the plaintiffs is just over \$56 million. The firm served as co-lead counsel.
- In re StarLink Corn Products, Liability Litigation MDL No. 1403 (N.D. Ill.): Cohen Milstein successfully represented U.S. corn farmers in a national class action against Aventis CropScience USA Holding and Garst Seed Company, the manufacturer and primary distributor of StarLink corn seeds. StarLink is a genetically modified corn variety that the United States government permitted for sale as animal feed and for industrial purposes, but never approved for human consumption. However, StarLink was found in corn products sold in grocery stores across the country and was traced to widespread contamination of the U.S. commodity corn supply. The Firm, as co-lead counsel, achieved a final settlement providing more than \$110 million for U.S. corn farmers, which was approved by a federal district court in April 2003. This settlement was the first successful resolution of tort claims brought by farmers against the manufacturers of genetically modified seeds.
- Snyder v. Nationwide Mutual Insurance Company No. 97/0633 (Sup. Ct. N.Y. Onondaga Cty.): Cohen Milstein served as one of plaintiffs' principal counsel in this case on behalf of persons who held life insurance policies issued by Nationwide through its captive agency force. The action alleged consumer fraud and misrepresentations. Plaintiffs obtained a settlement valued at more than \$85 million. The judge praised the efforts of Cohen Milstein and its co-counsel for having done "a very, very good job for all the people." He complimented "not only the manner" in which the result was arrived at, but also the "time ... in which it was done."
- Oncology & Radiation Associates, P.A. v. Bristol Myers Squibb Co., et al. No. 1:01CV02313 (D.D.C.): Cohen Milstein has been co-lead counsel in this case since its inception in 2001. Plaintiffs alleged that Bristol-Myers Squibb unlawfully monopolized the United States market for paclitaxel, a cancer drug discovered and developed by the United States government, which Bristol sells under the brand name Taxol. Bristol's scheme included a conspiracy with American BioScience, Inc., a generic manufacturer, to block generic competition. Cohen Milstein's investigation and prosecution of this litigation on behalf of direct purchasers of Taxol led to a settlement of \$65,815,000 that was finally approved by U.S. District Judge Emmet G. Sullivan on August 14, 2003 and preceded numerous Taxol-related litigations brought by the Federal Trade Commission and State Attorneys General offices.
- Kruman v. Christie's International PLC, et al. No. 01-7309 (S.D.N.Y.): A \$40 million settlement on behalf of all persons who bought or sold items through Christie's or Sotheby's auction houses in non-internet actions was approved in this action. Cohen Milstein served as one of three leading counsel on behalf of foreign plaintiffs. The Court noted that approval of the settlement was particularly appropriate, given the significant obstacles that faced plaintiffs and plaintiffs' counsel in the litigation. The settlement marked the first time that claims on behalf of foreign plaintiffs under U.S. antitrust laws have been resolved in a U.S. court, a milestone in U.S. antitrust jurisprudence.
- Roberts v. Texaco, Inc. 94-Civ. 2015 (S.D.N.Y.): Cohen Milstein represented a class of African-American employees in this landmark litigation that resulted in the then-largest race discrimination settlement in history (\$176 million in cash, salary increases and equitable relief). The Court hailed the work of class counsel for, *inter alia*, "framing an imaginative settlement, that may well have important ameliorative impact not only at Texaco but in the corporate context as a whole ...".

- Trotter v. Perdue Farms, Inc. No. 99-893 (D. Del.): This suit on behalf of hourly workers at Perdue's chicken processing facilities – which employ approximately 15,000 people – forced Perdue to pay employees for time spent “donning and doffing,” that is, obtaining, putting on, sanitizing and removing protective equipment that they must use both for their own safety and to comply with USDA regulations for the safety of the food supply. The suit alleged that Perdue's practice of not counting donning and doffing time as hours worked violated the Fair Labor Standards Act and state law. In a separate settlement with the Department of Labor, Perdue agreed to change its pay practices. In addition, Perdue is required to issue retroactive credit under one of its retirement plans for “donning and doffing” work if the credit would improve employees' or former employees' eligibility for pension benefits. Cohen Milstein was co-lead counsel.

Awards & Recognition

2021

- In 2021, *The American Lawyer* names Cohen Milstein a **“National Boutique / Specialty Litigation Department of the Year”** finalist.
- In 2021, Cohen Milstein’s Leslie M. Kroeger receives the 2021 **“B.J. and Tom Masterson Award for Professionalism”** from the Florida Justice Association.
- In 2021, *Lawdragon* selects eight Cohen Milstein attorneys for its **“Leading Plaintiff Employment and Civil Rights Lawyers”** guide.
- In 2021, *Palm Beach Illustrated* names seven Cohen Milstein attorneys to its **“Top Lawyers”** list.
- In 2021, *Law360* names Cohen Milstein’s Michelle Yau **“Benefits – MVP”** for her representation of participants and beneficiaries of the Triad Manufacturing Inc. Employee Stock Ownership Plan in an ERISA suit claiming the company overcharged workers for company stock.
- In 2021, *Law360* names Cohen Milstein’s Joseph M. Sellers **“Employment – MVP”** for his role in obtaining a settlement on behalf of some 700 fight service specialists alleging age discrimination by the Federal Aviation Administration.
- In 2021, *Law360* names Cohen Milstein’s Theodore J. Leopold **“Environmental – MVP”** for his work in securing a settlement for victims of the Flint, MI water crisis.
- In 2021, *Law360* names Cohen Milstein’s Sharon K. Robertson **“Life Sciences – MVP”** for her “pay for delay” antitrust class actions in the Life Sciences industry.
- In 2021, *The Best Lawyers in America* names three Cohen Milstein attorneys to its 2021 **“Ones to Watch”** list.
- In 2021, *The Best Lawyers in America* names 13 Cohen Milstein attorneys to its 2021 **“Best Lawyers in America”** list.
- In 2021, *The Best Lawyers in America* names Stephan A. LeClainche **“Lawyer of the Year”** in the Product Liability – West Palm Beach, FL category.
- In 2021, *The Best Lawyers in America* names Christine E. Webber **“Lawyer of the Year”** in the Employment Law – Washington, DC category.
- In 2021, *Lawdragon* names 24 Cohen Milstein attorneys to its **“500 Leading Plaintiff Employment Lawyers”** list.
- In 2021, Cohen Milstein’s Betsy A. Miller wins *The National Law Journal*/Law.com’s 2021 Elite Trial Lawyers **“Keith Givens Visionary Award.”**
- In 2021, Cohen Milstein’s wins *The National Law Journal*/Law.com’s 2021 Elite Trial Lawyers **“Environmental Protection Practice of the Year Award.”**
- In 2021, Cohen Milstein’s Laura H. Posner and Emmy L. Levens win *The National Law Journal*/Law.com’s 2021 Elite Trial Lawyers **“Elite Women of the Plaintiffs Bar Award.”**
- In 2021, Cohen Milstein’s Molly J. Bowen and Jessica Weiner win *The National Law Journal*/Law.com’s 2021 Elite Trial Lawyers **“Rising Stars Award.”**
- In 2021, Cohen Milstein’s Sharon K. Robertson named to Benchmark Litigation’s 2021 **“40 & Under Hot List.”**
- In 2021, three Cohen Milstein Attorneys Named to Florida Trend’s 2021 **“Florida Legal Elite.”**
- In 2021, Cohen Milstein’s Emmy L. Levens named to Bloomberg Law’s inaugural **“They’ve Got Next: The 40 Under 40.”**
- In 2021, Cohen Milstein’s Richard A. Koffman Recognized as GCR’s **“Who’s Who Legal: Thought Leaders – Competition 2022.”**
- In 2021, seven Cohen Milstein Antitrust attorneys named to GCR’s **“Who’s Who Legal: Competition 2021.”**
- In 2021, Cohen Milstein’s Julie S. Selesnick elected to the **“Fellows of the American Bar Foundation.”**
- In 2021, seven Cohen Milstein attorneys recognized in **“Florida Super Lawyers.”**

- In 2021, twelve Cohen Milstein Attorneys Recognized as 2021 **“Washington, DC Super Lawyers”**; six recognized as 2021 **“Washington, DC Rising Stars.”**
- In 2021, *Legal 500* named Cohen Milstein a **“Leading Firm”** in Antitrust Litigation: Plaintiff; Labor and Employment Disputes: Plaintiff; Products Liability, Mass Torts & Class Action: Plaintiff; and Securities Litigation: Plaintiff.
- In 2021, *Legal 500* named four Cohen Milstein attorneys **“Next Generation Partners.”**
- In 2021, *Legal 500* named eight Cohen Milstein partners **“Leading Lawyers.”**
- In 2021, Cohen Milstein’s Kit A. Pierson **“Ranked”** by Chambers USA for Antitrust: Plaintiff.
- In 2021, Cohen Milstein’s Sharon K. Robertson **“Top Ranked”** by Chambers USA for Antitrust: Plaintiff.
- In 2021, eight Cohen Milstein lawyers named among the **“Lawdragon 500 Leading Plaintiff Consumer Lawyers.”**
- In 2021, Cohen Milstein’s Kalpana Kotagal receives Reel Works **“Change Maker Award.”**
- In 2021, Cohen Milstein was recognized as a **“Leading Firm”** by Chambers USA in Three Categories – Antitrust: Plaintiff; Product Liability: Plaintiff; and Securities Litigation: Plaintiff.
- In 2021, Cohen Milstein’s Julie S. Selesnick named a *National Law Journal* **“Plaintiffs’ Trailblazer.”**
- In 2021, Cohen Milstein named an **“Elite Trial Lawyer”** finalist in eight practice areas by *The National Law Journal*.
- In 2021, *Daily Business Review* recognized Theodore J. Leopold Recognized as a **“2021 Distinguished Leader.”**
- In 2021, *Law360* recognized Julie Goldsmith Reiser as a **“Titan of the Plaintiffs Bar.”**
- In 2021, *The National Law Journal* and *The Trial Lawyer* named Betsy A. Miller and Steven J. Toll among **“America’s 50 Most Influential Trial Lawyers.”**
- In 2021, Lawdragon named Agnieszka Fryszman Named to the **“Lawdragon Global Litigation 500.”**
- In 2021, Lawdragon recognized 12 Cohen Milstein lawyers among the **“500 Leading Lawyers in America.”**
- In 2021, Lawdragon inducted Steven J. Toll into the **“Lawdragon 500 Hall of Fame.”**

2020

- In 2020, *Crain’s New York Business* recognized Laura H. Posner among New York’s **“Notable Women in Law.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Class Action Group of the Year.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Environmental Group of the Year.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Life Sciences Group of the Year.”**
- In 2020, *Law360* recognized Cohen Milstein as a **“Securities Group of the Year.”**
- In 2020, Cumberland School of Law named Theodore J. Leopold its **“2020 Distinguished Alumnus of the Year.”**
- In 2020, *U.S. News & World Report* and *Best Lawyers* named Cohen Milstein among their 2021 **“Best Law Firms”** nationally in ERISA Litigation, Employee Benefits Law, and Labor & Employment Litigation; for Washington, DC in Civil Rights Law, Employee Benefits (ERISA) Law, Employment Law – Individuals, Labor Law – Union, Litigation – ERISA, and Litigation – Labor & Employment; and for West Palm Beach, FL in Mass Tort Litigation / Class Actions – Plaintiffs Medical Malpractice Law – Plaintiffs, Personal Injury Litigation – Plaintiffs, and Product Liability Litigation – Plaintiffs for West Palm Beach, FL.
- In 2020, *Super Lawyers* recognized five Cohen Milstein attorneys as **“2020 New York – Metro Super Lawyers.”**
- In 2020, Benchmark Litigation recognized Cohen Milstein as a 2021 **“Top Plaintiffs Firm.”**
- In 2020, *Law360*’s Glass Ceiling Report named Cohen Milstein among **“The Best Law Firms for Female Attorneys.”**
- In 2020, Lawdragon named seven Cohen Milstein attorneys to its **“500 Leading Plaintiff Employment Lawyers”** list.
- In 2020, the Human Trafficking Legal Center named Agnieszka M. Fryszman **“Human Trafficking Advocate of the Year.”**
- In 2020, *Crain’s Chicago Business* named Carol V. Gilden one of its **“Notable Women in Law.”**

- In 2020, *Palm Beach Illustrated* named six Cohen Milstein attorneys to its **“Top Lawyers”** list.
- In 2020, *The National Law Journal* named Shaylyn Cochran a **“Washington D.C. Trailblazer.”**
- In 2020, Lawdragon named 15 Cohen Milstein attorneys to its **“500 Leading Plaintiff Financial Lawyers”** list.
- In 2020, *The Best Lawyers in America* named 15 Cohen Milstein attorneys to its 2021 **“Best Lawyers in America”** list.
- In 2020, *The Best Lawyers in America* named Stephan A. LeClainche **“Personal Injury Lawyer of the Year – West Palm Beach, FL.”**
- In 2020, American Lawyer Media and The National Trial Lawyers named Cohen Milstein **“Antitrust Law Firm of the Year.”**
- In 2020, *Florida Trend* named Poorad Razavi a **“Legal Elite”** in the Civil Trial section.
- In 2020, *Law360* named Jamie Bowers a **“Rising Star – Benefits.”**
- In 2020, *Law360* named Emmy L. Levens a **“Rising Star – Class Actions.”**
- In 2020, *Law360* named Shaylyn Cochran a **“Rising Star – Employment.”**
- In 2020, *The Legal 500* named Cohen Milstein a **“Top-Tier”** firm in Labor and Employment: Labor and Employment Disputes (including Collective Actions): Plaintiff.
- In 2020, *The Legal 500* named Cohen Milstein a **“Leading Practice”** in Antitrust, Products Liability, and Securities Litigation.
- In 2020, *Florida Super Lawyers* recognized Nicholas C. Johnson, Leslie M. Kroeger, Stephan A. LeClainche, Theodore J. Leopold as **“Super Lawyers”** in the area of Personal Injury Law (Plaintiff); Adam J. Langino recognized as a **“Rising Star”** in Personal Injury Products: Plaintiff.
- In 2020, *Law360* named Cohen Milstein’s Daniel A. Small a **“Law360 Titan of the Plaintiffs Bar”** for his decades of successful work in antitrust litigation.
- In 2020, *The National Law Journal* named Cohen Milstein’s John Sheehan a **“2020 Plaintiffs’ Trailblazer”** in Environmental Law.
- In 2020, *Daily Business Review* named Cohen Milstein’s Leslie M. Kroeger a **“2020 DBR Distinguished Leader.”**
- In 2020, *Super Lawyers* recognized 17 Cohen Milstein attorneys as **“2020 Washington, DC Super Lawyers”** and seven Cohen Milstein attorneys as **“2020 Washington, DC Rising Stars.”**
- In 2020, *Chambers USA* recognized Cohen Milstein as a leading firm in the **“Antitrust: Plaintiffs – Nationwide”** category.
- In 2020, Lawdragon recognized eight Cohen Milstein lawyers in the **“2020 Lawdragon 500 Leading Plaintiff Consumer Lawyers”** list.
- In 2020, Lawdragon recognized 12 Cohen Milstein lawyers in the **“2020 Lawdragon 500 Leading Lawyers in America”** list.
- In 2020, American Lawyer Media and The National Trial Lawyers named Cohen Milstein **“Antitrust Law Firm of the Year.”**
- In 2020, *Law360* named Cohen Milstein **“Practice Group of the Year – Benefits”** for the firm’s work in 2019.
- In 2020, *Law360* named Cohen Milstein **“Practice Group of the Year – Consumer Protection”** for the firm’s work in 2019.

2019

- In 2019, *Law360* named Cohen Milstein’s Sharon K. Robertson **“Life Sciences – MVP”** for her cutting-edge “pay for delay” antitrust class actions in the Life Sciences industry.
- In 2019, *Law360* named Cohen Milstein’s Karen L. Handorf a 2019 **“Benefits – MVP”** for her exemplary work in ERISA litigation.
- In 2019, Lawdragon named Cohen Milstein’s Agnieszka Fryszman and Steve Toll to **“Lawdragon Legends,”** a list recognizing 30 of the “nation’s elite lawyers” who have been named to the Lawdragon 500 for at least ten years.

- In 2019, ALM and *The National Trial Lawyers* named seven of Cohen Milstein's practice areas to its **"Elite Trial Lawyer – Finalist"** list and recognized Karen L. Handorf as one of its **"Elite Women of the Plaintiffs Bar"** (2020).
- In 2019, the Seven Hills School awarded Cohen Milstein's Kalpana Kotagal with the **"Norma Martin Goodall Distinguished Alumni Award."**
- In 2019, the *Chicago Business Journal* named Cohen Milstein's Carol V. Gilden a 2019 **"Woman of Influence."**
- In 2019, the American Antitrust Institute honored Cohen Milstein's Jessica Weiner with an **"Outstanding Antitrust Litigation Achievement Award."**
- In 2019, Lawdragon named 15 Cohen Milstein lawyers to its 2019 **"500 Leading Plaintiff Financial Lawyers"** list.
- In 2019, *Law360* named Cohen Milstein's Mary Bortscheller a **"Rising Star."**
- In 2019, *The Best Lawyers in America* named 12 Cohen Milstein attorneys to its 2020 **"Best Lawyers in America"** list.
- In 2019, *The Best Lawyers in America* named Cohen Milstein's Karen L. Handorf as **"ERISA Litigation Lawyer of the Year – Washington, DC."**
- In 2019, *The Best Lawyers in America* named Cohen Milstein's Stephan A. LeClainche **"Medical Malpractice Lawyer of the Year – West Palm Beach, FL."**
- In 2019, Public Justice Foundation named Cohen Milstein one of five finalists for the **"Trial Lawyer of the Year Award."**
- In 2019, Cohen Milstein's Environmental Toxic Tort practice was named a winner of *The National Law Journal's* **"Elite Trial Lawyers" Award**, and Cohen Milstein's Agnieszka Fryszman and Sharon Robertson were named winners of *The National Law Journal's* **"Elite Women of the Plaintiffs Bar" Award**.
- In 2019, six of Cohen Milstein lawyers were named among the **"Lawdragon 500 Leading Plaintiff Consumer Lawyers."**
- In 2019, Cohen Milstein's Carol V. Gilden received Lawyer Monthly Magazine's **"Women in Law Award."**
- In 2019, four of Cohen Milstein partners were named to Benchmark Litigation's **"40 & Under Hot List."**
- In 2019, Cohen Milstein's Christine E. Webber received the Washington Lawyers' Committee for Civil Rights and Urban Affairs' **"Roderic V.O. Boggs Award."**
- In 2019, Cohen Milstein's Nicholas C. Johnson and Poorad Razavi were named to Florida Trend's **"Legal Elite."**
- In 2019, Cohen Milstein's Nicholas C. Johnson was appointed to serve on the **AAJ Board of Governors**.
- In 2019, *The National Law Journal* named Cohen Milstein an **"Elite Trial Lawyer"** finalist in five practice areas and named Agnieszka Fryszman and Sharon Robertson **"Elite Women of the Plaintiffs Bar."**
- In 2019, *Law360's* 2019 Glass Ceiling Report named Cohen Milstein among **"The Best Law Firms for Female Attorneys."**
- In 2019, *The Legal 500* recognized Cohen Milstein's Antitrust, Civil Rights & Employment, Products Liability, and Securities Litigation practices as **"Leading Practices,"** and named seven Cohen Milstein attorneys among their **"Leading Lawyers," "Next Generation Lawyers,"** and **"Rising Stars."**
- In 2019, Cohen Milstein was named to *The National Law Journal's* **"Pro Bono Hot List."**
- In 2019, 21 Cohen Milstein attorneys were recognized as **"Super Lawyers,"** and nine Cohen Milstein attorneys were recognized as **"Rising Stars."**
- In 2019, Cohen Milstein's Takisha D. Richardson was named a **Florida Bar Association's Wm. Reece Smith, Jr. Leadership Academy Fellow**.
- In 2019, six of Cohen Milstein's Civil Rights & Employment Litigation lawyers were named among the **"Lawdragon 500 Leading Plaintiff Employment Lawyers 2019."**
- In 2019, the *Daily Business Review* honored Cohen Milstein with three Professional Excellence Awards, including Theodore J. Leopold, **DBR's 2019 "Distinguished Leaders" award**, Nicolas C. Johnson, **DBR's 2019 "On the Rise" award**, and the firm's Sexual Abuse, Sex Trafficking, and Domestic Violence Litigation team, **DBR's 2019 "Innovative Practice Areas" award**.

- In 2019, four Cohen Milstein lawyers received **“The Burton Awards' Law360 Distinguished Legal Writing Award - Law Firm.”**
- In 2019, nine Cohen Milstein lawyers were named among the **“Lawdragon 500 Leading Lawyers in America.”**

2018

- In 2018, *The National Law Journal* and *Trial Lawyer Magazine*, named Steven J. Toll and Betsy A. Miller among **“America’s 50 Most Influential Trial Lawyers.”**
- In 2018, *Law360* named Cohen Milstein **“Practice Group of the Year”** in two categories: Consumer Protection and Environmental.
- In 2018, *Law360* named three partners MVP in the respective practices, including: Theodore J. Leopold as **Law360’s Environmental MVP**, Andrew N. Friedman as **Law360’s Cybersecurity and Privacy MVP**, and Kalpana Kotagal as **Law360’s Employment MVP**.
- In 2018, *The National Law Journal* named Cohen Milstein winner of **“Elite Trial Lawyer of the Year”** in four categories, including Consumer Protection, Counterterrorism, Immigration, and Financial Products, and finalist in five other categories, including Antitrust, Civil Rights, Disability Rights, Employment Rights, and Racial Discrimination.
- In 2018, *The National Law Journal* named Kalpana Kotagal, Betsy A. Miller, and G. Julie Reiser – **“Elite Women of the Plaintiffs Bar.”**
- In 2018 the *Daily Business Review* named Stephan A. LeClainche and Diana L. Martin as one of its **“Most Effective Lawyers”** for Medical Malpractice and Pro Bono, respectively.
- In 2018, A Better Balance presented Kalpana Kotagal with **“A Better Balance: The Work & Family Legal Center’s Distinguished Public Service Award.”**
- In 2018, the American Antitrust Institute honored Sharon K. Robertson with its **“Outstanding Antitrust Litigation Achievement Award.”**
- In 2018, the NAACP honored Cohen Milstein with its **“Foot Soldier in the Sand Award,”** in recognition of the firm’s outstanding commitment to providing pro bono legal services.
- In 2018, *The Best Lawyers in America* recognized eleven Cohen Milstein attorneys as among the **Best Lawyers in America (2019)**, in their respective areas of law.
- In 2018, *The Best Lawyers in America* singled out and named Joseph M. Sellers **“The Best Lawyers in America 2019, Labor Law Lawyer of the Year – Washington, D.C.”**
- In 2018, *The Best Lawyers in America* singled out and named Milstein’s Leslie M. Kroeger **“The Best Lawyers in America 2019, Mass Tort Litigation / Class Actions “Lawyer of the Year – West Palm Beach, FL.”**
- In 2018, *Palm Beach Illustrated* named seven Cohen Milstein attorneys to its **“Top Lawyers” List.**
- In 2018, *Benchmark Litigation* named four Cohen Milstein attorneys to its **“40 & Under Hot List.”**
- In 2018, *Florida Trend* named five Cohen Milstein attorneys to its list of **“Florida’s Legal Elite.”**
- In 2018, *Lawdragon 500* named five Cohen Milstein attorneys to **“Leading Plaintiff Employment Lawyers.”**
- In 2018, *Crain’s* named Carol V. Gilden one of Chicago’s **“Notable Women Lawyers.”**
- In 2018, Harvard Law School named Kalpana Kotagal a **“Wasserstein Fellow.”**
- In 2018, *Chambers USA Women in Law* honored Kalpana Kotagal with its **“Outstanding Contribution to the Community in Advancing Diversity Award.”**
- In 2018, the *New York Law Journal* named Sharon K. Robertson to its list of **“New York Rising Stars.”**
- In 2018, *The Legal 500: Guide to the US Legal Profession* listed Cohen Milstein’s **Antitrust, Employment Disputes, and Securities Litigation** practices among its **“Leading Practices.”**
- In 2018, the *Daily Business Review* named Leslie M. Kroeger a **“Distinguished Leader.”**
- In 2018, *Law360* named Steven J. Toll a 2018 **“Titan of the Plaintiffs Bar.”**
- In 2018, Leslie M. Kroeger was sworn-in as President-Elect to the Florida Justice Association.

- In 2018, Lawdragon named seven Cohen Milstein attorneys to the 2018 **“Lawdragon 500,”** an annual list of the **500 Leading Lawyers in America.**
- In 2018, Theodore J. Leopold was recognized as an **“Energy and Environmental Trailblazer”** by *The National Law Journal*.
- In 2018, *Super Lawyers* recognized 20 Cohen Milstein attorneys as **“2018 Super Lawyers”** and 12 Cohen Milstein attorneys as **“Super Lawyer Rising Stars.”**

2017

- In 2017, *Law360* named Cohen Milstein a **“Practice Group of the Year: Privacy.”**
- In 2017, Steven J. Toll was named a *Law360* **“MVP – Class Action.”**
- In 2017, the *Daily Business Review* named Theodore J. Leopold a **“Most Effective Lawyer of 2017: Class Action.”**
- In 2017, Joel Laitman, Christopher Lometti, Betsy Miller, and Victoria Nugent were named *The National Law Journal’s* **“Plaintiffs’ Lawyers Trailblazers.”**
- In 2017, *The Best Lawyers in America* recognized seven Cohen Milstein partners as among the **“Best Lawyers in America”** for their respective practices of law.
- In 2017, *Law360* named Cohen Milstein partners, S. Douglas Bunch and Kalpana Kotagal as **“Rising Stars.”**
- In 2017, *The Legal 500* named Cohen Milstein a **Leading Firm** in “Antitrust: Civil Litigation / Class Actions” and “Dispute Resolution: Securities Litigation – Plaintiff.”
- In 2017, *The Legal 500* named Richard A. Koffman to its **“Legal 500 Hall of Fame.”**
- In 2017, *Legal 500* named Sharon K. Robertson and Brent W. Johnson as **“Legal 500 Next Generation Lawyer”** in the area of Antitrust: Civil Litigation/Class Actions.
- In 2017, *Super Lawyers* named Brent W. Johnson as a **“Rising Star”** and a **“Top Rated Antitrust Litigation Attorney in Washington, DC.”**
- In 2017, *Super Lawyers* named Leslie M. Kroeger, Stephan A. Le Clainche, and Theodore J. Leopold **“Florida Super Lawyers”** and Nicholas C. Johnson and Adam J. Langino **“Florida Rising Stars.”**
- In 2017, the Coalition for Independent Living Options Inc. presented Michael Dolce a Special Acknowledgment Award for his **“Commitment to Ending Sex Crimes against People with Disabilities.”**
- In 2017, Adam J. Langino was elected American Association for Justice’s Newsletter Chair for the Product Liability Section.
- In 2017, *Florida Trend* named Manuel J. Dominguez a **“Legal Elite.”**
- In 2017, Nicholas C. Johnson was elected President of the F. Malcolm Cunningham, Sr. Bar Association.
- In 2017, Leslie M. Kroeger was elected Treasurer to the Florida Justice Association.
- In 2017, *South Florida Legal Guide* named Theodore J. Leopold as a **“Top Lawyer,”** and Diana L. Martin and Adam Langino a **“Top Up and Comer.”**

Partner Profiles – Employee Benefits / ERISA

Mary J. Bortscheller

Mary J. Bortscheller is a Partner at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Ms. Bortscheller represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Ms. Bortscheller is a hands-on, strategic litigator, thoroughly versed in the complexities of ERISA law. In 2019, she was named a Law360 "Rising Star," recognizing lawyers under the age of 40 whose professional accomplishments transcend their age.

Ms. Bortscheller is involved in a series of groundbreaking cases involving employer-sponsored defined benefit plans known as "church plans," where non-profit health care systems in the United States claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Ms. Bortscheller also represents employees in litigation involving 401(k) plans and Employee Stock Ownership Plans (ESOPs) in complex breach of fiduciary duty litigation under ERISA.

Ms. Bortscheller is currently litigating the following matters:

- **BlackRock 401(k) Plan Litigation (N.D. Cal.):** Cohen Milstein represents participants in the BlackRock 401(k) Plan, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k) savings almost exclusively in BlackRock proprietary funds and by using BlackRock subsidiaries to broker securities lending deals using the Plan's assets.
- **AT&T Pension Benefit Plan Litigation (N.D. Cal.):** Cohen Milstein represents plaintiffs and a putative class of participants and beneficiaries in the AT&T Pension Benefit Plan in a case alleging AT&T improperly calculated the pension benefits of certain retirees who retired early and/or took a joint and survivor annuity. As a result of the improper calculation, plaintiffs received a lower pension benefit than they were entitled to under ERISA.
- **Western Milling ESOP Litigation (E.D. Cal.):** Cohen Milstein is representing plaintiff in a suit brought on behalf of participants and beneficiaries of the Western Milling Employee Stock Ownership Plan. Plaintiff, a participant in the ESOP, alleges that the ESOP's fiduciaries breached their fiduciary duties and engaged in prohibited transactions under ERISA by causing the ESOP to purchase 100% of Kruse-Western, Inc. company stock at an inflated stock price which did not take into account significant liabilities of the company. The value of the company stock subsequently dropped by 90% shortly after the purchase and has not significantly recovered.

Ms. Bortscheller was also significantly involved in the following high-profile successes:

- **Bon Secours Health System Church Litigation (D. Md.):** Cohen Milstein served as lead counsel to a class of defined benefit participants of seven Bon Secours Health System Inc. pension plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a settlement of over \$102 million, one of the largest settlements of its kind.
- **Trinity Health Corporation Church Plan Litigation (D. Md.):** Cohen Milstein served as co-lead counsel to a class of defined benefit participants of Trinity Health Corp. pensions plans which plaintiffs alleged improperly operated under the "church plan" exemption of ERISA. In May 2017, the court granted final approval of a \$75 million settlement.
- **Advocate Health Care Church Plan Litigation (N.D. Ill.):** Cohen Milstein served as co-lead counsel to a class of defined benefit participants, who alleged that the hospital's plan was not a church plan and thus the class was entitled to ERISA's protections. After the Supreme Court redirected this case back to the district court, in June 2018, the court granted final approval of a settlement, which provides a guarantee of accrued benefits for ten years and significant non-monetary equitable consideration.

- SSM Health Care Church Plan Litigation (E.D. Mo.): Cohen Milstein served as lead counsel to a class of defined benefit participants who alleged that SSM Health improperly operated its defined benefit pension plans under the ERISA church plan exemption, thereby underfunding the plans as required by ERISA to the detriment of plan benefits. In June 2019, the court granted final approval of a \$60 million settlement.

In addition to her ERISA case work, Ms. Bortscheller has represented, pro bono, unaccompanied minor clients in immigration proceedings. Prior to joining Cohen Milstein in 2013, Ms. Bortscheller practiced at a boutique commercial litigation firm based in Chicago, where she represented plaintiffs in antitrust and qui tam matters, as well as defendants in general commercial litigation.

Ms. Bortscheller graduated from Gustavus Adolphus College with a B.A., cum laude, in Political Science, and received her J.D., cum laude, from American University, Washington College of Law. During law school, she served as Features Editor and Senior Editor of Sustainable Development Law & Policy and was a staff member of the American University International Law Review. Ms. Bortscheller served as a judicial intern with the United States District Court for the District of Minnesota.

Before attending law school, Ms. Bortscheller served in the United States Peace Corps teaching English as a foreign language in Sichuan Province, China. Following law school, she was a volunteer for the Chicago Legal Clinic, Inc.'s Foreclosure Defense Project.

Michelle C. Yau

Michelle C. Yau is a Partner at Cohen Milstein and Chair of the firm's Employee Benefits/ERISA practice group. In this role, Ms. Yau represents the interests of employees, retirees, plan participants or beneficiaries in ERISA cases, with a focus on ERISA cases involving complex financial transactions or actuarial issues.

Ms. Yau is passionate about protecting pension plan participants. She brings to her practice a unique combination of government experience related to enforcing labor statutes and experience in finance, addressing complex financial instruments. Prior to joining Cohen Milstein in 2007, Ms. Yau was an Honors Program Attorney at the Department of Labor where she enforced and administered a variety of labor statutes, and before pursuing a career in law she worked as a financial analyst at Goldman Sachs in the Financial Institutions Group of the Investment Banking Division.

As a result of this unique experience, Ms. Yau has played an instrumental role in some of the most significant ERISA lawsuits in recent U.S. history, including litigation that emerged from the Madoff Ponzi scheme, including:

- In re Beacon Association Litigation (S.D.N.Y.): Ms. Yau represented a multi-plan class of participants, beneficiaries and fiduciaries, which settled along with other consolidated cases for \$219 million in 2013, representing 70% of the Class members' out-of-pocket losses. The judge praised the settlement, describing the outcome as "extraordinary" and the praising the "hard work" done by plaintiffs' counsel, including Cohen Milstein.
- In re Austin Capital Management Litigation (S.D.N.Y.): A case which was settled by the Department of Labor on the ERISA class on very favorable terms, Ms. Yau alleged that Madoff's returns, based on his advertised investment strategy, were mathematically impossible, a fact Austin Capital ought to have recognized well before the fraud was revealed.

Ms. Yau is presently litigating a series of church plan lawsuits alleging that health care systems wrongfully claim their benefit plans are exempt from ERISA's protection. She oversees the day-to-day management of these cases, including coordinating all the aspects of the litigation. She is also involved in a series of high-profile class actions involving 401ks, Employee Stock Ownership Plans (ESOPs), and other types of employee benefit plans that are allegedly in breach of ERISA and undervaluing the investments to defined beneficiaries.

Currently, Ms. Yau is representing clients in the following notable matters:

- Dignity Health Church Plan Litigation (N.D. Cal.): Cohen Milstein is co-counsel to a class of defined benefit participants, which alleges that Dignity Health is improperly claiming that its pension plans are exempt from ERISA's protections because they are "church plans," and as a result has underfunded its plans by over \$1.2 billion. In 2016, the Supreme Court agreed to hear arguments on consolidated church plan cases, and in June 2017, it reversed previous rulings and ordered plaintiffs, in this case, to file an amended complaint. Pending final approval by the court, Dignity has agreed to settle class claims for \$100 million.
- BlackRock 401(k) Retirement Plan Litigation (N.D. Cal.): Cohen Milstein is representing BlackRock 401(k) Plan participants and beneficiaries, who allege that the Plan fiduciaries violated their duties under ERISA by investing employees' 401(k) savings almost exclusively in BlackRock proprietary funds and by using Blackrock subsidiaries to broker securities lending deals using the Plan's assets.
- Western Milling ESOP Litigation (E.D. Cal.): Cohen Milstein is representing participants and beneficiaries of the Western Milling Employee Stock Ownership Plan, who allege that the ESOP's trustees breached their fiduciary duties by engaging in risky investments in violation of ERISA, including purchasing 100% of Kruse-Western, Inc. company stock, which subsequently dropped by 90% shortly after the purchase.

Ms. Yau played an instrumental leadership role in the following high-profile cases:

- Presence Health Plan Litigation (N.D. Ill.): Cohen Milstein represented Presence Health Network-sponsored pension plan participants and beneficiaries, who allege that defendants wrongly claimed that the plans under dispute qualified as ERISA-exempt "church plans" and subsequently denied participants the protections of ERISA, including underfunding the plans by over \$175 million. In July 2018, the court granted final approval to a \$50 million settlement.
- Trinity Church Plan Litigation: Cohen Milstein is counsel to a class of defined benefit participants in which allege that the hospital's plan is not a church plan and thus the class is entitled to ERISA's protections and thereby underfunded the plan by over \$600 million. In May 2017, the granted final approval of a \$75 million settlement.
- Advocate Health Care Church Plan Litigation (N.D. Ill.): Cohen Milstein served as co-lead counsel to a class of defined benefit participants, which alleged that the hospital's plan was not a church plan and thus the class was entitled to ERISA's protections. In 2016, the Supreme Court agreed to hear arguments on consolidated church plan cases, and in June 2017, it reversed previous rulings in favor of the plaintiffs. The Supreme Court, however, did not decide plaintiffs' other theories of liability and this case was returned to the district court for further litigation and subsequent mediation. In June 2018, the court granted final approval of a settlement.
- St. Anthony Medical Center Church Plan Litigation (N.D. Ill.): Cohen Milstein is counsel to a class of defined benefit participants, which alleges that the Medical Center violated numerous provisions of ERISA by improperly operating the plan as exempt from ERISA's protections. As a result, the class of participants suffered cutbacks as much as 40% of their promised benefits. In April 2019, the court granted final approval to a \$4 million settlement.
- Merrill Lynch ERISA Litigation (S.D.N.Y.): Cohen Milstein served as interim co-lead counsel in a class action alleging that fiduciaries of the Merrill Lynch retirement plans imprudently purchased and held inflated Merrill employer stock for the retirement accounts of the companies' employees. The litigation was resolved for \$75 million. Ms. Yau was engaged in all aspects of the litigation.
- Madoff Ponzi Scheme Litigation (S.D.N.Y.): Cohen Milstein represented a multi-plan class of participants, beneficiaries and fiduciaries in re Beacon Assoc. Litig. The \$219 million settlement in 2013 represented 70% of the Class members' out-of-pocket losses. Ms. Yau was engaged in all aspects of the litigation.
- Weyerhaeuser Pension Plan Litigation: Cohen Milstein was lead counsel in a lawsuit alleging that the Weyerhaeuser Company caused its Defined Benefit Retirement Plans to engage in a risky investment strategy involving alternative investments and derivatives, causing the Plans' master trust to become underfunded. A

settlement was reached for injunctive relief on behalf of Plans' participants and beneficiaries. Ms. Yau was engaged in all aspects of the litigation.

For her work in cutting-edge ERISA litigation, Law360 named Ms. Yau a Rising Star Under 40 in 2014. Ms. Yau is a prolific public speaker and is frequently invited to speak at ABA functions and CLE programs on ERISA litigation updates and trends.

Ms. Yau received her law degree from Harvard Law School in 2003, where she was awarded several public interest fellowships, including the Heyman Fellowship for academic excellence and a demonstrated commitment to federal public service. Ms. Yau graduated Phi Beta Kappa with a B.A. in Mathematics from the University of Virginia. Ms. Yau was also selected as an Echols Scholar and awarded the Student Council Scholarship for leadership, academic achievement and community service.

Of Counsel & Associate Profiles – Employee Benefits / ERISA

Scott M. Lempert

Scott M. Lempert is Of Counsel at Cohen Milstein and a member of the firm's Employee Benefits (ERISA) Practice Group. He joined the firm in 2016 and represents the interests of employees, retirees, and plan participants and beneficiaries in ERISA cases in the district court and on appeal.

Mr. Lempert is currently engaged in litigating a number of so-called “church plan” lawsuits. These cutting-edge legal cases assert that many non-profit health care systems in the United States wrongfully claim their benefit plans are exempt from ERISA regulation under the church plan exemption. Currently, Cohen Milstein serves as lead or co-lead counsel in 12 separate cases in various jurisdictions throughout the U.S.

Mr. Lempert has over 20 years of experience litigating complex commercial class actions on behalf of employees, retirees and consumers in retiree benefits, employment, consumer protection and antitrust matters. Prior to joining Cohen Milstein he worked on many high-profile matters, including:

- In re: Unisys Corp. Retiree Medical Benefits ERISA Litig. – a series of cases involving representation of thousands of retirees, both as class actions and individually, seeking restoration of lifetime retiree medical benefits unlawfully terminated after retirement. These cases successfully achieved multiple settlements and court judgments providing lifetime retiree medical benefits for some and a continuing stream of payments to pay for medical benefits for other retirees.
- Raetsch v. Lucent Technologies – 36 million dollar settlement involving unlawful transfer of excess defined benefit pension funds to an account to pay for retiree medical benefits.
- Mehling v. New York Life Insurance Co. -- 14 million dollar settlement challenging excessive fees charged to New York Life employees and the company’s pension plan for Plan assets invested in New York Life owned mutual funds.
- Stagi v. National R.R. Passenger Corp. – Gender discrimination class action alleging unlawful disparate impact on female union employees resulting from enforcement of an Amtrak employee policy that blocked union employees from promotion to management. Settlement provided Amtrak employees compensation for denial of opportunities for promotion and the striking of the unlawful employment policy.

Mr. Lempert graduated Phi Beta Kappa from the University of Delaware with a B.A., magna cum laude, in Psychology, and received his J.D., from the University of Pennsylvania Law School. During law school, he served as Vice President of the Law School Government and was a Morris Fellow.

Laura Older

Laura Older is an Associate at Cohen Milstein and a member of the firm’s Employee Benefits Practice Group. In this role, Ms. Older represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein, Ms. Older was a law clerk for the Honorable John D. Couriel of the Supreme Court of Florida.

Ms. Older earned her B.A., summa cum laude, from The Florida State University. She received her J.D. from Harvard Law School, where she served as the President of Lambda, Harvard Law School’s LGBTQ student organization, and the Executive Technical Editor of the Journal of Law & Gender. During law school, Ms. Older interned with the ACLU of Florida and Planned Parenthood.

Before pursuing a career in law, Ms. Older worked as a theatre marketing consultant in New York City.

Ms. Older is admitted only in Massachusetts. She is seeking admission to the District of Columbia Bar, and is currently working under the close supervision of the Partners of the firm who are admitted to practice in the District of Columbia.

Daniel R. Sutter

Daniel R. Sutter is an Associate at Cohen Milstein and a member of the Firm's Employee Benefits practice group. In his role, Mr. Sutter represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to becoming an Associate at the firm, Mr. Sutter served as a Legal Fellow in the Employee Benefits practice. In this role he investigated, developed, and drafted complaints against major financial institutions for ERISA violations involving complex investment vehicles. Mr. Sutter's previous experience at Cohen Milstein also includes serving as a Law Clerk (2013-2016) and as an Analyst (2010-2016); in both roles he researched potential cases for various practice groups. During 2015, Mr. Sutter served as a law clerk at the Consumer Financial Protection Bureau, Legal Division.

Mr. Sutter attended George Washington University, graduating with a B.A. in Finance in 2010. He earned his J.D. from the George Washington University Law School in 2016. During law school, Mr. Sutter was a member of the Federal Circuit Bar Journal. He also studied at the London School of Economics.

Ryan Wheeler

Ryan Wheeler is an Associate at Cohen Milstein and a member of the firm's Employee Benefits Practice Group. In this role, Mr. Wheeler represents the interests of employees, retirees, plan participants and beneficiaries in ERISA cases across the country.

Prior to joining Cohen Milstein as an Associate, Mr. Wheeler was a Fellow in Cohen Milstein's Fellowship program, where he worked on litigation matters spanning the firm's antitrust, consumer protection, civil rights and employment litigation, human rights, and securities litigation practices.

Before that, Mr. Wheeler was a law clerk to the Honorable Michael H. Simon of the United States District Court for the District of Oregon.

Mr. Wheeler received his B.A. from Pomona College and his J.D. from Harvard Law School, where he was the Solicited Content Editor for Harvard Civil Rights-Civil Liberties Law Review, a founding member of the Pipeline Parity Project (now known as the People's Parity Project), and the Co-President of Project No One Leaves.

Mr. Wheeler is admitted only in California. He has applied for admission to the District of Columbia Bar and is currently working under the close supervision of the partners of the firm who are admitted to practice in the District of Columbia.

EXHIBIT 2-C

Keller Rohrback Lodestar Calculations

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Keller Rohrback Lodestar Calculations**Phase One: Initial District Court proceedings – inception to 11/30/2014****Categories:**

5 Case Management Statements	10 Discovery	15 Investigation	19 Motion to Dismiss
7 Class Certification	11 Discovery Disputes	16 Mediation/Settlement	22 Second § 1292 Motion
8 Clients	12 Experts/Consultants	17 Motion for Injunction	24 Summary Judgment
9 Complaint	13 First § 1292 Motion	18 Motion Practice	

Timekeeper	Hours by Category															Total Hours	Current Rate	Lodestar - Current Rate
	5	7	8	9	10	11	12	13	15	16	17	18	19	22	24			
Al de Vries, Paralegal		0.8	12.8		217.7	6.5	5.5	2.8				9.2	28	5	28.7	317	\$ 340	\$ 107,780.00
Cari Laufenberg, Partner		36.5	0.8			2.4							3.3			43	\$ 915	\$ 39,345.00
Chris Graver, Partner	52.5	3.9	8.8	2.7	55.4	157.5			1.1	11.3	52.7	4.4		42.9	2.9	396.1	\$ 925	\$ 366,392.50
Eric Fierro, Partner					39.9	13	1									53.9	\$ 625	\$ 33,687.50
Erin Riley, Partner												33			17	50	\$ 915	\$ 45,750.00
Harry Williams, Associate			0.9		77.5	112.1	8.3	37.9				11.3			29.7	277.7	\$ 595	\$ 165,231.50
Havila Unrein, Partner	58.2	11.5	45.7	5.4	26.5	1.9	0.5	0.1	7.6	2.5	1.4	6.5	23.9	1.1	1.4	194.2	\$ 730	\$ 141,766.00
Jennifer Dallape Morgan, Paralegal			0.5		30.5											31	\$ 225	\$ 6,975.00
Jennifer Tuato'o, Paralegal		15	40.1	6.3	407	3		3.2	10.3		10.9	11.7	37.6		1.9	553.65	\$ 365	\$ 202,082.25
Jason Chukas, Document Analyst					152.3											152.3	\$ 215	\$ 32,744.50
Jason Kolcun, Paralegal	0.8	7.6			36.8		0.2						8.4			53.8	\$ 365	\$ 19,637.00
Karen Trumpower, Legal Assistant	1.8	1.8	0.6		0.4	7.7						0.4		16.2		28.9	\$ 241	\$ 6,964.90
Kash Karmand, Associate		1.4			13.9	3	4.4	0.5	1			59.9	4.2		0.3	88.6	\$ 400	\$ 35,440.00
Laurie Ashton, Partner	34.2	8.8	9	13.1	214.5	116.4	38.6	19.2	39.6	13.2	21	66	171.7	10	153.7	929	\$ 960	\$ 891,840.00
Lynn Sarko, Partner	19	1.2		5.5	80.3	25.6	4.5	15.5	42	4.5	2.8	7.5	91.4		42.2	342	\$ 1,060	\$ 362,520.00
Laura Gerber, Partner			2.7		9.2	1.5							0.2			13.6	\$ 915	\$ 12,444.00
Matthew Gerend, Partner	70.6	14.3	51.4	28	230.1	220.3	2.1	77.9	34.9	19.5	184	69.1	251.1	21	333.5	1607.8	\$ 655	\$ 1,053,109.00
Ron Kilgard, Partner	1.5	56.7	36.8	1.2	31.4	14.1	27.1		14.7		15.5	9.8	31.9	10.1	22.3	273.1	\$ 1,000	\$ 273,100.00
Susan James, Electronic Discovery Mgmt.					44.85											44.85	\$ 475	\$ 21,303.75
Total Hours by All Timekeepers	238.6	159.5	210.1	62.2	1668.3	685.0	92.2	157.1	151.2	51.0	288.3	288.8	651.7	106.3	633.6	5450.5		\$3,818,112.90

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Keller Rohrback Lodestar Calculations**Phase Two: Ninth Circuit Appeal – 12/1/2014 to 8/31/2016****Categories:**

2	Appeal Argument	16	Mediation/Settlement
3	Appeal Briefing	21	Post-Argument Briefing
8	Clients		

Timekeeper	Hours by Category					Total Hours	Current Rate	Lodestar - Current Rate
	2	3	8	16	21			
AJ de Vries, Paralegal		32	15.9	1.5	10	59.4	\$ 340	\$ 20,196.00
Chris Graver, Partner	17.7	83.9	13.6	6.5	19.1	140.8	\$ 925	\$ 130,240.00
Erin Riley, Partner		37				37	\$ 915	\$ 33,855.00
Havila Unrein, Partner	57.1	0.8	31.4		0.5	89.8	\$ 730	\$ 65,554.00
Jennifer Tuato'o, Paralegal		2.7	20.9		1.6	25.2	\$ 365	\$ 9,198.00
Jason Kolcun, Paralegal						0	\$ 365	\$ -
Karen Trumpower, Legal Assistant	69.2	1			0.4	70.6	\$ 241	\$ 17,014.60
Kash Karmand, Associate	5.2					5.2	\$ 400	\$ 2,080.00
Laurie Ashton, Partner	9	26		19.2	12.7	66.9	\$ 960	\$ 64,224.00
Lynn Sarko, Partner	1	3.4		12.8	1	18.2	\$ 1,060	\$ 19,292.00
Laura Gerber, Partner	28.3		0.5	0.3	0.6	29.7	\$ 915	\$ 27,175.50
Matthew Gerend, Partner	69.4	291.4	52.5	0.7	12	426	\$ 655	\$ 279,030.00
Ron Kilgard, Partner	202.4	52.6	27.9	8.9	27	318.8	\$ 1,000	\$ 318,800.00
Total Hours by All Timekeepers	459.3	530.8	162.7	49.9	84.9	1287.6		\$ 986,659.10

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Keller Rohrback Lodestar Calculations**Phase Three: Supreme Court Proceedings – 9/1/2016 to 7/17/2017****Categories:**

6	Cert Petition and Brief	16	Mediation/Settlement
8	Clients	18	Motion Practice
14	Government Agency Meetings	20	Oral Argument

	Hours by Category								
Timekeeper	6	8	14	16	18	20	Total Hours	Current Rate	Lodestar - Current Rate
AJ de Vries, Paralegal	16	2.5		46.7	11		76.2	\$ 340	\$ 25,908.00
Chris Graver, Partner	0.3	0.3		1.3	3.6		5.5	\$ 925	\$ 5,087.50
Havila Unrein, Partner	8.5	15.2		11	0.2	22.1	57	\$ 730	\$ 41,610.00
Jennifer Tuato'o, Paralegal	0.3	2.7		19.8			22.8	\$ 365	\$ 8,322.00
Laurie Ashton, Partner	14.3			48.2	21.3		83.8	\$ 960	\$ 80,448.00
Lynn Sarko, Partner	16.7			47.4	5.4	7	76.5	\$ 1,060	\$ 81,090.00
Laura Gerber, Partner	4.9	1		0.8	0.1		6.8	\$ 915	\$ 6,222.00
Matthew Gerend, Partner	66.9	6.5	1.5	0.9	27.5	0.2	103.5	\$ 655	\$ 67,792.50
Ron Kilgard, Partner	39.3	5.4	18.4	57.4	38.1		158.6	\$ 1,000	\$ 158,600.00
Total Hours by All Timekeepers	167.2	33.6	19.9	233.5	107.2	29.3	590.7		\$ 475,080.00

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Keller Rohrback Lodestar Calculations**Phase Four: Remand to District Court – 7/18/2017 to 5/25/2019****Categories:**

1	Amended Complaint	16	Mediation/Settlement
5	Case Management Statements	18	Motion Practice
8	Clients	23	Settlement Approval
10	Discovery		

	Hours by Category									
Timekeeper	1	5	8	10	16	18	23	Total Hours	Current Rate	Lodestar - Current Rate
AJ de Vries, Paralegal	1	9.1	10.2	12.9	19	30		82.2	\$ 340	\$ 27,948
Chris Graver, Partner	102.7	186.4	37.9	128.3	196.2	77	70.6	799.1	\$ 925	\$ 739,168
Eric Fierro, Partner				2.1				2.1	\$ 625	\$ 1,313
Havila Unrein, Partner			1.3			0.3		1.6	\$ 730	\$ 1,168
Jennifer Tuato'o, Paralegal	10	1.1	0.9		0.6	16.9		29.5	\$ 365	\$ 10,768
Lynn Sarko, Partner	11	3.5		24.1	149	15.7	0.8	204.1	\$ 1,060	\$ 216,346
Laura Gerber, Partner	2.3	0.8	0.6	0.6	15	18.9	1.3	39.5	\$ 915	\$ 36,143
Matthew Gerend, Partner	11.4	45.7	16.3	5	21.4	252	0.3	352.1	\$ 655	\$ 230,626
Rachel Morowitz, Associate	10.2					52.6		62.8	\$ 525	\$ 32,970
Ron Kilgard, Partner	11.1	51	20.6	45.4	361.9	33.9	13	536.9	\$ 1,000	\$ 536,900
Total Hours by All Timekeepers	159.7	297.6	87.8	218.4	763.1	497.3	86	2109.9		\$ 1,833,348

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Keller Rohrback Summary Lodestar Calculations

Timekeeper	Phase 1 Hrs.	Phase 2 Hrs.	Phase 3 Hrs.	Phase 4 Hrs.	Total Hrs.	Current Billing Rate	Lodestar
AJ de Vries, Paralegal	317.00	59.40	76.20	82.20	534.80	\$ 340.00	\$ 181,832.00
Cari Laufenberg, Partner	43.00	-	-	-	43.00	\$ 915.00	\$ 39,345.00
Chris Graver, Partner	396.10	140.80	5.50	799.10	1,341.50	\$ 925.00	\$ 1,240,887.50
Eric Fierro, Partner	53.90	-	-	2.10	56.00	\$ 625.00	\$ 35,000.00
Erin Riley, Partner	50.00	37.00	-	-	87.00	\$ 915.00	\$ 79,605.00
Harry Williams, Associate	277.70	-	-	-	277.70	\$ 595.00	\$ 165,231.50
Havila Unrein, Partner	194.20	89.80	57.00	1.60	342.60	\$ 730.00	\$ 250,098.00
Jennifer Dallape Morgan, Paralegal	31.00	-	-	-	31.00	\$ 225.00	\$ 6,975.00
Jennifer Tuato'o, Paralegal	553.65	25.20	22.80	29.50	631.15	\$ 365.00	\$ 230,369.75
Jason Chukas, Document Analyst	152.30	-	-	-	152.30	\$ 215.00	\$ 32,744.50
Jason Kolcun, Paralegal	53.80	-	-	-	53.80	\$ 365.00	\$ 19,637.00
Karen Trumpower, Legal Assistant	28.90	70.60	-	-	99.50	\$ 241.00	\$ 23,979.50
Kash Karmand, Associate	88.60	5.20	-	-	93.80	\$ 400.00	\$ 37,520.00
Laurie Ashton, Partner	929.00	66.90	83.80	-	1,079.70	\$ 960.00	\$ 1,036,512.00
Lynn Sarko, Partner	342.00	18.20	76.50	204.10	640.80	\$ 1,060.00	\$ 679,248.00
Laura Gerber, Partner	13.60	29.70	6.80	39.50	89.60	\$ 915.00	\$ 81,984.00
Matthew Gerend, Partner	1,607.80	426.00	103.50	352.10	2,489.40	\$ 655.00	\$ 1,630,557.00
Rachel Morowitz, Associate	-	-	-	62.80	62.80	\$ 525.00	\$ 32,970.00
Ron Kilgard, Partner	273.10	318.80	158.60	536.90	1,287.40	\$ 1,000.00	\$ 1,287,400.00
Susan James, Electronic Discovery Mgmt.	44.85	-	-	-	44.85	\$ 475.00	\$ 21,303.75
Total Hours by All Timekeepers	5,450.50	1,287.60	590.70	2,109.90	9,438.70		\$ 7,113,199.50

EXHIBIT 2-D

Cohen Milstein Lodestar Calculations

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-CV-01450-JST

Cohen Milstein Sellers & Toll Lodestar Calculations**Phase One: Initial District Court Proceedings****Phase One Categories**

51	Pleadings & Briefs	60	Contact with Counsel
52	Research	63	Contact with Client
53	Depositions	64	Experts
54	Document Discovery	70	Court Appearance - Trial
55	Other Discovery	71	Prepare Court Appearances
58	Settlement		

	Hours by Category													
Timekeeper	51	52	53	54	55	58	60	63	64	70	71	Total Hours	Current Rate	Lodestar
Handorf, Karen, L., Partner	89.00	16.00			3.25	5.75	5.25	2.75	0.50	1.00	1.25	124.75	\$ 1,025	\$ 127,868.75
Yau, Michelle, C., Partner	27.25	10.25	7.75	4.25	9.25	0.50	7.25	1.00		1.00	1.75	70.25	\$ 805	\$ 56,551.25
Rinaldi, Bruce, Of Counsel	225.75	4.00		2.00			2.00	10.00				243.75	\$ 790	\$ 192,562.50
Bortscheller, Mary, J., Partner	1.25				0.25							1.50	\$ 665	\$ 997.50
Bunch, Monya, Associate	23.75	1.00		0.50	3.75		0.50	0.50				30.00	\$ 580	\$ 17,400.00
Smith, Matthew, A., Associate	117.00			4.25			1.00	0.50				122.75	\$ 450	\$ 55,237.50
Lindblom, Alina, Paralegal	59.50	22.00		8.25			1.75	16.75	0.50			108.75	\$ 250	\$ 27,187.50
Total Hours by All Timekeepers	543.50	53.25	7.75	19.25	16.50	6.25	17.75	31.50	1.00	2.00	3.00	701.75		\$ 477,805.00

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-CV-01450-JST

Cohen Milstein Sellers & Toll Lodestar Calculations**Phase Two: Ninth Circuit Appeal****Phase Two Categories**

51	Pleadings & Briefs	60	Contact with Counsel
52	Research	63	Contact with Client
55	Other Discovery	64	Experts
57	Appellate Court Proceedings	71	Prepare Court Appearances
58	Settlement		

	Hours by Category											
Timekeeper	51	52	55	57	58	60	63	64	71	Total Hours	Current Rate	Lodestar
Handorf, Karen, L., Partner	13.50			1.50			0.25	0.25	0.50	16.00	\$ 1,025	\$ 16,400.00
Lempert, Scott, Of Counsel	0.75					0.25	0.25			1.25	\$ 840	\$ 1,050.00
Yau, Michelle, C., Partner	4.00	0.25		0.75	1.00	0.50			1.75	8.25	\$ 805	\$ 6,641.25
Rinaldi, Bruce, Of Counsel	2.50	1.50					0.75			4.75	\$ 790	\$ 3,752.50
Bortscheller, Mary, J., Partner	19.25				2.75		6.25			28.25	\$ 665	\$ 18,786.25
Bunch, Monya, Associate	0.25									0.25	\$ 580	\$ 145.00
Smith, Matthew, A., Associate			1.00			0.25				1.25	\$ 450	\$ 562.50
Total Hours by All Timekeepers	40.25	1.75	1.00	2.25	3.75	1.00	7.50	0.25	2.25	60.00		\$ 47,337.50

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-CV-01450-JST

Cohen Milstein Sellers & Toll Lodestar Calculations**Phase Three: Supreme Court Review****Phase Three Categories**

51	Pleadings & Briefs	62	Fee Appl. & Proceedings
52	Research	63	Contact with Client
54	Document Discovery	64	Experts
57	Appellate Court Proceedings	70	Court Appearance - Trial
58	Settlement	71	Prepare Court Appearances
60	Contact with Counsel		

Timekeeper	Hours by Category											Total Hours	Current Rate	Lodestar
	51	52	54	57	58	60	62	63	64	70	71			
Handorf, Karen, L., Partner	91.50	5.50		3.75	8.25	0.50		0.50			8.25	118.25	\$ 1,025	\$ 121,206.25
Lempert, Scott, Of Counsel	17.75	0.75	0.25			23.50		0.75		1.75		44.75	\$ 840	\$ 37,590.00
Yau, Michelle, C., Partner	12.50	3.00		42.00	2.25	13.25	0.50					73.50	\$ 805	\$ 59,167.50
Bortscheller, Mary, J., Partner	13.00	4.00	0.25	59.25	1.00			3.00	0.50			81.00	\$ 665	\$ 53,865.00
Bowers, Jamie, Associate	105.50											105.50	\$ 585	\$ 61,717.50
Deweese, Maria, Paralegal	12.00	17.50		1.25		0.75		9.25				40.75	\$ 290	\$ 11,817.50
Grant-Knight, Connor, Paralegal	6.75	14.25				2.75						23.75	\$ 290	\$ 6,887.50
Total Hours by All Timekeepers	259.00	45.00	0.50	106.25	11.50	40.75	0.50	13.50	0.50	1.75	8.25	487.50		\$ 352,251.25

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-CV-01450-JST

Cohen Milstein Sellers & Toll Lodestar Calculations**Phase Four: District Court Proceedings on Remand****Phase Four Categories**

- 51 Pleadings & Briefs
- 52 Research
- 58 Settlement
- 60 Contact with Counsel
- 63 Contact with Client

	Hours by Category							
Timekeeper	51	52	58	60	63	Total Hours	Current Rate	Lodestar
Handorf, Karen, L., Partner	8.25		15.25			23.50	\$ 1,025	\$ 24,087.50
Lempert, Scott, Of Counsel					0.75	0.75	\$ 840	\$ 630.00
Yau, Michelle, C., Partner	3.50		43.75			47.25	\$ 805	\$ 38,036.25
Bortscheller, Mary, J., Partner	4.00		6.75		1.50	12.25	\$ 665	\$ 8,146.25
Bowers, Jamie, Associate	0.50	11.25				11.75	\$ 585	\$ 6,873.75
Deweese, Maria, Paralegal	1.00			0.25	4.50	5.75	\$ 290	\$ 1,667.50
Total Hours by All Timekeepers	17.25	11.25	65.75	0.25	6.75	101.25		79,441.25

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-CV-01450-JST

Cohen Milstein Sellers & Toll Lodestar Calculations**Summary Lodestar Calculation**

Timekeepers	Phase 1 Hrs	Phase 2 Hrs	Phase 3 Hrs	Phase 4 Hrs	Total Hrs	Rate	Lodestar
Handorf, Karen, L., Partner	124.75	16.00	118.25	23.50	282.50	1,025	\$ 289,562.50
Lempert, Scott, Of Counsel		1.25	44.75	0.75	46.75	840	\$ 39,270.00
Yau, Michelle, C., Partner	70.25	8.25	73.50	47.25	199.25	805	\$ 160,396.25
Rinaldi, Bruce, Of Counsel	243.75	4.75			248.50	790	\$ 196,315.00
Bortscheller, Mary, J., Partner	1.50	28.25	81.00	12.25	123.00	665	\$ 81,795.00
Bowers, Jamie, Associate			105.50	11.75	117.25	585	\$ 68,591.25
Bunch, Monya, Associate	30.00	0.25			30.25	580	\$ 17,545.00
Smith, Matthew, A., Associate	122.75	1.25			124.00	450	\$ 55,800.00
Deweese, Maria, Paralegal			40.75	5.75	46.50	290	\$ 13,485.00
Grant-Knight, Connor, Paralegal			23.75		23.75	290	\$ 6,887.50
Lindblom, Alina, Paralegal	108.75				108.75	250	\$ 27,187.50
Totals	701.75	60.00	487.50	101.25	1,350.50		\$ 956,835.00

EXHIBIT 2-E

Description of Keller Rohrback Time Entry Categories

Rollins v. Dignity Health, U.S. District Court, N.D. Cal., No. 13-cv-01450-JST

Descriptions of Keller Rohrback Time Entry Categories

1. Amended Complaint: After the remand from the Supreme Court in 2017, counsel prepared an amended complaint to reflect the changed legal landscape in light of the Court's decision and to add entirely new "backloading" claims for the PEP Plus subgroup. These new claims involved the investigation of new facts, with the assistance of the new plaintiff, Patricia Wilson, and a new legal theory under section 204(h) of ERISA.
2. Appeal Argument: The Ninth Circuit heard argument on this case in July 2016. The argument was an enormously important even in the life of the case and counsel prepared very thoroughly for it, including preparation for the ancillary issues that the court might find of interest, even though they were not squarely presented by the section 1292 petition.
3. Appeal Briefing: Once the section 1292 proceedings were concluded, the case was briefed on the merits in the Ninth Circuit. This was a huge undertaking, not only with the briefs but also with the collection and presentation of the key documents from the record to make the factual case that the Dignity Health Pension Plan did not meet the factual requirements for a church plan.
4. Case Administration: This refers to the day-to-day administration of the case, including periodic team meetings of the lawyers and work by paralegals (but not lawyers' assistants) executing instructions from the lawyers on various matters. Class Counsel have not sought approval of Case Administration time in their fee motion.
5. Case Management Statements: In the district court, both before the Ninth Circuit accepted the section 1292 petition and after the remand, counsel were obliged to work with opposing counsel on case management statements.
6. Cert Petition and Brief: From June 2016, when the defendants in this and other church plan cases began filing petitions for certiorari in the Supreme Court, until the Court's decision in June 2017, counsel were heavily involved in opposing certiorari, working on various motions in the Supreme Court, including opposing an in-chambers motion to stay the mandate, working on the briefs on the merits, working with their Supreme Court lawyer, mooted the case, etc.
7. Class Certification: Plaintiffs filed a motion for certification in the district court, but it was never fully briefed or decided because of the review proceedings in the Ninth Circuit and the Supreme Court.

8. Clients: Counsel received many inquiries from potential clients and ultimately two clients engaged the two firms in this matter. They have been deeply involved in the case and counsel has communicated with them frequently, in person, by phone, and by email.

9. Complaint: The research into the original complaint began in late 2012 and continued through 2013 until the case was filed in April 2013. Deciding which theories to assert and how to plead them in this novel setting was a major undertaking of the two firms

10. Discovery: Discovery in the district court occurred before the case was stayed for appellate proceedings and after the case was remanded from the Supreme Court. The bulk of the discovery was document discovery, though there were also two depositions, and the discovery was crucial in providing the business context to the district court and the Ninth Circuit for Dignity Health's decision to change its ERISA regulated plan to a church plan.

11. Discovery Disputes: In the first phase of this case, in the district court, there were several discovery disputes which counsel had to negotiate with opposing counsel, and then, in some cases, to brief to the court.

12. Experts/consultants: In other church plan cases, counsel engaged several types of experts, including experts on canon law, ERISA experts, economists, and others. In this case counsel worked with an expert on the nature of the hospital business and the role of hospitals in providing charity for the Supreme Court proceedings and an actuary for the analysis of the value of various features of the settlement.

13. First § 1292 Motion: Dignity Health first moved for section 1292 review after the district judge denied the motion to dismiss. That motion was fully briefed and denied.

14. Government Agency Meetings: In connection with the Supreme Court proceedings counsel met with representatives of the Department of Labor and the Solicitor General's Office. This category includes time in preparation for those meeting and follow up after them.

15. Investigation: Factual investigation of Dignity Health's business and its pension and welfare plans.

16. Mediation/Settlement: The case was mediated after the Ninth Circuit decision in a full day session with Robert Meyer, a well-known JAMS mediator, who has handled many ERISA class actions, but that mediation was unsuccessful. The second mediation, after the remand from the Supreme Court was conducted with Jill Sperber, a Judicate West mediator. She began her work in November 2018. The mediation involved

“briefing,” two in person sessions, and almost daily phone calls and emails thereafter until the first settlement was presented to the district court June 2019. Afterwards, the parties renegotiated the original settlement twice

17. Motion for Injunction: In the district court counsel moved for an injunction to require Dignity Health to bring the Dignity Health Pension Plan into compliance with ERISA. The district court never reached the issue because of the section 1292 proceeding.

18. Motion Practice: This refers to motions not otherwise separately categorized and any stipulations.

19. Motion to Dismiss: The motion to dismiss was the key motion in the district court, both in this case and in the other church plan cases. Though labeled a motion to dismiss, in practice, in the first phase of the case it was necessarily a case determinative motion, for both sides. In the remand phase of the case, the motion was not necessarily a case dispositive motion, but the defense made arguments which, had the district court accepted them, would have ended the case for the plaintiffs. Thus, both motions were profoundly important for the case.

20. Oral Argument: This refers to the various oral argument in the district court before appellate review and after the Supreme Court remand.

21. Post-Argument Briefing: Because of certain issues raised by the Ninth Circuit Panel at oral argument, counsel filed post-argument briefs.

22. Second § 1292 Motion: After the district court granted partial summary judgment to the plaintiffs, Dignity Health renewed its section 1292 motion and the issue was fully briefed again. This time Dignity Health prevailed.

23. Settlement Approval: This encompasses proceedings in the district court for approval of the settlement the parties had reached, but only through the first preliminary approval motion in June 2019.

24. Summary Judgment: After prevailing on the motion to dismiss in the first phase of the case, counsel fully briefed a partial summary judgment motion, which was granted.

EXHIBIT 2-F

Summary of Keller Rohrback and Cohen Milstein Lodestar Calculations

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Class Counsel Combined Lodestar Calculations

Summary of Lodestar by Phase						
	Hours			Lodestar		
	KR	CMST	Total	KR	CMST	Total
Phase One	5,450.50	701.75	6,152.25	\$ 3,818,112.90	\$ 477,805.00	\$ 4,295,917.90
Phase Two	1,287.60	60.00	1,347.60	\$ 986,659.10	\$ 47,337.50	\$ 1,033,996.60
Phase Three	590.70	487.50	1,078.20	\$ 475,080.00	\$ 352,251.25	\$ 827,331.25
Phase Four	2,109.90	101.25	2,211.15	\$ 1,833,347.50	\$ 79,441.25	\$ 1,912,788.75
Totals	9,438.70	1,350.50	10,789.20	\$ 7,113,199.50	\$ 956,835.00	\$ 8,070,034.50

EXHIBIT 2-G

Keller Rohrback Expenses

Rollins v. Dignity Health

U.S. District Court, N.D. Cal., No. 13-01450-JST

Keller Rohrback Expenses - Inception to 12/19/2021

Description	Amount
Copies	\$ 22,361.76
Telephone	\$ 1,496.78
Postage/Express Delivery	\$ 4,960.11
Court Costs	\$ 4,961.85
Computer-Based and Other Research	\$ 23,246.07
Travel (airfare, ground travel, meals, lodging)	\$ 72,104.66
Relativity Database Service and Licensing	\$ 32,899.58
Miscellaneous	\$ 10,216.84
Total	\$ 172,247.64

EXHIBIT 2-H

Cohen Milstein Expenses

Rollins et al. v. Dignity Health et al.

Cohen Milstein Sellers & Toll PLLC

Expenses - case development until 12/19/2021

Description of Expense	Amount
Copies	\$ 5.50
Telephone	\$ 110.13
Postage/express delivery/courier	\$ 833.63
Court costs	\$ 2,120.00
Computer based and other research	\$ 7,276.12
Travel (airfare, ground travel, meals, lodging)	\$ 4,252.74
Database vendor costs	\$ 600.00
Overtime & other business meals	\$ 162.66
Meals/local travel for Supreme Court clients and counsel	\$ 707.22
Actuarial expert witness fees (consulting expert)	\$ 71,667.00
Other consulting witness fees	\$ 2,033.33
Supreme Court costs	\$ 71,672.51
Mediation fees	\$ 25,580.00
Deposition transcripts	\$ 4,538.40
	\$ 191,559.24