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13 *Attorneys for Plaintiff*

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA
16 SAN JOSE DIVISION

17 KRISTOPHER A. SCHWARTZ,
18
19 Plaintiff,

No. 3:15-cv-03347

20 v.

**DECLARATION OF GARY A. GOTTO IN
SUPPORT OF PLAINTIFF'S MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT AND FOR
ATTORNEYS' FEES AND COSTS**

21 ART COOK; ROGER STANGER; RONALD
22 ZIMMERMAN; BUCKLES-SMITH ELECTRIC
23 COMPANY; BANKERS TRUST COMPANY OF
24 SOUTH DAKOTA; AND JOHN DOE
25 DEFENDANTS NUMBERED 1-5,

26 Defendants,

27 *and*

Judge: Hon. Beth Labson Freeman

28 BUCKLES-SMITH ELECTRIC COMPANY
EMPLOYEE STOCK OWNERSHIP PLAN,
Nominal Defendant.

I, Gary A. Gotto, declare and state as follows:

1 8. Class Counsel posted the Notice of Settlement on its website on March 27, 2017 at the
2 following address: <http://www.kellersettlements.com/>.

3 9. The schedule attached as Exhibit A, and incorporated herein, is a detailed summary of the
4 amount of time spent by Keller Rohrback's partners, attorneys and professional support staff who were
5 involved in this litigation through March 21, 2017, the day after the Court preliminary the Settlement
6 reached between the parties.

7
8 10. The summary of hours spent by Keller Rohrback professionals does not include any time
9 devoted to prosecuting this case after March 21, 2017, including the time and work involved in preparing
10 the motion for attorneys' fees and costs, this declaration, the final approval motion, and all other related
11 pleadings thereto. Additional attorney time and expense will also be incurred in preparing for and
12 appearing at the Court's Final Fairness Hearing.

13
14 11. As Settlement Administrator, Class Counsel will also be responsible for continuing to
15 administer the Settlement and to disburse the Settlement proceeds if the Court approves the Settlement.
16 In my experience overseeing administration and disbursement of Settlement proceeds in the past,
17 significant work remains to effectuate the Settlement. These hours will not be compensable.

18 12. As set forth in Exhibit A, the total number of hours reasonably expended on this litigation
19 by Keller Rohrback from inception to March 21, 2017 is 1,131.95 hours. The total lodestar for Keller
20 Rohrback from inception to March 21, 2017 is \$514,626.90. Expense items are billed separately (and are
21 set forth below), and are not duplicated in the lodestar calculation.

22
23 13. These hours were incurred by, among other things, investigating the claims against
24 Defendants, engaging in extensive factual and legal research, reviewing and analyzing relevant documents
25 from Plaintiff, preparing and drafting the complaint and all amendments thereto, propounding discovery
26 requests to Defendants, responding to discovery requests from Defendants, consulting with ERISA
27

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DECLARATION OF
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1 experts, and reviewing and analyzing financial documents. In additional, substantial attorney time was
2 spent meeting and conferring and ultimately negotiating a settlement with Defense counsel.

3 14. Keller Rohrback has submitted fee petitions in other cases that have reported hourly rates
4 at amounts comparable to those submitted herein, and courts have approved an award of attorneys' fees
5 in such cases. Illustrative and non-exhaustive examples include:
6

- 7 • *Griffith, et al. v. Providence Health & Servs., et al.*, No. 14-1720 (W.D. Wash. Mar. 21,
8 2017) (ECF No. 69) (approving Keller Rohrback's request for attorney fees at hourly rates
9 similar to this case);
- 10 • *Overall v. Ascension Health*, No. 13-11396 (E.D. Mich. Sept. 17, 2015) (ECF No. 115)
11 (approving Keller Rohrback's request for attorneys' fees and cost request and finding
12 hourly rates to be reasonable);
- 13 • *Glaberson v. Comcast Corp.*, No. 03-6604, 2015 WL 5582251, at *15 (E.D. Pa. Sept. 22,
14 2015) (finding Keller Rohrback's hourly rates were reasonable);
- 15 • *Herfert v. Crayola LLC*, No. 11-1301 (W.D. Wash. Apr. 27, 2012) (ECF No. 51)
16 (approving Keller Rohrback's hourly rates as reasonable);
- 17 • *Fleishman v. Albany Medical Center*, No. 06-cv-0765-TJM-DRH (N.D.N.Y. Dec. 13,
18 2011) (ECF No. 416) (Court approved percentage-of-fund award cross-checked against
19 hourly rates);
- 20 • *In Re Merck & Co., Inc. Securities, Derivative & "ERISA" Litigation*, MDL No. 1658
21 (SRC) (D.N.J. Nov. 29, 2011) (Doc. No. 286) (Court approved percentage-of-fund award
22 cross-checked against hourly rates);
- 23 • *Jerry Cooper, Inc. v. Lifequotes of America, Inc.*, No. 04-2-40304-9 SEA (Nov. 18, 2011)
24 (ECF No. 223) (Court approved percentage-of-fund award cross-checked against hourly
25 rates);
- 26 • *Johnson v. Arizona Hospital and Healthcare Association*, No. CV07-1292-PHX-SRB (D.
27 Ariz. Mar. 4, 2011) (ECF No. 664) (Court approving percentage-of-fund award
28 crosschecked against hourly rates);
- *In Re IndyMac ERISA Litigation*, No. CV 08-4579 DDP(VBKx) (C.D. Cal. Jan. 19, 2011)
(ECF No. 137) (Court approving percentage-of-fund award cross-checked against rates);
- *Buus v. WAMU Pension Plan*, No. 07-CV-00903 MJP (W.D. Wash. Oct. 29, 2010) (ECF
No. 287) (Court approving percentage-of-fund award cross-checked against hourly rates);

- 1 • *In Re Washington Mutual, Inc. ERISA Litigation*, No. 2:08-md-01919-MJP (W.D. Wash.
2 Oct. 1, 2010) (ECF No. 753-1) (Court approving percentage-of-fund award cross-checked
3 against hourly rates);
- 4 • *Fouad v. Isilon Systems, Inc.*, No. 07-1764 (W.D. Wash. Feb. 12, 2010) (ECF No. 170)
5 (Court approving percentage-of-fund award cross-checked against hourly rates); and
- 6 • *Pelletz v. Weyerhaeuser Co.*, 592 F. Supp. 2d 1322, 1326-27 (W.D. Wash. 2009) (Court
7 approved Keller Rohrback's hourly rates as reasonable).

8 15. Keller Rohrback incurred a total of \$27,077.98 in unreimbursed expenses from inception
9 to March 21, 2017, all of which were reasonable and necessary for the prosecution of this litigation. A
10 summary of those expenses by category is attached as Exhibit B. These expenses included, *inter alia*,
11 expert costs, travel, computer research, discovery database services, photocopying, court costs, postage,
12 and long-distance and facsimile charges. Consistent with the parties' Settlement Agreement, the Notice
13 sent to the Settlement Class, and the Court's preliminary approval order, Class Counsel seek no more than
14 \$25,000 in reimbursable expenses.

15 16. In undertaking to represent Plaintiffs, Keller Rohrback had to ensure that sufficient
16 resources and funds existed at all times, not only to prosecute the litigation in a cost-effective manner, but
17 also to compensate the experts and vendors that the firm engaged in this matter. The financial burden on
18 contingent fee counsel is far greater than it is on firms that are paid on an ongoing basis throughout lengthy
19 and complex litigation. In particular, Keller Rohrback bore the financial burden of litigating this case on
20 a contingency fee basis for nearly two years since the filing of this complaint on July 20, 2015.

21 17. Pursuant to § 8.1.3 of the Settlement Agreement, the parties investigated whether to
22 reconstitute the Plan and re-establish Plan accounts for Settlement Class Members. After evaluating the
23 costs associated with reconstituting the Plan, the parties determined it would be too costly and would
24 lessen the amount available to Plan participants. As a result, the Plan will not be reconstituted, and instead
25

1 Class Counsel shall distribute each Class Member's Allocable Share of the Net Settlement Fund directly
2 to each Class Member via settlement check.

3 18. Pursuant to the applicable participant account balance statements provided by Defendant
4 Buckles-Smith, the Class Members held (directly or through the ESOP) approximately 58,000 shares as
5 of the date specified as applicable in Section 8.1.3 of the Settlement Agreement. Assuming the Court
6 grants Class Counsel's request for attorneys' fees and costs for \$115,500 in fees and \$25,000 in costs,
7 \$209,500 will be distributed to the Settlement Class on a pro rata basis to each Class Member based on
8 the amount of shares he or she owns under the Plan (or approximately \$3.61 per share).

9 19. The above calculations are based on plan account statements provided by Defendants to
10 Class Counsel to date. Class Counsel is in the process of verifying this information with Defendants, and
11 the parties will be able to determine the specific allocation amount for each Settlement Class Member by
12 the Final Fairness Hearing date.
13
14

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

16 DATED this 1st day of May, 2017.

17 KELLER ROHRBACK L.L.P.

18
19 By: /s/ Gary A. Gotto

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28 DECLARATION OF
GARY A. GOTTO