

APPENDIX

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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 19-2158

Charlene F. McDonald, individually and on behalf of a
class of all other persons similarly situated, and on behalf
of the Edward D. Jones & Co. Profit Sharing and 401(k)
Plan; Windle Pompey

Plaintiffs

Valeska Schultz; Melanie Waugh; Rosalind Staley

Plaintiffs-Appellees

v.

Edward D. Jones & Co., L.P.

Defendant-Appellee

The Jones Financial Companies

Defendant

The Edward Jones Investment and Education Committee

Defendant-Appellee

John & Jane Does, 1-25

Defendant

Brett Bayston; Bonnie Caudle; Mark Vivian; Stina
Wishman; Jan-Marie Kain; Linda Banniester; Ann
Echelmeier; Curtis Long; David Gibson; Ken Blanchard;
Jason Jonczak; Julie Rea; Asma Usmani; Glenn Kolod; Juli
Johnson; Jess Dechant; Peggy Robinson; Edward Jones
Profit Sharing and 401(k) Administrative Committee; John
Does, 1-30

Defendants - Appellees

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v.

Shiyang Huang

Objector-Appellant

Anna Mae Krause; Heath J. Petsche

Objectors

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: January 23, 2020

Filed: January 31, 2020

[Unpublished]

Before SHEPHERD, STRAS, and KOBES, Circuit Judges.

PER CURIAM.

In this Employee Retirement Income Security Act (ERISA) class action, objector Shiyang Huang appeals the district court's¹ judgment certifying a settlement class, approving the settlement agreement, and awarding attorneys' fees and case contribution awards. Initially, we find that plaintiffs had standing to bring the class action. See Campbell-Ewald Co. v. Gomez, 136 S. Ct. 663, 670-71 (2016) (without accepted settlement agreement, parties remained adverse); In re SuperValu, Inc., 870 F.3d 763, 768 (8th Cir. 2017) (putative class action can proceed as long as one named plaintiff has standing); Braden v. Wal-Mart Stores, Inc., 588 F.3d 585, 592-93 (8th Cir. 2009)

¹ The Honorable John A. Ross, United States District Judge for the Eastern District of Missouri.

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(plan participant had standing to pursue ERISA breach of fiduciary claim on behalf of plan).

We also conclude that the district court did not abuse its discretion in certifying the class under Federal Rule of Civil Procedure 23(b)(1)(A), as the action was brought on behalf of the plan and requested plan-wide relief, raising the risk of inconsistent adjudications that would establish incompatible standards of conduct for defendants if individual actions were brought. See Rattray v. Woodbury Cty., 614 F.3d 831, 835 (8th Cir. 2010) (standard of review); Piazza v. Ebsco Indus., Inc., 273 F.3d 1341, 1352 (11th Cir. 2001) (because ERISA breach of fiduciary duty claims were brought on behalf of plan and relief would benefit plan as whole, individual actions raised risk of inconsistent adjudications, and Rule 23(b)(1)(A) certification was available). Further, the named plaintiffs' case contribution awards did not render their interests adverse to those of the class, and the court did not abuse its discretion in granting the awards and attorneys' fees. See Caligiuri v. Symantec Corp., 855 F.3d 860, 865, 867-68 (8th Cir. 2017) (standard of review; \$10,000 awards were not unfair to class, and are regularly granted by courts in this circuit); In re Online DVD-Rental Antitrust Litig., 779 F.3d 934, 943, 954 (9th Cir. 2015) (awards compensating representatives for work done on behalf of class and commensurate with awards in similar cases did not create impermissible conflict between class and representatives; no abuse of discretion in awarding attorneys' fees where fee motion was filed by court's deadline, which was 15 days before deadline for members to object).

The judgment is affirmed. See 8th Cir. R. 47B.

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WHEREAS, unless otherwise defined in this Judgment, the capitalized terms herein shall have the same meaning as they have in the Settlement Agreement;

WHEREAS, by Order dated December 13, 2018 (Doc. 97) (the "Preliminary Approval Order"), this Court (1) conditionally certified the Settlement Class and appointed Class Counsel; (2) preliminarily approved the Settlement; (3) directed notice to Settlement Class Members and approved the plan and form of Notice; (4) appointed a Settlement Administrator; (5) scheduled a Fairness Hearing; and (6) scheduled a hearing on Plaintiffs' Counsels' motion for fees and costs and the payment of Case Contribution Awards;

WHEREAS, due and adequate notice has been given to the Settlement Class;

WHEREAS, the Court conducted a hearing on April 18, 2019 (the "Fairness Hearing") to consider, among other things, (a) whether the proposed Settlement on the terms and conditions provided for in the Settlement Agreement is fair, reasonable, adequate and in the best interests of the Settlement Class and should be approved by the Court; (b) whether a Judgment substantially in the form attached as Exhibit A to the Agreement should be entered dismissing with prejudice all claims asserted in the Action against Defendants with respect to Settlement Class Members; (c) whether the proposed Plan of Allocation for the proceeds of the Settlement is fair and reasonable and should be approved; (d) whether the motion by Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of litigation expenses and for Case Contribution Awards should be approved; and

WHEREAS, the Court having reviewed and considered the Settlement Agreement, all papers filed and proceedings held herein in connection with the Settlement, including all objections filed, all oral and written comments received

regarding the proposed Settlement, and the record in the Action, and good cause appearing therefor;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. **Jurisdiction**: The Court has jurisdiction over the subject matter of the Action, and all matters relating to the Settlement, as well as personal jurisdiction over all of the Parties and each of the Settlement Class Members.

2. **Incorporation of Settlement Documents**: This Judgment incorporates and makes a part hereof: (a) the Settlement Agreement filed with the Court on December 11, 2018, including the Plan of Allocation submitted therewith, and (b) the Notice submitted approved by the Court on December 13, 2018.

3. **Objections**: The Court has duly considered the objections to the Settlement that were filed and that were raised during the Fairness Hearing, namely, the objections filed by Heath Petsche (ECF 98), Anna Krause (ECF 103), and Shiyang Huang (ECF 104). For the reasons stated on the record and in the parties' respective briefing, the Court hereby overrules the objections.

4. **Class Certification for Settlement Purposes**: The Court hereby affirms its determinations certifying, for the purposes of the Settlement only, the Action as a class action pursuant to Rule 23(b)(1) of the Federal Rules of Civil Procedure with the Settlement Class consisting of all Current and Former Participants in the Plan who maintained a balance of any amount in the Plan at any point during the period from August 19, 2010 to the date of entry of the Preliminary Approval Order.

5. **Adequacy of Representation**: Pursuant to Rule 23 of the Federal Rules of Civil Procedure, and for the purposes of Settlement only, the Court hereby affirms its determinations in the Preliminary Approval Order certifying Plaintiffs as Class Representatives for the

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Settlement Class and appointing Plaintiffs' Counsel as Class Counsel for the Settlement Class both in terms of litigating the claims of the Settlement Class and for purposes of entering into and implementing the Settlement and finding that the Settlement has satisfied the requirements of Federal Rules of Civil Procedure 23(a)(4) and 23(g).

6. **Notice:** The Court finds that the dissemination of the Notice: (i) was implemented in accordance with the Preliminary Approval Order; (ii) constituted the best notice reasonably practicable under the circumstances; (iii) constituted notice that was reasonably calculated, under the circumstances, to apprise all Settlement Class Members of the pendency of the Action, of the effect of the Settlement (including the releases provided for therein), of Plaintiffs' Counsels' motion for an award of attorneys' fees and reimbursement of litigation expenses and case contribution awards, of their right to object to the Settlement, the Plan of Allocation and Plaintiffs' Counsels' motion for attorneys' fee and reimbursement of litigation expenses, and of their right to appear at the Fairness Hearing; (iv) constituted due, adequate, and sufficient notice to all persons or entities entitled to receive notice of the proposed Settlement; and (v) satisfied the requirements of Rule 23 of the Federal Rules of Civil Procedure, the United States Constitution including the Due Process Clause, and all other applicable law and rules.

7. **Final Settlement Approval and Dismissal of Claims:** Pursuant to, and in accordance with, Rule 23 of the Federal Rules of Civil Procedure, this Court hereby fully and finally approves the Settlement set forth in the Agreement in all respects including, without limitation, the amount of the Settlement; the releases provided for therein, including the release of the Plaintiffs' Claims as against the Defendants and the Defendants' Claims as against the

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Plaintiffs; and other dismissal with prejudice of the claims asserted in the Action against Defendants by Settlement Class Members, and finds that the Settlement is, in all respects, fair, reasonable and adequate, and is in the best interests of Plaintiffs and the Settlement Class. The Parties are directed to implement, perform and consummate the Settlement in accordance with the terms and provisions of the Agreement.

8. As of the Effective Date, pursuant to Fed. R. Civ. P. 54(b), all of the claims asserted in this Action against Defendants by Plaintiffs and Settlement Class Members are hereby dismissed with prejudice. The Parties shall bear their own costs and expenses, except as otherwise expressly provided in the Settlement Agreement.

9. **Binding Effect:** The terms of the Settlement Agreement and of this Judgment shall be forever binding on Defendants, Plaintiffs and all Settlement Class Members, as well as their respective heirs, executors, administrators, predecessors, successors and assigns.

10. **Releases:** The releases set forth in the Settlement Agreement, including but not limited to Paragraphs 5.1 and 5.3 of the Settlement Agreement (the "Releases"), together with the definitions contained in Paragraphs 1.11, 1.30 and 1.40 of the Settlement Agreement relating thereto, are expressly incorporated herein in all respects. The Releases are effective as of the Effective Date. Accordingly, the Court orders that, as of the Effective Date:

a. The Plaintiffs and each of the other Settlement Class Members, on behalf of themselves and their respective officers, directors, heirs, executors, administrators, predecessors, successors, affiliates and assigns, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged,

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and dismissed with prejudice each and every Claim against the Defendants and the other Defendant Released Parties and shall forever be enjoined from prosecuting any or all of the Plaintiffs' Claims against any of the Defendant Released Parties as more fully set forth in the Settlement Agreement; and

b. Each of the Defendants, on behalf of themselves and their respective officers, directors, heirs, executors, administrators, predecessors, successors, affiliates and assigns, shall be deemed to have, and by operation of law and of the judgment shall have, fully, finally and forever compromised, settled, released, resolved, relinquished, waived, discharged and dismissed with prejudice each and every Defendants' Claim against Plaintiffs and shall forever be enjoined from prosecuting any or all of the Defendants' Claims against the Plaintiffs, as more fully set forth in the Settlement Agreement.

11. **Bar Order:** Upon the Effective Date, all persons and entities shall be permanently enjoined, barred and restrained from bringing, commencing, prosecuting or asserting any and all claims, actions, suits, causes of actions, arbitrations, or demands in any forum against any of the Parties for recovery, contribution, indemnification or otherwise for any damages allegedly arising from any of the Released Claims as defined in the Settlement Agreement.

12. **Rule 11 Findings:** The Court finds and concludes that the Parties and their respective counsel have complied in all respects with the requirements of Rule 11 of the Federal Rules of Civil Procedure in connection with the commencement, maintenance, prosecution, defense and settlement of the claims asserted in the Action against Defendants by Settlement Class Members.

13. **No Admissions**: This Judgment, the Preliminary Approval Order, the Settlement Agreement (whether or not consummated), including the exhibits thereto and the Plan of Allocation contained therein (or any other plan of allocation that may be approved by the Court), materials submitted in support of the Plan of Allocation, and the negotiations that led to the agreement in principle reached on December 11, 2018, the negotiation of the Settlement Agreement and its exhibits, and any papers submitted in support of approval of the Settlement, and any proceedings taken pursuant to or in connection with the Settlement Agreement or approval of the Settlement (including any arguments proffered in connection therewith): (a) shall not be offered against any of the Defendants as evidence of, or construed as, or deemed to be evidence of any presumption, concession, or admission by any of the Defendants with respect to the truth of any fact alleged by Plaintiffs or the validity of any claim that was, could have been, or may be asserted or the deficiency of any defense that has been, could have been, or may be asserted in this Action or in any litigation, or of any liability, negligence, fault, or other wrongdoing of any kind by any of the Defendants; (b) shall not be offered against Plaintiffs as evidence of a presumption, concession or admission with respect to any liability, negligence, fault or wrongdoing of any kind, or in any way referred to for any other reason as against Plaintiffs in any civil, criminal or administrative action or proceeding, other than such proceedings as may be necessary to effectuate the provisions of the Settlement Agreement; provided, however, that if the Settlement Agreement is approved by the Court, the Parties and their respective counsel may refer to it to effectuate the protections from liability granted thereunder or otherwise to enforce the terms of the Settlement; (c) shall not be construed against any of the Parties as an admission,

concession, or presumption that the Settlement Amount represents the amount which could be or would have been recovered by the Settlement Class after trial with respect to their claims in the Action; (d) shall not be construed against the Plaintiffs that any of the claims asserted or to be asserted in the Action are without merit, that any of the Defendants have or had meritorious defenses, or that damages recoverable by the Settlement Class would not have exceeded the Settlement Amount.

14. **Retention of Jurisdiction:** Without affecting the finality of this Judgment in any way, this Court retains continuing and exclusive jurisdiction over: (a) the Parties for purposes of the administration, interpretation, implementation and enforcement of the Settlement; (b) the disposition of the Settlement Fund; (c) any motion for an award of attorneys' fees and litigation expenses by Plaintiffs' Counsel in the Action that will be paid from the Settlement Fund; (d) any motion to approve the Plan of Allocation; (e) the Settlement Class Members for all matters relating to the Action; (f) the enforcement of the Bar Order against any person; and (g) the interpretation, implementation and enforcement of this Judgment.

15. A separate order shall be entered on the motion of Plaintiffs' Counsel for an award of attorneys' fees and reimbursement of litigation expenses and Case Contribution Fees. Such order shall in no way affect or delay the finality of this Judgment and shall not affect or delay the Effective Date of the Settlement.

16. **Modification of Settlement Agreement.** Without further approval from the Court, Plaintiffs and Defendants are hereby authorized to agree to and adopt such amendments or modifications of the Settlement Agreement or any exhibits attached thereto to effectuate this Settlement that: (i) are not materially inconsistent with this Judgment; and (ii) do not materially limit the rights of

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Settlement Class Members in connection with the Settlement. Without further order of the Court, Plaintiffs and Defendants may agree to reasonable extensions of time to carry out any provisions of the Settlement.

17. **Termination:** If the Effective Date does not occur or the Settlement is terminated as provided in the Settlement Agreement, then this Judgment (and any orders of the Court relating to the Settlement) shall be vacated, rendered null and void and be of no further force or effect, except as otherwise provided by the Settlement Agreement. 18. Entry of Final Judgment: There is no just reason to delay entry of this Judgment as a final judgment with respect to the claims asserted in the Action against Defendants by Settlement Class Members. Accordingly, the Clerk of the Court is expressly directed to immediately enter this final judgment pursuant to Fed. R. Civ. P. 54(b) as against Defendants.

SO ORDERED.

Dated this 22nd day of April, 2019.

/s/ John A. Ross

JOHN A. ROSS

UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

VALESKA SCHULTZ, *et al.*,)
Plaintiffs,)
v.) CASE No. 4:16-cv-1346-JAR
EDWARD D. JONES)
& CO., L.P., *et al.*)
Defendants.)

ORDER ON PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES AND CASE CONTRIBUTION AWARDS

The Court having received and considered Plaintiffs' Motion for Attorneys' Fees, Reimbursement of Expenses and Case Contribution Awards (the "Fee Motion") (Doc. 101) in the above-captioned action (the "Action") and the supporting papers, including the Class Action Settlement Agreement dated December 11, 2018 (the "Settlement Agreement"), the declarations of counsel and the supporting Memorandum of Law, Plaintiffs' Response to Objections, and having held a hearing on the Fee Motion on April 18, 2019, and finding good cause for granting the Fee Motion, makes the following findings of fact and conclusions of law:

1. The Settlement Agreement confers substantial benefits on the Settlement Class.
2. The benefits that the Settlement Agreement confers on the Settlement Class is immediate and readily quantifiable (upon Judgment in the Action becoming Final (as defined in the Settlement Agreement)).

3. Plaintiffs' Counsel, Bailey Glasser LLP, Izard, Kindall & Raabe, LLP and Kessler Topaz Meltzer & Check LLP (collectively, "Class Counsel"), vigorously and effectively pursued the claims in this complex case on behalf of the Plaintiffs and the Class.

4. The Settlement Agreement was obtained as a direct result of Class Counsel's advocacy.

5. The Settlement Agreement was reached following extensive, good-faith negotiations between Class Counsel and Counsel for Defendants and was not the product of collusion.

6. Members of the Settlement Class were advised in the Class Notice approved by the Court that Class Counsel intended to seek attorneys' fees not to exceed one-third of the Settlement Fund, or \$1,058,333, and to be reimbursed for the expenses they incurred in prosecuting the Action from the Settlement Fund.

7. Counsel who recover a common benefit for persons other than himself or his client is entitled to a reasonable attorneys' fees from the Settlement Fund as a whole. *See, e.g., Boeing Co. v. Van Gernert*, 444 U.S. 472, 478 (1980) and *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 865 (8th Cir. 2017).

8. Class Counsel's requested fee is 1/3 of the amount of the Settlement. This amount is reasonable considering the benefits conferred through the settlement, the litigation risk that Class Counsel bore by litigating the case on a wholly contingent basis, the difficulty and novelty of the legal issues in the case, the skill and experience of the lawyers in the case, the time and labor Class Counsel devoted to the litigation, and the reaction of the Class. Moreover, a lodestar cross-check indicates that the requested fee provides a lodestar multiple of 1.6x, which is at or below multiples that have often been approved in other cases. The Court finds the rates and hours used to

determine the lodestar multiplier to be reasonable given the relevant market and the complexities of ERISA class litigation such as this.

9. The Court has duly considered the objections to the Settlement that were filed and raised during the Fairness Hearing, namely the objections filed by Heath Petsche (ECF 98), Anna Krause (ECF 103), and Shiyang Huang (ECF 104), and for the reasons stated on the record and in the parties' respective briefing, overrules those objections.

10. Class Counsel's requested fee is consistent with other fee awards in the Eighth Circuit. See *In re US Bancorp Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002) (affirming award of attorneys' fees equal to one-third of common fund); see also *Krueger v. Ameriprise Financial*, No. 11-2781, 2015 WL 4246879, at *4 (D. Minn. July 13, 2015) (awarding class counsel one third of the monetary relief recovered in ERISA case).

11. Class Counsel's request to be reimbursed for the \$19,018.50 in expenses they incurred in prosecuting this case is also reasonable and the Court finds that these expenses would normally be charged to a fee-paying client. *Krueger*, 2015 WL 4246879 at *3 (reimbursing class counsel for "expert Witness costs, mediation costs, computerized research, court records, travel expenses, and copy, telephone, and facsimile expenses.").

12. Plaintiffs, Valeska Schultz, Melanie Waugh and Rosalind Staley, brought a representative lawsuit on behalf of the Edward D. Jones & Co. Profit Sharing and 401(k) Plan (the "Plan"). In doing so, Plaintiffs expended substantial amounts of time and effort to protect the interests of the Class and the Settlement is a direct result of Plaintiffs' commitment. In addition, the Plaintiffs risked alienation by peer and friends and reputational risk in having brought an action against their prior employer. 13. Accordingly, the Court awards Class Counsel fees in the

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amount of \$1,058,333, and reimbursement of \$19,018.50 in expenses. Each of the Plaintiffs is awarded a Case Contribution Award in the amount of \$10,000. All awards to Class Counsel and Plaintiffs shall be paid from the Settlement Fund.

SO ORDERED.

Dated this 22nd day of April, 2019.

/s/ John A. Ross

JOHN A. ROSS

UNITED STATES DISTRICT JUDGE

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**UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT**

No. 19-2158

Charlene F. McDonald, individually and on behalf of a
class of all other persons similarly situated, and on behalf
of the Edward D. Jones & Co. Profit Sharing and 401(k)
Plan and Windle Pompey
Valeska Schultz, et. al.

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v.

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Brett Bayston, et al.

Appellees

v.

Shiyang Huang

Appellant

Anna Mae Krause; Heath J. Petsche

Appeal from U.S. District Court for the Eastern District
of Missouri - St. Louis
(4:16-cv-01346-JAR)

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ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

March 03, 2020

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans