

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

KIMBERLY GARTHWAIT, *et al.*,

Plaintiffs,

v.

EVERSOURCE ENERGY SERVICE
COMPANY, *et al.*,

Defendants.

Case No: 3:20-cv-00902-JCH

**DECLARATION OF LAURIE RUBINOW IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

I, Laurie Rubinow, hereby declare under penalty of perjury under the laws of the United States as follows:

1. I am a Partner with the law firm Miller Shah LLP (“Miller Shah” or “Class Counsel”). I am admitted to practice law in the States of Connecticut and New York and the Commonwealth of Pennsylvania, and I am one of the attorneys who has worked on the above-captioned action (the “Action”) since the initial pleadings stage. I have personal knowledge of the facts set forth herein.

2. Attached as Exhibit “1” is a true and correct copy of the Settlement Agreement¹ dated April 14, 2023, including all exhibits to the Settlement Agreement:

Exhibit A – Notice of Settlement

Exhibit A-1 – Former Participant Claim Form

Exhibit B – Plan of Allocation

¹Terms not defined herein shall have the same meaning as in the Settlement Agreement.

Exhibit C – [Proposed] Preliminary Approval Order

Exhibit D – [Proposed] Final Approval Order

Exhibit E – Template Class Action Fairness Act Notice

3. Plaintiffs, Kimberly Garthwait, Cumal T. Gray, Kristine T. Torrance, and Michael J. Hushion (collectively, “Plaintiffs”), have actively participated in the litigation from the outset and assisted Class Counsel in drafting the pleadings and other papers filed in the Class Action, consulted with Class Counsel as needed, answered discovery requests, prepared for and sat for depositions, provided additional information, participated in strategy and settlement discussions with Class Counsel, undertook preparation for trial and otherwise assisted in representing the interests of the Plan and the Class in the Action. Plaintiffs also participated in regular conference calls with Class Counsel to ensure they remained fully apprised of all developments in the Action. Plaintiffs fully understand the nature of their claims, as well as their duties and responsibilities as Class Representatives and to the Plan, and they have no interest antagonistic to the Plan and members of the Settlement Class.

4. Based upon the Plan’s Form 5500 filed by Defendants for 2021, there were in excess of 13,000 participants and beneficiaries in the Plan as of December 31, 2021. Based on my review of the Plan’s Form 5500 relevant filings, the Plan’s participants numbered more than 11,000 throughout the Class Period. Plaintiffs were Participants in the Plan during the Class Period.

5. Miller Shah’s attorneys are experienced in class action litigation, including in ERISA class actions, and have recovered more than \$1 billion on behalf of their clients in class

actions nationwide.² In ERISA class and representative actions, James E. Miller, Alec J. Berin, and I lead Miller Shah's practice and, over the past decade, we have served as lead counsel in some of the most significant ERISA cases prosecuted throughout the United States on behalf of retirement plans and their participants, including *Healthcare Strategies, Inc. v. ING Life Ins. & Annuity Co.*, No. 3:11-CV-282 (D. Conn.) (class action on behalf of retirement plans tried before the Honorable William G. Young and resulting in a settlement valued at over \$400 million for a class of retirement plans); *Phones Plus, Inc. v. Hartford Fin. Servs., Inc.*, No. 3:06-cv-01835 (D. Conn.) (class action settlement with value of over \$80 million on behalf of class of retirement plans); *Boley v. Universal Health Servs., Inc.*, No. 2:20-cv-02644 (E.D. Pa.) (\$12.5 million settlement on behalf of retirement plan participants); *Golden Star, Inc. v. Mass Mutual Life Ins. Co.*, No. 3:11-cv-30235 (D. Mass.) (\$9.475 million class action settlement on behalf of class of retirement plans); *Butler National v. Union Central Life Ins. Co.*, No. 1:12-cv-177 (S.D. Ohio) (\$2.25 million common fund established for class of retirement plans and other relief to class valued at over \$15 million); *Terraza v. Safeway, Inc.*, No. 4:16-cv-03994 (N.D. Cal.) (settlement of \$8.5 million for class of plan participants); *Jones v. Coca-Cola Consolidated, Inc.*, No. 3:20-cv-00988 (W.D.N.C.) (settlement of \$3.5 million for class of plan participants); *Barcenas v. Rush Univ. Med. Ctr.*, No. 1:22-cv-00366 (N.D. Ill.) (\$2.95 million settlement on behalf of retirement plan participants); *Allison v. L Brands, Inc.*, No. 2:20-cv-1060 (S.D. Ohio) (\$12.5 million settlement on behalf of retirement plan participants); *Blackmon v. Zachry Holdings, Inc.*, No. 5:20-cv-00988 (W.D. Tex.) (settlement of \$1.875 million for class of plan participants); *Hay v. Gucci, Inc.*, No. 2:17-cv-07148 (D.N.J.) (\$1.2 million settlement for class of plan

²See <https://millershah.com/practice-areas/employee-benefits-fiduciary-compliance/401-k-fee-litigation-gatekeeper-cases/>.

participants in small defined contribution retirement plan). In addition, in 2020, Mr. Miller was named whistleblower lawyer of the year by Taxpayers Against Fraud (“TAF”), a well-respected nonprofit association, for my work on behalf of the United States and certain states in recovering \$678 million in *U.S. ex rel. Bilotta v. Novartis Pharmaceuticals Corp.*, No. 11 Civ. 0071 (PGG), and \$54 million in *U.S. ex rel. Arnstein et al. v. Teva Pharmaceuticals et al.*, No. 13 Civ. 3702 (CM), both of which settled on the eve of trial in the Southern District of New York before Judge Gardephe and Chief Judge McMahon, respectively, and demonstrate Class Counsel’s ability to handle exceptionally complex litigation. Thus, the attorneys at Miller Shah have the experience, resources, expertise, and aptitude necessary to properly represent the interests of the Plan and the Settlement Class in this case. Miller Shah has litigated this case with Capozzi Adler, P.C. (“Capozzi Adler”), a firm with significant experience in ERISA class action litigation.

6. During the course of this litigation, trial preparation, and settlement negotiations, the parties engaged in discovery and exchanged additional information sufficient to enable counsel for all parties to evaluate the strength of Plaintiffs’ claims and risks of continued litigation. Specifically, Defendants produced and Plaintiffs and Class Counsel reviewed in excess of 25,000 pages of relevant documents and communications reflecting the relationship between and among fiduciaries, Defendants’ management and administration of the Plan, and Defendants’ process for monitoring the Plan’s investments and service providers. These documents included chartering documents of the fiduciary committee, the Plans’ investment policy statements during the Class Period, minutes of fiduciary committee meetings, materials provided to the fiduciary committee to support its decision-making, disclosures by service providers, disclosures made to participants in the Plans, and communications between and among Plan fiduciaries and other involved in the management and administration of the Plan.

Defendants have taken depositions of Plaintiffs, and Plaintiffs have taken depositions of numerous party and third-party fact witnesses, including a corporate representative of Eversource and numerous members of the Committees and others charged with aspects of Plan management and administration. In addition, the Parties disclosed expert reports and anticipated testimony at trial by experts bearing on issues of fiduciary process standards, the retirement plan recordkeeping market and recordkeeping fee rates, fiduciary investment principles, and damages. The Parties deposed the experts anticipated to testify at trial on behalf of an adverse party.

7. Prior to reaching the Settlement, the parties communicated their respective positions concerning Plaintiffs' likelihood of success on their claims and potential recovery on behalf of the Plan, conducted independent analyses to support their claims and defenses and evaluate potential resolutions, and participated in several settlement conferences and a full-day mediation and significant follow-up with Jed D. Melnick, Esquire, of JAMS and an independent ERISA expert retained by Mr. Melnick to assist the parties in evaluating issues related to liability and damages. Mr. Melnick is one of the most well-respected and experienced mediators in the country in complex financial disputes and has significant experience in mediating ERISA actions. In addition, the independent ERISA expert retained by Mr. Melnick has substantial industry experience and has served as a consulting and testifying expert in some of the most significant ERISA litigation in recent years. The Settlement was reached after a full-day mediation session and several follow-up sessions and exchanges of information over the course of several months, including with the independent ERISA expert retained to assist the mediator. There has been no collusion or complicity of any kind in connection with the Settlement reached in this case or any related negotiations.

8. As noted above, Class Counsel have significant experience in similar litigation and are well-informed as to the specifics of this Class Action. Class Counsel's thorough investigation, coupled with the document discovery conducted in this Class Action, has afforded Miller Shah and Capozzi Adler a significant understanding of the merits of the claims asserted, the strength of Defendants' defenses, and the values of theoretical outcomes of the case.

9. Based upon the claims remaining in the case, Plaintiffs and their experts have estimated that realistically recoverable damages range from \$14,895,443.34 to \$26,842,926.28, depending upon the methodology and assumptions employed and when brought to present value by applying a reasonable interest rate. While figures in this range are defensible, the likelihood of establishing the higher figure faces more challenges than the lower figure. Indeed, if the Class Action proceeded through trial, Defendants would likely challenge the loss calculation methodology and interest rates applied (not to mention challenges to causation and other elements of Plaintiffs' claims). Accordingly, the Settlement recovery amounts to over 72% of the midpoint of realistically recoverable damages.

10. Class Counsel have fully investigated and developed this Class Action through trial preparation. They have reviewed document productions sufficient to meaningfully assess the strength of Plaintiffs' claims, worked with experts, and engaged in motion practice, and will continue to properly and vigorously represent the interests of the Plan and the Class.

11. Class Counsel prosecuted the Class Action on a contingent basis and advanced all associated costs with no expectation of recovery in the event the litigation did not result in a recovery for the Settlement Class.

I declare under penalty of perjury that the foregoing is true and correct. Executed this
14th day of April, 2023, at Chester, Connecticut.

/s/ Laurie Rubinow
Laurie Rubinow