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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

MICHAEL MAYFIELD, on behalf of
himself and all others similarly
situated,

Plaintiff,

v.

ACE AMERICAN INSURANCE
COMPANY,

Defendant.

Civil Action No: 1:19-cv-02425-
SDG

PLAINTIFF’S UNOPPOSED
PETITION FOR AWARD OF
ATTORNEYS’ FEES AND
COSTS

I. RELIEF REQUESTED

On September 15, 2021, the Court granted preliminary approval of the parties’ proposed class-wide settlement of the claims in this matter. Plaintiff now petitions the Court for an award of attorneys’ fees and costs in the amount of \$290,484.56 in connection with that settlement. Pursuant to the parties’ settlement agreement, ACE does not object to this request.

1 **II. FACTUAL BACKGROUND**

2 **A. Procedural History**

3 Plaintiff Michael Mayfield, a citizen of Washington state, filed this
4 putative class action against Defendant ACE American Insurance Company
5 (“ACE”) in the Western District of Washington on November 26, 2018.
6 Mayfield asserted putative class claims under the Employee Retirement Income
7 Security Act (“ERISA”). Specifically, Mayfield alleged that ACE had failed to
8 pay interest to him and other putative class members when it missed certain
9 processing deadlines set forth in a provision of its accidental death policies (the
10 “Interest Clause”). ACE moved to dismiss and to transfer venue to the Northern
11 District of Georgia, and Mayfield opposed. On May 13, 2019, the district court
12 granted the motion to transfer and denied the motion to dismiss as moot. The
13 court denied Mayfield’s motion for reconsideration on May 24, 2019.

14 Following transfer to this Court, ACE again moved to dismiss Mayfield’s
15 class claims on predominance grounds and to dismiss or stay Mayfield’s
16 individual claims for failure to exhaust administrative remedies under ERISA.
17 Mayfield opposed, and this Court denied ACE’s motion in its entirety on March
18 19, 2020.
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1 The parties then engaged in extensive paper discovery and analysis of
2 ACE's records to determine which ACE accidental death policies contained the
3 Interest Clause that formed the basis of Mayfield's complaint, what claims had
4 been brought under such policies, how those claims were processed by ACE
5 and its third-party agent ACI, and how ACE and ACI interpreted, monitored,
6 and implemented the deadlines in the Interest Clause. This effort involved
7 numerous discovery conferences and communications regarding ESI searches
8 and other matters, and Rule 30(b)(6) depositions of ACE and ACI. Mayfield's
9 attorneys also reviewed the insurance laws of the 50 states with an eye toward
10 interpretation of the Interest Clause and provisions in other ACE policies
11 regarding processing deadlines and payments of interest and engaged an expert
12 to analyze publicly available data regarding ERISA policies issued by ACE.
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17 On May 20, 2021, the parties engaged in a full-day mediation that
18 resulted in the settlement agreement preliminarily approved by this Court on
19 September 15, 2021. As part of that settlement, ACE has agreed to pay up to
20 \$290,484.56 in fees and costs to Plaintiff's counsel, separate and apart from any
21 payments made to the putative class members.
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B. Plaintiff’s Counsel

Plaintiff Mayfield has been represented by three law firms in this action. The Menzer Law Firm began representing Mayfield in his administrative appeals of the denial of ERISA benefits by ACE. Menzer identified ACE’s alleged breach of the Interest Clause and anticipated this issue might affect other ERISA beneficiaries. Menzer Aff. ¶4; Berger Aff. ¶6.

Menzer associated with Schroeter Goldmark and Bender (“SGB”) to file suit in the Western District of Washington because of SGB’s experience in class action cases. Menzer Aff. ¶5; Berger Aff. ¶7. When the case was transferred to the Northern District of Georgia, Plaintiff associated Buckley Beal LLP, a plaintiff’s firm with experience in employment, ERISA, and class matters, to act as local counsel.

III. DISCUSSION

A. Legal Standard

The fees and costs in this case were agreed to and are sought pursuant to ERISA’s fee-shifting provision, under which the Court may award reasonable fees and costs to a prevailing party. *See* 29 U.S.C.A. § 1132(g)(1) (“In any action under this subchapter ... by a participant, beneficiary, or fiduciary, the court in its discretion may allow a reasonable attorney's fee and costs of action to either party.”). Thus, in class actions under ERISA, the Court may determine

1 the propriety of a fee award from the total settlement fund under lodestar
2 principles. *See Griffin v. Humana Employers Health Plan of Georgia, Inc.*, 167
3 F. Supp. 3d 1337, 1341 (N.D. Ga. 2016) (citing *Blum v. Stenson*, 465 U.S. 886,
4 888 (1984)).

5
6 In addition, when awarding class counsel fees on a lodestar basis, courts
7 frequently cross-check the requested fee as a percentage of the total settlement
8 fund. *See In re Home Depot Inc.*, 931 F.3d 1065, 1091 (11th Cir. 2019). The fee
9 and cost award requested here is reasonable under both standards and should be
10 approved.
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13 **B. The Requested Award Is Reasonable On A Lodestar Basis.**

14 Under ERISA's fee-shifting provision, Plaintiff may recover his
15 reasonable fees and costs as part of the successful settlement of this action.
16 Counsel's "lodestar figure represents a presumptively reasonable fee." *Penn. v.*
17 *Delaware Valley Citizens Council*, 478 U.S. 546, 565 (1986) ([A] "strong
18 presumption that the lodestar figure . . . represents a 'reasonable' fee is wholly
19 consistent with the rationale behind the usual fee-shifting statute"); *Walters v.*
20 *City of Atlanta*, 652 F. Supp. 755, 757-58 (N.D. Ga. 1985). The lodestar amount
21 is determined by multiplying a reasonable hourly rate by the hours reasonably
22 expended and then accounting for other considerations that may require an
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1 enhancement or reduction of the fee. *Norman v. Housing Auth. of Montgomery*,
2 836 F.2d 1292, 1302 (11th Cir. 1988). The standard of reasonableness in
3 determining the amount of attorneys' fees is to be given a "liberal
4 interpretation." *Dowdell v. City of Apopka*, 698 F.2d 1181, 1191-92 (11th Cir.
5 1983).

6
7 Here, counsel requests fees in the amount of \$271,257.06 and costs of
8 \$19,591.50 (for a total of 290,848.56). Such fee award is less than counsel's
9 actual lodestar. *See Berger Aff., Ex. 1; Menzer Aff., Ex. 1; Beal Aff., Ex. A*
10 Because the time expended in the case and hourly rates requested by Plaintiff's
11 counsel are reasonable, the requested fee should be approved.

12 **1. Counsel's Hours Are Reasonable**

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14 In determining whether counsel expended a reasonable amount of time
15 on a case, a court looks first to the time the attorneys recorded. *Hensley*, 461
16 U.S. at 433 (the hours counsel spent on the case are "[t]he most useful starting
17 point for determining the amount of a reasonable fee"). Over the past three
18 years, Plaintiff's counsel and their paralegals recorded the following time to the
19 case, as detailed in the exhibits to the accompanying Declarations of Matthew
20 Menzer, Adam Berger, and Andrew Beal:
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<u>Timekeeper</u>	<u>Firm</u>	<u>Hours</u>	<u>Rate</u>
Matthew Menzer	Menzer Law Firm	201.90	\$425-\$455
JohnDavid Toren	Menzer Law Firm	56.50	\$290-\$310
Brady Douglas	Menzer Law Firm	52.50	\$275
Adam Berger	SGB	166.20	\$545
Lindsay Halm	SGB	120.60	\$430
Ashley Gomez	SGB	6.50	\$250
Paralegals/Interns	SGB	42.40	\$130
Andrew Beal	Buckley Beal	24.10	\$515
Rachel Berlin	Buckley Beal	12.20	\$465
AnnieBoring Isaac Raisner	Buckley Beal	1.6	\$300
Paralegals	Buckley Beal	2.2	\$150

Next, a court assesses the reasonableness of the time recorded. Counsel must exercise “billing judgment” in determining the hours reasonably expended on the merits; however, counsel’s certification that the work itemized has, in fact, been performed is “entitled to considerable weight on the issue of time required...” *Perkins v. Mobile Housing Bd.*, 847 F.2d 735, 738 (11th Cir. 1988). In fact, because counsel’s sworn testimony is of such importance, in order for

1 the time to be reduced, “it must appear that the time claimed is obviously and
2 convincingly excessive under the circumstances.” *Perkins*, 847 F.2d at 738.

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4 As explained in the accompanying declarations of counsel, each firm
5 maintained contemporaneous time records which are submitted with this
6 petition. Those declarations further attest that each firm exercised reasonable
7 billing judgement to exclude any time that was “excessive, redundant, or
8 inefficient,” and that, in the professional judgment of the declarants, the time
9 spent by each firm was reasonable and necessary to the case. *Perkins*, 847 F.2d
10 at 738; *see also In Re Domestic Air Transp. Antitrust Litigation*, 148 F.R.D.
11 297, 354 (N.D. Ga. 1993).

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14 In particular, the time expended by Plaintiff’s counsel was reasonable
15 and necessary given: the multiple motions to dismiss filed by ACE and
16 successfully opposed by Plaintiff; the extensive discovery required to ascertain
17 and confirm the scope of the putative class claims, the facts underlying ACE’s
18 processing of claims for benefits, and analysis of claim files; legal research into
19 the insurance laws of all 50 states to define the scope of the class and verify
20 ACE’s assertions about its use of the Interest Clause; and the novelty and
21 difficulty of Plaintiff’s claims in a specialized and highly technical area of the
22 law, including procedural issues of exhaustion and substantive issues of
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1 interpretation of the Interest Clause. Berger Aff. ¶11; Menzer Aff. ¶9. And
2 while multiple law firms were involved, counsel avoided duplication of time
3 and effort by dividing tasks among the different firms and counsel consistent
4 with their particular spheres of experience and primary roles in the case. *Id.*
5 Thus, Menzer took the lead on factual investigation, depositions, and ERISA-
6 related legal argument and research; SGB focused on issues related to class
7 certification and class settlement, discovery of electronically stored
8 information, and calculation of damages; and Buckley Beal provided guidance
9 on local practice, procedure, and case law precedents in the Eleventh Circuit
10 and the Northern District of Georgia. Menzer Aff. ¶ 6; Berger Aff. ¶ 8.

14 2. Counsel’s Hourly Rates Are Reasonable.

15 The lodestar “reasonable rate” is “based on reasonable standards in the
16 community for attorneys of similar experience in handling similar cases.” *In re*
17 *Domestic Air Transp. Litigation*, 148 F.R.D. 297, 355 (N.D. Ga. 1993).
18 Applying the attorneys’ current rates to all of the work done in the case
19 “properly accounts for inflation and delay in receipt of payment” *Id.*;
20 *Missouri v. Jenkins*, 109 S.Ct. 2463, 2469 (1989) (“an appropriate adjustment
21 for delay in payment – whether by application of current rather than historic
22 hourly rates or otherwise”).
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1 The rates requested for each attorney are set forth in the table in section
2 B.1, *infra*. These rates are reasonable and well within hourly rates charged by
3 litigation attorneys of their caliber in the Atlanta and Seattle markets.¹
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5 To begin, these rates are consistent with fees awarded to Plaintiff's
6 counsel in prior federal court litigation under fee-shifting statutes. In 2019, Mr.
7 Berger and Ms. Halm from SGB were awarded fees at hourly rates of \$515 and
8 \$400, respectively, by the federal district court in Seattle in an employment
9 class action settlement. Berger Aff. ¶15. Their requested rates here are
10 consistent with their standard practice of increasing their rates by \$15 each
11 calendar year. *Id.* Similarly, Ms. Benjamin was awarded fees by the Northern
12 District of Georgia in 2016 at \$375 per hour (and co-counsel at Buckley Beal,
13 \$525) following a successful employment discrimination trial. Berger Aff. ¶19.
14 Their requested rates here are consistent with that award when adjusted for the
15 passage of time and increased experience in the interim.
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20 ¹ Reasonable hourly rates are the prevailing market rates “in the relevant
21 community.” *Blum v. Stenson*, 465 U.S. 886, 895 (1984). The relevant
22 community is ordinarily defined as the locale where the case was filed.
23 *Cullens v. Ga. Dep't of Transp.*, 29 F.3d 1489, 1494 (11th Cir. 1994). This
24 case was originally filed in Seattle and was transferred to Georgia over
25 Plaintiff's opposition. In any event, there does not appear to be a large
26 difference in the prevailing rates in the Seattle and Atlanta markets and the
requested rates are reasonable for attorneys of similar experience and ability in
either market.

1 In addition, other recent court orders from the relevant jurisdictions
2 confirm the reasonableness of counsel's rates. In *Black Lives Matter Seattle-*
3 *King County v. City of Seattle*, the Western District of Washington awarded
4 hourly rates of \$625 to a litigation partner at a large Seattle law firm with 12
5 years' experience, \$420 to associates at the same firm with greater than one
6 years' experience, and \$145 to paralegals. Berger Aff. ¶17. In *Kaur v. American*
7 *Enterprise Corp.*, a wage and hour case tried by other SGB attorneys, the court
8 awarded hourly rates of \$500 to a partner with 14 years' experience, \$330 to an
9 associate with nine years' experience, and \$150-175 for paralegals. Berger Aff.
10 ¶16.
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14 Finally, some of Plaintiff's attorneys, in addition to their contingent fee
15 cases, also handle matters on an hourly basis.² The rates at which these counsel
16 bill and actually receive payment in their hourly matters are the same rates they
17 are requesting be awarded here. See Berger Aff. ¶18; Menzer Aff. ¶11. That the
18 market actually compensates these counsel at the requested rates is compelling
19 evidence that those rates are, in fact, the lodestar "reasonable" market rates.
20 *Dillard v. City of Greensboro*, 213 F.3d 1347, 1354-55 (11th Cir. 2000) ("What
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25 ² Mr. Berger does not handle any matters on an hourly basis, but Ms. Halm and
26 the attorneys at Menzer Law and Buckley Beal do.

1 [plaintiff’s counsel] charges clients is powerful, and perhaps the best, evidence
2 of his market rate; that is most likely to be what he is paid as ‘determined by
3 supply and demand’”).
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5 **C. The Actual Litigation Costs Are Reasonable.**

6 Finally, together, Plaintiff’s counsel have expended \$19,591.50 in costs
7 in pursuing this litigation to date. *See* Berger Aff. ¶¶20-21; Menzer Aff. ¶12;
8 Beal Aff., Ex. A. These costs are itemized in the exhibits to the accompanying
9 declarations of counsel and comprise primarily costs of deposition, expert
10 analysis of data relating to ACE’s policies and claims, filing and service, and
11 legal research. These costs are very moderate given the scope and nature of the
12 claims in the case and the recovery achieved for class members, and should be
13 approved by the Court.
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17 **D. The Requested Fee Is Reasonable On A Percentage Basis.**

18 The requested fee award is also reasonable under a percentage of
19 recovery cross-check. The typical range of attorneys’ fees in class actions on a
20 percentage basis is between 20% and 33%. *See 4 Newberg on Class Actions* §
21 14:6 (4th ed. online) (“common fee awards fall in the 20 to 33 per cent range”
22 and “empirical studies show that, regardless whether the percentage method or
23 the lodestar method is used, fee awards in class actions average around one-
24 third of the recovery”).
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1 Here, the gross amount of the settlement is \$850,000. Thus, the requested
2 fee of \$271,257.06 represents just under 32% of the gross settlement fund,
3 consistent with the typical range of class counsel awards, and less than what
4 counsel would ordinarily recover in an individual case. *See* Berger Aff. ¶ 19
5 (counsel typically charges contingent fees of one-third to 40%); Goodrich, F. &
6 Silber, R., *Common Fund and Common Fund Problems: Fee Objections and*
7 *Class Counsel's Response*, 17 Rev. Litig. 525, 548-49 (Summer 1998) (“The
8 percentage awarded should mimic the market.... In non-class litigation, one-
9 third contingency fees are typical.”). Again, given the novel and difficult issues
10 posed by this case and the extent of recovery for the settlement class members,
11 the request fee is reasonable on a percentage basis and should be approved.
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16 IV. CONCLUSION

17 The requested fee and cost award is reasonable under both lodestar and
18 percentage analyses. Given the significant recovery for Settlement Class
19 members in this case, the time and effort that contributed to this outcome, and
20 the importance of counsel’s skill and experience to obtaining this result, the
21 requested fee award is appropriate and should be approved by the Court.
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1 DATED at Seattle, Washington this 14th day of October, 2021.

2 s/ Adam J. Berger

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CERTIFICATE OF SERVICE

I certify that I caused to be served via the Court’s ECF system a true and correct copy of this document, together with its supporting pleadings and attachments thereto, on the following counsel of record:

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DATED at Lynnwood, Washington this 14th day of October, 2021.

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