UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

KENNETH DUKES et al., Plaintiffs,

v. Civil Action No. 3:23-cv-313-DJH-CHL

AMERISOURCEBERGEN CORPORATION et al., Defendants.

* * * * *

MEMORANDUM AND ORDER

Plaintiffs Kenneth Dukes, Mark A. Gale, Christine Chavis, and David R. Fly filed this purported class action against Defendants AmerisourceBergen Corporation (Amerisource), Amerisource's Board of Directors, and Amerisource's Benefits Committee, seeking to represent a class of participants and beneficiaries of the AmerisourceBergen Corporation Employee Investment Plan (the Plan) and alleging multiple breaches of fiduciary duty relating to administration of the Plan under the Employee Retirement Income Security Act (ERISA). (Docket No. 16, PageID.329 ¶ 5) Defendants filed a motion to dismiss (D.N. 19), which the Court granted in part and denied in part.[1] (D.N. 37) The parties subsequently "reached a settlement in principle to resolve" all remaining claims. (D.N. 45, PageID.827) Plaintiffs now move for preliminary approval of the proposed class-action settlement and for preliminary certification of their proposed class. (D.N. 47; *see* D.N. 48) Defendants do not oppose the motion. (*See* D.N. 47, PageID.831)

[1] The Court dismissed Counts II and IV (the Stable Value Fund claims) but permitted Counts I and III (the Total RKA Fees claims) to proceed. (D.N. 37, PageID.803) The remaining counts allege that Defendants' decision to hire Fidelity Investments Institutional as recordkeeper for the Plan violated the fiduciary duty of prudence. (*See id.*, PageID.786–88) Specifically, the complaint alleges that the Plan paid "214% more than what they should have paid for Total RKA [services] during the Class Period" as compared to similarly situated defined-contribution plans. (*See id.*, PageID.803; *see also* D.N. 16, PageID.349 ¶ 109)

On July 22, 2025, the Court heard oral argument on Plaintiffs' motion and took the matter under advisement. (*See* D.N. 63) After careful consideration, the Court will grant Plaintiffs' motion for the reasons set out below.

I. BACKGROUND

The following information is set out in Plaintiffs' proposed settlement agreement and its associated exhibits. (*See generally* D.N. 47; D.N. 48; D.N. 49; D.N. 50) Plaintiffs propose the following settlement class:

> All persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a [Qualified Domestic Relations Order] who participated in the Plan at any time during the Class Period. Excluded from the Settlement Class are the current and former members of the AmerisourceBergen Corporation Benefits Committee during the Class Period.

(D.N. 49-1, PageID.873; *see also* D.N. 48, PageID.841) The proposed class period is "from June 20, 2017, through the date the Court enters the Preliminary Approval Order." (D.N. 49-1, PageID.868; *see also* D.N. 48, PageID.842) According to Plaintiffs' attorney Paul M. Secunda, the proposed class includes "51,160 participants/beneficiaries with a positive account balance between the start of the class period and March 7, 2025." (D.N. 49, PageID.858 ¶ 3)

Under the terms of the proposed settlement, Defendants will contribute $625,000 to a common settlement fund. (D.N. 48, PageID.842) This amount will be distributed to eligible class members "[a]fter accounting for any Attorneys' Fees and Costs, Administrative Expenses, and Class Representative Case Contribution Awards approved by the Court."[2] (*Id.*) As to attorney fees, the proposed settlement requires that "the requested fees may not exceed one-third of the

[2] Class counsel "will retain the Settlement Administrator, Analytics Consulting, LLC, to calculate the amounts payable to Settlement Class Members." (D.N. 48, PageID.842; D.N. 49-1, PageID.872)

Gross Settlement Amount." (*Id.*, PageID.844; *see* D.N. 49-1, PageID.884 ("Class Counsel intends to seek to recover their attorneys' fees not to exceed $208,333.33 . . . .") Class counsel also "intends to seek the Class Representatives' Case Contribution Award, in an amount not to exceed $5,000 each, for a total of $20,000." (D.N. 49-1, PageID.884) In addition, the proposed settlement allows for the deduction of "actual and reasonable expenses of any third party, including the Plan's Recordkeeper, that are necessary" to implement the settlement. (D.N. 49-1, PageID.876; *see* D.N. 48, PageID.844) Finally, class counsel "intends to seek to recover . . . litigation costs and expenses . . . not to exceed $40,000." (D.N. 49-1, PageID.884) To disperse the net settlement funds, Plaintiffs propose that "[f]or those Settlement Class Members who had an account in the Plan during the Class Period, the distribution will be made into his or her account in the Plan," and that all other class members receive a check. (D.N. 48, PageID.842; *see* D.N. 49-3, PageID.908–09)

The proposed settlement agreement also includes several ancillary provisions. For example, the agreement includes a release of claims. (*See* D.N. 49-1, PageID.870–72) This release covers "claims for individual denial of benefits under the Plan that the Class Representative or Class Members may have regarding the value of their respective vested account balances under the terms of the Plan." (*Id.*, PageID.872) The agreement provides that class members will be notified of the proposed settlement via email and then first-class U.S. mail, if necessary.[3] (D.N. 48, PageID.844; D.N. 49-1, PageID.875) The agreement also specifies that Defendants will retain an independent fiduciary to review and authorize the settlement. (D.N. 49-1, PageID.874)

[3] The proposed settlement agreement also provides for a settlement website where class members can view documents related to the case. (D.N. 49-1, PageID.876) In addition, it authorizes the settlement administrator to create a toll-free telephone line for questions related to the settlement. (*Id.*, PageID.872; D.N. 48, PageID.844)

II. ANALYSIS

"The claims of a 'class proposed to be certified for purposes of settlement' may be settled 'only with the court's approval.'" *Randy Branson v. Alliance Coal, LLC*, No. 4:19-CV-155-RGJ-HBB, 2025 WL 1908971, at *3 (W.D. Ky. July 10, 2025) (quoting Fed. R. Civ. P. 23(e)). Before approving a class settlement, the Court must determine that it is "fair, reasonable, and adequate." Fed. R. Civ. P. 23(e)(2). Under Rule 23(e), "class action settlement approval involves a three-step process: (1) preliminary approval of the proposed settlement, (2) notice of the settlement to all affected class members, and (3) a final approval hearing." *Branson*, 2025 WL 1908971, at *3 (internal quotations omitted). Before directing notice, the Court must determine that it "will likely be able to . . . approve the proposal under Rule 23(e)(2)[] and . . . certify the class for purposes of judgment on the proposal." Fed. R. Civ. P. 23(e)(1)(B).

In deciding whether to grant preliminary approval, the Court considers two sets of factors that "largely encompass[]" each other. *See Macy v. GC Servs. Ltd. P'ship*, No. 3:15-CV-819-DJH-CHL, 2019 WL 6684522, at *2 (W.D. Ky. Dec. 6, 2019). The first set of factors, set out in Rule 23, requires the Court to consider whether

> (A) the class representatives and class counsel have adequately represented the class;
> (B) the proposal was negotiated at arm's length;
> (C) the relief provided for the class is adequate, taking into account:
> (i) the costs, risks, and delay of trial and appeal;
> (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
> (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
> (iv) any agreement required to be identified under Rule 23(e)(3); and
> (D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2). The Court also examines several factors articulated by the Sixth Circuit, including

> (1) the risk of fraud or collusion; (2) the complexity, expense[,] and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Macy, 2019 WL 6684522, at *2 (quoting *Pelzer v. Vassalle*, 655 F. App'x 352, 359 (6th Cir. 2016)).

A. Adequate Representation

The Court first examines whether "the class representatives and class counsel have adequately represented the class." Fed. R. Civ. P. 23(e)(2). This factor generally weighs in favor of a proposed settlement where class representatives and counsel "extensively litigat[e] th[e] matter through settlement" and "engage[] in a significant amount of discovery[,]" so long as "[t]here is no reason to think that, if the case continued to trial, [they] would stop litigating the case with the same intensity." *Green v. Platinum Restaurants Mid-Am. LLC*, No. 3:14-CV-439, 2022 WL 1240432, at *3 (W.D. Ky. Apr. 27, 2022); *see also Lott v. Louisville Metro Gov't*, No. 3:19-CV-271-RGJ, 2023 WL 2562407, at *2 (W.D. Ky. Mar. 17, 2023).

Here, nothing in the record indicates that the class representatives have failed to adequately represent the proposed class. Class counsel represent that they "conducted a thorough investigation of the claims that were asserted and the factual basis for those claims." (D.N. 49, PageID.859 ¶ 8) Each named Plaintiff asserts that they assisted in this process and with the prosecution of the case generally. (*See generally* D.N. 50; D.N. 50-1; D.N. 50-2; D.N. 50-3) In addition, class representatives and counsel have litigated a motion to dismiss with some success (*see* D.N. 37) and have engaged in discovery. (*See* D.N. 41) There is no indication that class representatives and counsel "would stop litigating the case with the same intensity" should it go to trial. *See Green*, 2022 WL 1240432, at *3. Moreover, this case has been active since June 2023 (D.N. 1), and class counsel has substantial experience in ERISA litigation. (D.N. 49, PageID.860–

64 ¶¶ 12–27) These circumstances are significant because "[c]ourts presume a settlement resulting from 'extensive negotiations by experienced counsel' is fair." *Carter v. Paschall Truck Lines, Inc.*, No. 5:18-CV-41-BJB, 2025 WL 899854 (W.D. Ky. Mar. 25, 2025), at *3 (quoting *In re Inter-Op Hip Prosthesis Liability Litig.*, 204 F.R.D. 330, 351 (N.D. Ohio 2001)). In sum, this factor weighs in favor of preliminary approval. *See Green*, 2022 WL 1240432, at *3; *see also Carter*, 2025 WL 899854, at *2–3.

B. Arm's-Length Negotiation

Next, the Court asks whether the "proposal was negotiated at arm's length." Fed. R. Civ. P. 23(e)(2). As explained in the advisory committee notes to Rule 23, "the involvement of a neutral or court-affiliated mediator or facilitator in . . . negotiations may bear on whether they were conducted in a manner that would protect and further the class interests." Fed. R. Civ. P. 23(e)(2)(B) advisory committee's note to 2018 amendment. And as noted above, when a proposed settlement "result[ed] from extensive negotiations by experienced counsel," the Court should "presume" it is fair. *Carter*, 2025 WL 899854, at *3 (internal quotations omitted). Here, the proposed settlement was reached during a day-long mediation with JAMS mediator Robert Meyer, "an experienced and well-respected mediator." (D.N. 49, PageID.859 ¶ 10; *see also* D.N. 49-7 (outlining Meyer's credentials and experience)) Courts regularly approve proposed settlements reached under similar circumstances. *See, e.g.*, *Lott*, 2023 WL 2562407, at *2 (noting that "[t]he Agreement was achieved only after arm's-length and good-faith negotiations between the parties and with a third-party mediatory"); *Elliott v. LVNV Funding, LLC*, No. 3:16-CV-00675-RGJ, 2019 WL 4007219, at *8 (W.D. Ky. Aug. 23, 2019). Accordingly, this factor also supports preliminary approval. *See Carter*, 2025 WL 899854, at *3.

C. Adequacy of Relief

The next factor is whether "the relief provided for the class is adequate." Fed. R. Civ. P. 23(e)(2). In considering this factor, the Court weighs "the costs, risks, and delay of trial and appeal"; "the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims"; "the terms of any proposed award of attorney's fees, including timing of payment"; and "any agreement required to be identified under Rule 23(e)(3)." *Id.*

According to the amended complaint, Plaintiffs suffered "millions of dollars" in losses. (*See* D.N. 16) Class counsel demanded "$3.2 million at the facilitative mediation" to resolve Plaintiffs' claims. (D.N. 49, PageID.858 ¶ 4) The gross settlement amount of $625,000 (D.N. 49-1, PageID.869) therefore represents approximately 19.5% of Plaintiffs' total losses. (*See* D.N. 48, PageID.848) Based on Plaintiffs' representation of 51,160 class members (D.N. 49, PageID.858 ¶ 3), the gross settlement amount would provide approximately $12 per class member. Various costs and fees are subtracted from the gross settlement amount, however. Specifically, the proposed settlement deducts from the gross settlement amount "attorneys' fees not to exceed $208,333.33" (D.N. 49-1, PageID.884), $20,000 in total case contribution awards for the class representatives (*id.*), "litigation costs and expenses . . . not to exceed $40,000" (*id.*), and "actual and reasonable expenses of any third party, including the Plan's Recordkeeper, that are necessary" to implement the settlement. (D.N. 49-1, PageID.876; *see* D.N. 48, PageID.844) Deducting these costs creates a net settlement amount of $356,666.67, representing approximately 11.1% of Plaintiffs' total losses. Based on Plaintiffs' representation of 51,160 class members (D.N. 49, PageID.858 ¶ 3), the net settlement amount would provide approximately $7 per class member.

Ultimately, the proposed settlement provides adequate relief, at least at the preliminary-approval stage. *See Carter*, 2025 WL 899854, at *2; *Macy*, 2019 WL 6684522, at *1. The proposed settlement provides up to 33% of the gross settlement amount for attorneys' fees (D.N. 48, PageID.844; *see* D.N. 49-1, PageID.884), which is within the range approved by courts in this district. *See Green*, 2022 WL 1240432, at *3 (collecting cases); *see also Lott*, 2023 WL 2562407, at *3 (same); *McClurg v. Dallas Jones Enters., Inc.*, No. 4:20-CV-201-RGJ-HBB, 2025 WL 1908974, at *3 (W.D. Ky. July 10, 2025) ("[T]he negotiated fee for class counsel is up to one-third (1/3) of the Gross Settlement Amount, which is within an acceptable range."). Moreover, ERISA "litigation is highly specialized and complex" and "presents substantial risks" when defendants deny liability. *See Chavez v. Falcon Transp. Co.*, No. 4:19-CV-958, 2025 WL 959219, at *8 (N.D. Ohio Mar. 31, 2025) (internal quotation omitted). In this action, Defendants have already obtained dismissal of several of Plaintiffs' claims (*see* D.N. 37), which suggests significant risk to Plaintiffs if the litigation were to continue. The proposed settlement's "proposed method of distributing relief," Fed. R. Civ. P. 23(e), also appears to be effective (*see* D.N. 49-3, PageID.908–09; D.N. 48, PageID.842). As discussed above, the proposed settlement provides that "[f]or those Settlement Class Members who had an account in the Plan during the Class Period, the distribution will be made into his or her account in the Plan," and that all other class members receive a check. (D.N. 48, PageID.842; *see* D.N. 49-3, PageID.908–09) Finally, there are no side agreements relating to the proposed settlement. (*See* D.N. 49-1, PageID.895 § 14.20) In sum, this factor supports preliminary approval of the proposed settlement.

D. Equitable Treatment

Next, the Court considers whether "proposal treats class members equitably relative to each other." Fed. R. Civ. P. 23(e)(2). A proposed settlement "may, in some circumstances, be

inequitable if it 'gives preferential treatment to the named plaintiffs.'" *Carter*, 2025 WL 899854, at *3 (quoting *Vassalle*, 708 F.3d at 755). Although "[s]ervice awards are not prohibited within the Sixth Circuit" when based on "class representatives' procured benefits, financial risks, and time expended," "sizable award[s] . . . might reflect inequitable or preferential treatment to the named representative's benefit." *McClurg*, 2025 WL 1908974, at *4 (internal quotations and citations omitted). Specifically, the Court "should be most dubious of incentive payments when they make the class representatives whole, or . . . even more than whole; for in that case the class representatives have no reason to care whether the mechanisms available to unnamed class members can provide adequate relief." *Carter*, 2025 WL 899854, at *3 (quoting *In re Dry Max Pampers Litigation*, 724 F.3d 713, 722 (6th Cir. 2013)). Thus, the Court must consider "whether the settlement gives preferential treatment to the named plaintiffs while only perfunctory relief to unnamed class members." *Dry Max*, 724 F.3d at 718 (quotation omitted). In doing so, the Court examines "the extent of [the representatives'] personal involvement in litigating th[e] case and the proportionality of the service award to other class members' recoveries." *McClurg*, 2025 WL 1908974, at *4 (citations omitted).

Although this factor does not strongly weigh against *preliminary* approval, it will certainly "merit more consideration at the final fairness hearing." *See id.* (citing *Duffy v. Mazda Motor of Am., Inc.*, No. 3:24-CV-388-BJB, 2025 WL 517608, at *3 (W.D. Ky. Feb. 17, 2025)). The proposed settlement provides for a $5,000 "Case Contribution Award" to each named Plaintiff. (D.N. 49-1, PageID.884) But as noted in part II.C above, each class member will receive only approximately $7 from the proposed settlement. Thus, the "proportionality of the service award to other class members' recoveries," *McClurg*, 2025 WL 1908974, at *4 (citations omitted), suggests that the proposed settlement may give "preferential treatment to the named plaintiffs."

Carter, 2025 WL 899854, at *3. Moreover, the Court is concerned that the proposed settlement may provide "only perfunctory relief to unnamed class members." *See Dry Max*, 724 F.3d at 718 (quotation omitted).

On the other hand, the named Plaintiffs have filed several affidavits (*see* D.N. 50; D.N. 50-1; D.N. 50-2; D.N. 50-3) to explain "what the service award[s] compensate[] [the named Plaintiffs] for." *See Carter*, 2025 WL 899854, at *3; *see also McClurg*, 2025 WL 1908974, at *4 (noting that the Court should consider "the extent of [the representatives'] personal involvement in litigating th[e] case"). Specifically, the named Plaintiffs assert that they have " (1) reviewed the allegations in the Complaint; (2) provided information and documents to counsel to assist in the prosecution of the action; and (3) reviewed the Settlement Agreement in its entirety and communicated with counsel regarding the negotiation of the Settlement." (*See* D.N. 50, PageID.954–55 ¶ 3; *see also* D.N. 50-1, PageID.956–57 ¶ 3; D.N. 50-2, PageID.958–59 ¶ 3; D.N. 50-3, PageID.960–61 ¶ 3) Such assertions are sufficient at the preliminary-approval stage. *See, e.g.*, *Carter*, 2025 WL 899854, at *3–4 (noting the potential inequity of a proposed settlement's case-contribution award but nevertheless granting preliminary approval); *Duffy*, 2025 WL 517608, at *3 (same); *McClurg*, 2025 WL 1908974, at *4 (same). At the final-approval stage, however, Plaintiffs should be prepared to further justify the proposed settlement's service awards, including an accounting of the hours spent by the class representatives on the case. *See McClurg*, 2025 WL 1908974, at *4. Specifically, Plaintiffs must provide "specific documentation—in the manner of attorney time sheets—of the time actually spent on the case by each recipient of an award." *See Shane Grp., Inc. v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 311 (6th Cir. 2016).

E. Sixth Circuit Factors

The Sixth Circuit factors also largely support preliminary approval. As discussed above, these factors include

> (1) the risk of fraud or collusion; (2) the complexity, expense[,] and likely duration of the litigation; (3) the amount of discovery engaged in by the parties; (4) the likelihood of success on the merits; (5) the opinions of class counsel and class representatives; (6) the reaction of absent class members; and (7) the public interest.

Macy, 2019 WL 6684522, at *2 (quoting *Pelzer*, 655 F. App'x at 359). As to the first factor, "[i]n the absence of evidence to the contrary, the court may presume that no fraud occurred and that there was no collusion between counsel." *Crawford v. Lexington-Fayette Urb. Cnty. Gov't*, No. CIV. A. 06-299-JBC, 2008 WL 4724499, at *6 (E.D. Ky. Oct. 23, 2008) (citation omitted). The record contains no such evidence here. Moreover, because the settlement was reached through an arms-length negotiating process with an experienced mediator (D.N. 49, PageID.859 ¶ 10; *see also* D.N. 49-7), any risk of fraud or collusion is "negligible." *See, e.g.*, *Lewis v. Huntington Nat'l Bank*, No. 2:11-CV-00058, 2013 WL 12231327, at *3 (S.D. Ohio May 30, 2013) (citation omitted). With respect to the second and fourth factors, ERISA "litigation is highly specialized and complex" and "presents substantial risks." *Chavez*, 2025 WL 959219, at *8. Given these risks, the probability of success on the merits, "which provides a gauge from which the benefits of the settlement must be measured," also weighs in favor of preliminary approval. *See Lewis*, 2013 WL 12231327, at *3 (internal quotation omitted). In addition, class counsel and the class representatives support the proposed settlement. (*See generally* D.N. 48; D.N. 50; D.N. 50-1; D.N. 50-2; D.N. 50-3) And as to the public interest, "[s]ettlement is the preferred means of resolving litigation," especially "complex litigation and class action suits because they are notoriously difficult and unpredictable and settlement conserves judicial resources." *Ware v. CKF Enters.*,

Inc., No. CV 5:19-183-DCR, 2020 WL 2441415, at *14 (E.D. Ky. May 12, 2020) (quotations omitted); *see also Duffy*, 2025 WL 517608, at *4.

The remaining factors are either irrelevant or inconsequential. Although the record does not reflect that the parties completed discovery before beginning settlement negotiations (*see* D.N. 41; D.N. 42; D.N. 43), discovery was initiated (D.N. 42; *see also* D.N. 49, PageID.859 ¶ 9), and class counsel "conducted a thorough investigation of the claims that were asserted and the factual basis for those claims." (D.N. 49, PageID.859 ¶ 8) Ultimately, "[e]ven though a considerable amount of additional discovery on liability, damages, and the appropriateness of certification would be necessary if the Court were to reject the proposed agreement," this factor does not weigh strongly in the Court's analysis. *Ware*, 2020 WL 2441415, at *14. As to the final remaining factor, "[t]he reaction of absent class members is not relevant to the preliminary approval stage analysis." *See id.* n.4 (internal quotation omitted); *see also Duffy*, 2025 WL 517608, at *4.

F. Preliminary Class Certification for Settlement Purposes

Prior to directing notice to the class members, the Court must also conditionally certify the class for settlement purposes. *See* Fed. R. Civ. P. 23(e)(B) (requiring the Court to direct notice if "justified by the parties' showing that the court will likely be able to . . . certify the class for purposes of judgment on the proposal"); *In re Flint Water Cases*, 499 F. Supp. 3d 399, 418 (E.D. Mich. 2021). "Though still subject to the Court's final approval at a later date, preliminary certification indicates at this stage that certification is sufficiently 'likely' to justify sending notice to settlement class members." *Id.* Ultimately, "[t]o be certified, a class must satisfy all four of the Rule 23(a) prerequisites—numerosity, commonality, typicality, and adequate representation—and fall within one of the three types of class actions listed in Rule 23(b)." *Branson*, 2025 WL 1908971, at *5 (quoting *Young v. Nationwide Mut. Ins. Co.*, 693 F.3d 532, 537 (6th Cir. 2012)).

But "at th[e] preliminary stage, rigorous analysis under Rule 23(a)–(b) is not necessary." *Id.* (citation omitted).

1. Rule 23(a) Prerequisites

The Court concludes that the proposed class likely satisfies the four Rule 23(a) prerequisites. As to numerosity, the Court asks whether "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). This analysis has "no strict numerical test." *See Branson*, 2025 WL 1908971, at *5 (quoting *Daffin v. Ford Motor Co.*, 458 F.3d 549, 552 (6th Cir. 2006)). Still, the numerosity requirement is "usually" satisfied when the proposed class includes "substantial numbers." *Daffin*, 458 F.3d at 552 (internal quotation omitted). Indeed, "joinder is generally deemed . . . impracticable in classes with more 40 members." *See* Introduction to Rule 23(a)(1)—Impracticability of joinder, 1 Newberg and Rubenstein on Class Actions § 3:11 (6th ed.). Here, Plaintiffs represent that the proposed class includes 51,160 individuals. (D.N. 49, PageID.858 ¶ 3) This number is sufficient. *See Branson*, 2025 WL 1908971, at *5 (noting that "6,667 class members or more certainly suffices").

Next, "[c]ommonality requires a common contention that, if resolved, would resolve claims of all class members in one stroke." *Branson*, 2025 WL 1908971, at *5 (internal quotations omitted). Generally, this requirement is "easily satisfied in ERISA cases." *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, at *10 (S.D. Ohio Feb. 18, 2021) (quotation omitted). As Plaintiffs correctly note, this action involves several issues common to all class members, including "(1) whether the Plan's RKA fees were excessive; (2) whether Defendants breached their fiduciary duties to the Plan; and (3) whether the Plan suffered losses from the alleged fiduciary breaches." (D.N. 48, PageID.852) As a result, the commonality requirement is likely fulfilled here.

As to the typicality requirement, the Court asks whether the class representatives' claims "arise[] from the same event or practice or course of conduct that gives rise to the claims of other class members, and if [their] claims are based on the same legal theory." *Karpik*, 2021 WL 757123, at *11 (quoting *Beattie v. CenturyTel, Inc.*, 511 F.3d 554, 561 (6th Cir. 2007)). Typicality "tends to merge with the commonality requirement" and is also generally satisfied in ERISA litigation like that at issue here. *See id.* (quotations and citations omitted); *see also Davis v. Magna Int'l of Am., Inc.*, No. 20-11060, 2023 WL 3729443, at *9 (E.D. Mich. Mar. 27, 2023). Here, the class representatives' claims are based on the same legal theories as those of other class members and arise from the same course of conduct—Defendants' administration of the Plan. (*See generally* D.N. 16) Thus, the typicality requirement is likely satisfied.

Finally, "[t]here are two criteria for determining whether the representation of the class will be adequate: 1) [t]he representative must have common interests with unnamed members of the class, and 2) it must appear that the representatives will vigorously prosecute the interests of the class through qualified counsel." *Branson*, 2025 WL 1908971, at *5 (quoting *Senter v. Gen. Motors Corp.*, 532 F.2d 511, 524–25 (6th Cir. 1976)). For the reasons already discussed in Part II.A, the adequate-representation requirement appears to be met here. *See Karpik*, 2021 WL 757123, at *11; *see also Branson*, 2025 WL 1908971, at *5.

2. Rule 23(b) Requirement

The Court is also satisfied that the proposed class likely "fall[s] within one of the three types of class actions listed in Rule 23(b)." *Branson*, 2025 WL 1908971, at *5. Plaintiffs contend that preliminary certification is warranted under Rule 23(b)(1). (D.N. 48, PageID.854) Under Rule 23(b)(1), Plaintiffs must demonstrate that

> prosecuting separate actions by or against individual class members would create a risk of:

> (A) inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct for the party opposing the class; or
>
> (B) adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Fed. R. Civ. P. 23(b)(1). Rule 23(b)(1)(B) class actions are "only appropriate when the suit threatens to impair or dispose of the rights and interests of absent class members, as in the case of lawsuits filed by shareholders or against trustees, or where there is a limited fund available to pay damages." *Mod. Holdings, LLC v. Corning, Inc.*, No. 5:13-CV-00405-GFVT, 2018 WL 1546355, at *11 (E.D. Ky. Mar. 29, 2018) (citing *Ortiz v. Fibreboard Corp.*, 527 U.S. 815 (1999)). The advisory committee's note to Rule 23 explains that certification under subsection (b)(1)(B) is warranted in "an action which charges a breach of trust by an indenture trustee or other fiduciary similarly affecting the members of a large class of security holders or other beneficiaries, and which requires an accounting or like measures to restore the subject of the trust." Fed. R. Civ. P. 23(b)(1)(B) advisory committee's note to 1966 amendment. Courts widely recognize that "subsection (b)(1)(B) is the most appropriate subsection for class certification in an ERISA breach of fiduciary duty case." *Shirk v. Fifth Third Bancorp*, No. 05-CV-049, 2008 WL 4425535, at *4 (S.D. Ohio Sept. 30, 2008) (collecting cases); *see also In re Nortel Networks Corp. ERISA Litig.*, No. 3:03-MD-01537, 2009 WL 3294827, at *14 (M.D. Tenn. Sept. 2, 2009). Because Plaintiffs assert such claims here (*see generally* D.N. 19), certification under Rule 23(b)(1)(B) is likely.

G. Adequacy of the Proposed Notice

Pursuant to Rule 23(e), the Court must direct notice of the proposed settlement "in a reasonable manner to all class members who would be bound by the proposal." Fed. R. Civ. P.

23(e)(1)(B). Rule 23(b)(1)(B) class actions have "no notice requirement . . . beyond that required by subdivision (e) for settlement purposes." *Ortiz*, 527 U.S. at 841 n.19. Rule 23(b)(3) class actions, on the other hand, require "the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Here, the proposed notice is adequate because it satisfies the (relevant) procedures for "the best notice that is practicable under the circumstances" contemplated by Rule 23(c)(2)(B). *See Walls v. JPMorgan Chase Bank, N.A.*, No. 3:11-CV-673-DJH, 2016 WL 9459818, at *3 (W.D. Ky. May 5, 2016). Specifically, the proposed notice explains the nature of the action, contains information regarding the terms of the proposed settlement, explains the scope of released claims, describes the process for making objections and appearing at the fairness hearing, and outlines proposed attorney fees, costs, and case-contribution awards. (*See generally* D.N. 49-2) Moreover, the parties intend to send the proposed notice via email and then first-class U.S. mail, if necessary (D.N. 48, PageID.844; D.N. 49-1, PageID.875), a procedure supported by Rule 23. *See* Fed. R. Civ. P. 23(c)(2)(B); *see also* Notice by mail, 3 Newberg and Rubenstein on Class Actions § 8:28 (6th ed.) (explaining that "notice by mail is the preferred means for notifying identified members of a class").

III. CONCLUSION

For the reasons set out above, and the Court being otherwise sufficiently advised, it is hereby

ORDERED as follows:

(1) Plaintiffs' unopposed motion for preliminary settlement approval (D.N. 47) is **GRANTED**. The Court preliminarily **APPROVES** the settlement agreement between the parties. This approval is subject to further consideration at a final approval hearing, following proper notice to the members of the settlement class of the opportunity to object to its terms.

(2) Pursuant to Federal Rule of Civil Procedure 23(e), the Court preliminarily **CERTIFIES** the following class for settlement purposes:

> All persons who participated in the Plan at any time during the Class Period, including any Beneficiary of a deceased Person who participated in the Plan at any time during the Class Period, and any Alternate Payee of a Person subject to a [Qualified Domestic Relations Order] who participated in the Plan at any time during the Class Period.

(*See* D.N. 49-1, PageID.873 ¶ 1.46) Excluded from the Settlement Class are the current and former members of the AmerisourceBergen Corporation Benefits Committee during the Class Period. (*Id.*)

(3) The Court preliminarily **APPOINTS** Plaintiffs Kenneth Dukes, Mark A. Gale, Christine Chavis, and David R. Fly as Class Representatives for the Settlement Class.

(4) The Court preliminarily **APPOINTS** Walcheske & Luzi, LLC and Paul Hershberg Law, PLLC as Class Counsel for the Settlement Class.

(5) The Court **APPROVES** the notice and notice method described in the settlement agreement. Notice shall proceed in accordance with the procedures and methodologies described therein.

(6) The Court **APPROVES** the appointment of Analytics Consulting, LLC as Settlement Administrator.

(7) This matter is **SET** for a final fairness hearing on **November 7, 2025, at 10:00 a.m.** at the U.S. Courthouse in Louisville, Kentucky.

(8) Members of the settlement class who wish to object to the proposed settlement agreement must submit a written statement of objection that comports with the procedures outlined in the settlement agreement. Any objections must be filed at least **twenty-one (21) days prior to the final fairness hearing**. Any responses to objections must be filed at least **seven (7) days prior to the final fairness hearing.** There shall be no replies.

(9) Any motions for attorney fees, expenses, and class representative service awards **SHALL** be filed at least **thirty (30) days prior to the final fairness hearing**. In addition, any briefs or other documentation in support of final approval must be filed at least **fourteen (14) days prior to the final approval hearing**.

August 29, 2025

David J. Hale, Judge
United States District Court