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9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 BRIAN SMITH, JACQUELINE MOONEY,  
12 ANGELA BAKANAS, and MATTHEW  
13 COLÓN, individually and on behalf of all  
14 others similarly situated,

15 Plaintiffs,

16 v.

17 VCA, INC., and THE PLAN COMMITTEE  
18 FOR THE VCA, INC. SALARY SAVINGS  
19 PLAN, and JOHN AND JANE DOES 1-50,

20 Defendants.

Case No. 2:21-cv-09140-GW-AGR

**DECLARATION OF ANDREW W.  
FERICH IN SUPPORT OF  
PLAINTIFFS' MOTION FOR  
AWARD OF ATTORNEYS' FEES,  
COSTS, AND SERVICE AWARDS**

1 I, Andrew W. Ferich, on oath, hereby declares as follows:

2 1. I am an adult, I have personal knowledge of the facts stated herein, and I am  
3 competent to so testify. I am co-counsel for Plaintiffs in this action. I am a partner of  
4 Ahdoot & Wolfson, PC (“AW”), and a member in good standing of the bars of the state  
5 of Pennsylvania, New Jersey, and the District of Columbia.

6 2. This Declaration is submitted in Support of Plaintiffs’ Motion for Award of  
7 Attorneys’ Fees, Costs, and Service Awards filed contemporaneously herewith. I make  
8 the following declaration based upon my own personal knowledge and, where indicated  
9 as based on information and belief, that the following statements are true. If called upon  
10 as a witness, I could and would competently testify as follows:

11 **HISTORY OF THE LITIGATION**

12 3. Plaintiffs in this Action allege that VCA, Inc. and the Plan Committee for  
13 the VCA, Inc. Salary Savings Plan (together, “VCA” or “Defendants”) breached fiduciary  
14 duties in violation of ERISA, 29 U.S.C. §§ 1001-1461 by failing to ensure that Plan  
15 members’ payment of recordkeeping and administrative (“RK&A”) fees were fair,  
16 reasonable, and appropriate.

17 4. On November 22, 2021, Plaintiffs filed their Class Action Complaint against  
18 Defendants alleging that, inter alia, VCA: (a) breached their duty of prudence to the Plan  
19 as fiduciaries by allowing the Plan to pay multiplies of the reasonable per participant  
20 amount for the Plan’s retirement plan services fees, failing to properly disclose the fees  
21 charged to Participants in the Plan, failing to defray reasonable expenses of administering  
22 the plan, and failing to act with the required due care and diligence in the administration  
23 of the Plan; and (b) breached their duty to adequately monitor ERISA fiduciaries of the  
24 Plan by failing to monitor and evaluate their performance, failing to monitor the process  
25 by which Plan recordkeepers were evaluated, and failing to remove individuals  
26 responsible for Plan monitoring who caused excessive cost and detriment to the Plan.  
27 ECF No. 1 ¶¶ 176-181, 183-188.

1           5.       Almost immediately after Plaintiffs filed their class action lawsuit,  
2 Defendants sought to stay the litigation by filing a motion to stay, pending the Supreme  
3 Court’s decision in the ERISA litigation in *Hughes et al. v. Northwestern Univ.*, No. 19-  
4 1401, 141 S. Ct. 2882 (U.S. July 2, 2021). ECF No. 25. Plaintiffs opposed this motion.  
5 ECF No. 28. *Hughes* was decided during the pendency of the motion to stay, (and thus  
6 mooted) resulting in VCA’s withdrawal of the motion. ECF No. 36.

7           6.       On February 17, 2022, VCA moved to dismiss the litigation in its entirety  
8 (ECF No. 40, which Plaintiffs vehemently opposed). ECF No. 47. Ultimately, the Court  
9 denied the motion to dismiss in its entirety and allowed Plaintiffs to continue to litigate  
10 all claims against VCA. ECF Nos. 55, 56.

11          7.       The attorneys at AW who worked on this matter have stayed abreast of all  
12 material developments involving the allegations in the case and issues concerning the  
13 Plan during the Class Period, and thoroughly investigated their allegations that the Plan  
14 paid unreasonable and excessive fees for retirement plan services.

15          8.       The attorneys at AW identified and investigated the claims and the  
16 underlying facts in this lawsuit, spoke with numerous Class Members, and performed  
17 various additional efforts to institute this action against Defendants on behalf of the  
18 aggrieved Plan participants. Inherent in this effort is the unique complexity of  
19 understanding the inner workings of the VCA Inc. Salary Savings Plan.

20          9.       For example, Plaintiffs combed through extensive publicly available Form  
21 5500 filings, analyzed and evaluated the administrative fee setup in the Plan by reviewing  
22 those filings and other Plan documents, and did an extensive comparative analysis of the  
23 Plan against similar plans, allowing Plaintiffs to demonstratively illustrate (i.e., through  
24 the tables in the Complaint) how the effective annual per participant retirement plan  
25 service fees paid in 2018 by other comparable plans with similar numbers of participants  
26 were significantly lower, as well as graphics comparing the service fee paid by the Plan  
27 with the annual service fee paid by comparable plans for materially identical services.  
28 AW’s research and other efforts allowed Plaintiffs to allege that during the Class Period,

1 both smaller plans and plans of a comparable size to the Plan paid significantly lower  
2 per-participant retirement plan service fees than the Plan, including other plans which use  
3 Defendants' same recordkeeper, Prudential.

4 **MEDIATION AND SETTLEMENT NEGOTIATIONS**

5 10. Following commencement of this action, Plaintiffs and Defendants engaged  
6 in open dialogue about case management issues and engaged in multiple meet-and-confer  
7 discussions. During these conferrals in July 2022, the parties discussed the prospect of  
8 early resolution. As a result, the parties mutually agreed to mediate this matter.

9 11. The parties reserved an all-day mediation session with David Geronemus of  
10 JAMS—a highly experienced mediator with expertise in ERISA class action  
11 settlements—for November 9, 2022. In preparation, the parties began settlement  
12 negotiations and organizing for the November 9 mediation.

13 12. On November 9, 2022, the parties participated in an all-day mediation  
14 session. The negotiations during the mediation session were hard-fought, conducted at  
15 arm's length and in good faith, allowing the parties to communicate their respective  
16 positions on the litigation and their claims and defenses with each other and the mediator.  
17 With Mr. Geronemus's guidance, the parties conducted a productive mediation session  
18 marked by zealous advocacy by counsel for both sides on behalf of their clients. At all  
19 times, the negotiations were conducted in an adversarial manner with each side  
20 vigorously representing their clients' interests.

21 13. By the end of the mediation, the parties reached an agreement in principle  
22 to settle the litigation, having agreed to the creation of a Qualified Settlement Fund  
23 consisting of a Gross Settlement Amount of \$1,500,000.

24 14. Prior to and during mediation and settlement negotiations, Plaintiffs  
25 received and analyzed mediation-related discovery and informational productions from  
26 Defendants to verify not only the details about the Plan and its administration, but also  
27 the fairness of the Settlement and related negotiations.

28

1 15. During negotiations, the parties deferred discussions about maximum  
2 Service Payments to be sought on behalf of the proposed Class Representatives, as well  
3 as the amount of Attorneys' Fees and Costs to be sought by Plaintiffs' counsel until after  
4 reaching an agreement on all material terms of the settlement.

5 16. Following the mediation session, the parties continued to confer and finalize  
6 the Settlement's terms. During this time, the parties exchanged numerous drafts of the  
7 Settlement Agreement and its exhibits, negotiating, and ironing out various details to  
8 maximize the benefits to the Class Members including the Plan of Allocation, the best  
9 Notice to Class Members, and the selection of the Settlement Administrator.

10 17. Plaintiffs' Counsel solicited competing bids from three separate third-party  
11 administrators for settlement notice and administration. With each of the potential  
12 settlement administrators, proposed Class Counsel discussed the notice and distribution  
13 plans agreed to in the Settlement. Counsel ultimately negotiated an agreement with  
14 Analytics Consulting LLC ("Analytics Consulting"), a nationally recognized leader in  
15 class action settlement administration with expertise in ERISA class action settlements  
16 that has administered hundreds of class action settlements.

17 18. After comprehensive negotiations, Plaintiffs and VCA finalized the terms of  
18 the Settlement and executed the final Settlement Agreement on January 30, 2023. The  
19 Settlement provides that Class Counsel shall seek to recover attorneys' fees not to exceed  
20 \$500,000, and litigation costs and expenses advanced and carried by Class Counsel for  
21 the duration of the Class Action, not to exceed \$50,000, which shall be recovered from  
22 the Settlement Fund. SA ¶ 6.1. The Settlement also provides that Class Counsel will move  
23 the Court for approval of a \$3,000 payment to each Plaintiff. *Id.*

24 **AHDOOT & WOLFSON, PC'S HOURS AND LODESTAR**

25 19. Ahdoot & Wolfson, PC ("AW") expended 351.7 hours in this litigation  
26 through April 27, 2023 for a lodestar of \$261,190.

27 20. AW's representation of the Class was on a wholly contingent basis. The  
28 Firm devoted substantial resources to this matter, and we have received no payment for

1 any of the hours of services performed or the out-of-pocket costs and expenses that AW  
2 committed to the litigation of this case. We did this, with no guarantee of repayment, to  
3 represent our clients and because of the public interest and social importance of this case.  
4 Moreover, AW was required to forego other financial opportunities to litigate this case.  
5 AW thus took this case with the expectation that the firm would receive a risk  
6 enhancement in the event we prevailed.

7 21. All attorneys and legal staff who worked on this case maintained  
8 contemporaneous time records reflecting the time spent on all billable matters. In all  
9 instances, the timekeeper indicated the date and amount of time spent on a task to one-  
10 tenth of an hour increments, described the work that was performed during the indicated  
11 time period, and identified the case to which the time should be charged. AW's  
12 contemporaneous time records can be made available to the Court for *in camera* review  
13 upon request.

14 22. AW made every effort to litigate this matter efficiently by coordinating the  
15 work of AW's attorneys and paralegals, as well as co-Class Counsel, minimizing  
16 duplication, and assigning tasks in a time and cost-efficient manner, based on the  
17 timekeepers' experience levels and talents.

18 23. I certify to the Court that AW's fee records accurately reflect work actually,  
19 reasonably, and necessarily performed in connection with the litigation of this matter. I  
20 believe that the hours spent reflect time spent reasonably litigating this case, which I have  
21 sought to manage and staff efficiently as described above.

22 24. A summary of rates and hours expended by AW's professionals, as of April  
23 27, 2023, is set forth as follows:

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<b>Name</b>	<b>Title</b>	<b>Rate</b>	<b>Time</b>	<b>Lodestar</b>
Robert Ahdoot	Partner	\$1,200	32.7	\$39,240
Andrew Ferich	Partner	\$850	236.8	\$201,280
Carlynn Wagner	Associate	\$450	0.6	\$270
Windy Loritsch	Paralegal	\$250	51.1	\$12,775
Heidi Liivamagi	Paralegal	\$250	0.7	\$175
Kathryn Cabrera	Paralegal	\$250	0.2	\$50
Laura Lowe	Paralegal	\$250	29.6	\$7,400
<b>TOTALS</b>			351.7	\$261,190

25. Since the Preliminary Approval Order was entered, AW attorneys have devoted significant additional hours of time to, among other things, preparing and finalizing the Motion for Final Approval of Class Action Settlement, and all supporting declarations and exhibits thereto and coordinating with the Settlement Administrator about the Notice Plan and implementing the Settlement.

26. I expect AW to maintain a high level of oversight and involvement in this case, and will continue to expend significant attorney time given the future work still needed for completion of the Settlement, including: preparing for and attending the final approval hearing, addressing any appeals, and working with Defendant and the Settlement Administrator on the distribution of benefits to the Settlement Class.

27. Therefore, I anticipate incurring additional lodestar in the future.

#### **AHDOOT & WOLFSON, PC'S REASONABLE EXPENSES**

28. To date, AW has incurred \$27,949.83 of litigation expenses, as follows:

<b>Description</b>	<b>Amount</b>
Filing Fees and Transcripts	\$1,902.13
Postage and Shipping	\$52.72
Attorney Service Fees	\$699.90
Electronic Research	\$108.20
Mediation and Expert Fees	\$25,186.88
<b>Total</b>	<b>\$27,949.83</b>



1 29. These costs include court fees, special admissions fees, mediation fees,  
2 consultant and expert fees, electronic research fees, attorney service fees, postage,  
3 duplication costs, travel, and other related costs. Each of these costs and expenses are  
4 fully documented, and in my opinion, necessary and reasonable. This amount does not  
5 include internal and other additional costs that Class Counsel incurred in this litigation  
6 but, in an exercise of discretion, do not seek to recover.

7 **AHDOOT & WOLFSON, PC FIRM EXPERIENCE**

8 30. At all times, AW had the experience and expertise to effectively litigate any  
9 all issues related to this litigation.

10 31. In March 1998, Robert Ahdoot and Tina Wolfson founded AW, now a  
11 nationally recognized law firm that specializes in complex and class action litigation, with  
12 a focus on privacy rights, consumer fraud, anti-competitive business practices, employee  
13 rights, defective products, civil rights, and taxpayer rights. The attorneys at AW are  
14 experienced litigators who have often been appointed by state and federal courts as lead  
15 class counsel, including in multidistrict litigation. In over two decades of its successful  
16 existence, AW has successfully vindicated the rights of millions of class members in  
17 protracted, complex litigation, conferring hundreds of millions of dollars to the victims,  
18 and affecting real change in corporate behavior. A copy of AW firm's resume is attached  
19 hereto as **Exhibit 1**.

20 32. I joined AW as a partner at the age of only 33, and already have extensive  
21 experience serving in leadership and support roles in complex actions. For example, I  
22 have been at the forefront of the highly publicized Accellion FTA data breach litigation  
23 announced in late 2020, and have zealously prosecuted cases against Accellion and three  
24 of its customers that were impacted by this massive breach. Due to my firm's efforts,  
25 settlements were reached in each of these litigations. In one of these settlements, final  
26 approval of the settlement was recently granted, and I was appointed as class counsel.  
27 *See Cochran, et al. v. The Kroger Co., et al.*, No. 5:21-cv-01887-EJD (N.D. Cal.), ECF  
28



1 No. 115 (granting final approval of nationwide settlement that provides \$5 million non-  
2 reversionary fund and appointing me and AW as co-lead class counsel).

3 33. I played a principal role in identifying the alleged wrongdoing and  
4 prosecuting the litigation in *Davis, et al. v. Washington University of St. Louis, et al.*,  
5 No. 4:17-cv-01641-RLW (E.D. Mo.) (Hon. Ronnie L. White), a class action arising from  
6 Washington University in St. Louis' breach of fiduciary duties under ERISA for  
7 mismanaging the Plan and failing to ensure that its fees and expenses remain reasonable.  
8 That case recently settled following years of hard-fought litigation that included my  
9 efforts.

10 34. I have been appointed to leadership positions in multiple consumer class  
11 actions. For example, I was appointed as class counsel in *Udeen, et al. v. Subaru of*  
12 *America, Inc.*, No. 1:18-cv-17334-RBK-JS (D.N.J.), where I helped obtain a settlement  
13 valued at more than \$6.25 million on behalf of owners and lessees of Subaru vehicles  
14 with allegedly defective infotainment systems. *See also McFadden v. Microsoft Corp.*,  
15 No. C20-0640-RSM-MAT, 2020 WL 5642822, at \*3 (W.D. Wash. Sept. 22, 2020)  
16 (appointed as co-lead counsel).

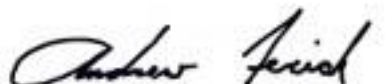
17 35. I was appointed recently as Interim Co-Lead Counsel in *Smeltz, et al. v.*  
18 *Logan Health, et al.*, No. A-DV-22-0124 (8th Judicial District Court, Cascade County  
19 Mar. 31, 2022) (Grubich, J.), a data breach class action arising from the exposure of  
20 highly sensitive information of 213,545 individuals, including medical records.

21 36. I was recently appointed as Class Counsel in *In re Forefront Data Breach*  
22 *Litigation*, Master File No. 1:21-cv-00887-LA (E.D. Wis. Oct. 3, 2022), a ransomware  
23 cyberattack and data breach class action involving the disclosure of sensitive information  
24 of 2,413,553 individuals, including medical records.

25 37. I was also recently appointed as co-lead class counsel in *Kesner et al. v.*  
26 *UMass Memorial Health Care, Inc.*, No. 2185 CV 01210 (Mass. Super. Ct.), a medical  
27 data breach case where the Court has granted preliminary approval of a \$1.2 million non-  
28 reversionary common fund settlement.

1           38. In sum, I and my firm have led and continue to lead many high-profile class  
2 action cases. AW has decades of experience in the prosecution of class actions.

3           I hereby certify that the foregoing is true and correct. Executed at Radnor,  
4 Pennsylvania on April 28, 2023.

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7 Andrew W. Ferich  
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