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9 *Counsel for Plaintiffs and the Class*

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

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

16 Plaintiffs,

17 v.

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

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

**DECLARATION OF ERICH P.
SCHORK IN SUPPORT OF
PLAINTIFFS' MOTION FOR
AWARD OF ATTORNEYS' FEES,
COSTS, AND SERVICE
PAYMENTS**

1 I, Erich P. Schork, hereby declare as follows:

2 1. I am an adult, have personal knowledge of the facts stated herein, and am
3 competent to so testify. I am co-counsel for Plaintiffs in this action and am one of Class
4 Counsel. I am a partner at the law firm Roberts Law Firm, US, PC (“RLF”), and a
5 member in good standing of the bar of the state of Illinois.

6 2. This Declaration is submitted in Support of Plaintiffs’ Motion for Award of
7 Attorneys’ Fees, Costs, and Service Payments 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 opposed. ECF No. 47. Ultimately, the Court denied the
9 motion to dismiss in its entirety and allowed Plaintiffs to continue to litigate all claims
10 against VCA. ECF Nos. 55, 56.

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

1 to allege that during the Class Period, both smaller plans and plans of a comparable size
2 to the Plan paid significantly lower per-participant retirement plan service fees than the
3 Plan, including other plans which use 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 Service
2 Payments to be sought on behalf of the proposed Class Representatives, as well as the
3 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 Class Members including the Plan of Allocation, the best Notice
9 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, Class Counsel discussed the notice and distribution plans
13 agreed to in the Settlement. Counsel ultimately negotiated an agreement with Analytics
14 Consulting LLC (“Analytics Consulting”), a nationally recognized leader in class action
15 settlement administration with expertise in ERISA class action settlements that has
16 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 **CLASS COUNSELS’ HOURS AND LODESTAR**

25 19. Using the information provided in my co-Class Counsel’s concurrently filed
26 Declaration and my own personal knowledge of my firm’s lodestar, the following chart
27 summarizes the lodestar by each firm:
28

Firm	Hours	Lodestar
Ahdoot & Wolfson PC	351.7	\$261,190
Roberts Law Firm US PC	220.2	\$183,756
Total	571.9	\$449,946

ROBERTS LAW FIRM'S HOURS AND LODESTAR

20. RLF expended 220.2 hours in this litigation through April 27, 2023 for a lodestar of \$183,756.

21. RLF's representation of the Class was on a wholly contingent basis. The Firm devoted substantial resources to this matter, and we have received no payment for any of the hours of services performed or the out-of-pocket costs and expenses that RLF committed to the litigation of this case. We did this, with no guarantee of repayment, to represent our clients and because of the public interest and social importance of this case.

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

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

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

25. A summary of rates and hours expended by RLF's professionals, as of April 27, 2023, is set forth as follows:

Name	Title	Rate	Time	Lodestar
Michael Roberts	Partner	\$1,040	4.3	\$4,472
Erich P. Schork	Partner	\$860	192.4	\$165,464
Karen Halbert	Partner	\$950	7.1	\$6,745
Sarah DeLoach	Partner	\$750	.6	\$450
Morgan Hunt	Associate	\$560	10.1	\$5,656
Angelicia Grissom	Paralegal	\$170	5.7	\$969
TOTALS			220.2	\$183,756

26. Since the Preliminary Approval Order was entered, RLF 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.

27. I expect RLF 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.

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

CLASS COUNSELS' EXPENSES

29. As set forth herein and in the concurrently filed Declaration of co-Class Counsel, Class Counsel have incurred a total of \$50,966.11 in unreimbursed costs and expenses that were necessarily incurred in connection with the investigation, prosecution, and settlement of this litigation.

ROBERTS LAW FIRM'S LITIGATION EXPENSES

30. To date, Roberts Law firm has incurred \$23,046.28 of litigation expenses, as follows:

Description	Amount
Filing Fees	\$57
Travel	\$1,378.38
Electronic Research	\$2,479.65
Mediation and Expert Fees	\$19,131.25
Total	\$23,046.28

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

ROBERTS LAW FIRM'S EXPERIENCE

32. The Roberts Law Firm, U.S., P.C., is a full-service law firm with a worldwide client base, integrating business law with a world vision. The Roberts Law Firm includes a team of highly experienced and reputable attorneys to deliver cost-effective client-focused representation on a variety of legal issues including, but not limited to antitrust litigation, data breach litigation, intellectual property law, business-based litigation, and general corporate law. The Roberts Law Firm is headquartered in Dallas, Texas, with presence in Boston, Chicago, Denver, Little Rock, and New York. A copy of the Robert Law Firm's firm resume is attached as Exhibit 1.

33. Michael L. Roberts is the owner and manager of Roberts Law Firm. He has served as lead and co-lead counsel and on the executive committees in numerous complex class actions, including *First Impressions Salon, Inc., v. National Milk Producers Federation* (S.D. Ill.) (Michael Roberts was appointed Co-Lead Class Counsel and a \$220 million settlement was reached and granted final approval); *National Trucking Financial Reclamation Services, LLC vs. Pilot Corporation* (E.D. Ark.) (Michael Roberts was

1 appointed Co-Lead Counsel and the case settled for \$84 million plus injunctive relief);
2 *In re Microsoft Antitrust Litigation: Paul Peek, D.D.S., v. Microsoft Corporation* (Ark.
3 Cir. Ct.) (Michael Roberts was appointed Co-Lead Settlement Class Counsel and the case
4 settled for \$37 million).

5 34. For the past seventeen years, my practice has focused on litigating complex
6 class action with an emphasis on antitrust, automotive defect, privacy, and ERISA
7 matters. I have been appointed to and served in leadership positions in a number of class
8 action cases where settlements were reached and granted final approval, including
9 *Winstead v. ComplyRight, Inc.*, *Gann v. Nissan North America, Inc.*, *Orr v.*
10 *Intercontinental Hotels Group, PLC*, *In re Pilot Flying J Fuel Rebate Contract Litigation*,
11 and *Rafofsky v. Nissan North America, Inc.* I have also successfully argued appeals in
12 complex class action matters before the United States Courts of Appeals for the Third,
13 Sixth, and Seventh Circuits.

14 35. I played an active role in litigating the following class action matters that
15 successfully settled: *Warner v. Toyota Motor Sales, U.S.A., Inc.* (C.D. Cal.) (settlement
16 reached regarding allegations of excessive frame rust to certain vehicles providing
17 benefits valued at in excess of \$3.4 billion to Settlement Class members); *Fond Du Lac*
18 *Bumper Exchange, Inc. v. Jui Li Enterprise Co., Ltd.*, (E.D. Wis.) (settlements reached
19 with four of six defendants in this ongoing international antitrust action providing for the
20 payment of \$9,850,000); *Campos v. Calumet Transload R.R., LLC* (N.D. Ill.) (settlements
21 reached providing for payment of \$1,455,000 for the benefit of the Settlement Class in
22 action relating to the alleged negligent storage and handling of petroleum coke and coal
23 at certain industrial storage facilities); *In Re: Sony Gaming Networks and Customer Data*
24 *Security Breach Litigation*, MDL 2258 (S.D. Cal.) (settlement reached in this 60-case
25 data breach MDL); *Schulte v. Fifth Third Bank* (N.D. Ill.) (\$9.5 million settlement fund
26 and injunctive relief valued at \$108.4 million over ten years achieved relating to
27 allegations that the defendant unlawfully re-sequenced debit card transactions); *In Re:*
28 *Countrywide Fin. Corp. Customer Data Security Breach Litigation*, MDL No. 1998

1 (W.D. Ky.) (settlement reached in this 40- case data breach MDL making benefits valued
2 at over \$650 million available to the Class); *In Re: TJX Retail Security Breach Litigation*,
3 MDL No. 1838 (D. Mass.) (settlement reached in this data breach MDL making benefits
4 valued at over \$200 million available to the Class); *In Re: High Sulfur Content Gasoline*
5 *Products Liability Litigation*, MDL No. 1632 (E.D. La.) (settlement reached in this 26-
6 case MDL relating to the alleged sale of defective gasoline resulting in approximately
7 \$100 million being made available towards satisfaction of consumers’ claims); *Palace v.*
8 *DaimlerChrysler Corp.* (Ill. Cir. Ct.) (\$8.25 million settlement achieved relating to the
9 defendant’s alleged sale of vehicles with defective head gaskets).

10 36. In sum, I and my firm have led and continue to lead high-profile class action
11 cases. The Roberts Law Firm has decades of experience in the prosecution of class
12 actions.

13 I declare under penalty of perjury that the foregoing is true and correct to the best
14 of my knowledge. Executed at Park Ridge, Illinois, on April 28, 2023.

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16 Erich P. Schork
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