UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
NEWPORT NEWS DIVISION

Roger A. Herndon, on behalf of himself and all others similarly situated, Plaintiff, vs. Huntington Ingalls Industries, Inc., the HII Administrative Committee, and John/Jane Does 1–5, Defendants.	Civil Action No.: 4:19-cv-00052-HCM-DEM CLASS ACTION

DECLARATION OF DOUGLAS P. NEEDHAM IN SUPPORT OF PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS SETTLEMENT

I, Douglas P. Needham, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am a partner with the law firm of Izard, Kindall & Raabe ("IKR"), co-counsel for the Plaintiff, Roger Herndon ("Plaintiff" or "Herndon"). I make this Declaration in support of Plaintiff's Motion for Preliminary Approval of Class Settlement. A true and accurate copy of the proposed Settlement Agreement, and the exhibits thereto, is attached as Exhibit A to this Declaration.

2. I have been actively involved in the prosecution of this Action, am familiar with its proceedings, and have personal knowledge of the matters set forth herein based on my active supervision and participation in all material aspects of the Action and if called to do so, I could and would testify competently thereto.

I. Summary of Plaintiff's Claims

3. Plaintiff filed this Action on behalf of participants and beneficiaries receiving pension benefits in the form of a Joint and Survivor Annuity ("JSA") or Preretirement Survivor

Annuity ("PSA") from the "Legacy" part of the Huntington Ingalls Industries, Inc., Newport News Operations Pension Plan for Employees Covered by United Steelworkers Local 8888 Collective Bargaining Agreement (the "Covered Plan"). ECF No. 1.

4. Under Section 205(d) and (e) of ERISA, a plan's "Qualified Joint and Survivor Annuities" (the "QJSA"), Qualified Optional Survivor Annuities ("QOSAs") must be "actuarially equivalent" to the single-life annuity ("SLA") that the participant could have taken when he or she began receiving benefits, and Qualified Pre-Retirement Survivor Annuities ("QPSAs") must be equal to the survivor benefit of the plan's designated QJSA. Complaint ("Compl."), Dkt. 1, at ¶¶ 17–24 (citing ERISA Section 205(d) and (e), 29 U.S.C. §§ 1055(d) and (e)). Two benefit forms are "actuarially equivalent" when they have the same present value, so long as the present values of both benefits are calculated using the same, reasonable actuarial assumptions. *Id.* at ¶¶ 29–30.

5. The actuarial assumptions that are used to calculate present values for purposes of determining actuarial equivalence involve mortality and interest rates. Mortality assumptions, which are generally based on a mortality table, estimate how long benefit payments will be made and, therefore, how many benefit payments will be made, based on the ages of the participant and, (in the case of JSAs), the beneficiary. Interest rate assumptions discount the value of expected future payments to a present value. The Complaint alleges that Huntington Ingalls Industries, Inc., ("HII") calculated Class Members' JSA and PSA benefits using outdated mortality and interest rate assumptions (or conversion factors based on, or consistent with, outdated mortality and interest rate assumptions), which caused Class Members' benefits to be less than an "actuarially equivalent" amount. Dkt. 1, ¶¶ 1, 5-7, 65. In other words, Plaintiff alleged that (a) the present values of Class Members' JSA benefits had lower present values than the SLAs they could have taken when they retired using mortality and interest rate assumptions that were reasonable when

Class Members began receiving their benefits; and (2) that PSA benefits were lower than the survivor portion of the plan's Qualified JSA that would have been actuarially equivalent to an SLA on the date benefits commenced.

II. Summary of the Litigation

6. Prior to filing the Complaint, IKR and co-counsel Bailey & Glasser LLP (B&G) engaged in a detailed investigation of the terms of the Covered Plan and the applicable law and regulations. We consulted with an actuarial expert, Dr. Mitchell I. Serota, concerning the Covered Plan's actuarial assumptions and how benefits were calculated under those assumptions.

7. Plaintiff filed the Complaint on May 20, 2019. Dkt. 1. On June 27, 2019, Defendants filed a Motion to Dismiss the Complaint. Dkt. 10. On July 12, 2019, Plaintiff filed a memorandum in opposition to Defendants' motion. Dkt. 19. Defendants filed a reply memorandum on July 17, 2019. Dkt. 21.

8. The Court issued a scheduling order pursuant to Rule 16 on August 21, 2019, while the Motion to Dismiss was pending. Dkt. 36. Plaintiff issued initial discovery requests on August 8, 2019, and subsequently issued additional requests on September 20, 2019 and October 3, 2019. Defendants, in turn, served a discovery request on Plaintiff on September 20, 2019. The Parties proceeded to prepare responses and objections, meet and confer on objections, collect, review and provide documents responsive to the discovery requests. Plaintiff filed a Motion to Compel on November 20, 2019 (Dkt. 42), which Defendants opposed on December 4, 2019. Dkt. 44. Plaintiff filed a Reply Brief supporting the motion on December 10, 2019. Defendants produced over 170,000 pages of documents in response to Plaintiff's discovery requests.

9. Plaintiff began deposing Defendants' fact witnesses in December of 2019. Plaintiff deposed Vice President of Compensation and Benefits Karen Velkey, Director of Employee

Benefits Brian Dahn, and Executive Vice President and Chief Human Resources Officer William Ermatinger. Defendants deposed Plaintiff Roger Herndon on January 23, 2020.

10. On December 3, 2019, Plaintiff disclosed Mitchell I. Serota as his expert witness pursuant to Rule 26(a)(2)(A) and served a report by Dr. Serota on Defendants. Defendants disclosed Thomas Terry as an expert witness on December 17, 2019, and served his report on Plaintiff. Plaintiff served an Amended Report from Dr. Serota on January 3, 2020, as well as a Rebuttal Report responding to Mr. Terry's Report. Defendants deposed Dr. Serota on January 14, 2020. As a result of new evidence disclosed to Dr. Serota during his deposition, he filed a Supplemental Report on February 14, 2020. Plaintiffs deposed Mr. Terry on January 17, 2020.

11. While fact and expert discovery was ongoing, Plaintiff filed a Motion for Class Certification on December 13, 2019, together with a memorandum of law demonstrating that the Class met all of the requirements of Rule 23(a), together with the requirements of Rule 23(b)(1) and 23(b)(2). Dkts. 46 and 47. After reviewing Plaintiff's motion and supporting brief, Defendants agreed to stipulate to the certification of a class. Dkt. 48. The Court subsequently certified the Class under Rules 23(a) and 23(b)(1), appointed Roger Herndon as the representative of the Class, and appointed IKR and Bailey & Glasser LLP ("B&G") as Co-Lead Counsel for the Class. Dkt. 76.

12. On January 27, 2020, Defendants filed a Motion for Summary Judgment together with a supporting brief and multiple exhibits. Dkts. 53-55. Plaintiff filed an opposition to the Motion for Summary Judgment on February 14, 2020, a motion to exclude portions of the testimony of Defendant's expert, Thomas Terry, and supporting documents for both the summary judgment opposition and the motion to exclude. Dkts. 61-62, 64-65. Defendants filed a Reply supporting their summary judgment motion and a motion to exclude the testimony of Plaintiff's

expert on February 28, 2020, and an opposition to Plaintiff's motion to exclude portions of Terry's testimony on March 20, 2020. Dkts. 77-79, 85. With the Court's leave, Plaintiff filed a sur-reply opposing summary judgment on March 11, 2020 (Dkt. 84) and an opposition to the motion to exclude Dr. Serota's testimony on March 24, 2020. Dkt. 86.

13. On February 18, 2020, mid-way through the briefing on Defendants' summary judgment motion, the Court held a hearing on Defendant's Motion to Dismiss. The Court denied the Motion to Dismiss two days after the hearing, on February 20, 2020. Dkt. 73. Defendants filed an Answer, with affirmative defenses, on March 4, 2020. Dkt. 80. Plaintiff filed a Motion to Strike Affirmative Defenses on April 7, 2020 (Dkts. 89-90), which Defendants opposed on April 21, 2020. Dkt. 94.

14. On July 24, 2020, Magistrate Judge Miller held a hearing on the outstanding motions, at the conclusion of which he denied Plaintiff's Motion to Strike Affirmative Defenses and Plaintiff's Motion to Strike a late-filed supplemental declaration by Defendant's expert. Dkt. 103. On August 28, 2020, Magistrate Judge Miller issued a Report and Recommendations with respect to the parties' motions to exclude experts and Defendant's Motion for Summary Judgment, recommending that all three motions be denied. Dkt. 106. Defendants filed objections to the recommendations concerning their pending motions, which Plaintiff opposed. Dkts. 108 and 112. The District Court overruled the objections and adopted the Magistrate Judge's Report and Recommendations on September 29, 2020. Dkt. No. 113.

15. The case was reassigned on October 19, 2020. The Court held a status conference on January 25, 2021 and set a Trial Scheduling Order which set November 8, 2021 as the date for a bench trial. Dkt. 114.

III. Settlement Discussions

16. Following a discussion with the Court at the January 25, 2021 status conference, the Parties were directed to appear before Magistrate Judge Miller for a settlement conference on April 12, 2021. Dkt. 115. In accordance with Judge Miller's settlement conference order, Plaintiffs made a detailed written settlement proposal to Defendants on March 24, 2021. However, at the request of the Parties the Settlement Conference was pushed back to June 14, 2021. Dkt. 116.

17. The Parties provided Judge Miller with confidential mediation statements on June 10, 2021, and attended the June 14, 2021 Settlement Conference virtually. Counsel were accompanied by representatives of the Parties, and Plaintiff Roger Herndon attended the day-long conference. However, the Parties were unable to reach agreement during the conference.

18. On August 16, 2021, Magistrate Judge Miller set a second mediation conference for September 8, 2021, following a conference with the Parties. Dkt. 118. The Parties again submitted confidential mediation statements and attended the mediation virtually, including Plaintiff Herndon. At the conclusion of the September 8, 2021 session, the Parties reached agreement in principle on the main substantive terms of a settlement. The Parties then jointly moved that the Court suspend the deadlines in the Trial Management Order to provide time to conclude negotiations on the terms of a settlement agreement, which the Court granted. Dkt. 120.

19. Throughout the remainder of September, all of October and into November, the Parties negotiated the terms of a Settlement Agreement. The Parties reached agreement on all terms on November 11, and the Settlement Agreement was executed the same day.

III. Analysis of Key Settlement Terms

20. ***Total Benefit to the Class:*** If Plaintiff had prevailed at trial on both liability and damages, the "make whole" relief would have been the difference in value of JSAs and PSAs

calculated during the Class Period with the Covered Plan's assumptions compared to the amount that would have been paid if Dr. Serota's actuarial assumptions had been used instead. As set forth in Dr. Serota's Supplemental Report, filed as part of the summary judgment briefing, the present value of that difference is approximately $8.15 million. The value of the proposed Settlement, $2.8 million, is 34% of this maximum damage amount.

21. Because the basis of Plaintiff's claims is that Class Members are receiving lower monthly pension benefit payments than they should be, the Settlement provides that amount of the Settlement, net of any awards for attorneys' fees, expenses and a lead plaintiff award (the "Net Settlement Value") will be paid to the Class in the form of an increase to their monthly pension benefit payments. This method matches the claims that form the basis for the lawsuit; it also avoids potential negative tax and benefit consequences that can come from lump sum payments. In prior cases that I have worked on, some retirees have raised concerns that receiving a single lump sum payout could negatively impact their taxes and/or jeopardize their eligibility for certain health insurance benefits, the eligibility for which is dependent on annual income amounts.

22. The Settlement is non-reversionary. The payments will be made automatically and fully over the course of the Class Members' lives, ensuring that none of the Settlement will be returned to HII.

23. Based on an analysis of the data provided by Defendants, the Settlement will provide real and meaningful benefits to Class Members. There are 1994 people in the Class, and the average per-Class Member present value of the gross settlement amount is approximately $1,400. The average per-class member present value of the settlement, net of the proposed awards for attorneys' fees, costs and expenses (discussed below) is approximately $888. Each Class Member's monthly benefit increase will depend upon the total value of their past and future benefit

payments under the Covered Plan, as well as their age and (where applicable) the age of their beneficiary as of January 1, 2022.

24. ***Equitable Treatment of Class Members:*** The Plan of Allocation was designed to ensure that Class Members receive compensation both for the shortfall in benefit payments that they have already received as well as benefits they are scheduled to receive in the future. Accordingly, the Net Settlement Amount is equitably allocated among Class Members and/or their Associated Beneficiaries in proportion to the ***total value*** of their past ***and*** future pension benefit payments.

25. The plan of allocation in the Settlement does not take into account the specific damages that might have been established for each Class Member if the case had gone to trial. The primary reason for this is that doing so would have involved considerable additional costs for actuarial work, which would have necessarily lowered the Net Settlement Amount that would be distributed to the Class. Because the Class is relatively small and the total amount of damages was not high, Plaintiff and Class Counsel determined that the additional costs of obtaining greater precision in the plan of allocation outweighed its value.

26. ***Release:*** If approved, all Class Members will be deemed to provide a release of certain claims. Plaintiff took care to ensure that the scope of the release is tailored to the claims at issue in the case. Specifically, the Settlement releases only claims "arising on or before January 17, 2020 that were brought, or could have been brought, arising out of, or relating to, the allegations in the Complaint." The Settlement further specifies that "claims by Class Members (other than Plaintiff) that are not or could not be related to the allegations in the Complaint" are not released.

27. ***Provisions Related to Attorneys' Fees, Expenses and Case Contribution Award:*** The Settlement provides that Plaintiff will ask the Court to make an award of attorneys' fees equal

to 25% of the Gross Settlement Amount, and will also request reimbursement of expenses (which, as discussed below, are currently just under $00,00). The Settlement also provides that Plaintiff will request a case contribution award of $10,000 for his services on behalf of the Class. Importantly, the Settlement clearly provides that any amounts deducted from the Gross Settlement Amount for payment of the Fees, Expenses and Costs Award must be approved by the Court, and the Settlement itself is not contingent upon the Court approving any such awards. Furthermore, the Settlement does not include a "clear-sailing" clause. Defendants are free to object to Plaintiff's motion for a Fees, Expenses and Costs Award.

28. If the Court approves the requested Fees, Expenses and Costs Award in full, the Net Settlement Amount – the amount that will increase the benefits paid to members of the Class – will be approximately 22 percent of the class-wide damages calculated by Plaintiff's expert.

IV. Evaluation of the Reasonableness of the Settlement

29. IKR has substantial experience in class actions, complex litigation and ERISA litigation. A copy of the firm's resume is attached to this Declaration as Exhibit B. Over the course of the past several years, IKR and B&G have served as counsel for Plaintiffs in several cases involving ERISA's actuarial equivalence requirements. Published decisions in these cases include *Herndon v. Huntington Ingalls Indust. Inc.*, No. 19-52, 2020 WL 5809965, at *1 (E.D. Va. Aug. 28, 2020) (cross-motions for summary judgment), *report and recommendation adopted sub nom. Herndon v. Huntington Ingalls Indus., Inc.*, No. 19-52, 2020 WL 5809996 (E.D. Va. Sept. 29, 2020); *Masten v. Metro. Life Ins. Co.*, No. 18-CV-11229 (RA), 2021 WL 2418464 (S.D.N.Y. June 14, 2021) (motion to dismiss); *Belknap v. Partners Healthcare Sys., Inc.*, No. 19-11437-FDS, 2020 WL 4506162 (D. Mass. Aug. 5, 2020) (same); *Smith v. Rockwell Automation, Inc.*, 438 F. Supp. 3d 912 (E.D. Wis. 2020) (same); *Duffy v. Anheuser-Busch Companies, LLC*, 449 F. Supp.

3d 882 (E.D. Mo. 2020) (same); *Smith v. U.S. Bancorp,* No. 18-3405, 2019 WL 2644204, at *1 (D. Minn. June 27, 2019) (same); *Torres v. Am. Airlines, Inc.*, 416 F. Supp. 3d 640 (N.D. Tex. 2019) (same).

30. Based on our experience, knowledge of evolving caselaw and substantial investigation of the facts at issue in this case, IKR strongly supports the proposed Settlement. Several factors are particularly important to this analysis.

31. While the case survived Defendants' Motion to Dismiss and Motion for Summary Judgment, both liability and damages turned on the Parties' experts' dueling views of what are "reasonable" actuarial assumptions. Plaintiff and HII each retained actuarial experts that provided radically different opinions on this issue. *See* Dkt. 54-2, 54-3, 54-4, 55-12, 65-1, and 85-1. Plaintiff is confident in his expert's opinion and believed that the opinion of Defendants' expert, Thomas Terry, was sufficiently lacking in credibility to move to exclude it (Dkt. 61). Notably, however, while Magistrate Judge Miller's Report and Recommendations found that both experts' opinions were sufficiently credible as to be admissible (Dkt. 106, at 8-26), he noted in his opinion that he might be persuaded by the arguments of Huntington's actuary if he were sitting as the finder of fact based on the record before him. *Id.* at 34.

32. If the Court had credited Terry entirely at trial, Plaintiff's case would have failed altogether. If the Court had credited Terry even ***in part,*** damages to the Class might have been dramatically lower. For example, even if the Court only credited Terry's proposed discount rate assumption, that would have substantially lowered the amount of damages. Plaintiff believes that Terry's analysis is incorrect and that the Court would not accept his opinions at trial. However, cases that turn on the testimony of battling experts in arcane fields present significant risks for both parties.

33. At the time that this case was filed on May 20, 2019, no court had ruled on whether plans that used outdated actuarial factors might violate ERISA's actuarial equivalence requirements. While the statutory requirement is long-standing, until that time its application had not been tested in court. Even as of now, no similar case has gone to trial, nor has any appellate court weighed in on the soundness of the legal theory at the heart of the case. Defendants have made numerous legal arguments that, if credited, would result in a judgment in their favor. While Plaintiff believes that Defendants' legal arguments are without merit, there is no question that this area of law is evolving and that Defendants' arguments create a risk that Plaintiff might recover less than a full recovery, or nothing at all.

V. Evaluation of the Reasonableness of the Attorneys' Fee Request

34. Plaintiff will request an award of $700,000 in attorneys' fees. As noted above, the Settlement provides that this amount will be paid by the Defendant in the first instance, but, like payments for litigation expenses and the Case Contribution Award (discussed below), the percentage of the Settlement awarded in attorneys' fees will be applied as a reduction to Class Members' future benefits. In this way, the Class that benefits from the Settlement will share equally in paying for the legal services that generated that benefit, just as in any other common fund case.

35. Plaintiff's requested fee is 25% of the Settlement's $2.8 million present value. "Under the percentage-of-the-fund method, courts base attorneys' fee awards on a percentage of the common recovery's value, usually between 25 percent and 30 percent." *Hooker v. Sirius XM Radio, Inc.*, No. 13-3, 2017 WL 4484258, *2 (E.D. Va. May 11, 2017). The requested award is at the low end of this spectrum.

36. Analyzing 458 class action settlements between 2009 and 2013, Professors

Eisenberg, Miller and Germano found that the median fee award was 29 percent. *See* Theodore Eisenberg, Geoffrey Miller and Roy Germano, *Attorneys' Fees in Class Actions, 2009-2013,* ("Eisenberg Study"), Law & Econ. Research Paper Series (Dec. 2016), at 11. Both the mean and median percentage awards for ERISA cases was 26 percent. *Id.* at 13. Plaintiff's request of a fee request equal to 25 percent is lower than these averages.

37. This case is factually, technically and legally complex, requiring counsel to master then intricacies of obscure provisions of ERISA, the Pension Protection Act, the Tax Code and implementing regulations, as well as the complexities of actuarial valuations and benefit calculations. It could only be litigated by firms with a high degree of competence in ERISA law, complex litigation and class actions. The attorneys at IKR and B&G are well-qualified. Indeed, they are almost the only firms involved in litigating the question of whether retirement plans that have failed to update their actuarial assumptions and conversion factors are providing actuarially equivalent benefits to plan participants.

38. Litigating the case on a pure contingency required counsel to shoulder an unusually high degree of risk. The theory of the case was novel and untested, and proving both liability and damages required sophisticated expert testimony. The expense for work by experts alone was over $240,000. If the case been litigated to trial, counsel would have had to pay far greater amounts out of pocket, with no assurance of recovering those expenses, not to mention the investment of countless hours of attorney time.

VI. Information Concerning Counsel's Lodestar and Expenses

39. In preparation for filing this motion, I reviewed IKR's time and out-of-pocket expenses in connection with the current litigation.

40. The information in this declaration regarding my firm's time and expenses is taken from contemporaneous time and expense printouts prepared and maintained by my firm in the ordinary course of business. The time reflected in my firm's lodestar calculation and the expenses for which payment is sought are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation. In addition, the expenses are all of a type that would normally be charged to a fee-paying client in the private legal marketplace. IKR prosecuted this case on a wholly contingent basis and has not received any compensation to date for either its litigation expenses or its time.

41. A summary of IKR's hours and lodestar in the case as of November 7, 2021, is shown in the following table:

Attorney	Years of Practice	Rate	Hours	Lodestar
Robert A. Izard	38	$ 925	442.5	409,312.50
Mark P. Kindall	33	$ 850	474	402,900
Craig A. Raabe	32	$ 850	0.5	425.00
Seth R. Klein	25	$ 750	28.75	21,56.50
Douglas P. Needham	14	$ 650	519.75	337,837.50
Jennifer D. Somers	18	$300	108.25	32,475.00
Christopher M. Barrett	12	$550	5.5	3,025.00
Oren Faircloth	5	$ 350	393.25	125,562.50
Eileen McGee	Paralegal	$180	2.5	450.00
Jude Reid	Paralegal	$ 180	64.5	11,610
Total			**2039.5**	**$1,323,597.50**

42. Biographical details for the IKR attorneys who worked on the case are included at the end of the Firm's resume, attached as Exhibit B to this declaration.

43. The hourly rates shown in the chart are IKR's normal rates for both hourly customers and class action work (although hourly clients can receive a discount for prompt payment). IKR's class action work is a specialized national practice; we do not charge differential rates based on the location where a lawsuit is filed. Courts have approved IKR's fees in class actions litigated all over the country.

44. In the course of our nationwide practice, attorneys at IKR have worked with many of the firms that typically represent plaintiffs in ERISA class actions nationwide. As a result, we are familiar with the rates charged by other firms in our practice area. In our experience, our rates are broadly in line with rates of other firms with nationwide ERISA class action practices, and have been the basis for awards of fees in courts around the country.

45. Firms that litigate high-stakes class action cases against major international corporations such as Raytheon can only succeed with lawyers who are able to match the experience, talent and resources of the largest, most respected law firms in the country. The firm representing Defendants in this action – Alston & Bird LLP – is a major national and international firm, with over 750 attorneys and offices in Atlanta, Beijing, Brussels, Charlotte, Dallas, Fort Worth, London, Los Angeles, New York, Palo Alto, Raleigh, San Francisco and Washington, D.C. Alston & Bird's hourly rates appear to be comparable to IKR's, as shown in *HomeGoods, Inc. v. Papanicolaou*, No. CV1906912CJCPLAX, 2019 WL 7171541, at *8 (C.D. Cal. Dec. 4, 2019), an IP case decided two years ago where the court awarded attorneys' fees based on the following rates for Alston & Bird attorneys: "$915 per hour for partner Larry Jones, $850 per hour for partner Yuri Mikulka, $710 for senior associate Evan Woolley, $630 for senior associate Lauren Timmons, $435 for junior associate Sara Miller, and $195 for librarian Elizabeth Powell-Whyte."

VII. Information Concerning Expenses

46. IKR has also incurred $149,683.93 in out-of-pocket expenses while prosecuting this case, as summarized by category in the table below.

Category	Amount
Experts/Investigation	$123,215.67
Research/Discovery	$121.10
Sheriff/Service Fees	$99.00
Transcripts	$8,935.40
Travel	$16,895.88
Postage/Delivery	$416.88
Total Expenses	**$149,683.93**

47. These expenses were necessary to the successful prosecution of this action, and are typical of the types of expenses that IKR would bill to clients in non-contingency cases.

VIII. Information About the Case Contribution Award

48. Class Counsel has requested that the Court award a case contribution award to Mr. Herndon of $10,000. That amount would reduce the Net Settlement Amount which will be paid to the Class.

49. Mr. Herndon has been an active participant in the litigation from the outset, providing documents to Plaintiff's counsel, reviewing court filings, being deposed by Defendants' counsel, participating in both mediation sessions, and consulting with counsel when the Settlement was being negotiated. The case could not have been litigated without Mr. Herndon. His efforts on behalf of all members of the Class deserve compensation. A declaration from Mr. Herndon is attached as Exhibit C.

I declare under penalty of perjury that the foregoing is true to the best of my knowledge information and belief.

Executed this 12th day of November, 2021 in West Hartford, Connecticut.

/s/ *Douglas P. Needham*
Douglas P. Needham