

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

<p>Tushar Bhatia, individually and as the representative of a class of similarly situated persons, and on behalf of the McKinsey & Company, Inc. (PSRP) Profit-Sharing Retirement Plan and the McKinsey & Company, Inc. (MPPP) Money Purchase Pension Plan,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>McKinsey & Company, Inc., MIO Partners, Inc., and John Does 1-50,</p> <p style="text-align: center;">Defendants.</p>	<p>No. 1:19-cv-1466-GHW-SN</p> <p style="text-align: center;">DECLARATION OF STEVE POMERANTZ, PH.D., CONCERNING THE PROPOSED PLAN OF ALLOCATION</p>
---	--

I. QUALIFICATIONS

1. I hold a Ph.D. in mathematics from the University of California at Berkeley and have taught courses in statistics, probability, operations research, mathematics, and finance at the undergraduate and graduate level.

2. I began working in the investment community in 1986. Over the course of my career, I have held positions in investment research and portfolio management for several major firms including Weiss Peck and Greer, New York Life Investment Management, Citibank, and Morgan Stanley. As part of my work at these investment management firms, I have provided portfolio management services to both mutual funds and institutional accounts, and I have offered investment and asset allocation advice to a wide range of clients, including both high net worth individuals and very large institutional clients including defined benefit and defined contribution plans.

3. I am currently the principal of my own investment consulting firm. As an investment consultant, I have assisted investment managers, hedge funds, fund of funds, insurance companies, and defined benefit and contribution plans on a wide variety of investment-related issues including manager selection and monitoring. In addition, I have provided expert testimony in a variety of cases, including both securities cases and ERISA cases involving claims relating to the investment options in defined contribution plans. A copy of my curriculum vitae is attached as Exhibit 1.

II. NATURE OF ENGAGEMENT

4. I have been engaged by Plaintiff's counsel ("Counsel") as an expert witness in the above-captioned action. In connection with Plaintiff's pending Motion for Preliminary Approval of Class Action Settlement, Counsel have asked me to analyze the Plan of Allocation in the proposed Settlement. Specifically, I have been asked to analyze the effect of the proposed cap on individual settlement allocations.

III. PLAN OF ALLOCATION

5. The formula for calculating individual settlement allocations to Class Members is set forth in Paragraph 6.4 of the Settlement Agreement. Specifically, subparagraphs 6.4.1. and 6.4.2 provide as follows:

6.4.1. For each Authorized Former Participant and Current Participant, the Settlement Administrator shall determine an *Average Settlement Allocation Score*. For purposes of making this determination, a *Settlement Allocation Score* shall be calculated for each quarter during the Class Period, which shall be the sum of 15 points (if the Eligible Class Member had an Active Account at the end of the quarter) plus 0.0020 points for every dollar invested by the Eligible Participant in MIO Funds at the end of the quarter (up to a maximum of 300 points).¹ A Participant's *Average Settlement Allocation Score* shall be the average of the Participant's *Settlement Allocation Scores* during the Class Period, weighted by the percentage of days in the quarter for partial quarters at the beginning and end of the Class Period.

¹ The maximum *Settlement Allocation Score* for each quarter thus will be 315 points (15 + 300).

6.4.2. The Settlement Administrator shall determine the total settlement payment available to each Authorized Former Participant and Current Participant by calculating each such participant's pro-rata share of the Net Settlement Fund based on his or her *Average Settlement Allocation Score* compared to the sum of the *Average Settlement Allocation Scores* for all Authorized Former Participants and Current Participants. If the dollar amount of the settlement payment to an Authorized Former Participant is calculated by the Settlement Administrator to be less than \$5.00, then that Authorized Former Participant's payment or pro rata share shall be zero for all purposes.

6. For purposes of this Declaration, the term "cap" refers to the maximum settlement allocation score attributable to investments in MIO Funds (300 points per quarter) and overall (315 points per quarter).

IV. PRELIMINARY DATA PROVIDED BY DEFENDANTS AND ASSUMPTIONS USED IN THE ANALYSIS

7. On August 19, 2020, I received a file that I understand was delivered to Counsel by attorneys for the Defendants that same day. I was advised that the file contained year-end balances, from 2013 through 2019, for participants in the defined contributions plans at issue (the "Plans") who may be eligible to receive an allocation under the Settlement.² I understand that this file represents the most comprehensive participant balance information currently in the custody of the Defendants.³

² The settlement excludes "Trustees for the McKinsey Master Retirement Trust and members of the Administrative Committee for the Plans at any time during the Class Period, as well as persons who served on the Shareholders Council of McKinsey & Company, Inc. or the Board of Directors of MIO Partners, Inc. at any time during the Class Period." *See Settlement Agreement (ECF No. 75-1) § 2.48*. I understand that Defendants removed the excluded individuals before providing the data to Counsel.

³ The proposed Plan of Allocation utilizes quarter-end balances. *See Settlement Agreement § 6.4.1*. I understand that quarter-end balances are in the custody of the Plans' third-party recordkeeper and that Defendants have agreed to direct the recordkeeper to provide this information to the Settlement Administrator to implement the proposed Plan of Allocation in the event that the Settlement is approved. *See id. § 3.5*.

8. In reviewing the file, I found that each participant is identified by a unique identification number. For each unique identification number, I was able to identify a balance in each investment option in the Plans as of December 31 of each year from 2013 through 2019.

9. In order to apply the proposed plan of allocation, I received additional instructions from Counsel and made assumptions as follows:

- A. *Relevant investments:* I was advised by Counsel that Active Global Equities, Special Situations, Special Situations Enhanced Liquidity, and Special Situations Enhanced Liquidity Multi-Currency Hedged are the relevant “MIO Funds” as defined in Section 2.35 of the Settlement Agreement.
- B. *Quarterly vs. annual balance data:* In the absence of currently-available quarter-end balance information (see *supra* ¶ 7 & n. 3), I was instructed to assume that a participant’s year-end balances were the same for each quarter of that year. For example, I assume that a participant’s year-end 2014 balances were also that participant’s balances at the end of each of the first three quarters of 2014. In addition, because year-end data is not yet available for 2020, I assume that each participant’s balances in 2020 were the same as on the last day of 2019.
- C. *Current vs. former participant status:* Defendants’ information that is currently available does not identify whether each participant is a current or former participant. In order to identify former participants that could be subject to the \$5 minimum claim in the proposed Plan of Allocation (see *Settlement Agreement* § 6.4.2), I assume that any participant with a positive balance in any year from 2013 through 2018, but no positive balance at year-end 2019, is a former participant.
- D. *Former participant claims:* Because former participants must submit a claim form in order to receive a share of the Settlement, and because no average settlement allocation score will be calculated for former participants who do not timely submit a valid claim form, the total number of participants who will receive an allocation and the sum of their average settlement allocation scores will depend on how many (and which) former participants timely submit claim forms upon receiving notice of the Settlement. Claim response information is unknown at this stage. For the present calculations, I was instructed to assume that 100% of former participants will submit valid claim forms.
- E. *Gross settlement fund vs. net settlement fund:* Allocations made directly to participants under the plan of allocation will be based on the net settlement fund, which is the gross settlement amount (\$39.5 million) after allowable deductions. See *Settlement Agreement* §§ 2.30 & 2.37. Because allowable

deductions have not been determined, I was instructed to apply the plan of allocation using the gross settlement amount.

- F. *Unique identification numbers that are not associated with any balance:* There are 70 unique identification numbers in the data that are not associated with any positive balance in any year. Because a participant with no positive balance in the Plans during the Class Period would not be entitled to any allocation from the settlement, I was instructed to exclude these 70 participants from the total number of participants eligible to receive an allocation.
- G. *Class period end date:* The Settlement Agreement calls for the final quarterly allocation scores to be calculated based on balances on the last day of the class period. Under the settlement terms, the Class Period ends on the date that the settlement receives preliminary approval. *See Settlement Agreement § 2.13.* Because the preliminary approval motion is pending, I was instructed to use August 5, 2020—the date used to determine account balances for other purposes (*see Settlement Agreement §§ 2.19, 2.28, 6.5.1*)—as the end of the Class Period. This means that, in the weighting of quarterly settlement allocation scores, the final quarter is assumed to have 36 days. *See id. § 6.4.1.*

V. ANALYSIS OF THE PROPOSED PLAN OF ALLOCATION AND THE EFFECT OF THE PROPOSED CAP ON INDIVIDUAL PARTICIPANT ALLOCATIONS

10. In the first step of my analysis, I applied the proposed Plan of Allocation as written, and calculated (1) a settlement allocation score for each quarter, (2) an average settlement allocation score for the class period, and (3) a proportionate share of the gross settlement amount for each participant eligible to receive an allocation. After eliminating the 70 unique identification numbers that are not associated with any balance in the data (*see supra*, ¶ 9F), I calculated these values for 32,493 individual participants.

11. In the second step, I adjusted the proposed Plan of Allocation to eliminate the cap on individual participant allocations and calculated (1) a settlement allocation score for each quarter, (2) an average settlement allocation score for the class period, and (3) a proportionate share of the gross settlement amount for each of the 32,493 individual participants.

12. Comparing these two sets of values shows that 30,440 participants (93.7%) would be entitled to a higher allocation under the proposed Plan of Allocation than in the alternative

allocation scenario with no cap on individual participant allocations. The remaining 2,053 (6.3%) would receive higher allocations without the proposed cap.

13. Based on the data provided and the assumptions utilized, my analysis shows that the maximum allocation under the proposed plan of allocation would be \$4,419.25. A total of 2,766 participants would receive the maximum share. The maximum allocation corresponds to 9,415.76 total settlement allocation points for the Class Period, after accounting for partial quarters at the beginning and end of the Class Period.⁴ If points are considered as proxies for dollars, this falls slightly below the \$10,000 threshold for claims that are subject to arbitration under the Plans.

14. Based on the current assumptions, no former participant would fall below the \$5 minimum allocation under either the proposed Plan of Allocation or under the alternative allocation scenario. The minimum allocation under the proposed Plan of Allocation is \$24.64, and the minimum allocation under the alternative, uncapped allocation scenario is \$8.87.

15. In order to further compare the allocations under each scenario, Counsel asked me to show the results for certain percentiles (e.g., 10th percentile) and distribution tranches (e.g., \$1,000-\$2,000) and calculate certain additional information as shown in Illustrations 1 and 2 on the following pages:

⁴ The Class Period starts on February 15, 2013, *see Settlement Agreement* § 2.13, and is assumed to end on August 5, 2020, *see supra* at ¶ 9(G). As noted above, the maximum number of points for each quarter is 315 points. *See Settlement Agreement* § 6.4.1. This results in a total maximum of 9,765 points over 31 full quarters ($315 \times 31 = 9,765$), and 9,415.76 points after accounting for the fact that the first quarter includes 45 of 90 possible days and the last quarter includes 36 of 92 possible days ($[315 \times 45/90] + [315 \times 29] + [315 \times 36/92] = 9,415.76$).

Illustration 1 – Gross Allocations by Percentiles*Plan of Allocation (Capped)*

	Avg. Points Per Quarter (Participant)	Total Points All Quarters (Participant)	Gross Allocation (Participant)	Cumulative Allocation through percentile
1st percentile	2.18	65.10	\$30.55	\$8,866.55
10th percentile	5.11	152.69	\$71.66	\$143,465.54
25th percentile	10.56	312.72	\$148.18	\$641,468.77
50th percentile	30.82	921.34	\$432.43	\$2,700,311.96
75th percentile	134.93	4,033.38	\$1,893.05	\$10,675,646.48
90th percentile	304.57	9,104.13	\$4,272.99	\$25,169,326.55
Top 8.5 percent (max award)	315.00	9,415.76	\$4,419.25	\$39,500,000.00

Alternative Allocation Scenario (Uncapped)

	Avg. Points Per Quarter (Participant)	Total Points All Quarters (Participant)	Gross Allocation (Participant)	Cumulative Allocation through percentile
1st percentile	2.18	65.10	\$11.00	\$3,193.35
10th percentile	5.11	152.69	\$25.81	\$51,670.08
25th percentile	10.56	315.72	\$53.37	\$231,029.29
50th percentile	30.82	921.34	\$155.74	\$972,535.49
75th percentile	142.91	4,271.68	\$722.08	\$3,915,720.59
90th percentile	489.70	14,637.67	\$2,474.33	\$10,545,857.46
99th percentile	3,323.89	99,355.34	\$16,794.85	\$27,166,605.38
100th percentile	52,548.73	1,570,750.17	\$265,516.79	\$39,500,000.00

Illustration 2 – Gross Allocations in Ranges*Plan of Allocation (Capped)*

	Number of Participants	Sum of All Allocations in Range	Median Balance of Participants in Range ⁵	Mean Balance of Participants in Range
\$24-\$100	5,227	\$305,483.23	\$9,104.23	\$23,962.45
\$100-\$500	11,826	\$2,769,309.19	\$31,935.69	\$67,077.43
\$500-\$1,000	3,861	\$2,774,268.67	\$66,831.62	\$117,962.28
\$1,000-\$2,000	3,724	\$5,347,594.91	\$120,437.20	\$171,633.37
\$2,000-\$3,000	2,436	\$6,015,878.64	\$227,856.86	\$363,734.97
\$3,000-\$4,000	1,657	\$5,832,787.09	\$308,798.38	\$455,760.64
\$4,000-\$4,420	3,762	\$16,454,318.27	\$674,041.36	\$1,129,046.27

Alternative Allocation Scenario (Uncapped)

	Number of Participants	Sum of All Allocations in Range	Median Balance of Participants in Range	Mean Balance of Participants in Range
\$8-\$100	13,743	\$657,968.34	\$17,976.28	\$52,966.85
\$100-\$500	8,823	\$2,172,584.21	\$62,066.97	\$84,308.83
\$500-\$1,000	3,294	\$2,351,866.41	\$153,189.18	\$188,451.32
\$1,000-\$2,000	2,702	\$3,848,506.02	\$276,638.77	\$326,682.63
\$2,000-\$3,000	1,193	\$2,903,906.81	\$445,696.21	\$513,863.91
\$3,000-\$4,000	723	\$2,513,250.77	\$609,692.88	\$702,111.37
\$4,000-\$4,420	214	\$902,608.61	\$720,950.08	\$780,293.28
\$4,420-\$10,000	1,115	\$7,209,761.83	\$1,047,962.62	\$1,148,522.87
\$10,000-\$50,000	631	\$11,917,149.40	\$2,307,999.44	\$2,799,898.05
\$50,000+	55	\$5,022,397.60	\$9,046,393.25	\$10,434,365.41

⁵ To calculate the median and mean balances for the participants in each allocation range under each scenario in Illustration 2, each participant's balance is their total year-end 2019 balance in the Plans (across all investment options, not solely MIO funds) or, if the participant did not have a year-end 2019 balance in the Plans, their most recent balance in the data provided.

16. If requested, I can adjust my calculations with alternate assumptions, update my calculations with additional data, or draw additional comparisons to analyze the effect of the proposed cap on individual participant allocations.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 31st day of August, 2020, by

A handwritten signature in black ink, appearing to read "Steve Pomerantz", written in a cursive style.

Steve Pomerantz, Ph.D.