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22 *Attorneys for Plaintiffs & the Class*

23 UNITED STATES DISTRICT COURT  
24 NORTHERN DISTRICT OF CALIFORNIA  
25 SAN FRANCISCO/OAKLAND DIVISION

26 CAROL FOSTER and THEO FOREMAN,  
27 on behalf of themselves, individually, and on  
28 behalf of all others similarly situated,

Plaintiffs,

v.

ADAMS AND ASSOCIATES, INC., ROY  
A. ADAMS, LESLIE G. ADAMS, DANIEL  
B. NOREM, JOY CURRY NOREM and THE  
DANIEL NOREM REVOCABLE TRUST  
DATED JANUARY 9, 2002,

Defendants.

Case No. 18-cv-02723-JSC

CLASS COUNSEL’S NOTICE OF MOTION  
AND MOTION FOR ATTORNEYS’ FEES  
AND LITIGATION EXPENSES

Date: February 17, 2022  
Time: 9:00 a.m.  
Courtroom F, 15<sup>th</sup> Floor  
Honorable Jacqueline Scott Corley

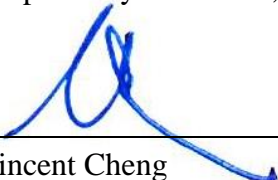
1 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE THAT on February 17, 2022 at 9:00 a.m., in Courtroom F,  
3 15th Floor of the San Francisco Division of the United States District Court, Northern District of  
4 California, 450 Golden Gate Avenue, San Francisco, California, Class Counsel will move, and  
5 hereby do move, the Court to enter an order under Rule 23(h) of the Federal Rules of Civil  
6 Procedure awarding \$1,000,000 (representing 33.3% of the common fund in this case) to Class  
7 Counsel as attorneys' fees and awarding Class Counsel reimbursement of \$149,978.03 for  
8 litigation expenses incurred.

9 This Motion is supported by the accompanying Memorandum of Law, the Declaration of  
10 Daniel Feinberg ("Feinberg Decl."), the Declaration of R. Joseph Barton ("Barton Decl."), the  
11 Declaration of Jeffrey Lewis ("Lewis Decl."), the Declaration of Terrence J. Coleman  
12 ("Coleman Decl."), and the Proposed Order filed herewith, all of the pleadings and documents  
13 on file with the Court in this action, and further evidence and argument as may be submitted  
14 prior to the Court's decision on this motion.

15  
16 Dated: December 2, 2021

Respectfully submitted,



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*Attorneys for Plaintiffs & the Class*

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2 Declaration of Daniel Feinberg with the following attachments:

3 Exhibit A: Declaration of Jeffrey Lewis (“Lewis Decl.”);

4 Exhibit B: Declaration of Terrence J. Coleman (“Coleman Decl.”);

5 Exhibit C: Itemized time entries for professionals affiliated with Feinberg Jackson  
6 Worthman & Wasow calculated at current rates;

7 Exhibit D: Itemized entries for the necessary expenses incurred by Feinberg Jackson  
8 Worthman & Wasow in the litigation.

9 Declaration of R. Joseph Barton with the following attachments:

10 Exhibit A: *Wilcox v. Swapp*, No. 17-cv-275, Order Granting Final Approval of Class  
11 Action Settlement (E.D. Wa. July 23, 2020), retrieved via PACER;

12 Exhibit B: Itemized time entries for professionals affiliated with Block & Leviton  
13 calculated at current rates;

14 Exhibit C: Itemized entries for the necessary expenses incurred by Block & Leviton  
15 in the litigation.

**SUMMARY OF CLASS COUNSEL'S RATES, HOURS, AND EXPENSES**

<b>Name</b>	<b>2018 Rate</b>	<b>2019 Rate</b>	<b>2020 Rate</b>	<b>2021 Rate</b>	<b>Hours</b>	<b>Total (current rates)</b>	<b>Total (historical rates)</b>
Joseph Barton (Partner, JD '00)	\$750	\$825	\$875	\$900	621.20	\$558,630.00	\$534,325.00
Vincent Cheng (Associate, JD '03)	\$510	\$550	\$575	\$600	788.10	\$472,860.00	\$449,086.50
Colin Downes (Associate, J.D. '15)	\$425	\$450	\$475	\$520	18.90	\$9,828.00	\$9,828.00
Ming Siegel (Paralegal, B.A. '16)	\$235	\$250	\$265	\$275	411.80	\$113,245.00	\$108,302.00
<b>Subtotal</b>					<b>1840.00</b>	<b>\$1,154,563.00</b>	<b>\$1,101,541.50</b>
Daniel Feinberg (Partner, JD '88)	\$910	\$910	\$910	\$975	1433.90	\$1,398,052.50	\$1,330,595.50
Nina Wasow (Partner, JD '06)	\$710	\$710	\$710	\$850	14.40	\$12,240.00	\$10,756.00
Darin Ranahan (Partner, JD '10)	\$590	\$590	\$590	\$775	11.10	\$8,602.50	\$6,678.50
Andrea Obando (Associate, JD '16)	\$375	\$375	\$375	\$500	7.70	\$3,850.00	\$2,887.50
Caitlin Kauffman (Fellow, JD '20)	N/A	N/A	\$375	\$375	298.00	\$111,750.00	\$111,750.00
Anne Weis (Law Clerk)	\$265	\$265	\$265	N/A	20.70	\$5,692.50	\$5,485.50

1	Anika Holland (Law Clerk)	\$265	\$265	\$265	N/A	31.00	\$8,525.00	\$8,215.00
2								
3	Bethany Balchunas (Law Clerk)	\$265	\$265	\$265	N/A	11.00	\$3,025.00	\$2,915.00
4								
5	Jasjit Mundh (Law Clerk)	\$265	\$265	\$265	N/A	12.90	\$3,547.50	\$3,418.50
6								
7								
8	Rianna Hidalgo (Law Clerk)	\$265	\$265	\$265	N/A	22.50	\$6,187.50	\$5,962.50
9								
10	Olivia Ruiz (Paralegal)	\$265	\$265	\$265	N/A	50.70	\$13,435.50	\$13,435.50
11								
12	Kelsey Lawson (Paralegal)	\$265	\$265	\$265	\$265	70.50	\$18,682.50	\$18,682.50
13								
14	Gloria Choi (Paralegal)	N/A	N/A	N/A	\$265	6.30	\$1,669.50	\$1,669.50
15	<b>Subtotal</b>					<b>1990.70</b>	<b>\$1,595,260.00</b>	<b>\$1,522,451.50</b>
16	<b>Total</b>					<b>3830.70</b>	<b>\$2,749,823.00</b>	<b>\$2,623,993.00</b>
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Pursuant to Federal Rule of Civil Procedure 23(h), Class Counsel hereby moves the Court  
4 for an order awarding Plaintiff's counsel up to \$1,000,000 in attorney's fees (representing 33.3%  
5 of the common fund) and reimbursement of \$149,978.03 for litigation expenses incurred.

6 **II. ARGUMENT<sup>1</sup>**

7 **A. Class Counsel are Entitled to a Fee Award of \$1 million or 33.3% of the**  
8 **Common Fund**

9 Rule 23 permits a court to award "reasonable attorneys' fees . . . that are authorized by  
10 law or by the parties' agreement." Fed. R. Civ. P. 23(h). "Attorneys' fees provisions included in  
11 proposed class action settlement agreements are, like every other aspect of such agreements,  
12 subject to the determination of whether the settlement is 'fundamentally fair, adequate, and  
13 reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P.  
14 23(e)). Rule 23(h) "requires that any class member be allowed an opportunity to object to the fee  
15 'motion' itself." *In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 993-994 (9th Cir.  
16 2010). Consistent with that requirement, the Court's Preliminary Approval Order set the date for  
17 submission of the fee motion as December 2, 2021, which is before the January 10, 2021  
18 deadline for Class Members to object to the Settlement. ECF No. 233 at 15.

19 "Where the settlement involves a common fund, courts typically award attorney's fees  
20 based on a percentage of the settlement fund." *Roe v. Jose Torres L.D. Latin Club B., Inc.*, No.  
21 19-CV-06088, 2020 WL 5074392, at \*8 (N.D. Cal. Aug. 27, 2020). The Ninth Circuit has  
22 established a benchmark of 25 percent of the common fund for attorneys' fees calculations under  
23 the [percentage] method." *Foster v. Adams and Assocs., Inc.*, No. 18-CV-02723, 2021 WL  
24 4924849, at \*8 (N.D. Cal. Oct. 21, 2021) (J. Corley) (citing *Powers v. Eichen*, 229 F.3d 1249,

25 \_\_\_\_\_  
26 <sup>1</sup> Pursuant to this District's Procedural Guidance for Class Action Settlements, Class Counsel  
27 directs the Court's attention to Plaintiffs' Motion for Final Approval, which will be filed by  
28 January 13, 2022, for a summary of the background of the case. See Procedural Guidance for  
Class Action Settlements, available at <https://cand.uscourts.gov/forms/procedural-guidance-for-class-action-settlements/>.

1 1256 (9th Cir. 2000)); *see In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 942 (9th  
 2 Cir. 2011) (“courts typically calculate 25% of the fund as the ‘benchmark’ for a reasonable fee  
 3 award”). Courts must provide “adequate explanation in the record of any special circumstances  
 4 justifying a departure” from the 25% benchmark. *Theodore Broomfield v. Craft Brew All., Inc.*,  
 5 17-CV-01027, 2020 WL 1972505, at \*11 (N.D. Cal. Feb. 5, 2020). In practice, “in most common  
 6 fund cases, the award exceeds that benchmark.” *In re Omnivision Techs., Inc.*, 559 F.Supp.2d  
 7 1036, 1047 (N.D. Cal. 2008); *Perez v. Rash Curtis & Assocs.*, No. 4:16-CV-03396, 2020 WL  
 8 1904533, at \*16 (N.D. Cal. Apr. 17, 2020) (stating same and granting class counsel's request for  
 9 attorneys' fees based on one-third of common fund); *Vedachalam v. Tata Consultancy Servs.*,  
 10 *Ltd.*, No. 06 CV 963, 2013 WL 3941319, \*2 (N.D. Cal. July 18, 2013) (collecting cases  
 11 awarding 30-33.3% of common fund); *Patel v. Trans Union, LLC*, No. 14-CV-00522-LB, 2018  
 12 WL 1258194, at \*5-7 (N.D. Cal. Mar. 11, 2018) (approving class counsel's request for one third  
 13 of settlement fund); *Rubin-Knudsen, v. Arthur Gallagher and Co.*, No. EDCV 18-6227, 2021  
 14 WL 4924765, at \*7 (C.D. Cal. Mar. 19, 2021) (finding that “courts within this Circuit routinely  
 15 award attorneys' fees equal to one-third of a gross settlement amount” and collecting cases). In  
 16 this case, Class Counsel requests a fee award of 33.3% of the common fund.

17 The Ninth Circuit has identified a number of factors that the Court may consider in  
 18 assessing whether an award is reasonable, including: (1) the results achieved, (2) the risk of  
 19 litigation, (3) the skill required and quality of work, (4) the contingent nature of the fee and the  
 20 financial burden carried by the plaintiffs, and (5) awards made in similar cases. *See Vizcaino v.*  
 21 *Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). These factors all support the  
 22 reasonableness of Class Counsel's requested fee award and the appropriateness of an upward  
 23 departure from the Ninth Circuit's 25% benchmark.

#### 24 **1. The Results Achieved and Awards Made in Other ERISA Cases** 25 **Weigh in Favor of Class Counsel's Requested Fees**

26 Class Counsel achieved a settlement providing gross monetary relief of \$3 million to the  
 27 Class, in addition to certain non-monetary provisions that also provide substantial benefits to the  
 28 Class. The recovery for each Class Member varies based only on the number of vested AAI

1 shares that accrued in the Class Members' ESOP account. After deducting 33.3% for attorneys'  
2 fees and the amount of \$ \$149,978.03 for costs, the average Class Member will recover \$528.00.

3 The Court previously found that "the monetary portion of the Settlement represents  
4 approximately 28.5% of the maximum amount of the loss determined by Plaintiffs' expert."  
5 *Foster*, 2021 WL 4924849, at \*6. Of course, the Class would only recover the maximum loss if  
6 the case were successfully litigated through trial on Plaintiffs' remaining prohibited transaction  
7 and breach of fiduciary duty claims (*i.e.*, Counts I and III), the Court agreed with Plaintiffs on  
8 the measure of recovery based on AAI stock's fair market value at the time of the October 2012  
9 Transaction, and the resulting judgment could be collected. And no part of a favorable judgment  
10 in favor of Plaintiffs and the Class was reversed on appeal.

11 Courts in the Ninth Circuit have approved ERISA class action settlements providing  
12 23.4% - 34% of the maximum monetary recovery and awarded fees that exceed the benchmark  
13 in those cases. *E.g.*, *Hurtado v. Rainbow Disposal Co., Inc.*, No. 817CV01605, 2021 WL  
14 2327858, at \*4 (C.D. Cal. May 21, 2021) (finding that "the percentage of total potential liability  
15 recovered here is an impressive result given that ERISA actions are generally complex" where  
16 the settlement fund represented between approximately 23.4% and 34.0% of the maximum  
17 amount of loss and awarding as fees the requested 30% of the common fund); *Marshall v.*  
18 *Northrop Grumman Corp.*, No. 16-CV-6794, 2020 WL 5668935, \*2-3, 4 (C.D. Cal. Sept. 18,  
19 2020) (finding that the settlement was "an exceptional result" that "justifie[d] an attorney fee  
20 award of one-third of the settlement fund" where the settlement fund represented "approximately  
21 29% of Plaintiffs' claimed damages at trial").

22 Here, Class Counsel secured a settlement of \$3 million, plus the agreement of the  
23 Defendants who are not Adams and Associates, Inc. ("AAI"), to bear all costs of settlement  
24 administration, which would otherwise be deducted from the settlement fund (as well as other  
25 non-monetary relief). Agmt. §§ I.G, III.1, IV.7. The monetary recovery achieved here compares  
26 favorably with other ERISA class actions in which the court awarded one-third of the settlement  
27 fund for attorneys' fees. *E.g.*, *Marshall*, 2020 WL 5668935, \*2-3; *Sims v. BB&T Corp.*, No.  
28 1:15-CV-732, 2019 WL 1993519, \*2 (M.D.N.C. May 6, 2019) (order awarding one-third of

1 common fund in attorneys’ fees where the settlement represented 19% of the monetary relief  
2 sought); *Karpik v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, at \*8  
3 (S.D. Ohio Feb. 18, 2021) (awarding one-third of common fund where the settlement represented  
4 “approximately 30% of the total damages that Plaintiffs claimed at the mediation were associated  
5 with Defendants’ alleged fiduciary breaches”). The recovery here is also greater—both in  
6 absolute terms and as a proportion of the maximum potential recovery—than recoveries in some  
7 non-ERISA cases where the court awarded attorneys’ fees of at least 33% of the common fund.  
8 *See Deaver v. Compass Bank*, No. 13-cv-222, 2015 WL 8526982, \*7, 10-14 (N.D. Cal.  
9 December 11, 2015) (J. Corley) (\$500,000 settlement or 14.2% of “potential liability”; 33% fee  
10 award); *Dawson v. Hitco Carbon Composites, Inc.*, No. CV16-07337, 2019 WL 7842550, at \*6-  
11 7 (C.D. Cal. Nov. 25, 2019) (\$1.1 million settlement or 22% of potential maximum recovery;  
12 35% fee award); *Jiangchen v. Rentech, Inc.*, No. 17-1490, 2019 WL 5173771, \*7, 9 (C.D. Cal.  
13 Oct. 10, 2019) (\$2.05 million settlement or 10% of maximum damages; 33.3% fee award); *Greer*  
14 *v. Dick’s Sporting Goods, Inc.*, 215CV01063, 2020 WL 5535399, at \*6, 8, 11 (E.D. Cal. Sept.  
15 15, 2020) (\$2.8 million settlement or 17% of maximum potential exposure; 33% fee award).

16 Non-monetary relief is an additional factor that weighs in favor of awarding the requested  
17 fees. *Wakefield v. Wells Fargo & Co.*, 3:13-CV-05053, 2015 WL 3430240, at \*5 (N.D. Cal. May  
18 28, 2015) (“When determining the value of a settlement, courts consider both the monetary and  
19 non-monetary benefits that the settlement confers.”). Such non-monetary relief also supports an  
20 upward departure from the 25% benchmark. *E.g., Hurtado*, 2021 WL 2327858, at \*4 (holding  
21 that payment to class members through a 401(k) plan, preserving the tax advantages enjoyed  
22 under the ESOP, and class members not bearing the costs of receiving their distributions under  
23 the terms of the settlement “supports an upward departure from the 25% attorneys’ fees  
24 benchmark”); *Spann v. J.C. Penney Corp.*, 211 F.Supp.3d 1244, 1263 (C.D. Cal. 2016) (finding  
25 that non-monetary relief weighed in favor of attorneys’ fees award of 27% ); *see also Pfeifer v.*  
26 *Wawa, Inc.*, No. CV 16-497, 2018 WL 4203880, \*13 (E.D. Pa. Aug. 31, 2018) (holding that  
27 “innovative” structure of settlement that “allows Class Members to roll over the payment into  
28 another plan and thus take advantage of the tax benefits of a tax-qualified retirement plan”

1 supported attorney fee award).

2 Here, the Settlement provides important non-monetary relief. Class Counsel secured  
3 significant non-monetary relief for the Class by structuring the Settlement so that it would be  
4 paid through the Adams and Associates, Inc. 401(k) Profit Sharing Plan (“the AAI 401(k) Plan”),  
5 preserving the tax advantages that Class Members would have enjoyed in their ESOP allocations.  
6 Agmt. § VII.5. The net settlement amount is paid into the AAI 401(k) Plan without any Class  
7 Member having to complete a claim form. The Settlement ensures that for Class Members who  
8 are former employees or otherwise eligible for an immediate distribution, they will have the option to  
9 receive a check for their share of the net settlement proceeds, elect a rollover to an IRA or another  
10 eligible retirement account or have their settlement monies remain in the AAI 401k Plan. *Id.*  
11 § IV.5(a). The Settlement also ensures that Class Members who are not eligible for an immediate  
12 distribution from the AAI 401(k) Plan (*i.e.*, most current employees) will have their shares of the  
13 settlement amount transferred to their existing account or, if they do not have one, to an account  
14 newly established for them in the AAI 401(k) Plan. *Id.* § IV.5(b). The Settlement also ensures  
15 that if Class Members elect a distribution or provide investment instructions, the settlement  
16 monies will be invested. *Id.* § IV.5(b). Additionally, Class Counsel also secured complete non-  
17 monetary relief on Count IV, the SPD claim, requiring AAI to issue an SPD compliant with  
18 ERISA (*id.* § VI.2) and complete relief on Count V, the anti-indemnification claim, barring AAI  
19 from paying for the Settlement or indemnifying any of the other Defendant. *Id.* § VI.1.

20 Thus, the factors regarding the results achieved and awards made in similar cases weigh  
21 in favor of Class Counsel’s requested award of 33.3% of the common fund.

## 22 **2. The Risks of Litigation Weigh in Favor of Class Counsel’s Requested** 23 **Fees**

24 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly  
25 a case involving complicated legal issues, is a significant factor in the award of fees.” *In re*  
26 *Omnivision Techs., Inc.*, 559 F.Supp.2d 1036, 1046–47 (N.D. Cal. 2008). Plaintiffs have  
27 previously outlined the risks involved in litigating this case. ECF No. 231 at 12-15, 23-24. At  
28 preliminary approval, the Court recognized that “ERISA actions are notoriously complex cases,



1 and ESOP cases are often cited as the most complex of ERISA cases.” *Foster*, 2021 WL  
2 4924849, at \*6 (quoting *Pfeifer v. Wawa, Inc.*, No. CV16-497, 2018 WL 4203880, at \*7 (E.D.  
3 Pa. Aug. 31, 2018)). In considering the risks of continued litigation, the Court observed that in  
4 their statement of non-opposition, “Defendants set forth their view of the obstacles of continued  
5 litigation including that they continue to dispute wrongdoing and ... that the evidence does not  
6 support Plaintiffs’ breach of fiduciary duty or prohibited transaction claims.” *Id.* The Court also  
7 observed that Class Counsel recognize “the expense, risk, and length of continued proceedings  
8 necessary to prosecute the litigation against Defendants through trial and appeals, based on the  
9 Courts’ decisions and the risks that any or all of Plaintiffs’ claims might fail following a trial on  
10 the merits or on appeal.” *Id.* (quoting ECF No. 231 at 23). For example, because Count III  
11 depended in part upon proving the underlying breach by a deceased ESOP trustee (who had no  
12 records related to the transaction), the derivative character of the claim introduces difficult trial  
13 issues about the knowledge of the Director Defendants who allegedly failed to monitor the  
14 breaching trustee or remedy his breach. ECF No. 231 at 24. A recent decision in a trial of  
15 litigation involving an ESOP transaction involving a deceased trustee illustrates these risks:  
16 Following a one-week jury trial, the court entered judgment in favor of Defendants on all claims.  
17 *Walsh v. Bowers*, No. CV 18-0015, 2021 WL 4240365, at \*1 & 29 (D. Haw. Sept. 17, 2021).

18 Defense verdicts entered by courts after trial in other complex ERISA fiduciary breach  
19 class actions illustrate those risks. *E.g.*, *Romo v. Principal Life Ins. Co.*, Opinion and Order on  
20 Merits Following Trial (D. Iowa April 8, 2021) (ECF No. 219-2) (entering a defense verdict in  
21 an ERISA fiduciary breach class action following a six-day trial); *Wildman v. Am. Cent. Servs.*,  
22 *LLC*, 362 F.Supp.3d 685 (W.D. Mo. 2019) (defense verdict in ERISA fiduciary breach class  
23 action following 11 day trial); *Fish v. Greatbanc Tr. Co.*, No. 09 C 1668, 2016 WL 5923448, \*1,  
24 \*68 (N.D. Ill. Sept. 1, 2016). While Co-Lead Class Counsel have successfully tried ERISA cases  
25 and do not shy away from trial, they fully appreciate the risks involved.

26 Even if Plaintiffs had prevailed at trial, Defendants would likely have appealed any  
27 judgment in Plaintiffs’ favor. There have been high-profile class actions where plaintiffs  
28 prevailed at trial and subsequently had such verdicts reversed on appeal. For example, following

1 a non-jury trial, the Ninth Circuit affirmed in part and reversed in part the judgment rendered in  
 2 favor of the certified class, vacated the \$203 million restitution award, and remanded the case for  
 3 further proceedings. *Gutierrez v Wells Fargo Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012); *see*  
 4 *Robbins v. Koger Props., Inc.*, 116 F.3d 1441, 1449 (11th Cir. 1997) (reversing \$81 million jury  
 5 verdict and dismissing case with prejudice in securities action); *Anixter v. Home–Stake Prod.*  
 6 *Co.*, 77 F.3d 1215 (10th Cir. 1996) (overturning plaintiffs' verdict obtained after two decades of  
 7 litigation).

8 In addition to the risks of reversal on appeal that attach any complex litigation of this  
 9 kind, there were also collection risks unique to this case, including the risks that the Defendants  
 10 against whom Class Counsel viewed as having the strongest claims—Defendants Roy Adams  
 11 and Dan Norem—might not have sufficient assets to satisfy a judgment, particularly given that  
 12 Defendants only had \$1 million in insurance at the inception. As Class Counsel are well aware,  
 13 even when a successful judgment that survives appeal, it can take significant time to collect the  
 14 judgment—particularly from individual defendants. Thus, the risks of litigation weigh in favor of  
 15 Class Counsel’s requested fee award.

### 16 **3. The Skill Required and Quality of Work Weigh in Favor of Class** 17 **Counsel’s Requested Fees**

18 ERISA class actions are “complex” and require counsel with “specialized skills.” *Karpik*  
 19 *v. Huntington Bancshares Inc.*, No. 2:17-CV-1153, 2021 WL 757123, \*9 (S.D. Ohio Feb. 18,  
 20 2021). “Very few plaintiffs’ firms possess the skill set or requisite knowledge base to litigate . . .  
 21 class-wide, statutorily-based claims for pension benefits.” *Savani v. URS Prof. Sols. LLC*, 121  
 22 F.Supp.3d 564, 573 (D.S.C. 2015). In addition to legal expertise, counsel in ERISA cases must  
 23 possess “expertise regarding industry practices.” *Kruger v. Novant Health*, No. 1:14CV208, 2016  
 24 WL 6769066, \*3 (M.D.N.C. Sept. 29, 2016). Even among the “notoriously complex” set of  
 25 ERISA class actions, “ESOP cases are often cited as the most complex of ERISA cases.” *Pfeifer*,  
 26 2018 WL 4203880, at \*7. Cases from this District and other districts in the Ninth Circuit  
 27 illustrate that the complexity of ERISA class actions often results in a 33.3% common fund fee  
 28 award. *E.g., Marshall*, 2020 WL 5668935, at \*9 (awarding attorneys’ fees of 1/3 of settlement

1 fund of \$12.3 million in an ERISA action); *Schwartz v. Cook*, No. 15-CV-03347, 2017 WL  
2 2834115, at \*5 (N.D. Cal. June 30, 2017) (awarding attorneys’ fees of 1/3 of settlement fund in  
3 an ERISA action involving an ESOP transaction); *Waldbuesser v. Northrop Grumman Corp.*,  
4 CV 06-6213, 2017 WL 9614818, at \*4 (C.D. Cal. Oct. 24, 2017) (awarding attorneys’ fees of 1/3  
5 of settlement fund of \$16.75 million in an ERISA action). The skill of the work of both Mr.  
6 Barton and Mr. Feinberg have been recognized by courts. *E.g.*, *Hurtado*, 2021 WL 2327858, at  
7 \*5 (observing in an ESOP case where Mr. Barton was Co-Lead counsel that “Class Counsel  
8 provided skillful, quality work” that justified “an upward departure from the benchmark  
9 amount”); *Pfeifer*, 2018 WL 4203880, at \*13 (holding that “Class Counsel [including Mr.  
10 Feinberg and Mr. Barton] skillfully and vigorously prosecuted this complex ERISA matter”).

11 Class Counsel are two law firms among the small ERISA plaintiffs’ bar with the unique  
12 and extensive experience and expertise required to litigate cases like this one and the willingness  
13 to litigate such cases on behalf of Plaintiffs. Lewis Decl. ¶¶ 13-15. This case involved precisely  
14 the issues that make litigation of this sort notoriously complex. It required Class Counsel to hire  
15 an expert to prepare a report on business valuation and an expert to prepare a rebuttal report on  
16 fiduciary industry standards. ECF No. 231-3 ¶ 7. The claims required Class Counsel to obtain  
17 discovery from Defendants and at least 11 non-parties, including dozens of document requests  
18 and interrogatories, to review of hundreds of over 35,000 pages of documents, 8 depositions, and  
19 meetings of counsel to resolve discovery disputes without the involvement of the Court. *Id.* ¶¶ 2-  
20 8. The parties’ cross motions for summary judgment required Class Counsel to address complex  
21 ERISA issues including, for example, the scope of the duty to monitor a fiduciary and disclose  
22 accurate and complete material information under ERISA’s provisions governing fiduciary  
23 duties, whether Defendants were acting as fiduciaries for purposes of the October 2012  
24 Transaction, whether equitable relief was available, and whether Defendants could prove that the  
25 ESOP paid no more than adequate consideration. ECF No. 128 at 12-15, 16-20; ECF No. 142 at  
26 19-28.

27 “The quality of Class Counsel's work is further evidenced by the favorable settlement  
28 achieved, including both monetary and prospective relief,” on behalf of the Class. *Urakhchin v.*

1 *Allianz Asset Mgt. of Am., L.P.*, No. 815CV01614, 2018 WL 8334858, at \*6 (C.D. Cal. July 30,  
 2 2018). The specialized skill brought to bear by Class Counsel on this complex case thus weighs  
 3 in favor of the upward departure from the Ninth Circuit benchmark and supports the  
 4 reasonableness of Class Counsel’s requested fee award.

5 **4. The Contingent Nature of the Fee and Financial Burden Carried**  
 6 **Weigh in Favor of Class Counsel’s Requested Fees**

7 As this Court recognized in another case, “[w]ith respect to the contingent nature of  
 8 litigation . . . courts tend to find above-market-value fee awards more appropriate in this context  
 9 given the need to encourage counsel to take on contingency-fee cases for plaintiffs who  
 10 otherwise could not afford to pay hourly fees.” *Deaver*, 2015 WL 8526982, at \*11. “Moreover,  
 11 when counsel takes cases on a contingency fee basis, and litigation is protracted, the risk of non-  
 12 payment after years of litigation justifies a significant fee award.” *Id.*; see *Philips v. Munchery*  
 13 *Inc.*, No. 19-CV-00469, 2021 WL 326924, at \*9 (N.D. Cal. Feb. 1, 2021) (J. Corley) (holding  
 14 that “as Class Counsel took this matter on a contingency basis, they assumed considerable risk  
 15 litigating the matter for the last two years”).

16 Class Counsel took this case on a contingent basis. Barton Decl. ¶ 6; Feinberg Decl. ¶ 10.  
 17 To date, Class Counsel have invested over 3,800 hours prosecuting this case. Barton Decl. ¶ 6;  
 18 Feinberg Decl. ¶ 10. Class Counsel have received no compensation for any efforts in this case  
 19 since they were engaged by Plaintiffs. Barton Decl. ¶ 6; Feinberg Decl. ¶ 10. Class Counsel  
 20 undertook this representation despite the substantial risk that none of their expenses on behalf of  
 21 the Class—including not just attorney time, but \$149,978.03 in litigation costs—would be  
 22 recouped. Barton Decl. ¶¶ 13, 16-17; Feinberg Decl. ¶¶ 17, 21-23.

23 Class Counsel assumed the financial risks associated with this essential aspect of the  
 24 case. Based on Class Counsel’s prior trial experience of ESOP cases, Class Counsel anticipated  
 25 paying as much as double the amounts already expended for experts had the case proceeded  
 26 through trial. Barton Decl. ¶ 13; see *Schwartz*, 2017 WL 2834115, at \*5 (N.D. Cal. June 30,  
 27 2017) (holding that the factor that “counsel has litigated this case completely contingent on  
 28 outcome—the firm has not been paid for any of its time or expenses incurred to date” supported

1 fee award of 1/3 of the settlement fund). The significant contingent risks and financial burden  
 2 assumed by Class Counsel in litigating this case thus weigh in favor of the reasonableness of the  
 3 requested fees.

4 **B. The Lodestar Cross-Check Confirms the Reasonableness of Class Counsel’s**  
 5 **Requested Fee Award**

6 Counsel's lodestar may “provide a useful perspective on the reasonableness of a given  
 7 percentage award.” *Vizcaino*, 290 F.3d at 1050; *see Perez*, 2020 WL 1904533, at \*18 (observing  
 8 that “courts in the Ninth Circuit sometimes examine the lodestar calculation as a crosscheck on  
 9 the percentage fee award to ensure the reasonableness of the percentage award”). The lodestar  
 10 method consists of two steps. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir. 2016). *First*, a  
 11 court multiplies a reasonable number of hours expended on the litigation by a reasonable hourly  
 12 rate to arrive at a lodestar figure. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th Cir.  
 13 2016); *Kelly*, 822 F.3d at 1099. *Second*, the court determines whether to adjust the lodestar figure  
 14 upward or downward using a multiplier based on factors not subsumed in the lodestar  
 15 calculation. *Id.*; *Van Gerwen v. Guar. Mut. Life Co.*, 214 F.3d 1041, 1045 (9th Cir. 2000).  
 16 Among those factors, “the degree of success obtained is the most critical factor in determining  
 17 the reasonableness of a fee award.” *Bravo v. City of Santa Maria*, 810 F.3d 659, 666 (9th Cir.  
 18 2016); *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942 (the most crucial factor is  
 19 “the benefit obtained for the class”).

20 **1. Class Counsel’s Hourly Rates are Reasonable Given the Experience,**  
 21 **Skill, and Expertise Required to Litigate a Complex ERISA Case**

22 The established standard for determining a reasonable hourly rate is the rate “prevailing  
 23 in the community for similar services of lawyers of reasonably comparable skill, experience, and  
 24 reputation.” *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *Camacho v. Bridgeport Fin. Inc.*,  
 25 523 F.3d 973, 979 (9th Cir. 2008). “Affidavits of the plaintiffs’ attorney and other attorneys  
 26 regarding prevailing fees in the community, and rate determinations in other cases, particularly  
 27 those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of the prevailing market  
 28 rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990);

1 *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110 (9th Cir. 2014). “Complex ERISA cases, such as  
2 this, ‘involve a national standard, and attorneys practicing ERISA law in the Ninth Circuit tend  
3 to practice in different districts.’” *Marshall*, 2020 WL 5668935, at \*6 (quoting *Mogck v. Unum*  
4 *Life Ins. Co. of Am.*, 289 F.Supp.2d 1181, 1191 (S.D. Cal. 2003)). The “relevant hourly rate for  
5 Class Counsel’s work” is thus “the ‘nationwide market rate.’” *Id.* A “district court has discretion  
6 to compensate delay in payment in one of two ways: (1) by applying the attorneys’ current rates  
7 to all hours billed during the course of the litigation; or (2) by using the attorneys’ historical rates  
8 and adding a prime rate enhancement.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d  
9 1291, 1305 (9th Cir. 1994).

10 Here, the hourly rates charged by Class Counsel are based on each professional’s  
11 position, experience, and expertise. Block & Leviton LLP’s rates fall between \$275 and \$900.  
12 Barton Decl. ¶ 6. Feinberg Jackson Worthman & Wasow LLP’s rates fall between \$265 and  
13 \$975. Feinberg Decl. ¶ 10. The rates of the two firms represent the customary billing rates for the  
14 firm’s professionals and the level of skill required in a complex class action case of this type.  
15 Barton Decl. ¶ 7; Feinberg Decl. ¶ 10. Historical rates for all years in which professionals billed  
16 time to this case are provided along with current rates for all professionals still employed by  
17 Block & Leviton LLP or Feinberg Jackson Worthman & Wasow LLP.

18 Courts have recognized Block & Leviton’s and specifically Mr. Barton’s significant  
19 experience with complex class action litigation and approved their customary rates in other  
20 cases. Barton Decl. ¶ 12. Two courts in the Central District of California recently approved of  
21 Block & Leviton’s rates—including those of the attorneys in this case—one of which awarded  
22 fees for its representation of a class of participants in connection with a sale of an ESOP’s assets  
23 in an ERISA class action. *Hurtado*, 2021 WL 2327858, at \*6; see *Marshall*, 2020 WL 5668963,  
24 at \*4 (holding that Block & Leviton’s rates—including those of the attorneys in this case—were  
25 “within the range of prevailing rates within the community” and awarding fees for Block &  
26 Leviton’s successful representation of an objector to an ERISA class action settlement).  
27 Similarly, another court of this Circuit approved of Block & Leviton’s rates as of 2020—which  
28 included the attorney rates of Joseph Barton and paralegal Ming Siegel—in awarding fees in a

1 complex data privacy class action. Barton Decl. Ex. A. Private clients also pay these rates. For  
2 example, a Fortune 100 company paid the firms' customary rates where Mr. Barton and Block &  
3 Leviton were counsel to the Independent Fiduciary for the purpose of analyzing claims and  
4 negotiating a settlement of ERISA fiduciary breach claims. Barton Decl. ¶ 11.

5 Courts have recognized Feinberg Jackson Worthman & Wasow's and specifically Mr.  
6 Feinberg's significant experience with complex ERISA class actions and approved their  
7 customary rates in other cases. Feinberg Decl. ¶¶ 4, 16. For example, the Eastern District of  
8 Pennsylvania recently approved Mr. Feinberg's hourly rate of \$975. *Cunningham v. Wawa, Inc.*,  
9 No. CV 18-3355, 2021 WL 1626482, at \*8 (E.D. Pa. Apr. 21, 2021) (finding Class Counsel's  
10 rates reasonable in ESOP litigation "in light of the complexity of ERISA cases and the skill and  
11 experience of counsel"). The *Cunningham* court also approved the hourly rates for other partners  
12 at Feinberg Jackson Worthman & Wasow, associate attorneys and support staff who also worked  
13 on this case. *Id.* Individual and institutional clients in the past have hired Mr. Feinberg for advice  
14 and representation in litigation at his then-hourly rate. Feinberg Decl. ¶ 16.

15 These rates are also in line with rates approved by comparably skilled and specialized  
16 lawyers in similar litigation. In another ERISA class action just last year, a court approved rates  
17 of up to \$900 per hour for attorneys with 14-25 years of experience and up to \$650 per hour for  
18 attorneys with 5-14 years of experience in its lodestar calculation. *Marshall*, 2020 WL 5668935  
19 at \*7. Recently, in a complex class action, this Court approved rates of up to \$950 per hour for  
20 class counsel with 15-30 years of experience. *Philips*, 2021 WL 326924, at \*10; *see Rainbow*  
21 *Bus. Sols. v. MBF Leasing LLC*, No. 10-CV-01993, 2017 WL 6017844, at \*1 (N.D. Cal. Dec. 5,  
22 2017) (finding rates between \$275 to \$950 per hour for class counsel to be reasonable). Other  
23 courts in this District have approved similar rates in complex class actions. *See, e.g., Dickey v.*  
24 *Adv. Micro Devices, Inc.*, No. 15-CV-04922, 2020 WL 870928, at \*8 (N.D. Cal. Feb. 21, 2020)  
25 (finding class counsel's hourly rates up to \$1,000 per hour for partners to be reasonable); *Hefler*  
26 *v. Wells Fargo & Co.*, No. 16-CV-05479, 2018 WL 6619983, at \*14 (N.D. Cal. Dec. 18, 2018)  
27 (finding rates from \$ 650 to \$ 1,250 for partners or senior counsel, \$ 400 to \$ 650 for associates,  
28 and \$245 to \$ 350 for paralegals to be reasonable); *Nitsch v. DreamWorks Animation SKG Inc.*,

1 No. 14-CV-04062, 2017 WL 2423161, at \*9 (N.D. Cal. June 5, 2017) (finding class counsel’s  
 2 hourly rates varying between \$275 and \$1,200 per hour based on experience to be reasonable).  
 3 These cases demonstrate that Class Counsel’s rates are in line with other attorneys of similar  
 4 experience and skill handling complex litigation including complex ERISA litigation.

5 Finally, Class Counsel’s rates are supported by declarations from attorneys familiar with  
 6 the prevailing rates, both in the nationwide market for class action ERISA litigation services and  
 7 for complex class action litigation in the local geographic area. Jeffrey Lewis of Keller  
 8 Rohrback, L.L.P. in Northern California is another attorney who regularly handle ERISA  
 9 litigation for employees as well as other complex ERISA class action litigation. Lewis Decl. ¶ 9.  
 10 Mr. Lewis attests and illustrates the comparability of his rates to the rates of Class Counsel. *Id.* ¶  
 11 18-22. Terrence J. Coleman of Pillsbury & Coleman, LLP in Northern California handles all  
 12 aspects of ERISA litigation. Coleman Decl. ¶¶ 3, 8. Mr. Coleman attests that Class Counsel’s  
 13 rates are consistent with the range of market rates in the Northern District of California. *Id.* ¶¶  
 14 13.

## 15 2. The Hours Expended by Class Counsel are Reasonable

16 A reasonable number of hours expended by a party’s counsel “is calculated by  
 17 considering whether, in light of the circumstances, the time could reasonably have been billed to  
 18 a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008). Counsel  
 19 are expected to “make a good faith effort to exclude . . . hours that are excessive, redundant, or  
 20 otherwise unnecessary.” *Hensley v. Eckerhart*, 461 U.S. 424, 434 (1983). For a district court “to  
 21 reduce the number of hours submitted,” for purposes of the lodestar calculation, “it must appear  
 22 that the time claimed is obviously and convincingly excessive under the circumstances.” *Full*  
 23 *Tilt Boogie LLC v. Kep Fortune LLC*, No. 219CV09090, 2021 WL 4527735, at \*3 (C.D. Cal.  
 24 Sept. 14, 2021) (citing *Blackwell v. Foley*, 724 F.Supp.2d 1068, 1081 (N.D. Cal. 2010)). In  
 25 assessing the reasonableness of the hours expended, courts have taken into account the fact that  
 26 the amount of time billed by a plaintiff’s counsel “is in large part a result of [a defendant’s]  
 27 aggressive defense strategy.” *Wren v. RGIS Inventory Specialists*, No. 06 CV 5778, 2011 WL  
 28 1230826, at \*26 (N.D. Cal. Apr. 1, 2011).



1 Class Counsel performed significant work to litigate this case vigorously and efficiently.  
2 For purposes of preparing the Complaint, Amended Complaint, and Second Amended  
3 Complaint, Class Counsel conducted extensive factual and legal investigations of the Selling  
4 Shareholder Defendants' sale of 100% of the AAI stock to the ESOP in October 2012 including  
5 the U.S. Department of Labor's small business set-aside policy, the status of AAI's 13 contracts  
6 with the Department of Labor, AAI's bid protests, and the ESOP trustee Alan Weissman's  
7 criminal history. Feinberg Decl. ¶¶ 13-14; Barton Decl. ¶ 8. During the course of this contentious  
8 and complex case, Class Counsel filed briefs in opposition to and argued against Defendants'  
9 motion to dismiss. *See* ECF No. 18; ECF Nos. 25 & 60. After defeating Defendants' Rule  
10 12(b)(6) motion, ECF No. 61, Class Counsel briefed and argued Plaintiffs' motion for class  
11 certification and secured certification of the Class over Defendants' opposition. *See* ECF Nos.  
12 79, 81, 94. Class Counsel briefed and argued Plaintiffs' motion for partial summary judgment on  
13 Plaintiffs' prohibited transaction and breach of fiduciary duty claims and briefed and argued  
14 Plaintiffs' opposition to Defendants' motion for summary judgment on all counts. *See* ECF Nos.  
15 102, 128; ECF No. 142. The Court denied Plaintiffs' motion but granted Defendants' motion  
16 only as to Count I under ERISA § 406(a) as to Defendants Leslie Adams and Joy Curry Norem  
17 and as to Count II under ERISA § 406(b). ECF No. 153 at 21. Class Counsel briefed and argued  
18 Plaintiffs' motions *in limine* and briefed Plaintiffs' oppositions to Defendants' motions *in limine*  
19 (including on both of Plaintiffs' experts). ECF Nos. 182-84, 187-88 & 197-98. Class Counsel  
20 prepared, filed, and completed Plaintiffs' pretrial submissions. ECF Nos. 205, 206, 207, 209,  
21 215.

22 Class Counsel also engaged in extensive discovery. Over the course of this litigation,  
23 Class Counsel issued more than forty-five requests for production and more than ten document  
24 subpoenas and obtained more than 35,000 pages of documents from Defendants and non-parties.  
25 ECF No. 231-3 ¶¶ 2-4. This case involved eight depositions, including a Rule 30(b)(6)  
26 deposition of AAI, the depositions of two named individual Defendants (Roy Adams and Daniel  
27 Norem), and Weissman's valuation and legal advisors (Joshua Edwards and Karen Ng), and the  
28 depositions of the two named Plaintiffs (Carol Foster and Theo Foreman). *Id.* ¶ 7. Class Counsel

1 met and conferred with Defendants and non-parties on discovery matters throughout the case in  
 2 an effort to resolve disputes without the Court’s involvement. *Id.* ¶ 6. Class Counsel served one  
 3 expert report on valuation and two expert rebuttal reports to Defendants’ experts on valuation  
 4 and fiduciary standards. *Id.* ¶ 7. Class Counsel took the depositions of Defendants’ three experts  
 5 (Joseph Garofolo, Norman Duquette, and Jeffrey Risius) and defended the depositions of  
 6 Plaintiffs’ two expert witnesses (Steven Garber and Jeffrey Krenzle). *Id.* ¶ 8.

7 To litigate this case efficiently, Class Counsel assigned work to junior attorneys and  
 8 paralegals with lower hourly rates as appropriate. Barton Decl. ¶ 5; Feinberg Decl. ¶ 9. Co-Lead  
 9 Class Counsel coordinated their work to avoid unnecessary duplication of effort. Barton Decl. ¶  
 10 5; Feinberg Decl. ¶ 9. Prior to filing their motion for attorneys’ fees, counsel from each firm  
 11 reviewed time entries, and, just as counsel would prior to sending bills to paying clients,  
 12 removed time entries for duplicative or unnecessary work that ordinarily would not be billed  
 13 client. Barton Decl. ¶ 10; Feinberg Decl. ¶ 10. The lodestar figure submitted by Class Counsel in  
 14 support of their request for fees reflects these adjustments. Consistent with this Court’s Order  
 15 (ECF No. 233), Class Counsel has submitted detailed billing records of the billable tasks  
 16 performed by their professionals in this case. Barton Decl. Ex. B; Feinberg Decl. Ex. C. In light  
 17 of efforts by Plaintiff’s counsel to litigate this case efficiently, as well as the significant work  
 18 performed over the past three and a half years, the complexity of the legal issues presented, and  
 19 Defendants’ aggressive defense, the 3,830 hours expended by Co-Lead Class Counsel to date are  
 20 reasonable.

21 **3. The Fact That Class Counsel’s Requested Fees Reflect a Negative**  
 22 **Multiplier Over Class Counsel’s Lodestar Supports the**  
 23 **Reasonableness of the Fee Request**

24 A court may adjust a lodestar figure upward or downward by considering “the benefit  
 25 obtained for the class.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942; *Bravo*, 810  
 26 F.3d at 666 (“the degree of success obtained is the most critical factor”). The fact that the  
 27 requested fees reflect a reduction in the lodestar or a “negative multiplier” “strongly suggests the  
 28 reasonableness of a negotiated fee.” *Castillo v. Community Child Care Counsel of Sant Clara*  
*County, Inc.*, No. 17-CV-07243, 2021 WL 4895084, at \*6 (N.D. Cal. Oct. 20, 2021) (citing

1 *Moreno v. Capital Bldg. Maint. & Cleaning Servs., Inc.*, No. 19-CV-07087, 2021 WL 4133860,  
 2 at \*6 (N.D. Cal. Sept. 10, 2021)). Courts in this District and other districts of the Ninth Circuit  
 3 have regularly authorized awards of the requested fees where the fees are less than counsel’s  
 4 lodestar. *See In re Lenovo Adware Litig.*, No. 15-MD-02624, 2019 WL 1791420, at \*9 (N.D.  
 5 Cal. Apr. 24, 2019) (approving award of the requested fees where “Class Counsel thus is seeking  
 6 fees approximately 51% lower than their lodestar”); *Schwartz*, 2017 WL 2834115, at \*5 (finding  
 7 that a lodestar cross-check confirmed the reasonableness of the requested fees, which represented  
 8 22% of class counsel’s lodestar); *Castillo v. ADT, LLC*, No. 2:15-383, 2017 WL 363108, at \*7  
 9 (E.D. Cal. Jan. 25, 2017) (“The fact that the requested fees in this case are below the lodestar  
 10 figure further supports granting approval”); *Hose v. Wash. Inventory Serv., Inc.*, No. 14-CV-  
 11 2869, 2020 WL 3606404, at \*9 (S.D. Cal. July 2, 2020) (approving class counsel’s requested  
 12 fees representing 44% of their lodestar and 33% of the settlement fund and observing that  
 13 “[c]ourts in this circuit have routinely authorized awards representing a similar reduction in the  
 14 lodestar,”). Co-Lead Class Counsel’s requested fee award represents 36% of their lodestar and  
 15 thus a 64% reduction in that amount. *See Philips*, 2021 WL 326924, at \*10 (approving award of  
 16 the requested fees where “the Court notes that the fees sought represent approximately forty  
 17 percent of Class Counsel’s actual lodestar” and thus a negative multiplier). The negative  
 18 multiplier here is significant in light of the complexity of the case, the excellent result achieved  
 19 for the Class, and compared to other awards in this Circuit. Thus, the lodestar crosscheck  
 20 confirms that Class Counsel’s requested fees are reasonable and supports their approval.

21 **C. Class Counsel are Entitled to Reimbursement of Litigation and Settlement**  
 22 **Administration Expenses**

23 “There is no doubt that an attorney who has created a common fund for the benefit of  
 24 the class is entitled to reimbursement of reasonable litigation expenses from that fund.” *Philips*,  
 25 2021 WL 326924, at \*10 (citation omitted). Reasonable out-of-pocket litigation expenses are  
 26 those that “would normally be charged to a fee paying client.” *Trs. of the Const. Indus. and*  
 27 *Laborers Health and Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253, 1257 (9th Cir. 2006); *In re*  
 28 *Lenovo Adware Litig.*, Case No. 15-md-02624-HSG, 2019 WL 1791420, at \*9 (“Class Counsel

1 is entitled to recover “those out-of-pocket expenses that would normally be charged to a fee  
2 paying client.”).

3 Class Counsel requests reimbursement of a total of \$149,978.03 in expenses, which  
4 includes the following charges, all of which are recoverable in this Circuit: court fees, deposition  
5 costs, electronic research costs, electronic discovery expenses, process server fees, expert fees,  
6 postage and courier fees, printing costs, conference call costs and travel/lodging. Barton Decl.  
7 ¶ 16; Feinberg Decl. ¶¶ 20-21. Consistent with this Court’s Order (ECF No. 233), Class Counsel  
8 has submitted with this motion an itemized sheet summarizing costs with this Motion. Barton  
9 Decl. Ex. C; Feinberg Decl. Ex. D. Each of these categories of expenses is recoverable. *Harris v.*  
10 *Marhoefer*, 24 F.3d 16, 19-20 (9th Cir. 1994) (holding that “expenses related to discovery” are  
11 recoverable expenses); *Davis v. City & County of S.F.*, 976 F.2d 1536, 1556 (9th Cir. 1992)  
12 (affirming that “out-of-pocket” expenses such as “travel, courier and copying costs” are  
13 reimbursable), *vacated in other part by*, 984 F.2d 345, 345 (9th Cir. 1993); *In re: Cathode Ray*  
14 *Tube (CRT) Antitrust Litig.*, No. 07 CV 5944, 2016 WL 4126533, at \*11 (N.D. Cal. Aug. 3,  
15 2016) (approving recovery of costs including conference call expenses); *Trs. of Const. Indus. &*  
16 *Laborers Health & Welfare Tr.*, 460 F.3d at 1259 (holding that “reasonable charges for  
17 computerized research may be recovered”); *In re Lenovo Adware Litig.*, 2019 WL 1791420, at  
18 \*9 (approving recovery of out-of-pocket expenses including “professional service fees (experts,  
19 investigators, accountants), travel fees, and discovery-related fees”).

20 The costs for which Class Counsel request reimbursement are substantially less than  
21 those reimbursed to plaintiffs’ lawyers in similar ERISA fiduciary breach settlements.  
22 *Waldbuesser v. Northrop Grumman Corp.*, No. CV 06-6213-AB (JCX), 2017 WL 9614818, \*1  
23 (C.D. Cal. Oct. 24, 2017) (awarding over \$1.1 million in litigation expenses); *Kanawi v. Bechtel*  
24 *Corp.*, No. C 06-05566 CRB, 2011 WL 782244, \*1 (N.D. Cal. Mar. 1, 2011) (awarding over  
25 \$1.5 million in litigation expenses); *Urakhchin*, 2018 WL 8334858, at \*7 (awarding almost  
26 \$600,000 in litigation expenses). These expenses are necessary to the successful prosecution of  
27 the case, and Class Counsel advanced them without any guarantee they would be recovered.  
28 Barton Decl. ¶ 17; Feinberg Decl. ¶ 22. These expenses are thus reasonable and appropriate for

1 reimbursement.

2 **III. CONCLUSION**

3 For the forgoing reasons, the Court should grant Plaintiffs' Class Counsel's Motion for  
4 Attorneys' Fees and Litigation Expenses.

5  
6 Dated: December 2, 2021

Respectfully submitted,

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