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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

**PLAINTIFFS’ NOTICE OF MOTION  
AND MOTION FOR SERVICE AWARDS  
TO NAMED PLAINTIFF CLASS  
REPRESENTATIVES**

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, Plaintiffs Carol Foster and Theo  
5 Foreman will move, and hereby do move, the Court to enter an order approving service awards  
6 in recognition of Plaintiffs' time and effort expended for the benefit of the Class, as follows:

- 7 1. \$5,000 for Plaintiff Carol Foster; and
- 8 2. \$5,000 for Plaintiff Theo Foreman.

9 This Motion is supported by the accompanying Memorandum of Law, the Declaration of  
10 Carol Foster ("Foster Decl."), the Declaration of Theo Foreman ("Foreman Decl."), the  
11 Declaration of Vincent Cheng ("Cheng Decl."), and the Proposed Order filed herewith, all of the  
12 pleadings and documents on file with the Court in this action, and further evidence and argument  
13 as may be submitted prior to the Court's decision on this motion.

14 Dated: December 2, 2021

Respectfully submitted,



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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiffs Carol Foster and Theo Foreman, as the Court-appointed Class Representatives  
 4 on behalf of the Class, respectfully submit this Memorandum of Law in support of their Motion  
 5 for Service Awards to Plaintiffs. Both Plaintiff Foreman (as then-current employee of Defendant  
 6 Adams and Associates, Inc.) and Plaintiff Foster (as former employee) took on risks in initiating  
 7 and advancing the litigation. Both have been actively involved in various aspects of prosecuting  
 8 the lawsuit from its inception through settlement, including participating in discovery and  
 9 attending settlement conferences. Plaintiffs are not receiving any benefit from the litigation  
 10 beyond their pro-rata shares of the settlement in their capacities as members of the Class. The  
 11 aggregate of the service awards requested here represents only 0.33% of the settlement amount.  
 12 The request for each Plaintiff does not exceed the amount that courts in this District deem  
 13 presumptively reasonable. Thus, Plaintiffs' Motion for service awards in the amount of \$5,000  
 14 each should be granted.

15 **II. ARGUMENT**

16 **A. The Court Has Discretion to Authorize Service Awards to the Named**  
 17 **Plaintiffs**

18 “Incentive awards [to the named plaintiff class representatives] are fairly typical in class  
 19 action cases.” *Rodriguez v. W. Publ’g Corp.*, 563 F.3d 948, 958 (9th Cir. 2009). “Such awards  
 20 are discretionary . . . and are intended to compensate class representatives for work done on  
 21 behalf of the class, to make up for financial or reputational risk undertaken in bringing the action,  
 22 and, sometimes, to recognize their willingness to act as a private attorney general.” *Id.* at 958-59.  
 23 In assessing whether an incentive award is reasonable, courts often consider:

24 (1) the risk to the class representative in commencing a suit, both financial and  
 25 otherwise; (2) the notoriety and personal difficulties encountered by the class  
 26 representative; (3) the amount of time and effort spent by the class representative;  
 27 (4) the duration of the litigation; and (5) the personal benefit (or lack thereof)  
 enjoyed by the class representative as a result of the litigation.

28 *Philips v. Munchery Inc.*, No. 19-CV-00469, 2021 WL 326924, at \*11 (N.D. Cal. Feb. 1, 2021)

1 (J. Corley) (quoting *Covillo v. Specialtys Cafe*, No. C-11-00594, 2014 WL 954516, at \*8 (N.D.  
2 Cal. Mar. 6, 2014)).

3 “In this district, a \$5,000 incentive award is presumptively reasonable.” *Covillo*, 2014  
4 WL 954516, at \*8; *Deaver v. Compass Bank*, No. 13-CV-00222, 2015 WL 8526982, at \*14  
5 (N.D. Cal. Dec. 11, 2015) (J. Corley) (stating same and collecting cases); *Wong v. Arlo Techs.,*  
6 *Inc.*, No. 5:19-CV-00372, 2021 WL 1531171, at \*12 (N.D. Cal. Apr. 19, 2021) (“Service awards  
7 as high as \$5,000 are presumptively reasonable in this judicial district.”). “Incentive awards  
8 typically range from \$2,000 to \$10,000.” *Id.* (quoting *Bellinghausen v. Tractor Supply Co.*, 306  
9 F.R.D. 245, 267 (N.D. Cal. 2015)); *Deaver*, 2015 WL 8526982, at \*14 (stating same). In ERISA  
10 cases where employees sue their current or former employers, significantly higher service  
11 awards are common. *See, e.g., Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794, 2020  
12 WL 5668935, \*11 (C.D. Cal. Sept. 18, 2020) (approving incentive awards for \$25,000 each to  
13 six class representatives, and aggregating cases approving awards as high as \$90,000); *Tom v.*  
14 *Com Dev USA, LLC*, No. 16-CV-1363, 2017 WL 10378629, \*10 (C.D. Cal. Dec. 4, 2017)  
15 (awarding ERISA plaintiff an incentive award of \$35,000).

16 Based on the above factors and considerations, the service awards requested here are  
17 reasonable and appropriate.

18 **B. The Requested Awards Are Reasonable and Appropriate.**

19 **1. Both Plaintiffs Took on Risks in Order to Advance the Litigation,**  
20 **Which Supports the Requested Service Awards**

21 Both Plaintiffs took on risks in commencing and advancing the litigation. When the  
22 original and amended Complaints were filed, Plaintiff Theo Foreman was an active employee of  
23 Defendant Adams and Associates, Inc. ECF No. 1 ¶ 7; ECF No. 40 ¶ 7; ECF Nos. 65 & 70 ¶ 8.  
24 Suing one’s current employer is a risky and often frightening undertaking. Plaintiff Carol Foster,  
25 a former employee throughout this litigation, also “undertook a significant ‘reputational risk’ in  
26 bringing this action against her former employer.” *Deaver*, 2015 WL 8526982, at \*15 (quoting  
27 *Rodriguez*, 563 F.3d at 958–59); *see* ECF No. 1 ¶ 6; ECF No. 40 ¶ 6; ECF Nos. 65 & 70 ¶ 7.  
28 Indeed, “Defendants only challenge to Plaintiffs’ class certification motion [wa]s a challenge to

1 the adequacy of Carol Foster as a class representative.” *Foster v. Adams and Assocs., Inc.*, 18-  
 2 CV-02723-JSC, 2019 WL 4168957, at \*5 (N.D. Cal. Sept. 3, 2019). And both Ms. Foster and  
 3 Mr. Foreman continue to work in the industry. Foster Decl. ¶ 2; Foreman Decl. ¶ 2.

4 Additionally, although it is rare, ERISA’s fee shifting provision authorizes an award of  
 5 attorney’s fees to successful defendants against unsuccessful plaintiffs. *See Bellinghausen*, 306  
 6 F.R.D. at 268 (acknowledging that taking on the risk of an adverse fee award mitigates in favor  
 7 of a service award). But unsuccessful plaintiffs in ERISA cases do face awards of costs.  
 8 *Marshall*, 2020 WL 5668935, at \*10 (find[ing] “the Class representatives faced substantial risk if  
 9 Defendants prevailed in this lawsuit and sought to recover their attorney fees and costs from the  
 10 named plaintiffs under 29 U.S.C. § 1132(g) and Fed. R. Civ. P. 54(d.)”); *see also Covillo*, 2014  
 11 WL 954516, at \*8 (finding in a wage and hour class action that “Plaintiffs undertook a financial  
 12 risk that, in the event of a judgment in favor of Defendants, they may have been personally  
 13 responsible for any costs awarded to Defendants”). The Plaintiffs here understood and took on  
 14 these risks in order to vindicate the rights of all participants and beneficiaries of the Adams and  
 15 Associates Employee Stock Ownership Plan (“the ESOP”). Foster Decl. ¶ 7; Foreman Decl. ¶ 7.

## 16 **2. The Notoriety and Personal Difficulties Factor Weighs in Favor of the** 17 **Requested Service Awards**

18 In evaluating whether the notoriety of the litigation and personal challenges faced by  
 19 plaintiffs weighs in favor of a service award, courts frequently look to whether a case produced  
 20 significant media coverage. *See, e.g., Marshall*, 2020 WL 5668935, at \*10. However, “[e]ven if  
 21 there was no media attention or difficulties encountered by the Class representatives, that would  
 22 not preclude the Court from awarding incentive awards.” *Id.*

23 Here, the case was covered in the legal press and by ERISA news aggregators. *See, e.g.,*  
 24 “Contractor Sued Over Employee Stock Deal Led By Now-Felon” (May 10, 2018), *available at*  
 25 [https://www.law360.com/articles/1042229/contractor-sued-over-employee-stock-deal-led-by-](https://www.law360.com/articles/1042229/contractor-sued-over-employee-stock-deal-led-by-now-felon)  
 26 [now-felon](https://www.law360.com/articles/1042229/contractor-sued-over-employee-stock-deal-led-by-now-felon); “Gov’t Contractor Directors To Pay \$3M To Settle ERISA Claims” (Sept. 27, 2021),  
 27 *available at* [https://www.law360.com/articles/1425275/gov-t-contractor-directors-to-pay-3m-to-](https://www.law360.com/articles/1425275/gov-t-contractor-directors-to-pay-3m-to-settle-erisa-claims)  
 28 [settle-erisa-claims](https://www.law360.com/articles/1425275/gov-t-contractor-directors-to-pay-3m-to-settle-erisa-claims). The case was not widely covered in the popular media, and participating as

1 named plaintiffs has not yet created any special difficulties for Plaintiffs outside of the  
2 workplace. Nonetheless, a simple internet search of “adams esop lawsuit” produces multiple sites  
3 covering this lawsuit as the primary result. The fact that the Plaintiffs sued their employer is  
4 readily apparent for any potential future employer. *See Deaver*, 2015 WL 8526982, at \*15. Thus,  
5 the factor concerning notoriety and personal difficulties weighs in favor of service awards, even  
6 if only slightly.

7 **3. The Amount of Time and Effort Spent by the Class Representatives**  
8 **Strongly Favors the Requested Service Awards**

9 Where the named plaintiffs initiate litigation, communicate and remain in contact with  
10 the attorneys, provide documents and participate in discovery, attend mediation sessions or  
11 settlement conferences, and contribute in other ways, those activities support service awards. *See*  
12 *In re Lenovo Adware Litig.*, No. 15-MD-02624, 2019 WL 1791420, at \*10 (N.D. Cal. Apr. 24,  
13 2019); *Chen v. Chase Bank USA, N.A.*, 19-CV-01082, 2020 WL 3432644, at \*12 (N.D. Cal. June  
14 23, 2020). Here, the two Plaintiffs devoted significant time and effort to the litigation. Before  
15 and after the litigation was filed, Plaintiffs collected and provided Class Counsel with various  
16 documents related to their participation in the ESOP. Before and after the filing of the original  
17 Complaint, Plaintiffs participated in phone discussions and in-person meetings with Class  
18 Counsel. Foster Decl. ¶ 4; Foreman Decl. ¶ 4. After the litigation commenced, Plaintiffs actively  
19 participated in discovery, including verifying answers to interrogatories, searching for documents  
20 responsive to requests for production issued by Defendants, and preparing for and appearing at  
21 Plaintiffs’ depositions. Foster Decl. ¶ 4; Foreman Decl. ¶ 4; *see Young v. Neurobrands, LLC*, No.  
22 4:18-CV-05907, 2021 WL 4784252, at \*1 (N.D. Cal. Oct. 8, 2021) (approving service award of  
23 \$5,000 to each class representative where they responded to written discovery and prepared for  
24 and attended deposition and had continuous communications with class counsel). Plaintiffs  
25 attended and participated in the parties’ Early Neutral Evaluation session and settlement  
26 conferences with Magistrate Judge Virginia K. DeMarchi. Foster Decl. ¶ 5; Foreman Decl. ¶ 5.

27 Plaintiff Carol Foster estimates that between 2018 and the present, she has devoted  
28 between 75 and 80 hours to the preparation and prosecution of the litigation. Foster Decl. ¶ 6.

1 Plaintiff Theo Foreman estimates that between 2018 and the present, he has devoted between 60  
 2 and 65 hours to the preparation and prosecution of the litigation. Foreman Decl. ¶ 6; *see Chen*,  
 3 2020 WL 3432644, at \*12 (N.D. Cal. June 23, 2020) (approving \$5,000 service award where  
 4 class counsel stated that the named plaintiff had spent over than 40 hours on the case); *Covillo*,  
 5 2014 WL 954516, at \*8 (approving a service award of \$8,000 to each named plaintiff where they  
 6 “were each deposed and estimate that they each spent approximately 40 hours assisting class  
 7 counsel in prosecuting this case”). The Plaintiffs’ investment of time and effort both before and  
 8 throughout the course of the litigation weighs heavily in favor of the requested service awards.

9 **4. The Duration of the Litigation Weighs in Favor of Service Awards**

10 Participating in “years of litigation” supports a service award. *See Marshall*, 2020 WL  
 11 5668935, at \*11 (citations omitted). In *Marshall*, the fact that the case had been pending for three  
 12 years at final approval weighed in favor of incentive awards. *Id.* Here, the litigation has been  
 13 pending for over three and a half years since May 9, 2018, with Plaintiffs being actively involved  
 14 throughout the case. ECF No. 1; Foster Decl. ¶¶ 4-5; Foreman Decl. ¶¶ 4-5. The long duration of  
 15 the litigation weighs heavily in favor of the requested service awards.

16 **5. No Plaintiff Is Receiving Any Extra Personal Benefit as a Result of the**  
 17 **Litigation, Which Weighs in Favor of the Service Awards**

18 “An incentive award may be appropriate when a class representative[] will not gain any  
 19 benefit beyond that they would receive as an ordinary class member.” *Waldbuesser v. Northrop*  
 20 *Grumman Corp.*, No. CV 06-6213, 2017 WL 9614818, at \*8 (C.D. Cal. Oct. 24, 2017) (citing  
 21 *Van Vranken v. A. Richfield Co.*, 901 F.Supp.294, 299 (N.D. Cal. 1995)). Here, neither Plaintiff  
 22 is receiving any benefit from the litigation beyond a pro-rata share of the settlement. *See Holman*  
 23 *v. Experian Info. Sols., Inc.*, No. 11-CV-0180, 2014 WL 7186207, at \*5 (N.D. Cal. Dec. 12,  
 24 2014) (approving a service award of \$10,000 to each plaintiff where “[t]hey receive no personal  
 25 benefit from the settlement beyond the \$375 that each claimant will be paid”). Class Counsel  
 26 estimate that Plaintiffs Foster and Foreman are expected to receive about \$250 and \$2,000,  
 27 respectively, from the common fund. Cheng Decl. ¶ 2. Both named Plaintiffs support the  
 28 settlement whether or not the Court authorizes their incentive awards. Foster Decl. ¶¶ 7-10;



1 Foreman Decl. ¶¶ 7-10.

2 For these reasons, the “personal benefit” factor weighs strongly in favor of the requested  
3 service awards.

4 **6. The Aggregate Total of the Requested Service Awards is Reasonable**

5 The aggregate of the requested service awards for the two Plaintiffs is \$10,000. That is  
6 less than the aggregate service awards approved in many other class actions. *See, e.g., Covillo,*  
7 *2014 WL 954516, at \*8* (approving an aggregate total of \$24,000 for service awards to three  
8 named plaintiffs); *Holman, 2014 WL 7186207, at \*6* (approving a total of \$30,000 for service  
9 awards to three named plaintiffs); *Marshall, 2020 WL 5668935, at \*12* (approving a total of  
10 \$150,000 for service awards to six named plaintiffs). The aggregate of the service awards  
11 requested here represents only 0.33% of the \$3 million settlement fund. *See id.* at \*11 (approving  
12 service awards where the aggregate of the awards was 1.2% of the total settlement).

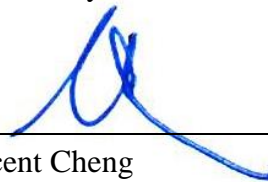
13 Finally, because the service awards requested here do not exceed \$5,000 each, the  
14 requested amount for each Plaintiff is presumptively reasonable. *See Covillo, 2014 WL 954516,*  
15 *at \*8; Deaver, 2015 WL 8526982, at \*14.*

16 **III. CONCLUSION**

17 For the forgoing reasons, the Court should grant Plaintiffs’ Motion for Service Awards.

18 Dated: December 2, 2021

Respectfully submitted,

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