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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

PAMELA CARTER, DEBORAH MARTIN, CHRISTINE MORALES, STANLEY CARAKER, STANLEY NICKS, MICHAELA VECHT, BERT SCHORLING, JEANETTE BREITEN, RAYMOND BACHAR, KATHERINE MITCHELL, STEPHANIE CASTRO, BRUCE HINSLEY, ARLENE POUNDS, JOSE GURROLA, AARON STRAW, ELDON ROSS, individually and as Representatives of the Participants and Beneficiaries of the Fleet Card Fuels Employees Stock Ownership Plan,

Plaintiffs,

vs.

SAN PASQUAL FIDUCIARY TRUST COMPANY; FLEET CARD FUELS; WILLIAM DAVIES; RICHARD DAVIES; STRATEGIC EQUITY GROUP; CHRISTOPHER KRAMER; SHORELINE CAPITAL, INC.; EDGEWATER CAPITAL, LLC,

Defendants.

CASE NO. 8:15-CV-01507-JVS-JCG

NOTICE OF MOTION AND MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE PAYMENTS

Date: February 26, 2018
Time: 1:30 p.m.
Ctrm: 10C
Judge: Hon. James V. Selna

Action Filed: September 17, 2015

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on February 26, 2018 at 1:30 p.m., or as soon thereafter as the matter may be heard, Plaintiffs Pamela Carter, Deborah Martin, Christine Morales, Stanley Caraker, Stanley Nicks, Michaela Vecht, Bert Schorling, Jeanette Breiten, Raymond Bachar, Katherine Mitchell, Stephanie Castro, Bruce Hinsley, Arlene Pounds, Jose Gurrola, Aaron Straw, and Eldon Ross ("Plaintiffs") shall move before the Honorable James V. Selna of the United States District Court for the Central District of California, Southern Division, Courtroom 10C, located at the Ronald Reagan Federal Building and United States Courthouse, 411 West 4th Street, Santa Ana, CA 92701, for entry of an Order: approving Class Counsel's application for an award of attorney's fees and payment of expenses, and approving the request of Class Counsel for service payments to the Plaintiffs.

Plaintiffs' Motion is brought pursuant to Federal Rule of Civil Procedure 23(h) and is based on this Notice and Motion, the Stipulation of Settlement between the parties (Dkt. 113), and the following accompanying pleadings and documents:

1. Plaintiffs' Memorandum of Points and Authorities in support of Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments;

2. Declaration of Jeffrey T. Belton in Support of Plaintiffs' Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments; and all exhibits attached thereto;

3. Declaration of Anthony W. Trujillo in Support of Plaintiffs' Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments;

4. Declaration of Alexander H. Winnick in Support of Plaintiffs' Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments;

5. Declaration of Alexander R. Wheeler in Support of Plaintiffs' Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments;

6. Declaration of Robert J. McKennon in Support of Plaintiffs' Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments;

7. Declarations of each of Plaintiffs Pamela Carter, Deborah Martin, Christine Morales, Stanley Caraker, Stanley Nicks, Michaela Vecht, Bert Schorling, Jeanette Breiten, Raymond Bachar, Katherine Mitchell, Stephanie Castro, Bruce Hinsley, Arlene Pounds, Jose Gurrola, Aaron Straw, and Eldon Ross in Support of Plaintiffs' Motion For Award of Attorneys' Fees, Litigation Expenses, and Service Payments;

8. The pleadings and other documents on file in this action; and

9. All other written material or oral argument as may be presented to the Court.

Dated: October 19, 2017

TRUJILLO & WINNICK LLP

/s/ Jeffrey T. Belton
Anthony W. Trujillo
Alexander H. Winnick
Jeffrey T. Belton
Attorneys for Plaintiffs

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION

PAMELA CARTER, DEBORAH MARTIN, CHRISTINE MORALES, STANLEY CARAKER, STANLEY NICKS, MICHAELA VECHT, BERT SCHORLING, JEANETTE BREITEN, RAYMOND BACHAR, KATHERINE MITCHELL, STEPHANIE CASTRO, BRUCE HINSLEY, ARLENE POUNDS, JOSE GURROLA, AARON STRAW, ELDON ROSS, individually and as Representatives of the Participants and Beneficiaries of the Fleet Card Fuels Employees Stock Ownership Plan,

Plaintiffs,

vs.

SAN PASQUAL FIDUCIARY TRUST COMPANY; FLEET CARD FUELS; WILLIAM DAVIES; RICHARD DAVIES; STRATEGIC EQUITY GROUP; CHRISTOPHER KRAMER; SHORELINE CAPITAL, INC.; EDGEWATER CAPITAL, LLC,

Defendants.

CASE NO. 8:15-CV-01507-JVS-JCG

MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, LITIGATION EXPENSES, AND SERVICE PAYMENTS

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I. INTRODUCTION

On August 28, 2017, this Court preliminarily approved the settlement of this class action, in which the Plaintiffs assert claims for breach of fiduciary duty under ERISA related to the Fleet Card Fuels Employee Stock Ownership Plan ("Plan" or "ESOP"). The settlement negotiated between the Representative Plaintiffs and Defendants RICHARD DAVIES, WILLIAM DAVIES, and SAN PASQUAL FIDUCIARY TRUST COMPANY ("Defendants") was the product of serious, informed and non-collusive negotiations, and was reached after significant law and motion practice, substantial discovery, and two rounds of formal mediation. Now, after more than two years of hard-fought litigation, Class Counsel move for an award of: (1) attorneys' fees of $187,500 which is 33 1/3% of the settlement fund; (2) reimbursement of case-related expenses in the amount of $15,859.00; and (3) service payments of $500 to each of the Representative Plaintiffs, except for Bruce Hinsley and Raymond Bachar, for whom the requested service payments are $1,500. These requests are in accordance with the terms of the settlement. (Dkt. 116).

The Declarations of Jeffrey T. Belton, Anthony W. Trujillo, and Alexander H. Winnick ("Class Counsel") in support of this motion contain detailed descriptions of the efforts of Class Counsel throughout the course of this litigation. As set forth in the Declarations, Class Counsel commenced this action on September 17, 2015 seeking to recover compensation from the Defendants (and SEG) for the alleged fiduciary breaches. (Dkt. 1). Over the course of the last two years, Class Counsel has opposed numerous motions to dismiss, conducted significant discovery, attended two all-day mediation sessions, and filed a motion for class certification, all before the settlement was achieved.

The benefit of the settlement to class members, which is the direct result of Class Counsel's efforts, is substantial. The settlement amount of $562,500 will result in a substantial monetary recovery for all the class members that submit claims. Each class member's payment amount will be calculated based on the number of vested

shares that each class member owned at the time the shares were redeemed. The settlement will be distributed pro rata to the class members that make claims based on the number of shares that they owned.

The proposed settlement resolves all the Plaintiffs' and the class members' ERISA claims against the Defendants. Projected settlement amounts will range from about $50 dollars for a class member that owned only 30 shares to more than $16,000 for a class member that owned more than 10,600 shares. If all the class members submitted claims, the average net settlement payment would be approximately $2,200. All the settlement terms are contained in the parties' Stipulation of Settlement ("Settlement"). (Dkt. 113).

Plaintiffs filed their Motion for Preliminary Approval of Class Action Settlement on July 20, 2017. (Dkt. 112). On August 28, 2017, following the hearing on the motion, the court granted Plaintiffs' Motion for Preliminary Approval. That day the Court issued an order preliminarily approving the settlement and providing for notice. (Dkt. 116). Thereafter, notice was disseminated to the class as directed. Plaintiffs will soon file a Motion for Final Approval. (Belton Decl., ¶ 25).

II. SUMMARY OF KEY SETTLEMENT TERMS

The consideration to be paid by San Pasqual is Three Hundred Twelve Thousand Five Hundred Dollars ($312,500). The consideration to be paid by the Davies is Two Hundred Fifty Thousand Dollars ($250,000). These contributions will be combined for a total settlement of Five Hundred Sixty-Two Thousand Five Hundred Dollars ($562,500) (the "Gross Settlement Amount").

From the Gross Settlement Amount, the following payments will be made, subject to Court approval: (a) Class Counsel's reasonable attorneys' fees in an amount not to exceed one-third (33 1/3 %) of the Gross Settlement Amount (i.e., not to exceed One Hundred Eighty Seven Thousand Five Hundred Dollars ($187,500)); (b) Class Counsel's reasonable litigation costs, not to exceed Twenty Five Thousand Dollars ($25,000); (c) a service payment to the Representative Plaintiffs in an amount

not to exceed Five Hundred Dollars ($500) for each Representative Plaintiff, except for Bruce Hinsley and Raymond Bachar who shall receive a service payment not to exceed One Thousand Five Hundred Dollars ($1,500); and (d) the reasonable costs of the settlement administrator in administering the Settlement, not to exceed Ten Thousand Dollars ($10,000). The remainder of the Gross Settlement Amount, after the deduction of the Court-approved payments (a) through (d) have been made (the "Net Settlement Amount"), shall be paid out in its entirety to the Class Members who submit valid and timely claim forms pro rata based on the number of shares that they owned. If a Class Member opts out of the settlement, that Class Member must submit a valid and timely exclusion form and that Class Member's proportionate share of the Net Settlement Amount will be returned to the Defendants. If 15 or more Class Members opt out, Defendants may within their discretion terminate the Settlement. For any funds remaining of Class Members who submit claim forms but have not cashed their settlement check, those funds will be forwarded, in the name of the Class Member, to the State of California, Controller – Unclaimed Property Division for further handling.

Additionally, the parties agreed that any reduction by the Court in the amount of attorneys' fees approved for Class Counsel shall not be a basis for rendering the entire settlement voidable or unenforceable. If the Court approves a fees payment of less than the amount sought, the remainder will be retained in the Net Settlement Amount for distribution to the class. (Dkt. 113, ¶ 32).

III. THE REQUESTED ATTORNEYS' FEES ARE REASONABLE

Federal Rule of Civil Procedure 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorney's fees and non-taxable costs that are authorized by law or by the parties' agreement." This Court has preliminarily certified the proposed settlement class. (Dkt. 116, pg. 4). The Settlement anticipates Class Counsel moving for an award of $187,500 in attorneys' fees. As shown below, the requested fee award is reasonable under both the percentage-of-recovery method

and the lodestar method for approving attorneys' fees.

A district court has "broad authority" over attorney fee awards in class actions, and the guiding principle is that a fee award is to be "reasonable under the circumstances." *Powers v. Eichen*, 229 F.3d 1249, 1256 (9th Cir. 2000); *In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1304 (9th Cir. 1994). To determine an appropriate fee, the Ninth Circuit "has affirmed the use of two separate methods for determining attorneys' fees," giving district courts "discretion to use either a percentage or lodestar method." *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998). Nevertheless, the Ninth Circuit has also recognized a "ground swell of support for mandating a percentage-of-the-fund approach in common fund cases…." *Florida v. Dunne*, 915 F.2d 542, 545 (9th Cir. 1990); *In re Pacific Enterprises Sec. Litig.*, 47 F.3d 373, 378-79 (9th Cir. 1995) (affirming 33.3% fee); *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043 at 1048-50 (28% fee); *Morris v. Lifescan, Inc.*, 54 Fed. Appx. 663 (9th Cir. 2003) (33% fee).

Courts have found that the percentage of recovery method is preferable to the lodestar method because it aligns the interests of class counsel directly with those of the class; it encourages efficient resolution of litigation by providing an incentive for early, yet reasonable, settlement; and it reduces the demands on judicial resources. *In re Activision Sec. Litig.*, 723 F.Supp. 1373, 1378-79 (N.D. Cal. 1989); *In re Oracle Sec. Litig.*, 131 F.R.D. 688, 689 (N.D. Cal. 1990); see also, *In re Bluetooth Headset Prods. Liab. Litig.* ("*Bluetooth*") 654 F.3d 934, 944-45 (9th Cir. 2011) (finding that when a settlement establishes a common fund, courts may use either method to gauge the reasonableness of a fee request, but encouraging courts to employ a second method as a cross-check after choosing a primary method).

Class Counsel requests an award of attorneys' fees in the amount of $187,500, representing 33 1/3% of the common fund. Considering the relatively small size of this case, the requested fee is a fair percentage of the common fund and is reasonable for undertaking a complex, risky, expensive, and time-consuming class action on a

wholly contingent basis. The requested fee is also warranted because the results achieved for the class are excellent. Class Counsel's total lodestar is $332,471.44. As a result, the $187,500 in fees requested reflects a fractional multiplier of only 0.56. The request should be approved whether the request is evaluated under the percentage-of-recovery or lodestar method.

This motion analyzes the fee request under both methods, both of which confirm that the fee is reasonable.

A. METHODS OF DETERMINING A REASONABLE FEE

i. The Common Fund Doctrine Applies In This Case

As an initial matter, Class Counsel is entitled to recover reasonable attorneys' fees under the common fund doctrine. The common fund doctrine is a well-recognized exception to the general American rule that a litigant must bear its own attorney's fees. *Alyeska Pipeline Service Co. v. Wilderness Society*, 421 U.S. 240, 257-58 (1975). Under the common fund doctrine, "a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of the common fund doctrine is to avoid unjust enrichment: "those who benefit from the creation of the fund should share the wealth with the lawyers whose skill and effort helped create it." *Washington Pub. Power Supply, supra*, 19 F.3d at 1300 (9th Cir. 1994).

The Ninth Circuit has held that the common fund doctrine applies when: (1) the class of beneficiaries is sufficiently identifiable; (2) the benefits can be accurately traced; and (3) the fee can be shifted with some exactitude to those benefitting. *Paul, Johnson, Alston & Hunt v. Graulty*, 886 F.2d 268, 271 (9th Cir. 1989). Each factor is met in this case. The eligible class members have already been identified by name and shares owned, thus each class member has a "mathematically ascertainable claim." *Id.* Additionally, the fee can be shifted with exactitude, since Class Counsel is requesting a specific percentage of the fund.

Under Ninth Circuit law, "the district court has discretion in common fund cases to choose either the percentage-of-the-fund or the lodestar method." *Vizcaino, supra*, 290 F.3d at 1047 (9th Cir. 2002). Regardless of whether the Court uses the percentage approach or the lodestar method, the main inquiry is reasonableness.

ii. The "Percentage-Of-The-Fund" Method

Under the Percentage-of-the-Fund Method, a court will assess the amount of the common fund by determining the value of the benefits that the settlement generates for the class and then award a percentage as attorneys' fees. *Staton v. Boeing*, 327 F.3d 938, 974-75 (9th Cir. 2003). In determining an appropriate fee in a common fund case, a court must decide, based on the unique posture of each case, what percentage of the common fund would most reasonably compensate Class Counsel given the nature of the litigation and the performance of counsel. For fee awards, the Ninth Circuit has established 25% of the fund as the benchmark award that should be given. *Six (6) Mexican Workers v. Arizona Citrus Growers*, 904 F.2d 1301, 1311 (9th Cir. 1990); see also *Vizcaino, supra*, 290 F.3d at 1047. However, the benchmark percentage can be adjusted based on the circumstances of the case. *Paul, Johnson, supra*, 886 F.2d at 272. Indeed, "in most common fund cases, the award exceeds th[e] benchmark." *In re Omnivision Techs., Inc.*, 559 F.Supp. 2d 1036, 1047 (N.D. Cal. 2008); *Activision, supra*, 723 F.Supp. 1373, 137 (N.D. Cal. 1989) ("This court's review of recent reported cases discloses that nearly all common fund awards range around 30% …."); *In re Nuvelo, Inc. Sec. Litig*, 2011 WL 2650592, at *2, quoting *Van Vranken v. Atlantic Richfield Co.*, 901 F.Supp. 294, 297-298 (N.D. Cal. 1995) ("Cases of under $10 Million will often result in fees above 25%").

One significant factor in determining whether the fee should exceed the benchmark is the size of the common fund. Courts have recognized that smaller cases involving common funds of $10 million or less frequently have fee awards of more than 25%. See *Vandervort v. Balboa Capital Corp.*, 8 F.Supp. 3d 1200, 1209-10 (C.D. Cal. 2014) ("In 'megafund' cases, fees will commonly be under the benchmark,

while in smaller cases—particularly where the common fund is under $10 million—awards more frequently exceed the benchmark."); *Cicero v. DirecTV, Inc.*, 2010 WL 2991486, at *6 (C.D. Cal. July 27, 2010) (noting that fees of one-third are common in wage and hour settlements below $10 million, citing cases). The Ninth Circuit in fact acknowledges that there exists an *inverse relationship* between the size of the fund and the percentage awarded. *Bluetooth*, *supra*, 654 F.3d at 942-43, citing *In re Prudential Ins. Co. America Sales Practice Litig. Agent Actions*, 148 F.3d 283, 339 (3d Cir. 1998) (stating, the "basis for [this] inverse relationship" is the belief "that 'in many instances the increase in recovery is merely a factor of the size of the class and has no direct relationship to the efforts of counsel.'"). This is the case here. The number of class members is small, but that did not reduce the work Class Counsel had to undertake to obtain the Settlement.

One of the primary purposes of the 25% benchmark fee is to prevent class counsel from obtaining a windfall from a large common fund. This is not a "megafund" case involving thousands of class members and a common fund of tens of millions of dollars. As a result, limiting Class Counsel's fee to the 25% benchmark would not make sense in this case. As discussed below, in smaller common fund cases like this, an award above the benchmark is often appropriate.

iii. The Lodestar Method

While Ninth Circuit Courts have found that the percentage of recovery method is preferable to the lodestar method, Courts should perform a lodestar cross-check to ensure the reasonableness of the percentage fee. *See, e.g., Bluetooth*, *supra*, 654 F.3d at 944; *Nuvelo*, *supra,* 2011 WL 2650592 (N.D. Cal. July 6, 2011) (awarding a 30% fee supported by a lodestar cross-check). Moreover, "[t]he benchmark percentage should be adjusted, or replaced with a lodestar calculation, when special circumstances indicate that the percentage recovery would be either too small or too large in light of the hours devoted to the case or other relevant factors." *Six (6) Mexican Workers, supra*, 904 F.2d at 1311. This Court, in its order preliminarily

approving the Settlement, requested that Plaintiffs' fee motion include a lodestar showing to assess the reasonableness of the fees requested, and to adequately support the request with detailed evidence. (Dkt. 116, pg. 10). Class Counsel has done this.

Under the lodestar method, a court "calculates the fee award by multiplying the number of hours reasonably spent by a reasonable hourly rate and then enhancing that figure, if necessary, to account for the risks associated with the representation". *Paul, Johnson, supra*, 886 F.2d at 272. The lodestar method gives a measure of counsel's time and investment in the case and provides "a check on the reasonableness of [a] percentage award…the lodestar calculation can be helpful in suggesting a higher percentage when litigation has been protracted." *Vizcaino, supra*, 290 F.3d at 1050.

B. CLASS COUNSEL'S FEE REQUEST IS REASONABLE UNDER THE PERCENTAGE METHOD

The Court in *Vizcaino* determined five factors relevant to determining whether the percentage fee is reasonable in the context of a particular case: (1) the results achieved; (2) the risk of litigation; (3) the skill required and the quality of work; (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Omnivision Technologies, supra,* 559 F.Supp.2d at 1046; citing *Vizcaino*, 290 F.3d at 1048. Applying the *Vizcaino* factors here, a fee of 33 1/3 % of the common fund is reasonable.

i. Class Counsel Obtained Exceptional Results

Courts have recognized that "the result achieved is a significant factor to be considered in making a fee award." *In re Heritage Bond Litig.*, 2005 WL 1594403 (C.D. Cal. June 10, 2005), *citing Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983). Here, Class Counsel obtained an exceptional result.

The total value of the Settlement is $562,500. The Class Members that submit claims will receive substantial cash payments, not coupons. The average gross settlement will be approximately $3,750. The average net settlement will be approximately $2,200 after reduction for court approved costs. The settlement in this

case will *nearly double* the amount that the Class Members received for their ESOP shares. Some of the Class Members that owned the most shares will receive net settlements of more than $10,000 from this common fund. (Belton Decl., ¶ 45).

Defendants had a potential exposure of approximately $1.6 million based on the latest analysis performed by SEG before the redemption, which valued the shares at approximately $10.32 per share. The total potential exposure of approximately $1.6 million is based on the $10.32 valuation minus the $2.78 the shares were actually redeemed for, multiplied by the approximately 208,000 shares owned by the class members ($10.32 less $2.78 = $7.54 per share owed to class members multiplied by 208,000 shares = $1,568,320). (Belton Decl., ¶ 46).

The settlement obtained by Class Counsel of $562,500 represents approximately 35% of the Defendants' potential exposure, and nearly doubles the amount the Class Members received for their shares. This settlement provides the class members with an additional amount of approximately $2.70 for each of their shares. This amount *does not include* the $100,000 settlement the class will receive from SEG in the state court case. When the amount from SEG is added, the class will be receiving an additional $3.18 for each of their shares. (Belton Decl., ¶ 47).

When compared to other cases, the Settlement of $562,500, or 35% of the Class' total loss, is an exceptional result. When the requested fee and expense awards, as well as the service payments, are deducted, the Class Members will receive a Net Settlement Amount of approximately $330,000, which represents 20% of the Class total loss. Such a recovery percentage is also considerable, and is greater than those obtained in numerous cases where class counsel was awarded one-third of a common fund. See *Heritage Bond., supra*, 2005 WL 1594403 (C.D. Cal. June 10, 2005) (adjusting benchmark percentage to 33% based on recovery of 36% of net loss); *In re Med. X–Ray Film Antitrust Litig.*, 1998 WL 661515, at *7–8 (E.D.N.Y. 1998) (awarding 33.3% where counsel recovered 17% of damages); *In re Crazy Eddie Sec. Litig.*, 824 F.Supp. 320, 326 (E.D.N.Y. 1993) (awarding 33.8% where counsel

recovered 10% of damages); *In re Gen. Instruments Sec. Litig.*, 209 F.Supp.2d 423, 431, 434 (E.D. Pa. 2001) (awarding one-third fee from $48 million settlement fund that was approximately 11% of the plaintiffs' estimated damages); *Cullen v. Whitman Medical Corp.* 197 F.R.D. 136, 148 (E.D. Pa. 2000) (awarding one-third in fees from settlement of class consisting of defrauded vocational students that was 17% of the tuition that class members paid).

Class Counsel's result in this case of achieving a 35% (gross) and 20% (net) recovery is excellent and supports the reasonableness of a 33 1/3 % fee.

ii. The Risks of Litigation

The Ninth Circuit recognizes that risk as well as novelty and difficulty of issues presented are important factors in determining a fee award. See *Vizcaino*, 290 F.3d at 1048. A fee award above the 25% benchmark is particularly justified where a case presents complex issues and risks. See *Pacific Enter., supra*, 47 F.3d at 379 (9th Cir. 1995) (holding that a 33% award for fees was "justified because of the complexity of the issues and the risks"). ERISA company stock cases contain a number of risks, in part because ERISA is a specialized and complex area of the law, which is still being developed. *In re Enron Corp. Sec., Derivative and "ERISA" Litig.*, 228 F.R.D. 541, 565 (S.D. Tex. 2005) (stating that "ERISA breach of fiduciary duty is a 'developing and somewhat esoteric, area of law' and therefore there is some risk to their suit, which supports settlement"); *In re Global Crossing Sec. & ERISA Litig.* 225 F.R.D 436, 456 (S.D.N.Y. 2004) (explaining that "numerous legal issues concerning fiduciary liability in connection with company stock in 401(k) plans remain unresolved" and that "[t]hese uncertainties would substantially increase the ERISA cases' complexity, duration, and expense.…"). "While every attorney undertaking a class action bears substantial risks, those risks are especially pronounced in ERISA litigation of this nature." *Boyd v. Coventry Health Care Inc.*, 299 F.R.D. 451, 464 (D. Md. 2014).

While Plaintiffs believe the claims in this case are solidly grounded and were

prepared to litigate this case to trial, Plaintiffs were likewise cognizant of the risks associated with proceeding. If the parties continued to litigate this case, both sides would need to spend tens of thousands of dollars on witness depositions, experts, summary judgment motions, and pre-trial preparation. Indeed, Class Counsel was faced with exponentially increasing expert costs and no guarantee those expenses could ever be recovered. Litigating through trial and any appeals would present significant risks to the Class and Class Counsel. (Belton Decl., 49).

Additionally, there still exists the risk that the class would not be certified. At the time of Settlement, the Davies had just filed their Opposition to Plaintiffs' Motion for Class Certification. In the Opposition, the Davies attacked Plaintiffs' motion for certification on numerous separate grounds. Both the Davies and San Pasqual indicated their intent to file motions for summary judgment. (Dkt. 69, pgs. 14-15). Litigating this matter through those motions, as well as to trial and appeal, would raise numerous issues where the law is not well settled, with the inherent risk that some key issues could be decided adversely to the Class. Settlement eliminates these litigation risks and costs, and ensures that the Class Members will receive a significant financial recovery. Viewed against the backdrop of the excellent recovery obtained, the risks inherent in this litigation warrant the requested fee. (Belton Decl. ¶, 49).

iii. The Skill Required and Quality of Work Supports Class Counsel's Fee Request

The prosecution of a class action requires unique skills and abilities. *Heritage Bond, supra*, 2005 WL 1594403 *19. Judge Tevrizian of the Central District noted that "courts in this circuit, as well as other circuits, have awarded attorneys' fees of 30% or more in complex class actions." *Id*. The uncertainties regarding ERISA cases also signify their complexity. *Global Crossing, supra*, 225 F.R.D at 456.

The quality of Class Counsel's effort, experience and skill is demonstrated in the exceptional result achieved. The settlement has nearly doubled the amount of money that the Class Members received for their shares, and provided the Class with

a recovery of 35% of their estimated losses. (Belton Decl. ¶, 47). In comparison, other federal courts have increased the fee percentage to 33 1/3 % for relatively lesser results, as discussed above.

Class Counsel has prosecuted this matter since its inception in September 2015 and expended approximately 792.07 attorney hours and 75.25 paralegal hours on this case. Class Counsel fought numerous 12(b)(6) motions, conducted significant review and outlining of voluminous documents, prepared and responded to discovery, filed a motion for class certification, and conducted extensive settlement negotiations and two mediations. Class Counsel further obtained preliminary approval of the settlement and are now working to oversee the claims process. (Belton Decl. ¶, 16-26).

The quality of opposing counsel is also important in evaluating the quality of the work done by Class Counsel. *In re Equity Funding Corp. Sec. Litig.*, 438 F.Supp. 1303, 1337 (C.D. Cal. 1977) (recognizing that "Plaintiffs' attorneys in this class action have been up against established and skillful defense lawyers, and should be compensated accordingly.") In this case, the Davies were represented by a top-flight global law firm with attorneys that specialize in ERISA and class litigation. Likewise, San Pasqual was represented by a well-respected firm with substantial experience defending complicated ERISA actions. The ability of Class Counsel to obtain such a favorable settlement in the face of this opposition demonstrates the superior quality of Class Counsel's work. (Belton Decl. ¶, 34).

iv. The Contingent Nature of the Fee Supports Class Counsel's Fee Request

The Ninth Circuit has observed: "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases … as a legitimate way of assuring competent representation for Plaintiffs who could not afford to pay on an hourly basis regardless whether they win or lose." *Washington*

Pub. Power Supply, supra, 19 F.3d at 1299-1300. "Attorneys whose compensation depends on their winning the [ ] case must make up in compensation in the cases they win for the lack of compensation in the cases they lose." *Vizcaino*, s*upra*, 290 F.3d at 1051. Thus, whether counsel take a case on a contingency fee basis is a factor in determining the appropriateness of a fee award. See *Torrisi v. Tucson Elec. Power Co.*, 8 F.3d 1370, 1376-77 (9th Cir. 1993).

Class Counsel took this case on a wholly contingent basis. This commitment of time and resources was a very significant risk for a small law firm. When this lawsuit was filed more than two years ago, it was with the knowledge that Class Counsel would spend hundreds of hours in a hard-fought litigation against well-funded defendants, with no guarantee of success. Given the inherent risks and uncertainties, Class Counsel filed this lawsuit with the expectation that, if the lawsuit were successful, Class Counsel would receive a premium to account for the risk of nonpayment. (Belton Decl. ¶ 50). Class Counsel's prosecution of this case on a contingency basis presented a great amount of risk, and therefore supports the requested fee of 33 1/3 % of the common fund.

v. Fee Awards In Similar Cases Support a 33 1/3 % Fee Request

The last factor to examine in evaluating a fee petition- fee awards in other cases- also supports the requested fee. As noted, the Ninth Circuit acknowledges that there exists an inverse relationship between the size of the fund and the percentage award. *Bluetooth, supra* (2011) 654 F.3d at 942-43. The Settlement in this case, albeit significant for the approximately 150 Class Members, is modest in comparison to the "megafund" cases. However, the size of the class and amount at issue did not diminish the difficulty of the case or the efforts of Class Counsel.

Both the Ninth Circuit and district courts routinely approve higher percentages, especially in smaller cases. *See, e.g., Craft v. County of San Bernardino*, 624 F.Supp. 2d 1113, 1127 (C.D. Cal. 2008) (noting that fees of less than 25% may be awarded in "megafund" cases involving recovery of $50 million or more, whereas cases

involving a recovery under $10 million often result in fees above 25%); *Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 448-51 (E.D. Cal 2013) (awarding as fees 33.3% of $1,290,000 settlement); *Schiller v. David's Bridal, Inc.*, 2012 WL 2117001 (E.D. Cal. 2010) (awarding as fees 32.1% of $518,000 settlement); *Vasquez v. Coast Valley Roofing*, 266 F.R.D. 482, 491-92 (E.D. Cal 2010) (awarding as fees 33.3% of $300,000 settlement); *Romero v. Producers Dairy Foods, Inc.*, 1:05-cv-00484 (E.D. Cal. Nov. 14, 2007) (awarding as fees 33.3% of $240,000 settlement). As these cases establish, when the settlement fund is relatively small, a fee award of 33 1/3% is often appropriate.

In the recent Central District case, *Casadine v. Maxim Healthcare Services*, 2:12-cv-10078 (C.D. Cal. 2012), which is similar to this case in both size of the class and size of the settlement, the Court approved plaintiff's motion for 33 1/3% of the common fund. The *Casadine* case settled for approximately $630,000, for 371 class members. The class counsel in *Casadine* requested $210,000 in legal fees, which Central District Judge, Dolly Gee, granted after determining such fees were reasonable. Counsel in that case declared that they spent approximately 888 hours on the matter, in comparison to the 792.07 attorney hours and 75.25 paralegal hours hours spent by Class Counsel in this case. The *Casadine* case, like this matter, also settled after the defendant's opposition to the motion for class certification was filed and prior to a ruling, and reflects a similar docket size (102 entries) compared to this case (116 entries thus far)[1].

Furthermore, in the specific context of ERISA breach of fiduciary duty cases, many courts have approved fee requests at or above 30%. See *In re Fremont General Corp. Litig.* 2:07-cv-02693 (C.D. Cal. June 30, 2011) (awarding 30%); *Kanawi v.*

[1] It is also worth noting that while the *Casadine* counsel conducted slightly more discovery, they did not face any motions to dismiss and engaged in only one mediation before the case settled.

Bechtel Corp., No. 06-5566, 2011 WL 782244, at *1 (N.D. Cal. Mar. 1, 2011) (awarding 30%); *In re Syncor ERISA Litig.*, No. CV 03-2446 LGB (Mar. 30, 2009) (awarding 33.3%); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010) (awarding 33 1/3 %).

Class Counsel's requested fee of 33 1/3% is reasonable because it is in line with awards made in similarly sized common fund class actions and ERISA cases.

C. CLASS COUNSEL'S FEE REQUEST IS ALSO REASONABLE UNDER THE LODESTAR METHOD

The Ninth Circuit encourages district courts to use both the percentage-of-recovery and the lodestar methods to cross-check one method of awarding fees against the other to ensure that the requested fees are reasonable. *Bluetooth*, *supra*, 654 F.3d at 944-945; citing *Vizcaino*, *supra*, 290 F.3d. 1050-51, *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Products Liability Litig.*, 55 F3d 768, 820 (3rd Cir. 1995). A court may presume that the lodestar "provides the accurate measure of reasonable attorneys' fees." *Harris v. Marhoefer*, 24 F.3d 16, 18 (9th Cir. 1994).

i. Class Counsel's Lodestar Is Reasonable

The lodestar method requires the Court to multiply the "number of hours reasonably expended by a reasonable hourly rate." *Hanlon*, *supra*, 150 F.3d at 1029 (9th Cir. 1998). That figure, the lodestar, can then be "adjusted upward or downward to account for several factors". *Id.* In *Vizcaino*, the Ninth Circuit in approving a multiplier of 3.65 noted that "courts have routinely enhanced the lodestar to reflect the risk of non-payment in common fund cases." 290 F.3d at 1051, quoting *Washington. Pub. Power Supply*, *supra*, 19 F.3d at 1295 (9th Cir. 1994). The excellent results obtained for the class, the complexities of the legal issues involved, and the substantial work performed by class counsel would all support adjusting the lodestar upwards. Furthermore, the contingent nature of the fee also supports the application of a positive multiplier.

Here, Class Counsel's lodestar significantly exceeds the fee being requested,

even *before* any multiplier is applied. Class Counsel's combined lodestar amount, based on their reasonable fees and reasonable hours expended on this matter, is $332,471.44. The fee request of $187,500.00 falls ***well below*** Class Counsel's lodestar, which strongly supports the reasonableness of the fee. See, e.g., *In re Flag Telecom Holdings, Ltd. Sec. Litig.*, 7:02-cv-02541 (S.D.N.Y. Nov. 8, 2010) (Dkt. 14, pg. 45) ("Lead Counsel's request for a percentage fee representing a significant discount from their lodestar provides additional support for the reasonableness of the fee request.").

Class Counsel's fee request is a fractional multiplier of only 0.56[2]. The fee request is more than reasonable based on the risk and complexity of the litigation and the excellent results achieved. Class Counsel has expended significant professional time and out-of-pocket expenses litigating this case for more than two years. Further work will need to be completed in the preparation of Plaintiff's Motion for Final Approval, attending the hearing on the motion and overseeing final administration of the Settlement. The following chart reflects the hours spent by Class Counsel and their requested hourly rates.

Timekeeper	**Title**	**Hours**	**Requested Hourly Rate**	**Lodestar**
Anthony Trujillo	Partner	242.0	$400	$96,800.00
Alex Winnick	Partner	290.7	$350/375	$105,321.94
Jeffrey Belton	Partner	259.37	$475	$123,200.75
Stephanie Belton	Paralegal	75.25	$95	$7,148.75
Total Lodestar				**$332,471.44**

(Belton Decl., ¶ 5).

ii. Class Counsel's Hourly Rates Are Reasonable

Courts "must determine a reasonable hourly rate considering the experience, skill, and reputation of the attorney requesting fees." *Chalmers v. City of Los Angeles*,

[2] The fractional multiplier is calculated as follows: $187,500 (total fees requested) divided by $332,471.44 (total lodestar) = 0.56

796 F.2d 1205, 1210 (9th Cir. 1986). The reasonable rate is derived from the reasonable market value of their services in the community. *Blum v. Stenson*, 465 U.S. 886, 895, n.11 (1984). "Courts may find hourly rates reasonable based on evidence of other courts approving similar rates or other attorneys engaged in similar litigation charging similar rates." *Parkinson v. Hyundai Motor America*, 796 F.2d 1160, 1172 (C.D. Cal. Sept. 14, 2010); *Ackerman v. Western Electric Co.*, 860 F.2d 1514 (9th Cir. 1988). "Affidavits of the plaintiffs' attorney and other attorneys regarding prevailing fees in the community, and rate determinations in other cases, particularly those setting a rate for the plaintiffs' attorney, are satisfactory evidence of the prevailing market rate." *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407 (9th Cir. 1990).

In this case, the requested hourly billing rate for Jeffrey T. Belton is $475.00; the requested hourly billing rate for Anthony W. Trujillo is $400.00; and the requested hourly billing rate for Alexander H. Winnick is $350.00/375.00[3]. Class Counsel's rates are based on each attorney's position, experience level, and location. These rates are reasonable because they are consistent with (1) Class Counsel's customary rates and (2) the rates allowed in other ERISA or class action cases in this district. (Belton Decl., ¶¶ 26-50).

1. Class Counsel's requested rates are consistent with their customary rates and experience level

The rates counsel actually charges serves as at least one factor the Court may consider in determining whether the rates sought are reasonable. *Perfect 10 Inc. v. Giganews, Inc.*, 2015 WL 1746484 (C.D. Cal. 2015), citing *Maldonado v. Lehman*, 811 F.2d 1341, 1342 (9th Cir. 1987) ("evidence of counsel's customary hourly rate may be considered by the District Court as one factor in determining the reasonable

[3] Attorney Winnick's billing increased on June 1, 2016 from $350.00 to $375.00 and his billing records in this matter reflect same; see Winnick Decl., ¶¶ 7-9

market rate."). "At minimum the rate an attorney actually charges its client is a 'good starting point' because 'the actual rate that [the attorney] can command in the market is itself highly relevant proof of the prevailing community rate.'" *Id.*, citing *Elser v. I.A.M. Nat. Pension Fund*, 579 F.Supp. 1375, 1379 (C.D. Cal. 1984). Class Counsel has provided detailed information regarding their position, experience level, and location, as well as their customary rates charged, in the accompanying Declarations of Jeffrey T. Belton, Anthony W. Trujillo, and Alexander H. Winnick. (Belton Decl., ¶ 26-33; Trujillo Decl. , ¶¶ 3-8; Winnick Decl., ¶¶ 4-8).

2. Class Counsel's requested rates are consistent with the rates allowed in other ERISA cases and/or class actions in this district of similar scale

The United States Supreme Court has held that fee awards are to be based on the prevailing rates of attorneys in private practice with similar skills and experience. See *Blum, supra*, 465 U.S. at 895 (1984). Class Counsel's rates, between $375 and $475 per hour (and $95 per hour for their paralegal), are reasonable because they are consistent with (and likely below) the prevailing rates in the communities in which Class Counsel practice and the hourly rates obtained by counsel in other similar cases.

Class Counsel's rates are well within the range accepted in the Central District when awarding attorneys' fees on a lodestar basis. A detailed list of fee awards is contained in the Belton Declaration. (Belton Decl., ¶ 36-41). In nearly all of these cases, the rates awarded to class counsel were higher than the rates requested here. This is especially true for attorneys with ten years of experience or more. Class Counsel's rates are also consistent with awards in ERISA cases in this district. (Belton Decl., ¶ 39-41).

As established in the concurrently filed declaration of attorney Alexander R. Wheeler, Class Counsel's rates are consistent with, if not less than, rates typically awarded to class counsel in this district. Like Class Counsel, Alexander Wheeler is a graduate of Pepperdine University School of Law and has also been practicing since

2005. In the Central District case *Campbell, et al. v. Best Buy Stores, L.P.* Case No. LA CV12-07794 JAK (SHx), Mr. Wheeler was awarded $650 per hour in June of 2015 for his work as class counsel, and his paralegal was awarded $125 per hour. Mr. Wheeler had been practicing law for slightly less than 10 years at that time. The fee award in *Campbell* was one-third of a $647,500 common fund. (See, Declaration of Alexander R. Wheeler, ¶¶ 7-8).

In the above described comparable Central District case, *Casadine, supra*, 2:12-cv-10078 (C.D. Cal. 2012) (Dkt. 97-2, 101), the Court approved one class counsel's $425.00 hourly rate. That attorney, an associate at his firm, was admitted to the bar in 2009 and had been practicing for approximately 6 years, or half the time of Class Counsel in this case. *Id.* (Dkt. 97-2, ¶ 40).

Furthermore, this Court previously found in 2010 that hourly rates of $490-$544.27 "are within the range of reasonable rates for attorneys in Southern California litigating complex class actions." *Vizzi v. Mitsubishi Motors North America, Inc.* 8:08-cv-00650 (Dkt. 76, pg. 16). This Court also ruled that rates of $450-$550 per hour for partners was reasonable in 2008 in the matter *Harper v. Red Robin Int'l.*, 8:07-cv-00124 (C.D. Cal. June 27, 2008). (Belton Decl., ¶ 37-38).

In a non-class ERISA matter, *Kim v. Life Insurance Company of North America*, 8:15-cv-00418 (C.D. Cal. June 7, 2016), this Court approved an hourly rate of $425 per hour for an attorney who was working his first ERISA case. *Id.* (Dkt. 59). This Court concluded, "that $425 per hour is the appropriate rate for [counsel's] work on this matter after taking into account both [the attorney's] inexperience on ERISA matters, as well as the contingent nature of the contract." *Id.*, (Dkt. 59, pg. 7-8). (Belton Decl., ¶ 39). (Declaration of Robert J. McKennon, Esq. ["McKennon Decl."], ¶ 9). Mr. McKennon declares that based on his substantial experience litigating ERISA cases in the Central District of California, Class Counsel's requested hourly billing rates are consistent with, if not below, the rates typically awarded to ERISA counsel in this district, especially for lawyers with 10 to 12 years of experience.

(McKennon Dec., ¶ 12; for Mr. McKennon's experience, see ¶¶ 3-9).

Lastly, "[c]ourts also frequently use survey data in evaluating the reasonableness of attorneys' fees." *B-K Lighting, Inc. v. Vision Lighting*, 2:06-cv-028252009 (C.D. Cal. Nov. 16, 2009) (Dkt. 337, pg. 10) (citing *Mathis v. Spears*, 857 F.2d 749, 755-56 (9th Cir. 1988)). Class Counsel's rates are less than those rates identified in the 2014 National Law Journal for the Los Angeles area. (Belton Decl., ¶ 42). The Central District has found the National Law Journal a more useful tool than the Laffey matrix[4] in determining whether rates are reasonable. *Chambers v. Whirlpool*, 214 F.Supp.3d 877, 899-900 (C.D. Cal. 2016) (citing, *Rodriguez v. City. of L.A.*, 96 F.Supp.3d 1012, 1023 (C.D. Cal. 2014) (approving rates from $500 to $975); (see also Dkt. 218–1, Fees Brief at 19) (quoting a National Law Journal survey of regional billing rates published in 2014, showing standard partner rates among top Los Angeles firms ranging from $490 to $975).

These various sources all confirm that Class Counsel's requested rates of between $375 and $475 per hour are reasonable.

iii. The Time Spent By Class Counsel On This Case Was Reasonable and Necessary

In performing a lodestar cross-check, mathematical precision is not required. *Young v. Polo Retail, LLC*, 2007 U.S. Dist. Lexis 27269 (N.D. Cal. March 8, 2007) ("In contrast to the use of the lodestar method as a primary tool for setting a fee award, the lodestar cross-check can be performed with a less exhaustive cataloging and review of counsel's hours."); *In Re Rite Aid Corp. Sec. Litig.*, 396 F.3d 294, 306-07 (3d Cir. 2005) ("The lodestar cross-check calculation need entail neither

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[4] The Laffey Matrix offers rates for lawyers based on their experience in the Washington D.C. area. Some courts have relied on the Matrix. See, e.g., *In re HPL Technologies, Inc. Securities Litig.*, 366 F.Supp.2d 912, 921-22 (N.D. Cal. 2005) (describing the Matrix as a "well-established objective source for rates that vary by experience…"). Counsel's rates are significantly less than those in the Laffey Matrix ($556-661 in 2015) for attorneys with similar experience. (Belton Decl., ¶ 43).

mathematical precision nor bean-counting.")

The hours worked are provided to the Court in detail in the concurrently filed Declarations of Class Counsel. The lodestar does not include all hours expended on this case as Class Counsel exercised billing judgment regarding the hours worked. Class Counsel further avoided duplicative billing.

A district court may exclude from the lodestar amount those hours that were not "reasonably expended." *Hensley, supra*, 461 U.S. at 433 (1983). However, "[b]y and large, the court should defer to the winning lawyer's professional judgment as to how much time he was required to spend on the case." *Moreno v. City of Sacramento*, 534 F.3d 1106, 1112 (9th Cir. 2008). As shown in the attached billing records, Class Counsel conducted significant discovery and document review, as well as engaged in numerous conversations with class members. They engaged in significant law and motion and attended two all day mediations. Class Counsel further prepared and filed a Motion for Class Certification and obtained Preliminary Approval of the Settlement. Class Counsel will have to perform additional work on the case to obtain final approval. (Belton Decl., ¶ 6).

In *Vizcaino*, *supra*, the Ninth Circuit found that multipliers in class action settlements typically range from 0.6 to 19.6, with the majority ranging from 1 to 4. *Id.*, 290 F.3d at 1051 n.6. In this case the lodestar amount (even without *any multiplier applied*) significantly exceeds the fee request. Thus, even if the Court were to find that the number of hours expended or the requested rates of Class Counsel were too high, the requested fee would still be reasonable.

IV. THE COURT SHOULD AWARD THE REQUESTED EXPENSES

Attorneys who create a common fund or benefit for a class are entitled to be reimbursed for their out-of-pocket expenses incurred in creating the fund or benefit, so long as the submitted expenses are reasonable, necessary, and directly related to the prosecution of the action. See, *Roberti v. OSI Sys.*, 2015 WL 8329916 (C.D. Cal. 2015) (citing *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994), class counsel may

recover reasonable expenses typically billed to paying clients in non-contingent litigation). Class Counsel have incurred the following recoverable expenses:

Type of Expense	**Amount**
Mediation Fees	$6,433.33
Filing and Service Fees	$906.90
Postage Charges	$67.06
Copy Charges	$298.11
Legal Research	$503.60
Accounting Expert	$7,650.00
Total Expenses	**$15,859.00**

(Belton Decl., ¶¶ 9-10, see Exhibit 5- detailed spreadsheet of expenses)

Class Counsel incurred these costs with no assurance they would be repaid, and the expenses incurred are standard and are the type of expenses typically billed by attorneys to paying clients in the marketplace. (Belton Decl., ¶¶ 9-11). See, *In re Immune Response Sec. Litig.* 497 F.Supp.2d 1166, 1177-78 (S.D. Cal. 2007) (finding that costs such as filing fees, photocopy costs, travel expenses, postage, telephone and fax costs, and mediation expenses are relevant and necessary). The requested reimbursement amount is reasonable. In the Central District class action case with a comparable docket size, time period, and settlement size, the Court granted $21,907.51 in expenses. *Casadine*, supra, 2:12-cv-10078 (C.D. Cal. Sept. 24, 2015).

Class Counsel will incur future costs in preparation for the final approval hearing, such as copy costs, legal research and delivery charges, however, they will not seek reimbursement of any of these expenses. Class Counsel respectfully requests that the Court grant reimbursement of all costs incurred by Class Counsel in order to successfully prosecute this litigation.

V. THE REQUESTED SERVICE PAYMENTS ARE REASONABLE

A payment of a service award to class representatives is permissible and often awarded as compensation for an individual undertaking the risk and expending the

time in working with plaintiffs' counsel to incurred class members' interests. See, *Rodriguez v. West Pub. Corp.*, 563 F.3d 948, 958-59 (9th Cir. 2009). Courts routinely approve incentive awards to compensate named plaintiffs for the services they provided and the risks incurred during the litigation. See, *Vasquez, supra*, 266 F.R.D. 482, 490 (E.D. Cal. 2010).

Section III of the Stipulation of Settlement permits Class Counsel to request service payments in the amount of $1,500 each for Raymond Bachar and Bruce Hinsley and $500 each for the other 14 named Plaintiffs (totaling $10,000). The requested service payments are proper because without the named Plaintiffs, there would be no recovery for the class. They each took the time to assist Class Counsel in litigating these claims, searching for and providing documents, providing declarations and information, and continuously conferring with Class Counsel whenever requested. The named Plaintiffs further accepted the risk of their names being associated with a lawsuit and the potential impact doing so can have on their employment prospects.[5] Class Counsel disclosed these individuals to the Defendants pursuant to Rule 26, and the Defendants thereafter served written discovery on them. By assuming the risks of being named plaintiffs, the Class Representatives have enabled all the other class members to benefit. Detailed descriptions of each Plaintiffs' participation are set forth in their declarations.

These service payment requests, which will total only $10,000 in the aggregate, are supported by relevant case law. The $10,000 in service payments equate to only 1.78% of the $562,500 settlement amount. (Belton Decl., ¶ 52). Courts in this circuit regularly grant similar sized awards to plaintiffs who instituted and prosecuted the action. *See, e.g., Alvarado v. Nederend*, 2011 WL 1883188 (E.D. Cal. May 17, 2011) (incentive payment of $7,500 to each plaintiff was about 1.5% of the total settlement,

[5] See, *https://www.monster.com/career-advice/article/hr-googling-job-applicant*

so the total incentive payments of $35,000 to the five plaintiffs was nearly 7.5% of the total settlement); *Knight v. Red Door Salons, Inc.*, 2009 WL 248367 (N.D. Cal. Feb. 2, 2009) (incentive payment of $5,000 each to two plaintiffs in a $500,000 settlement, or 2.0% of total settlement); *In re High-Tech Employee Antitrust Litig.*, 5:11-cv-02509 (N.D. Cal. May 16, 2014) (approving five service awards totaling $100,000); *Van Vranken, supra*, 901 F.Supp. 294 at 299 (N.D. Cal. 1995) (approving $50,000 enhancement); *Glass v. UBS Financial Services, Inc.*, 2007 WL 221862 (N.D. Cal. Jan. 26, 2007) (approving $25,000 award to each plaintiff).

The requested service payments are small both on an individual basis and in comparison to the amounts approved in other cases. These modest service payments are reasonable in light of the size of the settlement and the invaluable assistance the named Plaintiffs provided to Class Counsel and the other members of the class.

VI. CONCLUSION

As Class Counsel's lodestar amount significantly exceeds the amount requested under the percentage of recovery method, the reasonableness of the requested fee is confirmed. Accordingly, Class Counsel requests that the Court award Class Counsel $187,500 in attorney's fees and reimbursement of litigation expenses incurred in this matter of $15,859.00. Additionally, Plaintiffs and Class Counsel request that the Court award service payments in the amount of $1,500 to Raymond Bachar and Bruce Hinsley and $500 to each of the other named plaintiffs, all payable from the common fund.

Dated: October 19, 2017

TRUJILLO & WINNICK LLP

/s/ Jeffrey T. Belton

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