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6 **UNITED STATES DISTRICT COURT**
7 **EASTERN DISTRICT OF CALIFORNIA**

8
9
10 BRANDON IMBER, individually and on
behalf of all others similarly situated,
Plaintiff,

11 v.

12 BRUCE LACKEY, PAM LACKEY,
13 LACKEY FAMILY TRUST, COLE
SCHARTON, THE ADMINISTRATIVE
14 COMMITTEE OF THE PEOPLE
BUSINESS EMPLOYEE STOCK
15 OWNERSHIP PLAN, MIGUEL
PAREDES, RICK ROUSH, DEL
16 THACKER, RICHARD DEYOUNG and
RITCHIE TRUCKING SERVICE
HOLDINGS, INC.,

17 Defendants,

18 and

19 PEOPLE BUSINESS EMPLOYEE
20 STOCK OWNERSHIP PLAN,

21 Nominal Defendant.
22

Case No. 1:22-cv-004-HBK

**MEMORANDUM IN SUPPORT
OF PLAINTIFF'S MOTION TO
AWARD CLASS COUNSEL
ATTORNEYS' FEES AND
REIMBURSEMENT OF
EXPENSES**

Complaint Filed: December 30, 2021

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Declaration of R. Joseph Barton with the following attachments:

Exhibit A: The Barton Firm Time Records

Exhibit B: Block & Leviton Time Records

Declaration of Daniel Feinberg

Declaration of Gregory Y. Porter

SUMMARY OF CLASS COUNSEL’S LODESTAR

The Barton Firm						
Name	Hours	2023 Rate	2024 Rate	2025 Rate	Total (historical rates)	Total (current rates)
Joseph Barton (Partner, J.D. 2000)	331.00	\$975	\$975	\$995	\$324,927.00	\$329,345.00
Marie-Lise Baroutjian (Associate, J.D. 2024)	128.50	N/A	N/A	\$400	\$51,400.00	\$51,400.00
Colin Downes (Partner, J.D. 2015)	64.90	\$620	\$655	N/A	\$40,948.50	\$42,509.50
Ming Siegel (Paralegal, B.A. 2016)	46.50	\$280	\$280	\$285	\$14,112.00	\$13,252.50
Total	570.90				\$430,429.50	\$436,507.00

Block & Leviton						
Name	Hours	2021 Rate	2022 Rate	Total (historical rates)	Total (current rates)	
Joseph Barton (Partner, J.D. 2000)	85.80	\$900	\$950	\$80,910.00	\$81,510.00	
Vincent Cheng (Associate, J.D. 2003)	143.50	\$600	\$650	\$92,500.00	\$93,275.00	
Colin Downes (Associate, J.D. 2015)	69.10	\$520	\$550	\$37,294.00	\$38,005.00	
Ming Siegel (Paralegal, B.A. 2016)	44.00	\$275	\$280	\$12,283.50	\$12,320.00	
Total	342.40			\$222,987.50	\$225,110.00	

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SUMMARY OF CLASS COUNSEL'S EXPENSES

<u>The Barton Firm Expenses</u>	
Expense	Amount
Mailing/Postage	\$4.57
Mediation	\$2,500.00
Pacer	\$23.60
Printing/Copying	\$49.77
Travel	\$1,600.00 ¹
Total	\$4,177.94

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<u>Block & Leviton Expenses</u>	
Expense	Amount
Case Fee	\$427.00
Delivery/Courier Service	\$72.53
eFiling	\$225.00
Expert	\$25,000.00
Mediation	\$2,725.00
Pacer	19.80
Postage	\$11.06
Printing/Copying	\$351.20
Total	\$28,831.59

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¹ The amount for travel includes amounts for airfare already purchased to attend the final approval hearing, the hotel and an estimated amount for taxi and meals.

1 **I. Introduction**

2 Pursuant to Fed. R. Civ. P. 23(h), Plaintiffs and Class Counsel seek an award
3 of attorneys' fees and expenses to be paid out of the Cash Settlement Fund. After
4 nearly four years of work, Plaintiffs' counsel's efforts resulted in a Settlement,
5 which was the product of three mediations with two separate mediators and
6 numerous negotiations over the terms with Defendants, which are detailed in
7 numerous status reports filed in this case. The Settlement requires Defendants to
8 make a cash payment of \$485,000 (which has already been paid into an escrow
9 account) and to reduce the principal of the ESOP-related loans by \$1.4 million as
10 of January 1, 2024. The cash payment will exhaust the fiduciary defendants'
11 remaining insurance. Under the Settlement, the loan modification will result in the
12 release of 115,000 shares from the ESOP suspense account to participant accounts,
13 which Class Counsel estimates to have a value of over \$200,000 to participants. In
14 addition, the reduction of the debt will have a significant impact on the value of
15 Ritchie and correspondingly the value of Ritchie stock held by the ESOP
16 (including the stock already in their accounts). The total estimated value of the
17 benefits of the settlement is between \$1.885 million and \$2 million. Based on the
18 analysis by Plaintiff's valuation expert as to likely overvaluation and potential
19 losses, the settlement represents between 21% and 32% of the potential recovery of
20 the Class and an average participant benefit of approximately \$11,000. This is a
21 very good result for the Class.

22 Class Counsel seeks an amount to be paid out of the Cash Settlement Fund
23 that is substantially less than their lodestar of \$661,617.00 and the equivalent of
24 only about 22% of the total settlement value, which is less than the benchmark in
25 the Ninth Circuit for class actions and less than the percentage amount often
26 awarded in complex ERISA cases. Class Counsel also request reimbursement of
27 their expenses of \$33,009.53, the majority of which consists of expert expenses of
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1 \$25,000.00 and mediation expenses of \$5,225.00. Given the time, efforts and
2 results obtained, these amounts are more than reasonable and should be awarded.

3 **II. Background**

4 The procedural history of the case, the summary of the claims, the terms of
5 the Settlement and the value of the Settlement are set forth in detail in the
6 Memorandum in Support of Preliminary Approval (Doc. No. 158-1) and the
7 Memorandum in Support of Final Approval (Doc. No. 186).

8 **III. Class Counsel’s Fee is Reasonable Under Either the Common Fund or** 9 **Lodestar Approach**

10 Rule 23 permits a court to award “reasonable attorneys’ fees . . . that are
11 authorized by law or by the parties’ agreement.” Fed. R. Civ. P. Rule 23(h).
12 “Attorneys’ fees provisions” in a class action settlement agreements are, like every
13 other aspect of such agreements, subject to the determination of whether the
14 settlement is ‘fundamentally fair, adequate, and reasonable.’” *Staton v. Boeing Co.*,
15 327 F.3d 938, 963 (9th Cir. 2003). The Supreme Court “has recognized
16 consistently that a litigant or lawyer who recovers a common fund for the benefit
17 of persons other than himself or his client is entitled to a reasonable attorney's fee
18 from the fund as a whole.” *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980).
19 Where “a settlement produces a common fund for the benefit of the entire class,”
20 the court has discretion to employ either the lodestar method or the percentage-of-
21 recovery method. *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935 942
22 (9th Cir. 2011). Even under the percentage of fund method, the Ninth Circuit has
23 approved use of “lodestar cross-checks as a way of determining the reasonableness
24 of a particular percentage recovery of a common fund.” *Rojas-Cifuentes v. ACX*
25 *Pac. Nw. Inc.*, No. 2:14-cv-00697-CKD, 2025 WL 2731864, at *9 (E.D. Cal. Sept.
26 25, 2025). Class Counsel’s requested fee is reasonable under either approach.
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IV. Class Counsel Should be Awarded 22-23.5% of the Common Fund

“In the Ninth Circuit, the benchmark for a fee award in common fund cases is 25% of the recovery obtained.” *Urakhchin v. Allianz Asset Mgmt. of Am., L.P.*, No. 8:15-cv-01614 JLS-JCG, 2018 WL 8334858, *5 (C.D. Cal. July 30, 2018) (citing *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d at 942). When evaluating the reasonableness of a percentage-based attorney’s fee award, the Ninth Circuit has identified the following factors to consider: (1) the results achieved, (2) the risk of litigation, (3) the skill required and quality of work, and (4) the contingent nature of the fee and the financial burden carried by the plaintiffs; and (5) awards made in similar cases. *Ayala v. Valley First Credit Union*, No. 1:22-cv-00657-HBK, 2024 WL 1053820, at *9 (E.D. Cal. Mar. 11, 2024); see *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048–50 (9th Cir. 2002). All of these factors support Class Counsel’s requested fee award.

A. The Results Achieved Favor Class Counsel’s Requested Fee

“The overall result and benefit to the class from the litigation is the most critical factor in granting a fee award.” *Ayala*, 2024 WL 1053820, at *9 (quoting *In re Omnivision Techs.*, 559 F.Supp.2d 1036, 1046 (N.D. Cal. 2007)). “It is well-settled” that a “settlement amounting to only a fraction of the potential recovery does not per se render the settlement inadequate or unfair.” *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 459 (9th Cir. 2000) (affirming approval of ERISA settlement). Settlements that reflect only a single digit percentage have been found to be reasonable depending on the claims, defenses and stage of proceedings. *In re PFA Ins. Mktg. Litig.*, No. 4:18-cv-03771 YGR, 2024 WL 1145209, at *15 (N.D. Cal. Feb. 5, 2024) (citing cases and approving settlement that was only 3% of maximum liability); *Benitez v. W. Milling, LLC*, No. 1:18-cv-01484-SKO, 2020 WL 309200, at *8 (E.D. Cal. Jan. 21, 2020) (finding 13% recovery was “consistent with percentage recoveries California district courts have found to be reasonable”).

1 On a percentage of recovery basis, this settlement compares favorably to
2 other ERISA class action settlements. *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d
3 at 459 (finding fair and adequate ERISA settlement representing 16% recovery);
4 *Gamino v. KPC Healthcare Holdings, Inc.*, No. 5:20-cv-01126-SB-SHK, 2023 WL
5 3325190, at *4 (C.D. Cal. Mar. 11, 2023) (finding ESOP settlement of 7% of the
6 estimated losses “compare[d] favorably to other approved ERISA settlements”);
7 *Terraza v. Safeway Inc.*, No. 16-cv-03994-JST, 2021 WL 11607173, at *3 (N.D.
8 Cal. July 19, 2021) (finding ERISA class settlement that was “20% of maximum
9 potential damages” was a “very good result for the class”); *Urakhchin*, 2018 WL
10 8334858, at *4 (approving ERISA settlement that was 17.7% of maximum losses).
11 Courts in this Circuit have concluded that recoveries of 28%-29% of the losses in
12 ERISA cases are exceptional. *Marshall v. Northrop Grumman Corp.*, No. 16-CV-
13 6794 AB (JCx), 2020 WL 5668935, at *2 (C.D. Cal. Sept. 18, 2020) (finding an
14 ERISA class settlement that was 29% of losses was “an exceptional result”); *see*
15 *Rocke v. Allianz Asset Mgmt. of Am. LLC*, No. SACV 23-00098-CJC (KESx), 2024
16 WL 6874363, at *4 (C.D. Cal. Mar. 18, 2024) (describing ERISA settlement that
17 was 28% of maximum recovery as “extremely significant outcome for the class”);
18 *Hurtado v. Rainbow Disposal Co., Inc.*, No. 8:17-cv-01605-JLS-DFM, 2021 WL
19 2327858, at *4 (C.D. Cal. May 21, 2021) (finding settlement that was 24% to 34%
20 of total potential liability was “an impressive result”).

21 This Settlement provides meaningful monetary and non-monetary relief for
22 the Class. The Settlement primarily provides: (1) \$485,000.00 paid into a Cash
23 Settlement Fund and (2) a reduction of the principal balance of the ESOP-related
24 debt by \$1.4 million (“Loan Modification”). Agmt. § IV. A & § IV. B. The
25 Settlement also requires that the Settlement proceeds will be paid through the Plan
26 to ensure every Class Member will benefit from this Settlement and ensures the
27 tax-favored treatment of the Settlement proceeds. *Id.* § V.A.5 & V.B. The
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1 Settlement requires Defendants to bear the expenses of the Settlement and
2 distribution (other than those of the class notice and the Settlement Administrator)
3 and prohibits assessment of any fees or charges to Class Members to receive
4 distributions. *Id.* § V.C.1&2 & VII.4. For purposes of valuing the stock to be
5 liquidated, the Settlement precludes reducing the value by the amount of the costs
6 in the litigation or settlement. *Id.* § V.A.3(a)(2). *Finally*, the Settlement requires
7 the Plan Administrator (i.e. the Committee) and the Trustee to provide Plaintiff’s
8 counsel with any valuation reports regarding the value of Ritchie stock, which
9 allows oversight of the valuation of the stock. *Id.* § XVII.3. These latter items
10 constitute “an additional benefit” to class members. *See Hurtado*, 2021 WL
11 2327858, at *4 (approving ESOP structure with some similar requirements).

12 The cash payment will exhaust the available fiduciary insurance of the
13 fiduciary defendants provided by Nexus Specialty. *Id.* at Recital ¶ N. The Loan
14 Modification has both immediate and long-term benefits for participants. *First*, the
15 Settlement requires release of 115,000 shares from the ESOP suspense account to
16 ESOP participant accounts. *Id.* § IV.B. Based on the 2023 Form 5500, as of 2023,
17 there were 250,378 shares allocated to participant accounts with a fair value of
18 \$400,605 or \$1.60 per share. Barton Decl. (ECF No. 156-2) at Ex. A. As a result,
19 the Settlement will immediately increase the allocated shares by 46%. Barton Decl.
20 (ECF No. 158-2) ¶ 11. Based on data that Defendants have subsequently provided,
21 Class Counsel calculates the value of the 115,000 shares to be worth \$206,986.04
22 to the 175 Class members. Barton Decl. (ECF No. 186-2) ¶ 7. *Second*, the \$1.4
23 million debt reduction will *increase the value of all* shares. *Id.* As previously
24 explained, the equity value of the 2 million shares would increase from \$3.7
25 million to \$4.5 million or from \$1.60 per share to \$2.26 per share. Barton Decl.
26 (ECF No. 158-2) ¶ 11; *see also* Reply on Preliminary Approval (ECF No. 161) at
27 5. The immediate impact of the debt reduction means that allocated shares would
28

1 immediately increase from \$400,605 to \$827,108. *Id.* And the total shares held by
2 the ESOP (both allocated and unallocated) would increase by \$1.33 million. Reply
3 on Preliminary Approval (ECF No. 161) at 5-6. *Finally*, there is the long-term
4 impact that is even more important. *Id.* As a result of the \$1.4 million reduction of
5 debt, as the company makes contributions to the ESOP (assuming the same amount
6 of contributions), the ESOP debt will be paid more quickly and a greater number of
7 shares will be released from the suspense account, meaning that participants will
8 receive their ESOP shares more quickly. *Id.* Even excluding the long-term benefits,
9 the monetary value of the settlement is worth approximately \$2.02 million. As
10 previously explained, Plaintiff’s expert calculated that maximum overvaluation at
11 between \$6.2 million to \$9 million. Barton Decl. (ECF No. 158-2) ¶ 4. Thus, the
12 \$2.02 million represents between 22.4% and 32.5% of the maximum amount that
13 could have been recovered for the Class if Plaintiff prevailed.

14 An “average gross recovery of more than \$11,000 per class member” is
15 “significantly higher than that approved in many other ERISA class actions.” *New*
16 *England Biolabs, Inc. v. Miller*, No. 1:20-cv-11234-RGS, 2022 WL 20583575, at
17 *3 (D. Mass. Oct. 26, 2022); *Hurtado*, 2021 WL 2327858, at *4 (finding
18 settlement providing average benefit of \$11,969 per participant was significant
19 benefit). Other ERISA class actions approved in this Circuit had a far lower
20 average participant benefit. *E.g. Roche*, 2024 WL 6874363, at *7 (observing “class
21 members will receive an average of over \$1,000”); *Gamino* 2023 WL 3325190, at
22 *3-4 (approving ESOP settlement that provided an average of \$2,900 per
23 participant); *Baird v. BlackRock Institutional Trust Co., N.A.*, No. 17-cv-01892-
24 HSG, 2021 WL 5113030, at *2 (N.D. Cal. Nov. 3, 2021) (approving \$9.65 million
25 settlement to be divided among 18,289 class members for an average benefit of
26 \$527 per class member); *Marshall*, 2020 WL 5668935, at *2 (describing settlement
27 amounting to \$77.34 average gross recovery as “exceptional”). Here, the Class
28

1 data produced by Defendants identified 175 participant Class members. Barton
2 Decl. (ECF No. 186-2) ¶ 5. Using the \$2.02 million, that represents an average
3 benefit of \$11,542.85 per participant (or \$10,771 per participant at \$1.885 million).

4 As the Cash Settlement Payment will exhaust the available insurance for the
5 fiduciary defendants, the most likely available relief would be available from the
6 Lackeys and the Lackey Trust. *See* Agmt. at Recital ¶ N. As the 2018 Transaction
7 was financed by seller notes, the most likely result from successful litigation would
8 be reducing the amount of debt (i.e. a loan modification) and/or the transaction
9 price at which the Lackeys/Lackey Trust sold the shares and the amount financed.
10 *See* Compl. ¶ 64. The Settlement here accomplishes that by reducing the amount of
11 the loan retroactively as of January 1, 2024 by \$1.4 million. Agmt. § IV.B.1. That
12 remedies the amount of the overpayment (as calculated by Plaintiff’s expert) by
13 approximately 15% to 22% percent. *Supra* IV.A.

14 **B. The Risks of Litigation Support Class Counsel’s Requested Fee**

15 As this Court recognized, the claims in this case involved “‘significant’
16 litigation risk including Defendant's argument that the class should not be certified,
17 as well as risks on summary judgment, trial, and appeal.” *Imber v. Lackey*, No.
18 1:22-cv-00004-HBK, 2025 WL 2687358, at *13 (E.D. Cal. Sept. 19, 2025). This
19 risk “is especially true here given that ‘ERISA actions are notoriously complex
20 cases, and ESOP cases are often cited as the most complex of ERISA cases.’” *Id.*
21 (quoting *Foster v. Adams and Assoc., Inc.*, No. 18-cv-02723-JSC, 2021 WL
22 4924849, at *6 (N.D. Cal. Oct. 21, 2021)). As the Seventh Circuit recognized
23 more than 25 years ago, “very few areas of the law are as unsettled and
24 complex as ESOP valuation.” *Florin v. Nationsbank of Ga., N.A.*, 60 F.3d
25 1245, 1248 (7th Cir. 1995). In such cases, “[p]laintiffs claiming a breach of
26 fiduciary duty do not often succeed.” *Id.* The Seventh Circuit's observation
27 remains true today. Feinberg Decl. ¶ 13; Porter Decl. ¶¶ 4-5.

1 “[I]n any case, there is a substantial risk of losing at trial.” *Munday v. Navy*
2 *Fed. Credit Union*, No. 15-cv-1629, 2016 WL 7655807, *8 (C.D. Cal. Sept. 15,
3 2016). Several defense verdicts entered by courts after trial in a complex ERISA
4 fiduciary breach actions illustrate those risks. For example, the Department of
5 Labor lost an ESOP case after trial. *E.g., Walsh v. Bowers*, 561 F.Supp.3d 973 (D.
6 Haw. 2021) (entering defense verdict in ESOP case brought by DOL after one
7 week trial). In a case brought by private plaintiffs involving an ESOP invested in
8 privately held stock, a court found in favor of the defendants on all claims after 34
9 trial days. *Fish v. Greatbanc Tr. Co.*, 09 C 1668, 2016 WL 5923448, *1, *68 (N.D.
10 Ill. Sept. 1, 2016). In 2025, three trials in complex ERISA class actions all resulted
11 in defense verdicts. *McDonald v. Lab. Corp. of Am. Holdings*, 1:22CV680, 2025
12 WL 2325016, at *1 (M.D.N.C. Aug. 12, 2025) (finding for defendants after 3-day
13 trial); *Waldner v. Natixis Inv. Managers, L.P.*, No. 21-10273-LTS, 2025 WL
14 1871290, at *1 (D. Mass. June 26, 2025) (finding for defendants after 2-week
15 trial); *Iannone v. AutoZone, Inc.*, No. 2:19-cv-02779-MSN-tmp, 2025 WL
16 2797074, at *1 (W.D. Tenn. Sept. 30, 2025) (finding for defendants after 1-week
17 trial). Sometimes when plaintiffs successfully prove at trial that defendants
18 breached their fiduciary duties, courts have concluded that those breaches resulted
19 in no harm or loss to the Plan or the participants. *E.g., DeFazio v. Hollister, Inc.*,
20 854 F.Supp.2d 770, 816 (E.D. Cal. 2012) (finding after trial in ESOP case that “the
21 fiduciaries’ breaches of their duties did not cause a material harm to the Plan and
22 plaintiffs [were] not entitled to damages.”), *aff’d sub nom. DeFazio v. Hollister*
23 *Employee Share Ownership Tr.*, 612 Fed. Appx. 439 (9th Cir. 2015). While Class
24 Counsel has successfully tried ERISA cases, including ESOP cases, and does not
25 shy away from trial, Class Counsel also fully appreciates the risks involved.

26 Even if Plaintiff succeeded at trial, the Class faced a risk on appeal as
27 illustrated by a Ninth Circuit decisions reversing trial decisions for the class. *Wit v.*
28

1 *United Behav. Health*, 79 F.4th 1068 (9th Cir. 2023) (reversing prior trial decision
2 for class in an ERISA case after a ten-day bench trial); *Gutierrez v Wells Fargo*
3 *Bank, N.A.*, 704 F.3d 712 (9th Cir. 2012) (affirming in part and reversed in part the
4 judgment rendered in favor of the certified class, vacated the \$203 million
5 restitution award). Having litigated ERISA cases for more than 20 years (when this
6 case began), Class Counsel fully appreciated these risks. Thus, the risks that Class
7 Counsel undertook in accepting this case favor the fee award.

8 **C. The Skill Required & the Quality of Work Support Class**
9 **Counsel's Requested Fee**

10 ERISA class actions are “complex” and require counsel with “specialized
11 skills.” *Karpik v. Huntington Bancshares Inc.*, No. 2:17-cv-01153, 2021 WL
12 757123, *9 (S.D. Ohio Feb. 18, 2021). “Very few plaintiffs’ firms possess the skill
13 set or requisite knowledge base to litigate ... class-wide, statutorily-based claims
14 for pension benefits.” *Savani v. URS Prof. Sols. LLC*, 121 F.Supp.3d 564, 573
15 (D.S.C. Aug. 4, 2015). In addition to legal expertise, counsel in ERISA cases must
16 possess “expertise regarding industry practices.” *Kruger v. Novant Health*, No.
17 1:14-cv-00208, 2016 WL 6769066, *3 (M.D.N.C. Sept. 29, 2016). This is
18 particularly true in ESOP class actions. *Feinberg Decl.* ¶ 13.

19 Another court in this Circuit found that “[t]he skill and labor required to
20 adequately address complex issues of ERISA law weigh[ed] in favor of approving
21 [the] fee.” *Downey Surgical Clinic, Inc.*, No. CV09-5457 PSG (Jcx), 2015 WL
22 12645755, at *13 (C.D. Cal. Nov. 10, 2015) (awarding fee 30% of the settlement);
23 *see Marshall*, 2020 WL 5668935, at *9 (finding complexity supported a fee of 1/3
24 of settlement in ERISA action); *Urakhchin*, 2018 WL 8334858, at *6 (finding
25 complexity of ERISA supported fee of 25% of settlement). This Court previously
26 recognized both Class Counsel’s experience and its work to make a sufficiently
27 informed decision about the merits of case, including obtaining the relevant
28

1 discovery, and hiring an expert to assist with the assessment of the valuation.
2 *Imber*, 2025 WL 2687358, at *10-13. The Court also recognized that Class
3 Counsel “engaged in ongoing negotiations and three separate mediation sessions
4 with two different mediators” during the course of this litigation.” *Id.* at *12.
5 Finally, Class Counsel’s skills and labor to adequately address the complex issues
6 in this case are also evident in the briefing on the motion to dismiss and the skills
7 needed to negotiate and finalize a complex settlement agreement that provides
8 benefits more than simply cash and provisions designed to protect the interests of
9 the Class, such as the tax-favored treatment of the benefit payments and the
10 assurance that the litigation costs were not assessed against the amounts paid to
11 Class members who receive immediate payments. *See* Agmt. §§ V.A, B & C.
12 Thus, this factor weighs in favor of the fee.

13 **D. The Contingent Risk Supports the Requested Fee**

14 “Courts have long recognized that the attorneys' contingent risk is an
15 important factor in determining the fee award and may justify awarding a premium
16 over an attorney's normal hourly rates.” *Hurtado*, 2021 WL 2327858, at *5
17 (quoting *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1299 (9th
18 Cir. 1994)); *Boyd v. Bank of Am. Corp.*, No. 13-cv-00561 DOC, 2014 WL
19 6473804, at *10 (C.D. Cal. Nov. 18, 2014) (finding that “Class Counsel spen[ding]
20 over a year and a half, and over 3,000 hours litigating this case on a purely
21 contingency basis” supported fee award of 1/3 of the settlement). It is well-
22 recognized that due to the need and complexity of expert testimony, ESOP
23 litigation is expensive. *Fifth Third Bancorp v. Dudenhoeffer*, 573 U.S. 409, 424
24 (2014) (recognizing ESOP litigation is expensive); *Su v. Bowers*, 89 F.4th 1169,
25 1174 (9th Cir. 2024) (describing ESOP litigation that proceeded to trial as “time-
26 consuming and expensive”). When Class Counsel agreed to take this case, counsel
27 was well aware that the litigation would likely require hundreds or thousands of
28

1 hours and the expenses could amount to several hundreds of thousands of dollars
2 as evidenced by other ESOP litigation brought by this same counsel. *E.g. Gamino*,
3 2023 WL 3325190, at *7 (noting counsel expended 5,000 hours and \$664,715.96
4 in expenses in ESOP class action); *Foster v. Adams and Assoc., Inc.*, No. 18-cv-
5 02723-JSC, 2022 WL 425559, at *11 (N.D. Cal. Feb. 11, 2022) (noting counsel
6 expended 3,800 hours and \$149,978.03 in expenses in ESOP class action);
7 *Hurtado*, 2021 WL 2327858, at *8 (noting counsel expended 3,800 hours and
8 expenses of \$200,644.83 in an ESOP class action).

9 Here, Class Counsel took this case on a contingent basis. Barton Decl. ¶ 22.
10 Class Counsel undertook this representation despite the substantial risk that their
11 time and expenses on behalf of the Class would not be recouped. *Id.* To date, Class
12 Counsel has invested over 900 hours prosecuting this case. *Id.* ¶¶ 11-12. Class
13 Counsel has received no compensation for any efforts in this case since they were
14 engaged by Plaintiff and have advanced all of the litigation expenses, in excess of
15 \$30,000. *Id.* ¶¶ 22, 23-24. Based on prior trial experience of ESOP cases, Class
16 Counsel anticipated and was prepared to expend more than what was already
17 expended for experts had the case proceeded through discovery and trial. *Id.* ¶ 27.
18 Thus, the significant contingent risks and financial burden assumed by Class
19 Counsel in litigating this case and what Class Counsel was prepared to spend
20 weigh in favor of the reasonableness of the requested fees.

21 **E. The Awards in Similar Cases Support the Requested Fee**

22 In complex ERISA cases, courts across the country “routinely award
23 attorneys’ fees in the amount of one-third of the total settlement fund.” *Molloy v.*
24 *Aetna Life Ins. Co.*, No. 19-3902, 2024 WL 290283, at *6 n.41 (E.D. Pa. Jan. 25,
25 2024); *see Hawkins v. Cintas Corp.*, No. 1:19-cv-1062, 2025 WL 523909, at *3
26 (S.D. Ohio Feb. 18, 2025) (citing cases and awarding one-third of fund). Courts in
27 this Circuit have found that a one-third recovery is “on par” with awards in other
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1 complex ERISA class actions and awarded that amount although it “is above the
 2 Ninth Circuit's benchmark for class actions.” *In re LinkedIn ERISA Litig.*, No.
 3 5:20-cv-05704-EJD, 2023 WL 8631678, at *10 (N.D. Cal. Dec. 13, 2023)
 4 (awarding one-third of a \$6.67 million ERISA settlement); *Marshall*, 2020 WL
 5 5668935, at *8.² In other ERISA class actions brought by this same counsel, courts
 6 in this Circuit have awarded significantly more than the 25% benchmark. *Foster*,
 7 2022 WL 425559, at *10 (awarding one-third of \$3 million settlement in ESOP
 8 case); *Hurtado*, 2021 WL 2327858, at *4 (awarding 30% of \$7.9 million
 9 settlement in ESOP case); *see Gamino*, 2023 WL 3325190, at *5 (awarding 30% of
 10 \$9 million settlement in ESOP case). In a non-ERISA case in which there was “no
 11 formal discovery, no depositions, no motion practice, and no trial,” this Court
 12 found that a fee of 28% of the settlement was appropriate. *Manzo v. McDonald's*
 13 *Rest. of Cal., Inc.*, No. 1:20-cv-1175-HBK, 2022 WL 4586236, at *10 (E.D. Cal.
 14 Sept. 29, 2022). Thus, an award of 21.9 or 23.5% is more than reasonable.³

15 **F. The Absence of Any Objection Supports the Fee Request**

16 Courts in this Circuit sometimes also consider whether any class members
 17 have objected to the settlement. *Waldbuesser v. Northrop Grumman Corp.*, No.
 18 CV 06-6213-AB (JCX), 2017 WL 9614818, at *5 (C.D. Cal. Oct. 24, 2017) (“The
 19 presence or absence of objections from the class is also a factor in determining the
 20

21 ² While a fee of 33.3% fee is higher than the 25% benchmark rate in the Ninth
 22 Circuit, it is not uncommon for awards to be up to 33.3% for employment class
 23 actions in this District. *See Barbosa v. Cargill Meat Sol. Corp.*, 297 F.R.D. 431,
 24 450 (E.D. Cal. July 2, 2013) (listing cases where courts approved attorneys’ fees of
 25 approximately one-third of the total settlement). Cases where the settlement is
 “under \$10 Million” also “often result in fees above 25%.” *Nguyen v. Westlake*
Services Holding Company, 2025 WL 2087575, at *8 (C.D. Cal. 2025).

26 ³ The amount requested is 21.9% based on a total settlement value of \$2.02 million
 27 and 23.48% based on a total settlement value of \$1.885 million.

1 proper fee award.”); *Foster*, 2022 WL 425559, at *10 (finding “the lack of any
2 Class Member objections also supports the fee award”). To date, no class member
3 has objected to the settlement or the fee request.

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

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

20 **A. Class Counsel’s Hourly Rates Are Reasonable**

21 The established standard for determining a reasonable hourly rate is the rate
22 “prevailing in the community for similar services of lawyer of reasonably
23 comparable skill, experience, and reputation.” *Blum v. Stenson*, 465 U.S. 886, 895
24 n.11 (1984); *Camacho v. Bridgeport Fin. Inc.*, 523 F.3d 973, 979 (9th Cir. 2008). A
25 reasonable hourly rate should account for factors such as the attorney’s customary
26 hourly billing rate, the level of skill required by the litigation, the time limitations
27 imposed on the litigation, the amount of potential recovery, the attorney’s
28

1 reputation, and the undesirability of the case. *Zamora Jordan v. Nationstar Mortg.,*
2 *LLC*, No. 2:14-CV-0175-TOR, 2019 WL 1966112, at *8 (E.D. Wash. May 2,
3 2019). The Ninth Circuit has held that a district court “*must* apply a risk multiplier
4 to the lodestar ‘when (1) attorneys take a case with the expectation they will
5 receive a risk enhancement if they prevail, (2) their hourly rate does not reflect that
6 risk, and (3) there is evidence the case was risky.’” *Stetson v. Grissom*, 821 F.3d
7 1157, 1166 (9th Cir. 2016) (emphasis in original).

8 **1. This Case Warrants an Exception to the “Forum Rates”**

9 The Supreme Court has “consistently looked to the marketplace as [a] guide
10 as to what is ‘reasonable’” in evaluating fee awards. *Missouri v. Jenkins by Agyei*,
11 491 U.S. 274, 285 (1989). “Generally, when determining a reasonable hourly rate,
12 the relevant community is the forum in which the district court sits.” *Camacho*,
13 523 F.3d at 979 (quoting *Barjon v. Dalton*, 132 F.3d 496, 500 (9th Cir. 1997)). But
14 “rates outside the forum may be used if local counsel was unavailable, either
15 because they are unwilling or unable to perform because they lack the degree of
16 experience, expertise, or specialization required to handle properly the case.” *Id.*;
17 *Gates*, 987 F.2d at 1405 (affirming the district court's decision to award fees at
18 N.D. Cal rates rather than E.D. Cal rates, plaintiffs offered evidence that local
19 attorneys with requisite expertise and experience to handle the type of complex
20 litigation were unavailable); *see I.H. v. California*, No. 2:19-cv-02343-DAD-AC,
21 2025 WL 1158975, at *4 (E.D. Cal. Apr. 21, 2025) (applying out-of-District rates);
22 *W.A. v. Panama-Buena Vista Union Sch. Dist.*, No. 1:21-cv-00539-JLT-CDB, 2025
23 WL 957562, at *5 (E.D. Cal. Mar. 31, 2025) (same). This exception applies here.

24 “[C]ourts have repeatedly recognized [that] complex ERISA class action
25 litigation, such as this, involves a national market” and that “the relevant market
26 rate for [such cases] is a nationwide market rate.” *In re MedStar ERISA Litig.*, No.
27 JKB-20-1984, 2024 WL 4110941, at *9 (D. Md. Sept. 5, 2024) (citing cases).

1 Courts in this Circuit have also found that “[i]n complex ERISA cases, the relevant
2 hourly rate is the nationwide market.” *Gamino*, 2023 WL 3325190, at *6
3 (approving this Class Counsel’s rates in an ESOP case); *Marshall*, 2020 WL
4 5668935, at *6 (finding the relevant hourly rate in a complex ERISA fiduciary
5 breach case was the “nationwide market rate”); *Mogck v. Unum Life Ins. Co. of*
6 *Am.*, 289 F.Supp.2d 1181, 1191 (S.D. Cal. 2003) (finding complex ERISA cases
7 “involve a national standard, and attorneys practicing ERISA law in the Ninth
8 Circuit tend to practice in different districts.”). Using these national rates, Class
9 Counsel’s rates are below market. *See* Feinberg Decl. ¶¶ 16-17; Porter Decl. ¶ 7.

10 Further support that the local forum rates should not be used is evidenced by
11 Defendants’ decisions to retain out-of-town, and for one defendant, an out-of-state
12 law firm to defend this case. *See Chrapliwy v. Uniroyal, Inc.*, 670 F.2d 760, 768
13 n.18 (7th Cir. 1982) (“The rates charged by the defendant’s attorneys provide a
14 useful guide to rates customarily charged in this type of case” and when “defendant
15 has hired expensive, out of town counsel, the plaintiffs seem justified in saying that
16 the nature of the case required the skills of out of town specialists.”);⁴ *Avalon*
17 *Cinema Corp. v. Thompson*, 689 F.2d 137, 141 n.7 (8th Cir. 1982) (same);
18 *Centurytel of Chatham, LLC v. Sprint Commc’n Co. LP*, No. 09-1951, 2016 WL
19 4005965, at *9 (W.D. La. July 25, 2016) (same); *Weatherhead v. U.S.*, 112
20 F.Supp.2d 1058, 1077 (E.D. Wash. 2000).

21 As Daniel Feinberg, a California-based attorney with more than 36 years of
22 experience litigating ERISA and ESOP cases attests, there are no attorneys with
23 experience handling such complex ERISA class actions on behalf of participants in
24 this District. Feinberg Decl. ¶ 15. Every reported decision involving an ESOP class
25

26 ⁴ *Chrapliwy* was cited favorably by the Ninth Circuit. *Gates*, 987 F.2d at 1405.
27
28

1 action in the last 10 years has been brought by out-of-district counsel.⁵ And when
 2 Mr. Imber sought an attorney with experienced representing participants in
 3 complex ERISA and ESOP, he was unable to find one in this District. Imber Decl.
 4 (ECF No. 179-2) ¶ 3. Thus, apply out-of-district rates are appropriate here.

5 **2. The Rates Are Reasonable Based on Paying Clients**

6 The rates that counsel actually charge their paying clients is strong evidence
 7 of the appropriate market value of their services. *Loughner v. Univ. of Pittsburgh*,
 8 260 F.3d 173, 180 (3d Cir. 2001) (an attorney’s usual billing rate, though not
 9 dispositive, is “the starting point in ascertaining a reasonable hourly rate”); *see*
 10 *Tomazzoli v. Sheedy*, 804 F.2d 93, 98 (7th Cir. 1986) (“For private counsel with
 11 fee-paying clients, the best evidence is the hourly rate customarily charged by
 12 counsel or by her law firm.” (collecting cases)). These actual rates are the best
 13 evidence of what the market will bear, as compared to a “rate devised by the court”
 14 because “[l]awyers do not come from cookie cutters”; rather, “[c]lients are willing
 15 to pay more, per hour, for . . . better lawyers.” *Gusman v. Unisys Corp.*, 986 F.2d
 16 1146, 1150 (7th Cir. 1993) (Easterbrook, J.). Here, Class Counsel has extensive
 17 experience in ERISA and ESOP litigation. Barton Decl. ¶¶ 4-5. Class Counsel
 18 handles cases across the country, which illustrates that this expertise and
 19 experience is in demand across the country. *Id.*

20 **3. The Requested Fees Are Reasonable Using Local Rates**

21 Even if the Court were to apply the rates of the forum, the fee requested here
 22 would still be reasonable. Courts in this District have awarded fees in class action

24 ⁵ *E.g. Chea v. Lite Star Esop Comm.*, No. 1:23-cv-00647-SAB, 2025 WL 2938836
 25 (E.D. Cal. Oct. 16, 2025) and *Zavala v. Kruse*, No. 1:19-cv-00239-ADA-SKO,
 26 2023 WL 2387513 (E.D. Cal. Mar. 7, 2023): Feinberg Jackson Worthman &
 27 Wasow LLP and Cohen Milstein Sellers & Toll, PLLC; *Dalton v. Freeman*, No.
 28 2:22-cv-00847-DJC-DB, 2025 WL 901127 (E.D. Cal. Mar. 25, 2025): Schneider
 Wallace Cottrell Konecky LLP.

1 at rates of \$650 to \$750 for partners, \$495 for senior associates, \$395 for junior
 2 associates and \$200 paralegals. *Schmidt v. Vision Service Plan*, No. 2:20-cv-2400-
 3 CSK, 2025 WL 708535, at *11 (E.D. Cal. Mar. 3, 2025) (citing cases). In the most
 4 recent published decision on attorneys’ fees from this District in an ERISA case
 5 (albeit a single plaintiff case involving a benefits claim), another court in this
 6 District found that a 2020 rate of \$625 was a reasonable rate for an attorney with
 7 24 years experience. *Monroe v. Metro. Life Ins. Co.*, No. 2:15-cv-02079-TLN-
 8 CKD, 2022 WL 624870, at *3 (E.D. Cal. Mar. 3, 2022). In today’s dollars, that
 9 would be the equivalent of an hourly rate of \$785 per hour.⁶

10 Applying these rates, here, Class Counsel’s lodestar would be \$518,820.00:

<u>Attorney/Paralegal</u>	<u>Hours</u>	<u>Local Rate</u>	<u>Total</u>
R. Joseph Barton (J.D. 2000)	416.80	\$750	\$312,600.00
Colin Downes (J.D. 2015)	134.00	\$495	\$66,330.00
Vincent Cheng (J.D. 2003)	143.50	\$495	\$71,032.50
Marie-Lise Baroutjian (J.D. 2024)	128.50	\$395	\$50,757.50
Ming Siegel (Paralegal B.A. 2016)	90.5	\$200	\$18,100.00
Total	913.30		\$518,820.00

16 **4. Fees Should Be Awarded at Current Rates or Historical**
 17 **Rates With An Interest Rate Enhancement**

18 A “district court has discretion to compensate delay in payment in one of
 19 two ways: (1) by applying the attorneys’ current rates to all hours billed during the
 20 course of the litigation; or (2) by using the attorneys’ historical rates and adding a
 21 prime rate enhancement.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d
 22 at 1305. By contrast, awarding fees based on unadjusted hourly rates is
 23 inappropriate. *Erickson Prods Inc. v. Kast*, No. 13-cv-05472-DMR, 2024 WL
 24 5011954, at *9 (N.D. Cal. Dec. 6, 2024) (“Full compensation requires charging
 25 current rates for all work done during the litigation, or by using historical rates
 26

27 ⁶ This was calculated using <https://www.usinflationcalculator.com/>.

1 enhanced by an interest factor.”) “[I]n calculating the lodestar, counsel may use
2 their current hourly rates.” *Ricksecker*, 2023 WL 1542199, at *3. The prevailing
3 market rate is measured at the time the fee petition is submitted, not at the time the
4 services are performed. That is especially appropriate here, where the timeframe of
5 the case –2022 to 2025 – was considerable, and spanned a period of notably high
6 inflation. Class Counsel have also provided the Court with their lodestar at
7 historical rates, which amount to \$653,417.00. *See* Barton Decl. ¶¶ 11-12.

8 **B. Class Counsel’s Hours Are Reasonable**

9 A reasonable number of hours expended by a party’s counsel “is calculated
10 by considering whether, in light of the circumstances, the time could reasonably
11 have been billed to a private client.” *Moreno v. City of Sacramento*, 534 F.3d 1106,
12 1111 (9th Cir. 2008). “To reduce the number of hours worked, it must appear that
13 the time claimed is obviously and convincingly excessive.” *Charlebois v. Angels*
14 *Baseball LP*, 993 F.Supp.2d 1109, 1123 (C.D. Cal. 2012). One factor to consider is
15 whether (1) work was assigned to more junior attorneys, which “demonstrate[es] a
16 tendency toward efficient billing” and (2) “administrative tasks were appropriately
17 delegated to legal support staff and billed at a lower rate” *Hurtado*, 2021 WL
18 2327858, at *6; *Manzo*, 2022 WL 4586236, at *11 (observing that counsel did not
19 “indicate that any associates or other legal professionals assisted” on the case,
20 which suggested “hours billed by counsel may involve administrative or other
21 tasks that should reasonably be billed at lower rates” but approving the hours as
22 reasonable).⁷ Class Counsel delegated tasks to more junior attorneys as evidenced
23 by timekeepers with lower billing rates accounting for over 55% of the hours. *See*
24 Barton Decl. ¶ 15.

25 _____
26 ⁷ Where the lodestar method is used as a cross-check to the percentage method, it
27 can be performed with a less exhaustive cataloguing and review of counsel’s hours.
28 *Barbosa*, 297 F.R.D. 431, 451.

1 These hours are fewer than those in other ERISA fiduciary duty class actions
2 that settled before trial. *E.g. In re LinkedIn ERISA Litig.*, 2023 WL 8631678, at
3 *10 (finding 3,552 hours reasonable where counsel opposed motions to dismiss
4 and briefed class certification and reached a settlement shortly thereafter). Unlike
5 many law firms, which have numerous attorneys perform various tasks, Class
6 Counsel here concentrated the efforts among a handful of attorneys, which
7 improved efficiency. Barton Decl. ¶ 15. Class Counsel avoided duplication of tasks
8 by having certain attorneys handle specific tasks. *Id.*

9 **C. The Amount Expended By Defendants Provides Overall Amount**
10 **is Reasonable**

11 The reasonableness of the amount of fees sought is also illustrated by the
12 amount expended by Defendants' counsel. The Ninth Circuit has concluded that
13 the amount expended by the opposing party can be "useful guide" in evaluating a
14 fee request although it is "not dispositive" (as there may be reasons for disparities
15 between the amounts). *Democratic Party of Wash. State v. Reed*, 388 F.3d 1281,
16 1287 (9th Cir. 2004); *Cmty Ass'n for Restoration of the Env't, Inc. v. Cow Palace,*
17 *LLC*, No. 13-CV-3016-TOR, 2016 WL 3582754, at *16 (E.D. Wash. Jan. 12,
18 2016) (finding the hours that defendants expended on this litigation "provide[d]
19 further support for the reasonableness of Plaintiffs' counsel's total hours"). Here,
20 Class Counsel does not know the number of hours expended by Defendants'
21 counsel, but has some information about the total fees based on the original
22 amount of insurance and the amount by which Defendants had exceeded that
23 policy. Based on that information, Defendants' counsel (excluding counsel for the
24 Lackey Trust) have likely expended more than \$500,000 defending this litigation.
25 Barton Decl. ¶ 29. This provides further support for Class Counsel's fees.

26 **D. None of the Factors Support Reducing the Lodestar**

27 Once the presumptively reasonable lodestar amount is determined, the court
28

1 must consider the factors set forth in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67
2 (9th Cir. 1975),⁸ to the extent not already subsumed in the lodestar analysis, to
3 determine the reasonableness of the fee. *Huhmann v. FedEx Corp.*, No. 13-cv-
4 00787-BAS(NLS), 2015 WL 6127198, at *3 (S.D. Cal. Oct. 16, 2015). After the
5 subsumed factors are removed, the remaining factors are (1) the time and labor
6 required; (2) preclusion of other employment due to the case; (3) the customary
7 fee; (4) time limitations imposed by the client or the circumstances; (5)
8 undesirability of the case; (6) results obtained; (7) nature and length of the
9 professional relationship with the client; and (8) awards in similar cases. *See id.* at
10 *3, 8-9.8 It is a “rare case” where those factors justify “downward adjustments to
11 the presumptively reasonable lodestar.” *Camacho*, 523 F.3d at 982 (reversing
12 adjustment). Here, Class Counsel seeks less than lodestar.

13 **1. Time & Labor Required.** This litigation required over 900
14 hours. Barton Decl. ¶¶ 11-12. As this Court recognized and illustrated by a 51-page
15 complaint and 51-page settlement agreement, this was a complex case. *Supra* IV.B.

16 **2. Preclusion of Other Employment.** The “expenditure of time,
17 energy, and resources—especially by a small firm to the preclusion of other
18 employment—on employment litigation that entailed a substantial risk of failure
19 and hence of nonpayment” weighs in favor of an enhancement. *Chalmers v. City of*
20 *Los Angeles*, 676 F.Supp. 1515, 1524 (C.D. Cal. 1987). The Barton Firm has only

21
22 ⁸ The *Kerr* factors are (1) time and labor required; (2) novelty and difficulty of the
23 questions involved; (3) skill requisite to perform the legal service properly; (4)
24 preclusion of other employment by the attorney due to the case; (5) the customary
25 fee; (6) whether the fee is fixed or contingent; (7) time limitations imposed by the
26 client or the circumstances; (8) the amount involved and the results obtained; (9)
27 the experience, reputation and ability of the attorneys; (10) the undesirability of the
28 case; (11) the nature and length of the professional relationship with the client; and
(12) awards in similar cases. *Id.* at 70; *Morales v. City of San Rafael*, 96 F.3d 359,
363–64 (9th Cir. 1996).

1 two attorneys so this factor weighs against a downward adjustment.

2 **3. The Customary Fee.** The hourly rates sought are what counsel
3 charge clients who pay by the hour and what other courts have found reasonable.

4 *Supra* V.B. This weighs in favor of the requested fee.

5 **4. Time Limits Imposed.** None.

6 **5. Results Obtained.** The result obtained for the Class is the most
7 “critical factor.” *Bravo*, 810 F.3d at 666 (“[T]he degree of success obtained is the
8 most critical factor”). This factor weighs in favor of the fee. *Supra* IV.A.

9 **6. The Undesirability of the Case.** When “other attorneys
10 refused to take the case,” that evidences the case is undesirable. *Chalmers*, 676
11 F.Supp. at 1524. Class Counsel accepted this case in part because there were no
12 attorneys in this District with the experience to handle the case. *Supra* V.A.1. The
13 undesirability of the case weighs in favor of the requested fee.

14 **7. The Nature and Length of the Relationship with the Client.**
15 Before this case, Mr. Imber was not a client of The Barton Firm (or Block &
16 Leviton). Barton Decl. ¶ 21. As Class Counsel does not expect to have an ongoing
17 or further professional relationship, this weighs in favor of the fee.

18 **8. Awards in Similar Cases.** The fee request is lower than the
19 benchmark and those in similar cases. *Supra* IV.E. This weighs in favor of the fee.

20 **VI. There is No Indication of Collusion Between the Parties**

21 The Ninth Circuit has advised courts to be concerned when the following are
22 present: (1) “when counsel receive a disproportionate distribution of the settlement,
23 or when the class receives no monetary distribution but class counsel are amply
24 rewarded”; (2) “when the parties negotiate a clear sailing arrangement providing
25 for the payment of attorneys’ fees separate and apart from class funds, which
26 carries the potential of enabling a defendant to pay class counsel excessive fees and
27 costs in exchange for counsel accepting an unfair settlement on behalf of the
28

1 class”; and (3) “when the parties arrange for fees not awarded to revert to
2 defendants rather than be added to the class fund.” *In re Bluetooth*, 654 F.3d at
3 947. These are merely “warning signs” that must be explained to ensure the
4 settlement “does not betray the class’s interests.” *Id.* at 948-949. Factors weighing
5 in favor of a finding of non-collusiveness include “a neutral mediator.” *Id.* at 948.

6 *First*, the amount that Class Counsel is requesting is only a percentage of the
7 value of the settlement, and in an amount that is less than the benchmark in this
8 Circuit. *Imber*, 2025 WL 2687358, at *14. When the agreement provides that Class
9 Counsel will not seek more than a certain amount from the fund, that does not
10 create a warning sign. *In re LinkedIn ERISA Litig*, 2023 WL 8631678, at *8
11 (finding a request for 30% did not amount to a disproportionate amount).

12 *Second*, Defendants have agreed to take no position regarding the application
13 for an award of attorneys’ fees, but such clear sailing provisions are not prohibited
14 nor are they “fatal to final approval.” *Imber*, 2025 WL 2687358, at *13. Not only did
15 Class Counsel “engaged in years of negotiations” and “obtained discovery” that
16 allowed informed decision-making, but the amount sought is less than the
17 benchmark and less than lodestar. *See id.*

18 *Third*, the amount to be awarded will be whatever amount the Court awards,
19 the decision on fees will not affect approval of the settlement and anything remaining
20 in the Cash Settlement Fund will be distributed to Class Members. Agmt §§ V, VIII.

21 **VII. Class Counsel’s Expenses Are Reasonable**

22 “There is no doubt that an attorney who has created a common fund for the
23 benefit of the class is entitled to reimbursement of reasonable litigation expenses
24 from that fund.” *Marshall*, 2020 WL 5668935, at *9; *Carlin v. DairyAmerica, Inc.*,
25 380 F.Supp.3d 998, 1023-24 (E.D. Cal. 2019) (“An attorney who has created a
26 common fund for the benefit of the class is entitled to reimbursement of reasonable
27 litigation costs from that fund.”). Reasonable out-of-pocket litigation expenses are
28

1 those that “would normally be charged to a fee paying client.” *Trs. of the Const.*
 2 *Indus. and Laborers Health and Welfare Tr. v. Redland Ins. Co.*, 460 F.3d 1253,
 3 1257 (9th Cir. 2006). As this Court has concluded, reimbursable expenses include
 4 “(1) meals, hotels, and transportation; (2) photocopies; (3) postage, telephone, and
 5 fax; (4) filing fees; (5) messenger and overnight delivery; (6) online legal research;
 6 (7) class action notices; (8) experts, consultants, and investigators; and (9)
 7 mediation fees.” *Manzo*, 2022 WL 4586236, at *12. In a class action, it is
 8 appropriate for Class Counsel to seek “costs incurred or that it will incur” after
 9 filing the motion for fees and costs, including “travel and lodging for Counsel to
 10 attend the Fairness Hearing.” *Gamino*, 2023 WL 3325190, at *7.

11 The overall amount is also reasonable compared to similar ERISA cases.
 12 *Supra* IV.A; *see also e.g., In re LinkedIn ERISA Litig.*, 2023 WL 8631678, at *10
 13 (awarding expenses in the amount of \$119,386.0); *Terraza*, 2021 WL 11607173, at
 14 *3 (awarding over \$450,000 in expenses). In a recent ERISA breach of fiduciary
 15 duty case in which the parties briefed a motion to dismiss and then engaged in
 16 some initial discovery before proceeding to mediation, but plaintiff’s counsel did
 17 not appear to hire an expert, another court in this Circuit approved expenses of
 18 nearly \$20,000. *Nguyen*, 2025 WL 2087575, at *9 (approving \$19,906.29 for filing
 19 fees, postage/deliveries, computer research, and mediation). Here, Class Counsel’s
 20 largest expenses were an expert for \$25,000 and mediation totaling \$5,225.00. The
 21 total expenses of approximately \$33,000, summarized below, are reasonable:

Expense Category	Barton Firm	Block & Leviton	Total
Case Fee		\$427.00	\$427.00
Delivery/Courier Service		\$72.53	\$72.53
Pro Hac Fee		\$225.00	\$225.00
Expert		\$25,000.00	\$25,000.00
Mailing/Postage	\$4.57		\$4.57
Mediation	\$2,500.00	\$2,725.00	\$5,225.00
Pacer	\$23.60	\$19.80	\$43.40
Postage		\$11.06	\$11.06

Printing/Copying	\$49.77	\$351.20	\$400.97
Travel	\$1,600.00		\$1,600.00
Total	\$4,177.94	\$28,831.59	\$33,009.53

VIII. The Settlement Administrator’s Expenses Should be Approved

The Court appointed Analytics Consulting, LLC as the Settlement Administrator after Class Counsel had solicited bids from 11 potential administrators. Doc No. 158-2. Class Counsel requests authorization to pay the Settlement Administrator’s fees out of the Settlement Fund in the amount of up to \$5,449. This amount is less than those paid to settlement administrators in other ESOP litigation. *Gamino*, 2023 WL 3325190, at *7 (authorizing payment of \$13,000); *Hurtado*, 2021 WL 2327858, at *8 (authorizing payment of \$11,500).

IX. Conclusion

For the foregoing reasons, Class Counsel’s Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses should be granted and Class Counsel should be authorized to pay the Settlement Administrator from the Settlement Fund.

Dated: November 21, 2025

Respectfully submitted,



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