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8
 9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11 CLIFTON W. MARSHALL *et al.*,
 12 *Plaintiffs,*
 13 v.
 14 NORTHROP GRUMMAN
 CORPORATION, *et al.*,
 15 *Defendants.*

Case No. 16-CV-6794 AB (JCX)

**JOINT MOTION FOR
 PRELIMINARY APPROVAL
 OF CLASS SETTLEMENT**

DATE: January 31, 2020
 TIME: 10:00 a.m.
 Courtroom 7B – 7th floor

Hon. André Birotte Jr.

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1 The parties respectfully file this Motion under Rule 23(e) of the Federal Rules
2 of Civil Procedure for preliminary approval of a Class Settlement.

3 1. This action involves claims for alleged breaches of fiduciary duty and
4 prohibited transactions in violation of the Employee Retirement Income Security
5 Act of 1974 (ERISA), as amended, 29 U.S.C. § 1001 *et seq.*, with respect to the
6 Northrop Grumman Savings Plan, a 401(k) plan sponsored by Northrop Grumman
7 Corporation.

8 2. On January 13, 2020, after extensive arm’s-length negotiations, the
9 parties entered into the Settlement Agreement, which is attached hereto as Exhibit
10 A. The parties now respectfully request that the Court grant preliminary approval
11 of the Settlement Agreement.

12 3. The Settlement is fundamentally fair, adequate, and reasonable in light
13 of the circumstances of this case. Class Counsel believes that preliminary approval
14 of the Settlement is in the best interests of the Class Members. In return for a
15 release of all claims as defined in Section 2.39 of the Settlement Agreement,
16 Defendants have agreed to pay a sum of \$12,375,000 into a Gross Settlement Fund.

17 5. The purpose of preliminary approval is to determine whether the
18 proposed settlement is “within the range of possible judicial approval.” *Spann v.*
19 *J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal. 2016) (Olguin, J.) (quoting
20 *Wright v. Linkus Enters., Inc.*, 259 F.R.D. 468 (E.D. Cal. 2009)). “[C]loser
21 scrutiny is reserved for the final approval hearing.” *Id.* (quoting *Harris v. Vector*
22 *Mktg. Corp.*, No. 08-5198, 2011 WL 1627973, at *7 (N.D. Cal. Apr. 29, 2011)).

23 6. The Settlement reached between the parties here more than satisfies
24 this standard and is clearly “within the range of possible judicial approval” given
25 the nature of the case and the result reached by the parties. Preliminary approval
26 will not foreclose interested persons from objecting to the Settlement and thereby
27 presenting dissenting viewpoints to the Court.

28

1 7. Plaintiffs also submit to the Court a Memorandum in Support of this
2 Joint Motion for Preliminary Approval, as well the Declaration of Class Counsel.
3 Defendants are not submitting a Memorandum in Support of the Joint Motion.

4 WHEREFORE, the parties request the following:

5 • That following the preliminary approval hearing on January 31, 2020
6 [Doc. 318], the Court enter an Order granting preliminary approval of the
7 Settlement Agreement and the Class Notice;

8 • That the Court order any interested party to file any objections to the
9 Settlement within the time limit set by the Court, with supporting documentation,
10 order such objections, if any, to be served on counsel as set forth in the proposed
11 Preliminary Approval Order and Class Notice, and permit the parties the right to
12 limited discovery from any objector as provided for in the proposed Preliminary
13 Approval Order;

14 • That the Court schedule a Fairness Hearing for the purpose of
15 receiving evidence, argument, and any objections relating to the parties' Settlement
16 Agreement; and

17 • That following the Fairness Hearing, the Court enter an order granting
18 final approval of the parties' Settlement, retaining jurisdiction to enforce the terms
19 of the Settlement Agreement, and otherwise dismissing the Complaint in this action
20 with prejudice.

1 DATED: January 13, 2020

Respectfully submitted,

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By: /s/ Jerome J. Schlichter
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Michael A. Wolff (admitted *pro hac vice*)
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ATTESTATION

In accordance with Civil L.R. 5-4.3.4 regarding signatures, I, Jerome J. Schlichter, attest that concurrence in the filing of this document has been obtained by all of its signatories.

/s/ Jerome J. Schlichter
Jerome J. Schlichter

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 9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11 CLIFTON W. MARSHALL, *et al.*,
 12 *Plaintiffs,*

13 v.

14 NORTHROP GRUMMAN
 CORPORATION, *et al.*,
 15 *Defendants.*

Case No. 16-CV-6794 AB (JCX)

**PLAINTIFFS' MEMORANDUM IN
 SUPPORT OF MOTION FOR
 PRELIMINARY APPROVAL OF
 CLASS SETTLEMENT**

DATE: January 31, 2020
 TIME: 10:00 a.m.
 Courtroom 7B – 7th floor

Hon. André Birotte Jr.

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1 **I. Introduction.**

2 This Settlement marks the end of a prolonged battle between the parties that
3 began thirteen years ago with the filing of a related case, *In re Northrop Grumman*
4 *Corp. ERISA Litig.*, No. 06-6213 AB (JCx) (C.D. Cal.) (“*Grabek*”).¹ The
5 Settlement provides significant benefits to thousands of current and former
6 participants of the Northrop Grumman Savings Plan (the “Plan”). The Settlement
7 creates a \$12,375,000 Settlement Fund, providing meaningful monetary relief to
8 class members.

9 Under the Settlement’s “Plan of Allocation,” the Class will share in the
10 Settlement based on a fair and equitable methodology that considers the alleged
11 injury to each Class Member. The actual recovery per Class Member will depend
12 on the number of Class Members who are eligible for an award and the Class
13 Member’s average account balances during the Class Period. Current Participants
14 will automatically receive their distributions directly into their tax-deferred
15 retirement account(s). Former Participants will be given the option to receive their
16 distributions in the form of a check made out to them individually or, in most cases,
17 as a roll-over into another tax-deferred account. As a result, most Class Members
18 will receive their distributions tax-deferred, further enhancing the significant
19 monetary recovery.

20 After the Court limited the *Grabek* damages discovery period to May 11, 2009,
21 Plaintiffs filed this action on September 9, 2016 alleging continued unlawful
22 payments to Northrop Grumman Corporation occurring after that date. Plaintiffs
23 also brought claims alleging the Plan’s fiduciaries allowed unreasonable
24 recordkeeping fees to be charged to the Plan, and claiming that the fiduciaries failed
25

26 ¹ The fully executed settlement agreement (“Settlement” or “Settlement
27 Agreement”) is attached as Exhibit A to the Joint Motion for Preliminary Approval
28 of Class Settlement. All capitalized terms have the meaning assigned to them in
Article 2 of the accompanying Settlement Agreement, unless otherwise specified
herein.

1 to remove an underperforming actively managed Emerging Markets Equity Fund
2 (“EM Fund”) in the Plan. After Plaintiffs filed this case, the *Grabek* case did not
3 settle for another six months, until March 2017.

4 Since the filing of this action, there has been two separate partial denials of
5 Defendants’ motions to dismiss, certification of the Class, a partial grant of
6 summary judgment that dismissed Plaintiffs’ unreasonable recordkeeping fee claim
7 and other claims against certain defendants, and ultimately a settlement in principle
8 just fourteen minutes before the trial was set to begin. But before this case was
9 filed, Class Counsel extensively researched and investigated the alleged unlawful
10 practices that continued after the class period in *Grabek*, the administration of the
11 Plan, and the changes to the investment strategy of funds provided to Plan
12 participants.

13 The Settlement was the product of extensive arm’s-length negotiation.
14 Ultimately, the parties reached a settlement after numerous mediation sessions and
15 only after completing their trial preparations. In light of the litigation risks further
16 prosecution of this action would inevitably entail, the parties jointly request that the
17 Court: (1) preliminarily approve the proposed Settlement; (2) approve the proposed
18 form and method of notice to the Settlement Class; and (3) schedule a hearing at
19 which the Court will consider final approval of the Settlement.

20 **II. The claims in the case.**

21 Plaintiffs alleged that Defendants violated 29 U.S.C. §§ 1104 and 1106 by
22 unlawfully paying Northrop for services provided to the Plan, allowing
23 unreasonable recordkeeping fees to be charged by the Plan’s recordkeeper at the
24 time, Hewitt Associates LLC, and for failing to move the actively managed EM
25 Fund to passive management until the end of 2014. Doc. 132. Plaintiffs further
26 alleged that Northrop failed to monitor Plan fiduciaries. Following the Court’s
27 orders on Defendants’ two motions to dismiss [Docs. 68, 146], and motion for
28

1 summary judgment [Doc. 264] dismissing certain claims, trial was scheduled to
2 begin on October 15, 2019 against Northrop, the Northrop Grumman Savings Plan
3 Administrative Committee, Northrop Grumman Savings Plan Investment
4 Committee, Denise Peppard, Michael Hardesty, Kenneth L. Bedingfield, Kenneth
5 N. Heintz, Prabu Natarajan, Mark A. Caylor, Mark Rabinowitz, Richard Boak,
6 Debora Catsavas, Teri Herzog, Tiffany McConnell King, Christopher McGee, Gary
7 McKenzie, Constance Soloway, Rajender Chandhok, Gloria Flach, James M.
8 Myers, Sunil Navale, Eric Scholten, and Steven Spiegel concerning allegations that
9 these Defendants unlawfully paid Northrop for services provided to the Plan and for
10 failing to remove the EM Fund. Docs. 274, 284-1.

11 **III. Case History.**

12 **A. Pre-filing investigation.**

13 The initial complaint in this case was filed on September 9, 2016. Doc. 1. Class
14 Counsel's investigation of this matter began long before the filing of this action.
15 During years of representing the *Grabek* Class, Class Counsel developed a
16 thorough understanding of the allegedly unlawful reimbursement practices that
17 formed the basis of the common claim that was asserted in this action to recover
18 payments made to Northrop after May 11, 2009. They also investigated and
19 analyzed the administrative services provided by the Plan's former recordkeeper
20 (Hewitt), the relationship between the recordkeeper and the Plan's investment
21 advice provider (Financial Engines), and the investments offered in the Plan. The
22 dedication Class Counsel has shown to the Class is amply demonstrated by over
23 26,000 hours of attorney and non-attorney time spent litigating *Grabek*. *In re*
24 *Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2017 WL 9614818, at *3
25 (C.D. Cal. Oct. 24, 2017). Those pre-filing hours directly benefitted Class Members
26 in this case.

1 **B. Complex pre-trial procedural history.**

2 Plaintiffs filed their complaint after the damages period in *Grabek* was limited
3 to May 11, 2009. Doc. 1, ¶ 101. On January 30, 2017, the Court granted in part and
4 denied in part Defendants' motion to dismiss the initial complaint, with leave to
5 amend. Doc. 68. Plaintiffs filed a first amended complaint on February 13, 2017.
6 Doc. 46. On February 27, 2017, Northrop, the Northrop Committees, Peppard,
7 Ziskin, Hardesty, Bedingfield, Heintz, Zobair, Natarajan, Hickey, Movius, Caylor,
8 Rabinowitz, and Thomas answered that complaint. Doc. 75. On May 15, 2017,
9 Plaintiffs moved for class certification. Doc. 83. Over Defendants' opposition,
10 [Doc. 115], the Court granted class certification on November 2, 2017. Doc. 130.

11 On November 3, 2017, Plaintiffs filed a second amended complaint adding
12 additional individuals who served on the fiduciary committees during the class
13 period. Doc. 132. Northrop and the newly added defendants moved to dismiss the
14 second amended complaint. Doc. 141. On February 15, 2018, the Court granted in
15 part and denied in part Defendants' motion. Doc. 146.

16 On February 1, 2019, Defendants moved for partial summary judgment and *in*
17 *limine* to exclude the testimony of two of Plaintiffs' expert witnesses, and later filed
18 evidentiary objections to Plaintiffs' other expert. Docs. 167, 168, 196. On February
19 5, 2019, Plaintiffs moved to disqualify one of Defendants' experts, which was
20 denied. Doc. 176; Doc. 257. On August 14, 2019, the Court granted in part and
21 denied in part Defendants' motion for partial summary judgment and granted
22 Defendants' evidentiary objections to preclude one of Plaintiffs' experts from
23 offering certain opinions. Doc. 264. The record on summary judgment was
24 extensive. *Id.* at 18, n.7.

25 In preparation for trial, Defendants again moved *in limine* to exclude Plaintiffs'
26 experts on the remaining claims. Docs. 266, 267. Plaintiffs also moved to exclude
27 testimony of one of Defendants' experts. Doc. 268. The Court denied those
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1 motions. Docs. 308–310. Defendants also moved to exclude certain fact witness
2 testimony. Doc. 271. The parties filed their proposed findings of fact and
3 conclusions of law, trial brief, joint exhibit list, and joint witness list. Docs. 269,
4 270, 284-1, 289-1. Written direct testimony was submitted, along with evidentiary
5 objections to that testimony. Docs. 279–282, 291–294. And the parties submitted
6 Stipulated Facts. Doc. 311.

7 **C. Previous unsuccessful attempts at mediation.**

8 The parties attempted to mediate their claims on March 5, 2019 and October 2,
9 2019 with mediator Margaret A. Levy, but were unable to reach a settlement. Doc.
10 306. The parties continued discussions with the assistance of the mediator up to the
11 start of trial.

12 **D. Trial.**

13 The parties designated 1135 exhibits for potential use at trial, and over 20
14 witnesses they intended to call, including 4 experts. Trial was set to commence on
15 October 15, 2019 at 8:30 a.m. Doc. 311. Fourteen minutes prior to trial the parties
16 reached a settlement in principle. Doc. 315.

17 **IV. The terms of the proposed settlement.**

18 In exchange for releases and for the dismissal of this action as provided for in
19 the Settlement Agreement, Defendants will make available to Class Members the
20 benefits described below (the “Settlement Benefits”). Class Counsel agrees to take
21 any necessary enforcement action without additional cost to the Settlement Class.

22 **A. Monetary Relief.**

23 Defendants, or an entity acting on their behalf, will deposit \$12,375,000 (the
24 “Gross Settlement Amount”) in an interest-bearing settlement account (the “Gross
25 Settlement Fund”). The Gross Settlement Fund will be used to pay amounts to the
26 participants as well as Class Counsel’s Attorneys’ Fees and Costs, Administrative
27 Expenses of the Settlement, and Class Representatives’ Compensation as described
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1 in the Settlement Agreement.

2 **B. Notice and Class Representatives' Compensation.**

3 The notice costs and all costs of administration of the Settlement will come out
4 of the \$12,375,000 Gross Settlement Amount. Incentive payments to the six Class
5 Representatives in an amount to be approved by the Court would also be paid out of
6 the Gross Settlement Amount. Plaintiffs will seek \$25,000 for each of the Class
7 Representatives. This amount is well in line with precedent recognizing the value of
8 individuals stepping forward to represent classes—particularly in a case like this
9 one, where the potential benefit to any individual does not outweigh the cost of
10 prosecuting the claim and there are significant risks, including the risk of no
11 recovery, the risk of alienation from their employers and peers, and the risk of
12 uncompensated time and energy devoted to a lawsuit with uncertain prospects for
13 success. *E.g.*, *Grabek*, 2017 WL 9614818, at *7–8 (approving awards of \$25,000 to
14 each of the named plaintiffs); *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015
15 WL 4246879, at *4 (D. Minn. July 13, 2015) (approving awards of \$25,000 to each
16 of the named plaintiffs); *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432,
17 at *4 (S.D. Ill. Jan. 31, 2014) (approving \$25,000 to each of six surviving named
18 plaintiffs in 401(k) fee settlement). The total award requested for the Named
19 Plaintiffs represents just over one percent of the Settlement Fund.

20 **C. Attorneys' Fees and Costs**

21 Courts are authorized to use the percentage-of-funds method in awarding
22 attorneys' fees in class actions. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734,
23 738 (9th Cir. 2016); *see also In re Online DVD-Rental Antitrust Litig.*, 779 F.3d
24 934, 953 (9th Cir. 2015) (“The district court did not err in calculating the attorneys’
25 fees award by calculating it as a percentage of the total settlement fund[.]”). “Under
26 the percentage-of-fund method, the district court may award plaintiffs’ attorneys a
27 percentage of the common fund, so long as that percentage represents a reasonable
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1 fee.” *Stanger*, 812 F.3d at 738. Included within awards of percentages of common
2 funds are cases which have authorized a one-third fee. *See, e.g., In re Pacific*
3 *Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (affirming attorneys’ fees
4 award of one-third of settlement); *Emmons v. Quest Diagnostics Clinical Labs.,*
5 *Inc.*, No. 13-474, 2017 WL 749018, at *7–8 (E.D. Cal. Feb. 27, 2017) (one-third of
6 settlement fund was reasonable fee in light of relief obtained for the class, number
7 of hours worked, risk of non-payment, and experience of counsel); *Deaver v.*
8 *Compass Bank*, No. 13-222, 2015 WL 8526982, at *11–14 (N.D. Cal. Dec. 11,
9 2015) (approving fee equaling one-third of settlement, plus costs and expenses);
10 *Grabek*, 2017 WL 9614818, at *3 (same).

11 In this case, Class Counsel will request attorneys’ fees to be paid out of the
12 Qualified Settlement Fund in an amount not more than one-third of the Gross
13 Settlement Amount, or \$4,125,000, as well as reimbursement for costs incurred of
14 no more than \$450,000. A one-third fee is consistent with the market rate in
15 settlements concerning this particularly complex area of law. *Grabek*, 2017 WL
16 9614818, at *2–5; *see also, e.g., Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc.
17 174 (M.D. Tenn. Oct. 22, 2019); *Tussey v. ABB, Inc.*, No. 06-4305, Doc. 870 (W.D.
18 Mo. Aug. 16, 2019); *Sims v. BB&T Corp.*, No. 15-1705, 2019 WL 1993519, at *1–
19 3 (M.D. N.C. May 6, 2019); *Clark v. Duke*, No. 16-1044, 2019 WL 2579201, at
20 *1–5 (M.D. N.C. June 24, 2019); *Ramsey v. Philips N.A.*, No. 18-1099, Doc. 27
21 (S.D. Ill. Oct. 15, 2018); *Gordan v. Mass. Mut. Life Ins. Co.*, No. 13-30184, 2016
22 WL 11272044, at *1–3 (D. Mass. Nov. 3, 2016); *Abbott v. Lockheed Martin Corp.*,
23 No. 06-701, 2015 WL 4398475, at *1–2 (S.D. Ill. July 17, 2015); *Beesley*, 2014 WL
24 375432, at *1–3 (same); *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at
25 *1–4 (C.D. Ill. Oct. 15, 2013) (same). Importantly, this Court previously approved
26 a one-third fee plus costs in the prior case. *Grabek*, 2017 WL 9614818, at *6. That
27 is also what the Named Plaintiffs agreed to pay in this case. Schlichter Decl. ¶ 4.
28

1 **V. Argument.**

2 The first step in approving any proposed settlement in a class action is
3 preliminary approval. *Spann v. J.C. Penney Corp.*, 314 F.R.D. 312, 319 (C.D. Cal.
4 2016). At this stage, the Court reviews the proposed settlement to determine
5 whether it is sufficient to warrant public notice and a hearing. If so, the final
6 decision on approval is made after a “fairness” hearing. *Id.*; *see also* Manual for
7 Complex Litigation, Fourth, §13.14, at 172-73 (Fed. Jud. Ctr. 2004). The Court is
8 not required at the preliminary stage to make any final determinations:

9 The judge must make a preliminary determination on the fairness,
10 reasonableness, and adequacy of the settlement terms and must direct the
11 preparation of notice of the certification, proposed settlement, and date of the
12 final fairness hearing.

13 *Id.* § 21.632, at 321.

14 In this case, the Court should preliminarily approve the Settlement because it:
15 (1) is the result of arm’s-length negotiations; (2) has no obvious deficiencies; (3)
16 does not improperly grant preferential treatment to class representatives or
17 segments of the class; and (4) falls within the range of possible approval. *Spann*,
18 314 F.R.D. at 319; *see also Friedman v. Guthy-Renker, LLC*, No. 14-6009, 2016
19 WL 6407362, at *6 (C.D. Cal. Oct. 28, 2016) (same).

20 **A. The Settlement is the product of extensive arm’s length**
21 **negotiations.**

22 “An initial presumption of fairness is usually involved if the settlement is
23 recommended by class counsel after arm’s length bargaining.” *Harris v. Vector*
24 *Mktg. Corp.*, No. 08-5198, 2011 WL 1627973, at *8 (N.D. Cal. Apr. 11, 2011)
25 (internal quotations and citation omitted). The extensive and complex history of this
26 case alone should preclude any thought that the Settlement is the result of collusion
27 or anything but arm’s-length negotiations. The Settlement was reached after over
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1 three years of litigation, and over thirteen years since the filing of *Grabek*,
2 including the partial grant of multiple motions to dismiss and summary judgment,
3 exhaustive pre-trial preparation, and just prior to the start of trial. *See Spann*, 314
4 F.R.D. at 324 (there was “no evidence of collusion or fraud leading to, or taking
5 part in, the settlement negotiations between the parties” where the “matter was hard
6 fought and contentiously litigated throughout”) (internal quotation omitted); *G.F. v.*
7 *Contra Costa Cnty.*, No. 13-3667, 2015 WL 4606078, at *12–13 (N.D. Cal. July
8 30, 2015) (settlement not the result of collusion where “[t]he action was vigorously
9 litigated and involved significant discovery”); *Harris*, 2011 WL 1627973, at *8 (no
10 evidence of collusion where “the parties arrived at the settlement after engaging in
11 extensive discovery and after fully briefing their respective motions for summary
12 judgment”). Moreover, settlement was only reached with the continued assistance
13 of a mediator, Ms. Levy, through the date of trial, and “[s]ettlements reached with
14 the help of a mediator are likely non-collusive.” *La Fleur v. Medical Mgmt. Int’l*,
15 No. 13-398, 2014 WL 2967475, at *4 (C.D. Cal. June 25, 2014).

16 **B. The Settlement has no obvious deficiencies.**

17 “Because it is provisional, courts grant preliminary approval where the
18 proposed settlement lacks ‘obvious deficiencies’ raising doubts about the fairness
19 of the settlement.” *Gudimetla v. Ambow Educ. Holding*, No. 12-5062, 2014 WL
20 12594458, at *5 (C.D. Cal. Dec. 2, 2014) (citations omitted). There are no
21 deficiencies, obvious or otherwise, with the Settlement in this case. The Settlement
22 Agreement correctly defines the scope of the Class in this case, specifically
23 identifies the parties to be released, fully explains how funds are to be distributed to
24 Class Members, and correctly notes that any award of attorneys’ fees or Class
25 Representative incentive awards must be approved by the Court. Exhibit A,
26 Settlement §§ 2.38, 6.1–6.13. 7.1. And the Settlement makes clear that once fees
27 and costs are paid out, *all* funds are distributed to the Class—none of it goes back
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1 to Defendants. *Id.*, Settlement §§ 2.29, 6.13; *cf. Lith v. iHeartMedia*, No. 16-66,
2 2017 WL 1064662, at *18 (E.D. Cal. Mar. 20, 2017).

3 **C. The Settlement does not give preferential treatment to the Class**
4 **Representatives or any portion of the Class.**

5 “[T]he Ninth Circuit has recognized that service awards to named plaintiffs in a
6 class action are permissible and do not render a settlement unfair or unreasonable.”
7 *Harris*, 2011 WL 1627973, at *9 (citing *Rodriguez v. W. Publ’g Corp.*, 653 F.3d
8 948, 958–69 (9th Cir. 2009) and *Staton v. Boeing Co.*, 327 F.3d 938, 977 (9th Cir.
9 2003)). The \$25,000 incentive awards Class Counsel will request for the Class
10 Representatives do not “rise to the level of unduly preferential treatment.” *Spann*,
11 314 F.R.D. at 329. Here, Class Counsel will seek awards for six Class
12 Representatives, which is entirely reasonable. *Compare In re Online DVD-Rental*
13 *Antitrust Litig.*, 779 F.3d at 947–48 (approving incentive awards to 9 class
14 representatives) *with Staton*, 327 F.3d at 977 (rejecting incentive awards for 29
15 named class representatives that would total nearly \$900,000). Each individual
16 award is less than .21% of the Settlement fund. *See, e.g., In re Online DVD-Rental*
17 *Antitrust Litig.*, 779 F.3d at 948 (approving incentive awards that made up “a mere
18 .17% of the total settlement fund”); *Spann*, 314 F.R.D. at 329 (approving settlement
19 where counsel requested incentive award for named plaintiff “amounting to less
20 than a quarter of one percent” of the settlement fund). Indeed, courts in this district
21 have approved incentive awards much greater than Class Counsel will seek here.
22 *See Trujillo v. City of Ontario*, No. 04-1015, 2009 WL 2632723, *5 (C.D. Cal.
23 Aug. 24, 2009) (approving \$10,000 awards to 10 persons named in original
24 complaint plus \$30,000 each to the 6 class representatives). Moreover, “because the
25 parties agree that the Settlement Agreement shall remain in force regardless of any
26 service awards, the awards here are unlikely to create a conflict of interest between
27 the named plaintiffs and absent class members.” *Spann*, 314 F.R.D. at 328–29.
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1 **D. The Settlement is within the range of possible approval.**

2 The \$12,375,000 Settlement represents significant “monetary relief to the class
3 they might not otherwise obtain.” *Schaffer v. Litton Loan Servicing, LP*, No. 05-
4 7673, 2012 WL 10274679, at *12 (C.D. Cal. Nov. 13, 2012). It also appropriately
5 values Plaintiffs’ claims as “[e]stimates of what constitutes a fair settlement figure
6 are tempered by factors such as the risk of losing at trial, the expense of litigating
7 the case, and the expected delay in recovery (often measured in years).” *Id.* at *11.
8 Prevailing at trial was far from certain, since “trials of class actions are inherently
9 risky and unpredictable propositions.” *Cervantez v. Celestica Corp.*, No. 07-729,
10 2010 WL 2712267, at *3 (C.D. Cal. July 6, 2010). Even if Plaintiffs did prove
11 Defendants’ liability, it was unclear whether they would actually be able to obtain
12 the full amount of damages they sought. Regardless of what damages (if any) the
13 Court awarded after trial, any actual payment to Class Members would have to wait
14 until the conclusion of a lengthy appellate period. The \$12,375,000 Settlement
15 value appropriately takes these risks into account and ensures the Class will receive
16 certain relief soon, not speculative and uncertain relief years in the future (if at all).
17 *See Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D.
18 Cal. 2004) (“In most situations, unless the settlement is clearly inadequate, its
19 acceptance and approval are preferable to lengthy and expensive litigation with
20 uncertain results.”) (citation omitted).

21 Moreover, it is Class Counsel’s opinion that the Settlement is fair and
22 reasonable. Schlichter Decl. ¶ 2. The endorsement of a settlement as “fair,
23 reasonable, and adequate” by experienced counsel “weighs in favor of preliminarily
24 approving the Settlement Agreement.” *Eddings v. Health Net, Inc.*, No. 10-1744,
25 2013 WL 169895, at *5 (C.D. Cal. Jan. 16, 2013). Class Counsel is very
26 experienced in class action litigation generally, and actually pioneered ERISA
27 excessive fee class actions in particular. Class Counsel is intimately familiar with
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1 this unique and complex area of law, as noted by this Court and other courts
2 considering cases alleging ERISA breaches of fiduciary duty with respect to fees
3 and investments in 401(k) plans. *Grabek*, 2017 WL 9614818, at *3–4 (“The Court
4 finds that SBD is highly experienced in representing plaintiffs in class action
5 litigation, particularly ERISA class actions); *Tussey v. ABB, Inc.*, No. 06-4305,
6 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012) (“Plaintiffs’ attorneys are
7 clearly experts in ERISA litigation”); *Beesley*, 2014 WL 375432, at *2 (“The Court
8 remains impressed with Class Counsel’s navigation of the challenging legal issues
9 involved in this trailblazing litigation and Class Counsel’s commitment and
10 perseverance in bringing this case to this resolution.”); *Will v. General Dynamics*
11 *Corp.*, No. 06-698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010) (“Counsel’s
12 actions have led to dramatic changes in the 401(k) industry, including heightened
13 disclosure and protection of employees’ and retirees’ retirement assets.”); *Nolte*,
14 2013 WL 12242015, at *2 (“The law firm Schlichter, Bogard & Denton is the
15 leader in 401(k) fee litigation.”). As set forth above, the Settlement provides
16 substantial monetary relief in the amount of \$12,375,000. Finally, independent of
17 Class Counsel’s opinion as to the reasonableness of the Settlement, the parties also
18 will submit the settlement terms to an Independent Fiduciary, which will provide an
19 opinion on the Settlement’s fairness before the final approval hearing.

20 **VI. Conclusion.**

21 For these reasons, the Joint Motion for Preliminary Approval of Class
22 Settlement should be granted.

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DATED: January 13, 2020

Respectfully submitted,

By: /s/ Jerome J. Schlichter
Jerome J. Schlichter (SBN 054513)
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Nelson G. Wolff (admitted *pro hac vice*)
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Class Counsel for Plaintiffs

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 9 **UNITED STATES DISTRICT COURT**
CENTRAL DISTRICT OF CALIFORNIA

11 CLIFTON W. MARSHALL, *et al.*,
 12 *Plaintiffs,*
 13 v.
 14 NORTHROP GRUMMAN
 CORPORATION, *et al.*,
 15 *Defendants.*

Case No. 16-CV-6794 AB (JCx)

**DECLARATION OF JEROME J.
 SCHLICHTER IN SUPPORT OF
 JOINT MOTION FOR
 PRELIMINARY APPROVAL OF
 CLASS SETTLEMENT**

DATE: January 31, 2020
 TIME: 10:00 a.m.
 Courtroom 7B – 7th floor

Hon. André Birotte Jr.

1 I, Jerome J. Schlichter, hereby declare as follows:

2 1. I am the founding partner of the law firm Schlichter Bogard & Denton,
3 LLP, class counsel for the Plaintiffs. This declaration is submitted in support of
4 Plaintiffs' Memorandum in Support of the Joint Motion for Preliminary Approval
5 of Class Settlement. I am familiar with the facts set forth below and able to testify
6 to them.

7 2. There has been no collusion or complicity of any kind in connection
8 with the negotiations for, or the agreement to, settle this class action. As illustrated
9 in Plaintiffs' Memorandum in Support of the Joint Motion for Preliminary
10 Approval of Class Settlement, all settlement negotiations in this case were
11 conducted at arm's-length by adverse, represented parties. The negotiations were
12 extensive and adversarial, and the parties engaged with a highly experienced
13 mediator for in-person and telephonic mediation sessions over the course of the
14 litigation. It is my opinion that the proposed settlement is not only "within the range
15 of reasonableness," but also is fair, reasonable, adequate, and in the best interests of
16 the Northrop Grumman Savings Plan and its participants in light of the procedural
17 and substantive risks Plaintiffs would face if litigation were to continue.

18 3. Attached to the Joint Motion for Preliminary Approval of Class
19 Settlement as Exhibit A is a true and accurate copy of the Settlement Agreement
20 between Plaintiffs and Defendants.

21 4. Each of the six class representatives in the above-referenced matter
22 have a contract with this firm agreeing to a one-third fee to Schlichter Bogard &
23 Denton, LLP in the event of any recovery.

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I declare under penalty of perjury that the foregoing is true and correct.
Executed on January 13, 2020.

/s/ Jerome J. Schlichter
Jerome J. Schlichter