

1 JEROME J. SCHLICHTER (SBN 054513)
jschlichter@uselaws.com
2 NELSON G. WOLFF (admitted *pro hac vice*)
nwolff@uselaws.com
3 MICHAEL A. WOLFF (admitted *pro hac vice*)
mwolff@uselaws.com
4 KURT C. STRUCKHOFF (admitted *pro hac vice*)
kstruckhoff@uselaws.com
5 SEAN E. SOYARS (admitted *pro hac vice*)
ssoyars@uselaws.com
6 SCHLICHTER, BOGARD & DENTON LLP
100 South Fourth Street, Suite 1200
7 St. Louis, MO 63102
Telephone: (314) 621-6115
8 Facsimile: (314) 621-5934
Lead Counsel for Plaintiffs

9 WILLIAM A. WHITE (SBN 121681)
wwhite@hillfarrer.com
10 HILL, FARRER & BURRILL LLP
11 One California Plaza, 37th Floor
300 South Grand Avenue
12 Los Angeles, CA 90071-3147
Telephone: (213) 620-0460
13 Facsimile: (213) 620-4840
Local Counsel for Plaintiffs

14 **IN THE UNITED STATES DISTRICT COURT**
15 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
16 **(Western Division)**

17 CLIFTON W. MARSHALL, et al.,
18 *Plaintiffs,*
19 v.
20 NORTHROP GRUMMAN
CORPORATION, et al.,
21 *Defendants.*

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

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR ATTORNEYS'
FEES, REIMBURSEMENT OF
EXPENSES, AND INCENTIVE
AWARDS FOR CLASS
REPRESENTATIVES**

Date: June 5, 2020
Time: 10:00 a.m.
Courtroom 7B – 7th Floor

Hon. André Birotte Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**NOTICE OF MOTION AND MOTION FOR ATTORNEYS’ FEES,
REIMBURSEMENT OF EXPENSES, AND INCENTIVE AWARDS FOR
CLASS REPRESENTATIVES**

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on June 5, 2020, at 10:00 a.m. in the United States Courthouse for the Central District of California, Courtroom 7B of the above-entitled Court, located at 350 West First Street, Los Angeles, California 90012, Plaintiffs will move, and hereby do move, under Federal Rule of Civil Procedure 23(h) for an award of attorneys’ fees of \$4,125,000, reimbursement of reasonable litigation expenses of \$390,587, and incentive awards of \$25,000 each for Class representatives Clifton Marshall, Thomas Hall, Manuel Gonzalez, Ricky Hendrickson, Phillip Brooks and Harold Hylton. For the reasons set forth in Plaintiffs’ accompanying memorandum, these awards are reasonable and appropriate in this case.

This motion is made following the conference of counsel under L.R. 7-3 via e-mail correspondence on March 30, 2020. Defendants do not oppose this motion.

April 6, 2020

Respectfully submitted,

By: /s/ Jerome J. Schlichter
Jerome J. Schlichter (SBN 054513)
SCHLICHTER, BOGARD & DENTON LLP

Class Counsel

1 JEROME J. SCHLICHTER (SBN 054513)
jschlichter@uselaws.com
2 NELSON G. WOLFF (admitted *pro hac vice*)
nwolff@uselaws.com
3 MICHAEL A. WOLFF (admitted *pro hac vice*)
mwolff@uselaws.com
4 KURT C. STRUCKHOFF (admitted *pro hac vice*)
kstruckhoff@uselaws.com
5 SEAN E. SOYARS (admitted *pro hac vice*)
ssoyars@uselaws.com
6 SCHLICHTER, BOGARD & DENTON LLP
100 South Fourth Street, Suite 1200
7 St. Louis, MO 63102
Telephone: (314) 621-6115
8 Facsimile: (314) 621-5934
Class Counsel

9
10 WILLIAM A. WHITE (SBN 121681)
wwhite@hillfarrer.com
11 HILL, FARRER & BURRILL LLP
One California Plaza, 37th Floor
12 300 South Grand Avenue
Los Angeles, CA 90071-3147
13 Telephone: (213) 620-0460
Facsimile: (213) 620-4840
14 *Local Counsel for Plaintiffs*

15 **IN THE UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
16 **(Western Division)**

17 CLIFTON W. MARSHALL, et al.,
Plaintiffs,
18 v.
19 NORTHROP GRUMMAN
CORPORATION, et al.,
20 *Defendants.*

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

**MEMORANDUM IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND INCENTIVE AWARDS FOR
CLASS REPRESENTATIVES**

Date: June 5, 2020
Time: 10:00 a.m.
Courtroom 7B – 7th Floor

Hon. André Birotte Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Table of Contents

1

2 INTRODUCTION 1

3 CASE HISTORY 2

4 I. Pre-filing investigation..... 2

5 II. The claims in the case. 2

6 III. The complex procedural history prior to trial. 3

7 IV. Mediations..... 5

8 V. Trial..... 5

9 ARGUMENT 6

10 I. The Court should award Class Counsel a one-third attorney fee,

11 which is substantially less than the lodestar amount. 7

12 A. The relevant factors support a one-third fee award. 7

13 B. A one-third fee is supported by fees approved for Class

14 Counsel in other complex ERISA class actions. 20

15 II. The Court should reimburse Class Counsel for litigation

16 expenses. 22

17 III. The Court should approve incentive awards..... 23

18 CONCLUSION 25

19

20

21

22

23

24

25

26

27

28

Table of Authorities

CASES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Abbott v. Lockheed Martin Corp.,
No. 06-701, 2015 WL 4398475 (S.D. Ill. July 17, 2015) 10, 21, 23, 25

Barbosa v. Cargill Meat Solutions Corp.,
297 F.R.D. 431 (E.D. Cal. 2013)..... 14, 20

Barnes v. AT & T Pension Benefit Plan-Nonbargained Program,
963 F.Supp.2d 950 (N.D. Cal. 2013)..... 22

Beesley v. Int’l Paper Co.,
No. 06-703, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014)..... 11, 23

Bell v. Pension Comm. Of ATH Holding Co., LLC,
No. 15-2062, 2019 WL 4193376 (S.D. Ind. Sept. 4, 2019) 17, 20

Boeing Co. v. Van Gemert,
444 U.S. 472 (1980)..... 6

Bouman v. Block,
940 F.2d 1211 (9th Cir. 1991)..... 16

Boyd v. Bank of Am. Corp.,
No. 13-561-DOC, 2014 WL 6473804 (C.D. Cal. Nov. 18,
2014)..... 9, 20, 21

Campbell v. Best Buy Stores, L.P.,
No. 12-7794-JAK, 2016 WL 6662719 (C.D. Cal. Apr. 5, 2016)..... 14

Carlin v. DairyAmerica, Inc.,
380 F.Supp.3d 998 (E.D. Cal. 2019) 25

Cassell v. Vanderbilt Univ.,
No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22, 2019)..... 18, 20

Cervantez v. Celestica Corp.,
No. 07-729-VAP, 2010 WL 2712267 (C.D. Cal. July 6, 2010)..... 15

Cheng Jiangchen v. Rentech, Inc.,
No. 17-1490-GW, 2019 WL 5173771 (C.D. Cal. Oct. 10, 2019)..... 8, 21

Clark v. Duke,
No. 16-1044, 2019 WL 2579201 (M.D. N.C. June 24, 2019) 17, 18, 20, 25

Cullen v. Whitman Med. Corp.,
197 F.R.D. 136 (E.D. Pa. 2000) 9

Deaver v. Compass Bank,
No. 13-222, 2015 WL 8526982 (N.D. Cal. Dec. 11, 2015)..... 7, 8, 9, 20

Downey Surgical Clinic, Inc. v. OptumInsight, Inc.,
No. 09-5457- PSG, 2016 WL 5938722 (C.D. Cal. May 16,
2016)..... 13, 17

1 *Emmons v. Quest Diagnostics Clinical Labs., Inc.*,
 No. 13-474-DAD, 2017 WL 749018 (C.D. Cal. Feb. 24, 2017)..... 6, 8, 22

2 *Fernandez v. Victoria Secret Stores, LLC*,
 3 No. 06-04149-MMM, 2008 WL 8150856 (C.D. Cal. July 21,
 2008)..... 9, 21

4 *Fischel v. Equitable Life Assur. Soc’y of U.S.*,
 5 307 F.3d 997 (9th Cir. 2002) 16, 18

6 *Fox v. Vice*,
 131 S.Ct. 2205 (2011) 17

7 *Garcia v. Gordon Trucking, Inc.*,
 8 No. 10-324, 2012 WL 5364575 (E.D. Cal. Oct. 31, 2012) 9, 14

9 *George v. Kraft Foods Global, Inc.*,
 10 Nos. 08-3899, 07-1713, , 2012 WL 13089487 (N.D. Ill. June
 26, 2012) 21, 23

11 *Gordan v. Mass. Mut. Life Ins. Co.*,
 No. 13-30184, 2016 WL 11272044 (D. Mass. Nov. 3, 2016) 19, 21

12 *In re Corel Corp. Inc. Sec. Litig.*,
 13 293 F.Supp.2d 484 (E.D. Pa. 2003)..... 8

14 *In re Crazy Eddie Sec. Litig.*,
 824 F.Supp. 320 (E.D. N.Y. 1993)..... 8

15 *In re Gen. Instrument Sec. Litig.*,
 16 209 F. Supp. 2d 423 (E.D. Pa. 2001)..... 8

17 *In re Heritage Bond Litig.*,
 18 No. 02-ML-1475-DT, 2005 WL 1594403 (C.D. Cal. June 10,
 2005)..... passim

19 *In re Med. X-Ray Film Antitrust Litig.*,
 No. 93-5904, 1998 WL 661515 (E.D.N.Y. Aug. 7, 1998)..... 8

20 *In re Mego Fin. Corp. Sec. Litig.*,
 21 213 F.3d 454 (9th Cir. 2000) 23

22 *In re Northrop Grumman Corp. ERISA Litig.*,
 No. 06-6213, 2017 WL 9614818 (C.D. Cal. Oct. 24, 2017)..... passim

23 *In re Online DVD-Rental Antitrust Litig.*,
 24 779 F.3d 934 (9th Cir. 2015) 6, 23

25 *In re Pacific Enters. Sec. Litig.*,
 47 F.3d 373 (9th Cir. 1995) 21

26 *In re Quintus Sec. Litig.*,
 27 148 F. Supp. 2d 967 (N.D. Cal. 2001)..... 6

28 *In re Wash. Pub. Power Supply Sys. Sec. Litig.*,
 19 F.3d 1291 (9th Cir. 1994) 6, 14, 16, 19

1 *In re Washington Pub. Power Supply Sys. Sec. Litig.*,
19 F.3d 1291 (9th Cir. 1994)..... 15

2 *Johnson v. Georgia Highway Express, Inc.*,
3 488 F.2d 714 (5th Cir. 1974)..... 13

4 *Kelly v. Johns Hopkins Univ.*,
No. 16-2835, 2020 WL 434473 (D. Md. Jan. 28, 2020)..... 10, 17, 18, 20

5 *Krueger v. Ameriprise Fin., Inc.*,
6 No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015) 10, 17, 21

7 *Krueger v. Ameriprise Fin., Inc.*,
No. 11-2781, 2015 WL 4246879 (D.Minn. July 13, 2015) 25

8 *Kruger v. Novant Health, Inc.*,
9 No. 14-208, 2016 WL 6769066 (M.D. N.C. Sept. 29, 2016).....passim

10 *Mogck v. Unum Life Ins. Co. of Am.*,
289 F.Supp.2d 1181 (S.D. Cal. 2003) 17

11 *Moreno v. City of Sacramento*,
12 534 F.3d 1106 (9th Cir. 2008)..... 16

13 *Morris v. Lifescan, Inc.*,
54 F. App'x 663 (9th Cir. 2003)..... 21

14 *Multi-Ethnic Immigrant Workers Org. Network v. City of Los*
15 *Angeles*,
No. 07-3072-AHM, 2009 WL 9100391 (C.D. Cal. June 24,
16 2009)..... 20

17 *Nitsch v. DreamWorks Animation SKG Inc.*,
No. 14-4062, 2017 WL 2423161 (N.D. Cal. June 5, 2017) 25

18 *Nolte v. Cigna Corp.*,
19 No. 07-2046, 2013 WL 12242015 (C.D. Ill Oct. 15, 2013)..... 10, 11, 21, 25

20 *Norris v. Mazzola*,
No. No.15-4962, 2017 WL 6493091 (N.D. Cal. Dec. 19, 2017) 17, 21

21 *Pan v. Qualcomm Inc.*,
22 No. 16-1885, 2017 WL 3252212 (S.D. Cal. July 31, 2017) 25

23 *Powers v. Eichen*,
229 F.3d 1249 (9th Cir. 2000)..... 6

24 *Ramsey v. Philips N.A.*,
25 No. 18-1099, Doc. 27 (S.D. Ill. Oct. 15, 2018)..... 18, 21

26 *Razilov v. Nationwide Mut. Ins. Co.*,
No. 01-1466, 2006 WL 3312024 (D. Or. Nov. 13, 2006)..... 24

27 *Romero v. Producers Dairy Foods, Inc.*,
28 No. 05-484, 2007 WL 3492841 (E.D. Cal. Nov. 14, 2007)..... 20

1 *Rutti v. Lojack Corp., Inc.*,
 No. 06-350-DOC, 2012 WL 3151077 (C.D. Cal. July 31, 2012) 22

2 *Sims v. BB&T Corp.*,
 No. 15-1705, 2019 WL 1993519 (M.D. N.C. May 6, 2019) 17, 18, 19, 21

3

4 *Spano v. Boeing Co.*,
 No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016)passim

5 *Stanger v. China Elec. Motor, Inc.*,
 812 F.3d 734 (9th Cir. 2016) 6

6

7 *Staton v. Boeing Co.*,
 327 F.3d 938 (9th Cir. 2003) 6

8 *Steiner v. Am. Broadcasting Co., Inc.*,
 248 Fed. Appx. 780 (9th Cir. 2007) 19

9

10 *Stetson v. Grissom*,
 821 F.3d 1157 (9th Cir. 2016) 16

11 *Tibble v. Edison Int’l*,
 135 S.Ct. 1823 (2015) 10

12

13 *Tibble v. Edison Int’l*,
 No. 07-5359, 2017 WL 3523737 (C.D. Cal. Aug. 16, 2017)..... 11

14 *Trujillo v. City of Ontario*,
 No. 04-1015-VAP, 2009 WL 2632723 (C.D.Cal. Aug. 24,
 2009) 25

15

16 *Tussey v. ABB, Inc.*,
 746 F.3d 327 (8th Cir. 2014) 19

17

18 *Tussey v. ABB, Inc.*,
 No. 06-4305, 2012 WL 5386033 (W.D. Mo. Nov. 2, 2012)..... 10

19 *Tussey v. ABB, Inc.*,
 No. 06-4305, 2015 WL 8485265 (W.D. Mo. Dec. 9, 2015) 11, 17, 24

20

21 *Tussey v. ABB, Inc.*,
 No. 06-4305, 2019 WL 3859763 (W.D. Mo. Aug. 16, 2019)..... 10, 20, 23, 25

22 *Vasquez v. Coast Valley Roofing, Inc.*,
 266 F.R.D. 482, 492 (E.D. Cal. 2010)..... 20

23

24 *Vizcaino v. Microsoft Corp.*,
 290 F.3d 1043 (9th Cir. 2002)passim

25

26 **STATUTES**

27 29 U.S.C. § 1104..... 2

28 29 U.S.C. § 1106..... 2, 13

1 29 U.S.C. § 1132(g)..... 24

2 **RULES**

3 Fed. R. Civ. P. 23(h)..... 6, 22

4 Fed. R. Civ. P. 54(d)..... 24

5 **REGULATIONS**

6 29 CFR § 2550.408b-2 13

7 29 CFR § 2550.408c-2..... 13

8

9 **OTHER AUTHORITIES**

10 Jaklyn Willie, *Northrop Grumman Gets 401(k) Class Action*
 11 *Trimmed*, BLOOMBERG LAW, Feb. 16, 2018..... 25

12 John Manganaro, *Northrop Grumman ERISA Suit Sounds Familiar*
Claims, PLANADVISER, Sept. 16, 2016..... 25

13 Linda Stern, *Stern Advice: How 401(k) Lawsuits Are Bolstering*
 14 *Your Retirement Plan*, REUTERS (Nov. 5, 2013)..... 11

15 Nevin Adams, *Schlichter Wins One, Loses Several in Excessive*
Fee Suit, NAPA, Aug. 16, 2019 25

16 NEWBERG ON CLASS ACTIONS (4th ed. 2007)..... 21

17 Rebecca Moore, *Northrop Excessive Fee Case Moves Forward*,
 18 PLANSPONSOR, Nov. 6, 2017 25

19

20

21

22

23

24

25

26

27

28

INTRODUCTION

1
2 After more than three years of hard-fought litigation, the parties reached a
3 settlement to resolve all remaining claims in the amount of \$12,375,000. Under the
4 common fund doctrine, Class Counsel seeks an attorney fee award of one third of
5 the settlement fund (or \$4,125,000) and reimbursement of reasonable out-of-pocket
6 expenses in the amount of \$390,587 that Class Counsel incurred in prosecuting this
7 action on behalf of Northrop Grumman employees and retirees. A one-third fee is
8 consistent with fee awards in settlements involving similar complex ERISA
9 fiduciary breach claims. Specifically, this Court previously awarded Class Counsel
10 a one-third fee in the related *Grabek* action—*In re Northrop Grumman Corp.*
11 *ERISA Litig.*, No. 06-6213, 2017 WL 9614818, at *3 (C.D. Cal. Oct. 24, 2017)
12 (“*Grabek*”). The same should occur here.

13 Class Counsel devoted over 8,600 hours of attorney and staff time to bring this
14 case to trial. Despite the prior related case having settled, this case was also
15 vigorously defended up to the very brink of trial. Only fourteen minutes before trial
16 did the parties finally reach a settlement in principle. Doc. 315; Doc. 322 at 10.¹
17 The monetary settlement of \$12,375,000 is a tremendous result for the Class. It
18 substantially adds to the \$16,750,000 in recovery that Class Counsel already
19 secured for thousands of the same class members in *Grabek*. *Cf.* Doc. 130 at 13. In
20 total, Class Counsel recovered almost \$30 million to compensate Class members
21 for the alleged fiduciary breaches committed by the Northrop Plan fiduciaries.
22 Given the exceptional effort that Class Counsel displayed throughout this action, a
23 one-third fee of the common fund is fair and reasonable compensation for their
24 work. Such a fee would not even provide the lodestar amount that attorneys who
25 handle cases on an hourly rate charge with no risk, and would provide no
26 compensation or multiplier to Class Counsel for the substantial risk they undertook.
27 Their request for reimbursement of litigation expenses also is reasonable and far

28 ¹ All “Doc.” page references are to the CM/ECF header page number.

1 less than awards to Class Counsel in similar ERISA fiduciary breach actions.

2 Finally, the Class representatives—Clifton Marshall, Thomas Hall, Manuel
3 Gonzalez, Ricky Hendrickson, Phillip Brooks and Harold Hylton—each should
4 receive \$25,000 as an incentive award for the work they provided in representing
5 the Class. This amount also is consistent with awards in similar cases.

6 CASE HISTORY

7 I. Pre-filing investigation.

8 Class Counsel began their investigation of this matter years before filing the
9 complaint. Through their representation of the *Grabek* class, Class Counsel
10 developed a thorough understanding of the allegedly unlawful reimbursement
11 practices that formed the basis of the common claim that was asserted in this action
12 to recover payments made to Northrop after May 11, 2009. (The Court later limited
13 the scope of this claim to payments that occurred after September 9, 2010. Doc. 68
14 at 12–14.) The tens of thousands of hours that Class Counsel dedicated to *Grabek*
15 directly benefitted Class members in this case. *Grabek*, 2017 WL 9614818, at *3.

16 However, this case was not limited to the single common claim. Class Counsel
17 brought claims related to the claimed unreasonable compensation paid to the Plan’s
18 former recordkeeper (Hewitt Associates) and the alleged unlawful retention of the
19 actively managed Emerging Markets Equity Fund (“EM Fund”). Doc. 1 ¶¶ 111–121
20 (Counts II–III). In order to pursue these claims, Class Counsel investigated and
21 analyzed the administrative services and compensation paid to the Plan’s former
22 recordkeeper; the financial relationship between the recordkeeper and the Plan’s
23 investment advice provider (Financial Engines); and the Plan’s investments
24 throughout the class period. Jerome J. Schlichter Decl. ¶ 27.

25 II. The claims in the case.

26 Plaintiffs alleged that Defendants violated 29 U.S.C. §§ 1104 and 1106 by
27 unlawfully paying Northrop for services provided to the Plan (Counts I, IV, V),
28 allowing unreasonable recordkeeping compensation to be paid to the Plan’s former

1 recordkeeper (Count II), and retaining the actively managed EM Fund despite the
2 fund's history of underperformance (Count III). Doc. 132 ¶¶ 105–134. Plaintiffs
3 alleged that Defendants violated § 1106(a) by allowing Hewitt and the EM Fund's
4 active managers to receive unreasonable compensation. *Id.* ¶¶ 135–141 (Count VI).
5 Plaintiffs further alleged that Northrop failed to monitor the Plan fiduciaries. *Id.*
6 ¶¶ 142–148 (Count VII). Finally, Plaintiffs sought other remedies against Northrop
7 under §1132(a)(3) related to its alleged unlawful receipt of Plan assets related to
8 services Northrop employees provided to the Plan. *Id.* ¶¶ 149–153 (Count VIII).

9 **III. The complex procedural history prior to trial.**

10 Plaintiffs filed their complaint on September 9, 2016. Doc. 1 ¶ 101. On January
11 30, 2017, the Court granted in part and denied in part Defendants' motion to
12 dismiss the complaint, with leave to amend. Doc. 68. Plaintiffs filed an amended
13 complaint on February 13, 2017. Doc. 70. On February 27, 2017, Northrop, the
14 Northrop Committees, and the individual defendants answered that complaint. Doc.
15 75. On May 15, 2017, Plaintiffs moved for class certification. Doc. 83. Over
16 Defendants' vigorous opposition, the Court granted class certification. Doc. 130.

17 On November 3, 2017, Plaintiffs filed a second amended complaint adding
18 additional individuals who served on the Plan committees during the class period.
19 Doc. 132. Northrop and those defendants moved to dismiss the second amended
20 complaint, which Class Counsel again opposed. Doc. 141. On February 15, 2018,
21 the Court granted in part and denied in part Defendants' motion. Doc. 146.

22 Following the first dismissal order, Class Counsel diligently pursued discovery.
23 On April 11, 2017, they issued their first set of requests for production. Kurt C.
24 Struckhoff Decl. ¶ 2. They subsequently issued a second set of requests for
25 production on December 18, 2017, and interrogatories on February 15, 2018. *Id.*
26 ¶¶ 3–4. In addition, they subpoenaed three third-party service providers for
27 documents. *Id.* ¶ 5. Given the relationship between the parties and claims in this
28 case and *Grabek*, Class Counsel successfully intervened in *Grabek* to modify the

1 protective order in order to use documents that were produced in that action.
2 *Grabek*, Doc. 802. Throughout discovery, Class Counsel took lengthy depositions
3 of eight fact witnesses and three expert witnesses. Struckhoff Decl. ¶ 8. They also
4 reviewed and analyzed approximately 42,000 documents (over 353,000 pages) that
5 were produced by Defendants and third parties. *Id.* ¶ 6.²

6 Apart from obtaining discovery from Defendants, Class Counsel responded to
7 discovery propounded to the Plaintiffs. They responded to Defendants' document
8 requests and interrogatories, and supplemented those responses as necessary. *Id.*
9 ¶ 7. Class Counsel prepared and defended each of the six Class representatives at
10 their depositions, as well as their three experts, making a total of 20 depositions in
11 the case. *Id.* ¶ 9; Docs. 167-03, 167-04, 168-113 (expert depositions). Further, Class
12 Counsel responded in detail to Defendants' requests for admission propounded just
13 prior to the close of discovery. Struckhoff Decl. ¶ 10.

14 On February 1, 2019, Defendants moved for partial summary judgment and *in*
15 *limine* to exclude the testimony of two of Plaintiffs' expert witnesses, and later filed
16 evidentiary objections to Plaintiffs' other expert. Docs. 167, 168, 196. The record
17 on summary judgment was extensive. Doc. 264 at 18, n.7. Defendants' motion
18 included 119 exhibits and two declarations. Doc. 168-5 (110 exs.), Doc. 199-2 (9
19 exs.); Docs. 168-3, 168-4 (declarations). Class Counsel opposed this motion filing a
20 lengthy memorandum with an additional 82 exhibits. Doc. 187-1. The parties'
21 combined Statement of Facts was 266 pages covering 324 paragraphs of factual
22 statements and responses. Doc. 201.

23 On August 14, 2019, the Court granted in part and denied in part Defendants'
24 motion for partial summary judgment and granted Defendants' evidentiary
25 objections to preclude one of Plaintiffs' experts from offering certain opinions at
26 trial. Doc. 264. The Court granted summary judgment on Plaintiffs' unreasonable
27

28 ² This is a conservative estimate because over 16,600 documents were produced
in native format, such as excel, without a page count. *Id.* ¶ 6.

1 recordkeeping fee claim (Count II), their duty to monitor claim (Count VII), and
2 their prohibited transaction claim related to the compensation received by the Plan’s
3 recordkeeper (Hewitt) and the active managers of the EM Fund. *Id.* at 20–24. The
4 Court denied summary judgment on Plaintiffs’ claim that Defendants imprudently
5 retained the EM Fund. *Id.* at 14–19. Since Defendants did not move for summary
6 judgment on Plaintiffs’ unlawful reimbursement claim (Count I), this claim and
7 Plaintiffs’ EM Fund claim would proceed to trial.

8 **IV. Mediations.**

9 The parties mediated their claims in two separate mediations, on March 5, 2019
10 and October 2, 2019 with mediator Margaret A. Levy. Doc. 306. Each of those in-
11 person mediations was unsuccessful. However, leading up to the start of trial, the
12 parties continued settlement discussions through the assistance of the mediator.

13 **V. Trial.**

14 In preparation for trial, Defendants again moved *in limine* to exclude Plaintiffs’
15 experts on the remaining claims, which Class Counsel opposed. Docs. 266, 267.
16 Plaintiffs moved to exclude the testimony of one of Defendants’ experts. Doc. 268.
17 The Court denied those motions. Docs. 308–310. Defendants also moved to exclude
18 certain fact witness testimony, Doc. 271, which was later granted, Doc. 307.

19 The parties filed massive proposed findings of fact and conclusions of law, joint
20 exhibit lists, joint witness lists, and stipulated facts. Docs. 269, 270, 284-1, 289-1,
21 311. In total, the parties designated 1135 exhibits for potential use at trial, and over
22 20 witnesses they intended to call, including 4 experts. Doc. 304 (ex. list); Doc. 269
23 (witness list). Written direct testimony was submitted for four witnesses, along with
24 evidentiary objections to that testimony. Docs. 279–282, 291–294.

25 Trial was set to commence on October 15, 2019 at 8:30 a.m. Doc. 311.
26 Fourteen minutes prior to trial the parties reached a settlement in principle. Doc.
27 315. However, the terms of the settlement were not finalized at that time. Extensive
28 negotiations continued for four months until January 13, 2020. Doc. 321-1.

1 **ARGUMENT**

2 Class Counsel is entitled to an award of reasonable attorney fees and litigation
3 expenses from the common fund they created for the benefit of the Class. Fed. R.
4 Civ. P. 23(h); *Staton v. Boeing Co.*, 327 F.3d 938, 967 (9th Cir. 2003) (*citing*
5 *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The purpose of the “common
6 fund” doctrine is to avoid unjust enrichment, requiring “those who benefit from the
7 creation of the fund [to] share the wealth with the lawyers whose skill and effort
8 helped create it.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
9 1300 (9th Cir. 1994) (“*WPPSS*”). The district court has discretion over the amount
10 to award. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002). A
11 district court “abuses its discretion when it uses a mechanical or formulaic approach
12 that results in an unreasonable reward.” *Powers v. Eichen*, 229 F.3d 1249, 1256
13 (9th Cir. 2000).

14 The district court may use the percentage-of-the-fund method to determine a
15 reasonable attorney fee. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th
16 Cir. 2016); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir.
17 2015). Although the Ninth Circuit has established 25% as the benchmark attorney
18 fee in common fund cases, that benchmark is “a starting point for analysis” because
19 it “may be inappropriate in some cases.” *Vizcaino*, 290 F.3d at 1048. Factors that
20 inform the district court whether to adjust the benchmark percentage include: “(1)
21 the result obtained for the class; (2) the effort expended by counsel; (3) counsel’s
22 experience; (4) the skill of counsel; (5) the complexity of the issues; (6) the risks of
23 non-payment assumed by counsel; (7) the reaction of the class; and (8) comparison
24 with counsel’s lodestar.” *Grabek*, 2017 WL 9614818, at *2 (*citing In re Quintus*
25 *Sec. Litig.*, 148 F. Supp. 2d 967, 973–74 (N.D. Cal. 2001), and others). A one-third
26 percentage has been applied to the gross settlement amount to calculate the fee
27 award. *Grabek*, 2017 WL 9614818, at *6; *Emmons v. Quest Diagnostics Clinical*
28 *Labs., Inc.*, No. 13-474-DAD, 2017 WL 749018, at *8 (C.D. Cal. Feb. 24, 2017).

1 **I. The Court should award Class Counsel a one-third attorney fee, which**
2 **is substantially less than the lodestar amount.**

3 The relevant considerations to determine an attorney fee award overwhelmingly
4 justify an award of one third of the common fund in this case. Class Counsel
5 achieved an exceptional result for the Class. Their unparalleled expertise and
6 experience in not only handling complex ERISA fiduciary breach actions but being
7 the first to ever bring such actions greatly benefitted Class members. In 18 other
8 ERISA class action settlements, including *Grabek*, federal courts across the country
9 awarded undersigned Class Counsel a one-third fee for their efforts. *See infra*
10 Argument, §I(B). The same should occur here.

11 **A. The relevant factors support a one-third fee award.**

12 **1. Class Counsel obtained an exceptional result for the Class.**

13 The exceptional result obtained for the class is a relevant factor in determining
14 the reasonableness of an attorney fee award. *Vizcaino*, 290 F.3d at 1048. It is a
15 “significant factor”. *In re Heritage Bond Litig.*, No. 02-ML-1475-DT, 2005 WL
16 1594403, at *19 (C.D. Cal. June 10, 2005)); *Deaver v. Compass Bank*, No. 13-222,
17 2015 WL 8526982, at *11 (N.D. Cal. Dec. 11, 2015) (“the most critical factor”).

18 Under Plaintiffs’ theories of liability, the *maximum* exposure to Defendants on
19 the two triable claims was \$42.2 million. Doc. 284-1 at 65 (¶¶ 344–345). The
20 \$12.375 million settlement is 29% of Plaintiffs’ claimed damages at trial. But
21 Defendants vigorously disputed that they had any exposure.

22 Defendants argued they were not subject to *any* liability for the alleged
23 imprudent retention of the EM Fund. Doc. 289-1 at 59–67 (¶¶ 173–194). Even if
24 Plaintiffs prevailed on their unlawful reimbursement claim, Defendants claimed
25 their exposure was far less than what Plaintiffs contended. Of the \$6.18 million
26 paid to Northrop during the class period, Defendants first claimed they were
27 entitled to an offset for reasonable compensation. *Id.* at 69 (¶ 200). They then
28 claimed a second offset of \$4.2 million paid to the Plan as a result of a settlement

1 Northrop reached with the Department of Labor. *Id.* at 69 (¶ 201). Setting aside any
2 prejudgment interest, if Plaintiffs prevailed on their unlawful reimbursement claim
3 and Defendants obtained their offsets, this claim would be valued at less than \$2
4 million. The settlement therefore is over 600% greater than what Defendants argued
5 was their maximum exposure (again before applying any prejudgment interest).

6 The settlement fund, as a percentage of recovery, is greater than recoveries in
7 other cases where attorney fees of one third of the common fund were awarded. *See*
8 *Emmons*, 2017 WL 749018, at *5 (\$2.35 million settlement; 27.6% of claimed
9 damages of \$8.5 million); *Cheng Jiangchen v. Rentech, Inc.*, No. 17-1490-GW,
10 2019 WL 5173771, at *7 (C.D. Cal. Oct. 10, 2019) (\$2.05 million settlement; 10%
11 of maximum damages of \$20 million); *Deaver*, 2015 WL 8526982, at *7 (\$500,000
12 settlement; 14.2% of \$3,512,000 in “potential liability”); *see also In re Med. X-Ray*
13 *Film Antitrust Litig.*, No. 93-5904, 1998 WL 661515, at *7–8 (E.D.N.Y. Aug. 7,
14 1998) (settlement of 17% of claimed damages); *In re Crazy Eddie Sec. Litig.*, 824
15 F.Supp. 320, 326 (E.D. N.Y. 1993) (settlement of 10% of claimed damages); *In re*
16 *Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001)
17 (settlement of 15% of damages); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d
18 484, 489–490 (E.D. Pa. 2003) (settlement of 15% of the maximum recovery).³

19 **2. Class Counsel expended enormous effort on behalf of the Class.**

20 As the case history demonstrates, this litigation was hard fought at every stage.
21 *See supra*. Class Counsel survived two motions to dismiss, a vigorous opposition to
22 class certification, a motion for partial summary judgment, and multiple *Daubert*
23 challenges to their expert witnesses. They devoted tremendous time and effort to
24 fully prepare for trial. Before filing this case, Class Counsel also devoted significant
25 effort to investigate the continued unlawful payments to Northrop and other
26 potential fiduciary breaches. In total, after more than three years of litigation, Class
27

28 ³ The out-of-circuit decisions were cited with approval in *Grabek*. 2017 WL 9614818, at *2.

1 Counsel invested over 8,600 hours in this case. Sheri O’Gorman Decl. ¶ 4.

2 Class Counsel’s perseverance and zealous representation of the Class is
3 demonstrated by the filing of this action itself. The Court limited the damages
4 discovery period to May 11, 2009 in *Grabek*, Doc. 652 at 3, 7–8, but Plaintiffs did
5 not just accept that ruling. Instead, they filed this second action to recover the
6 continued unlawful payments to Northrop that occurred after that date, and added
7 additional claims that were not part of the first case. Doc. 1. For over thirteen years,
8 Class Counsel has shown their unwavering commitment to Northrop Plan
9 participants and beneficiaries.

10 Class Counsel’s efforts are consistent with, and in fact, exceed efforts expended
11 by other class counsel that were awarded a one-third fee of the settlement fund.
12 *Boyd v. Bank of Am. Corp.*, No. 13-561-DOC, 2014 WL 6473804, at *10 (C.D. Cal.
13 Nov. 18, 2014) (counsel spent over 3,000 hours litigation the case); *Fernandez v.*
14 *Victoria Secret Stores, LLC*, No. 06-04149-MMM, 2008 WL 8150856, at *16 (C.D.
15 Cal. July 21, 2008) (counsel invested thousands of hours in the case); *Garcia v.*
16 *Gordan Trucking, Inc.*, 2012 WL 5364575, at *8 (E.D. Cal. Oct. 31, 2012) (counsel
17 spent 3,700 hours on the matter); *Cullen v. Whitman Med. Corp.*, 197 F.R.D. 136,
18 150 (E.D. Pa. 2000) (counsel spent 3,900 hours on the litigation over two years of
19 litigation); *Corel*, 293 F. Supp. 2d at 496–97 (counsel spent 6,800 hours spent
20 litigating the case).

21 **3. Class Counsel displayed significant skill and experience.**

22 The experience of Class Counsel is relevant in determining the appropriate
23 attorney fee award. *Grabek*, 2017 WL 9614818, at *3–4; *Heritage Bond*, 2005 WL
24 1594403, at *20. A fee award of one third of the settlement fund is justified where
25 class counsel “has significant experience in the particular type of litigation at
26 issue[.]” *Deaver*, 2015 WL 8526982, at *11 (citation omitted. Moreover, a one-
27 third fee is appropriate where “[c]ounsel litigated effectively, and their experience
28 was essential for obtaining the result.” *Boyd*, 2014 WL 6473804, at *10.

1 This Court previously found Class Counsel to be “highly experienced in
2 representing plaintiffs in class action litigation, particularly in ERISA actions.”
3 *Grabek*, 2017 WL 9614818, at *4. District courts throughout the country agree.
4 Schlichter, Bogard & Denton is the “preeminent firm” in excessive fee litigation
5 having “achieved unparalleled results on behalf of its clients” in the face of
6 “enormous risks”. *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *3–4
7 (C.D. Ill Oct. 15, 2013). The firm is the “pioneer and the leader in the field of
8 retirement plan litigation.” *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL
9 4398475, at *1 (S.D. Ill. July 17, 2015). They are “experts” in the field. *Krueger v.*
10 *Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13,
11 2015); *Tussey v. ABB, Inc.*, No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov.
12 2, 2012) (“Plaintiffs’ attorneys are clearly experts in ERISA litigation.”). They are
13 attorneys of the “highest caliber”. *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020
14 WL 434473, at *4 (D. Md. Jan. 28, 2020). Indeed, their efforts have had a
15 “humongous” impact on 401(k) fees. Linda Stern, *Stern Advice: How 401(k)*
16 *Lawsuits Are Bolstering Your Retirement Plan*, REUTERS (Nov. 5, 2013) [*Grabek*,
17 Doc. 783-10].

18 Class Counsel successfully tried the first full trial of a 401(k) excessive fee case
19 in the United States, and successfully handled two appeals and multiple
20 remandments before obtaining a \$55 million settlement after over 12 years. *Tussey*
21 *v. ABB, Inc.*, No. 06-4305, 2019 WL 3859763, at *1–2 (W.D. Mo. Aug. 16, 2019).
22 Class Counsel also successfully handled the first and only 401(k) excessive fee case
23 in the United States Supreme Court which unanimously held that an ERISA
24 fiduciary has a continuing duty to monitor plan investments and remove imprudent
25 ones. *Tibble v. Edison Int’l*, 135 S.Ct. 1823, 1828–29 (2015). Following remand
26 from the Supreme Court and a unanimous *en banc* Ninth Circuit decision, resulting
27 in remand back to this District, Class Counsel obtained a \$13.2 million judgment on
28 behalf of the Edison plan participants. *Tibble v. Edison Int’l*, No. 07-5359, 2017

1 WL 3523737 (C.D. Cal. Aug. 16, 2017); *Tibble*, Doc. 602 at 1 (Oct. 25, 2018).

2 District courts across the country continue to recognize the reputation and
3 extraordinary skill and determination of Schlichter, Bogard & Denton. *See infra*.
4 “Class Counsel’s efforts have not only resulted in a significant monetary award to
5 the class but have also brought improvement to the manner in which the Plans are
6 operated”. *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *3
7 (M.D. N.C. Sept. 29, 2016). Obtaining a favorable result in a similar ERISA
8 fiduciary breach action required Class Counsel to display extraordinary efforts
9 because the “litigation entails complicated ERISA claims”. *Martin v. Caterpillar,*
10 *Inc.*, No. 07-1009, 2010 WL 3210448, at *2 (C.D. Ill. Aug. 12, 2010). The firm has
11 been regarded as “an exceptional example of a private attorney general risking large
12 sums of money and investing many thousands of hours for the benefit of employees
13 and retirees”. *Will v. Gen. Dynamics Corp.*, No. 06-698-GPM, 2010 WL 4818174,
14 at *2 (S.D. Ill. Nov. 22, 2010). Their diligence and perseverance “reflect the finest
15 attributes of a private attorney general”. *Beesley v. Int’l Paper Co.*, No. 06-703,
16 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014).

17 As the “leader in 401(k) litigation”, Class Counsel’s “fee litigation and the
18 Department of Labor’s fee disclosure regulations” have saved American workers
19 and retirees approximately \$2.8 billion. *Nolte*, 2013 WL 12242015, at *2 (internal
20 citations omitted). They have “significantly improved 401(k) plans across the
21 country” by bringing these cases. *Spano v. Boeing Co.*, No. 06-743, 2016 WL
22 3791123, at *3 (S.D. Ill. Mar. 31, 2016). Schlichter, Bogard & Denton also has
23 made a “national contribution...whose litigation clarified ERISA standards in the
24 context of investment fees” and “educated plan administrators, the Department of
25 Labor, the courts and retirement plan participants[.]” *Tussey v. ABB, Inc.*, No. 06-
26 4305, 2015 WL 8485265, at *2 (W.D. Mo. Dec. 9, 2015).

27 Karen Ferguson, Director of the non-profit Pension Rights Center, based on her
28 4 decades of experience advocating for retirees’ interests and monitoring of 401(k)

1 plan ERISA fiduciary breach litigation over the past 11 years, has praised the
2 “importance of Mr. Schlichter and his firm’s work, acting as a private attorney
3 general in ensuring that participants are protected under ERISA”. *Grabek*, Doc.
4 783-3 ¶ 13. Thomas Theado, an experienced litigator with over 40 years of
5 experience in class actions and other complex civil litigation, recognized that “[n]o
6 other law firm in the United States has the depth and experience in excessive fee
7 cases as Schlichter, Bogard & Denton.” *Grabek*, Doc. 783-4 ¶ 15.

8 The quality of Class Counsel’s work is shown by their success litigating this
9 case. Defendants were represented by competent attorneys with experience
10 handling complex matters. *See Heritage Bond*, 2005 WL 1594403, at *20 (“quality
11 of opposing counsel is important in evaluating the quality of Plaintiffs’ counsel’s
12 work”). Despite the quality of that representation, Class Counsel was repeatedly
13 successful in this case. They defeated Defendants’ motions to dismiss, obtained
14 class certification over opposition, survived summary judgment on their EM Fund
15 claim, and defeated multiple *Daubert* motions directed to Plaintiffs’ experts. *E.g.*,
16 Docs. 68, 146; Doc. 130; Doc. 264; Docs. 308, 310.

17 Class Counsel also efficiently litigated this case. Prior to the filing of this
18 lawsuit, they had specialized knowledge of Northrop’s alleged unlawful
19 reimbursement practices based on their efforts in *Grabek*. This expertise placed
20 Class Counsel in a unique and well-suited position to litigate the common claim.
21 They did not need to spend unnecessary time or expense to understand the process
22 by which Northrop internally administered the Plan and sought reimbursement for
23 direct expenses incurred in providing these services. They relied on their
24 institutional knowledge of detailed regulations and DOL advisory opinions that
25 governed Northrop’s specific conduct at issue. The efficiency by which they
26 litigated this case is shown by the number of hours they devoted to this case in
27 comparison to *Grabek*. Compare O’Gorman Decl. ¶ 4 (over 8,600 hours) with
28 *Grabek*, 2017 WL 9614818, at *3 (over 26,000 hours). Yet, in each case, Class

1 Counsel’s requested fee is much less than even the lodestar amount, and much less
2 including a multiplier for risk. *See infra* Argument, §I(A)(7); *Grabek*, 2017 WL
3 9614818, at *5.

4 **4. The issues in the case were novel and complex.**

5 “Courts have recognized that the novelty, difficulty and complexity of the issues
6 involved are significant factors in determining a fee award.” *Heritage Bond*, 2005
7 WL 1594403, at *20 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d
8 714, 718 (5th Cir. 1974)). As this Court recognized, “ERISA 401(k) fiduciary
9 breach class actions involve complex questions of law and have not been widely
10 litigated to this point.” *Grabek*, 2017 WL 9614818, at *4. “[G]iven the transient
11 nature of standing ERISA law,” these cases “require[] highly skilled counsel who
12 could understand the complexity of the law and adapt case law accordingly.”
13 *Downey Surgical Clinic, Inc. v. OptumInsight, Inc.*, No. 09-5457-PSG, 2016 WL
14 5938722, at *10 (C.D. Cal. May 16, 2016).

15 This case involved complex claims of prohibited transactions under 29 U.S.C.
16 § 1106 for which there are no reported cases directly on point. It thus required Class
17 Counsel to rely on detailed and complex regulations (29 C.F.R. §§ 2550.408b-2,
18 2550.408c-2) and DOL advisory opinions. *See* Doc. 284-1 at 42–53 (¶¶ 239–291).
19 The case also involved an imprudent investment claim related to Defendants’
20 retention of the actively managed EM Fund. This claim required a fact-intensive
21 inquiry focusing on the methods Defendants employed to investigate the merits and
22 structure of the EM Fund. *See* Doc. 264 at 14–19. The parties further disputed
23 controlling ERISA authority, such as which party had the burden of proof to
24 establish the objective imprudence of Defendants’ conduct. *See* Doc. 187 at 17–19.
25 The summary judgment record and the parties’ proposed findings of fact and
26 conclusions of law confirm the complexity of the factual and legal issues involved.
27 *See* Doc. 284-1 (355 paragraphs); Doc. 289-1 (214 paragraphs).

1 **5. Class Counsel faced enormous risk of non-payment.**

2 The risks assumed by Class Counsel, “particularly the risk of non-payment or
3 reimbursement of expenses, is a factor in determining counsel’s proper fee award.”
4 *Grabek*, 2017 WL 9614818, at *4. These risks must be considered. *Vizcaino*, 290
5 F.3d at 1048. “Contingent fees that may far exceed the market value of the services
6 if rendered on a non-contingent basis are accepted in the legal profession as a
7 legitimate way of assuring competent representation for plaintiffs who could not
8 afford to pay on an hourly basis regardless whether they win or lose.” *WPPSS*, 19
9 F.3d at 1299. The risk of non-payment after years of hard-fought litigation “weighs
10 substantially in favor” of a one-third fee. *Campbell v. Best Buy Stores, L.P.*, No. 12-
11 7794-JAK, 2016 WL 6662719, at *8 (C.D. Cal. Apr. 5, 2016); *Barbosa v. Cargill*
12 *Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“where recovery is
13 uncertain”, a one-third fee of the common fund “has been found to be appropriate”).

14 Class Counsel accepted this case on a contingency fee basis with no guarantee
15 that they would be compensated for any of the thousands of hours they invested in
16 this case, and with the history of the vigorous more than a decade long battle of
17 other 401(k) excessive fee cases. Schlichter Decl. ¶¶ 22–23, 32, 34–35. The firm
18 has borne and continues to carry substantial litigation costs with no guarantee of
19 repayment. Class Counsel “undertook considerable financial risks” in pursuing this
20 matter and should be compensated for assuming these risks through their requested
21 fee. *See Garcia*, 2012 WL 5364575 at *10 (one-third fee awarded where “[c]lass
22 [c]ounsel undertook considerable financial risks in this litigation by accepting this
23 case on a contingency basis,” and “[t]here was no guarantee they would recoup
24 their fees or the substantial costs involved”). Without question, the risk of non-
25 payment to Class Counsel was “great” as shown by the fact that the settlement did
26 “not occur simply upon the filing of the lawsuit” but rather only after “extensive
27 litigation” for years and only minutes before the start of trial. *Cf. Grabek*, 2017 WL
28 9614818, at *4.

1 Any recovery in this case was far from certain, which substantially contributed
2 to the financial risks assumed by Class Counsel. Defendants prevailed in part on
3 their motion to dismiss and their motion for partial summary judgment. Doc. 146 at
4 12 (dismissing Counts I–IV against Northrop); Doc. 264 at 25 (dismissing duty of
5 loyalty claims and Counts II, VI, VII). Defendants asserted substantial defenses to
6 each of Plaintiffs’ triable claims. *See* Doc. 311 at 16–18; Doc. 289-1 (proposed
7 findings of fact and conclusions of law); Doc. 301 (trial brief). Even though
8 Plaintiffs successfully proceeded to trial on two claims, obtaining a favorable
9 judgment was uncertain because “trials of class actions are inherently risky and
10 unpredictable propositions.” *Cervantez v. Celestica Corp.*, No. 07-729-VAP, 2010
11 WL 2712267, at *3 (C.D. Cal. July 6, 2010).

12 It was very possible that Class Counsel would not receive any compensation for
13 the work they performed. Several actions handled by Class Counsel were dismissed
14 or summary judgment granted in whole or part. Schlichter Decl. ¶¶ 25–26. As the
15 Ninth Circuit has recognized, without being fully compensated for “the risks of
16 receiving nothing,” “very few lawyers could take on the representation of a class
17 client given the investment of substantial time, effort, and money.” *WPPSS*, 19 F.3d
18 at 1300 (internal quotation marks and citations omitted). The simple fact here is that
19 *no one* took on the risk in *any* 401(k) fiduciary breach case in the United States
20 before Class Counsel began bringing these cases. Schlichter Decl. ¶ 18; *Grabek*,
21 2017 WL 9614818, at *4 (*citing* Schlichter Decl. [Doc. 783-2]); *Spano*, 2016 WL
22 3791123, at *3 (“This type of litigation over 401(k) fees did not exist until
23 September 2006, when Schlichter, Bogard & Denton began holding employers
24 responsible for alleged fiduciary breaches.”).

25 **6. So far, no Class member has objected to the fee request.**

26 On or about April 6, 2020, the settlement administrator sent notices to Class
27 members of the settlement and Class Counsel’s request for attorney fees and
28 reimbursement of expenses. Struckhoff Decl. ¶ 11. The settlement agreement and

1 Plaintiffs’ memorandum in support of preliminary approval have been published on
2 the settlement website, www.2019northrop401ksettlement.com, since early
3 February 2020. O’Gorman Decl. ¶ 6. These documents disclosed Class Counsel’s
4 intention to seek a one-third fee (\$4,125,000) and reimbursement of no more than
5 \$450,000 in expenses. Doc. 321-1 § 7.1; Doc. 322 at 12. To date, Class Counsel has
6 not received any objections from Class members. Struckhoff Decl. ¶ 12. In
7 addition, the record in *Grabek* is instructive. From a class size of approximately
8 210,000 class members, only four class members filed objections, and just two of
9 them objected to Class Counsel’s fee request. *Grabek*, 2017 WL 9614818, at *5.

10 **7. A lodestar comparison confirms the reasonableness of Class**
11 **Counsel’s attorney fee request.**

12 A lodestar calculation “measures the lawyers’ investment of time in the
13 litigation” and “provides a check on the reasonableness of the percentage award.”
14 *Vizcaino*, 290 F.3d at 1050. Under the lodestar method, the Court “must start by
15 determining how many hours were reasonably expended on the litigation, and then
16 multiply those hours by the prevailing local rate for an attorney of the skill required
17 to perform the litigation.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th
18 Cir. 2008). Fair and reasonable compensation to class counsel “requires charging
19 current rates for all work done during the litigation, or by using historical rates
20 enhanced by an interest factor.” *WPPSS*, 19 F.3d at 1305. Using historical rates
21 “inadequately compensate[s] [a] firm for the delay in receiving its fees.” *Id.* As
22 such, “[a]ttorneys in common fund cases must be compensated for any delay in
23 payment.” *Fischel v. Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1010 (9th
24 Cir. 2002). Failing to use the prevailing rates as of the date of the fee request or
25 otherwise update the lodestar calculation for the delay in payment is reversible
26 error. *Stetson v. Grissom*, 821 F.3d 1157, 1166 (9th Cir. 2016); *Fischel*, 307 F.3d at
27 1010; *Bouman v. Block*, 940 F.2d 1211, 1235 (9th Cir. 1991) (affirming use of
28 current hourly rate “to compensate for the delay in receiving payment”) (citation

1 omitted). Class Counsel need only submit documentation appropriate to meet the
2 burden establishing an entitlement to an award, not to satisfy “green-eyeshade
3 accountants.” *Fox v. Vice*, 131 S.Ct. 2205, 2216 (2011).

4 Complex ERISA cases, such as this, “involve a national standard, and attorneys
5 practicing ERISA law in the Ninth Circuit tend to practice in different districts.”
6 *Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d 1181, 1191 (S.D. Cal. 2003).
7 Class Counsel has brought actions across the country defended by national firms
8 with ERISA experience. Schlichter Decl. ¶¶ 19, 35. Few plaintiff’s firms have the
9 necessary expertise and are willing to take the risk and devote the resources
10 necessary to litigate complex ERISA claims. Schlichter Decl. ¶¶ 24, 31, 36;
11 *Grabek*, Doc. 783-4 ¶ 4. As a result, the relevant hourly rate for Class Counsel’s
12 work is the “nationwide market rate”. *Kelly*, 2020 WL 434473, at *6; *Clark v.*
13 *Duke*, No. 16-1044, 2019 WL 2579201, at *2 (M.D. N.C. June 24, 2019); *Kruger*,
14 2016 WL 6769066, at *4 (collecting cases); *Tussey*, 2015 WL 8485265, at *7.

15 Class Counsel has spent 7,497 attorney hours and 1,118.40 non-attorney hours
16 litigating this case. O’Gorman Decl. ¶ 4. The time and labor expended in this case
17 is consistent with other ERISA fiduciary breach class actions handled by Class
18 Counsel. *E.g.*, *Clark*, 2019 WL 2579201, at *3; *Sims v. BB&T Corp.*, No. 15-1705,
19 2019 WL 1993519, at *2 (M.D. N.C. May 6, 2019); *Bell v. Pension Comm. Of ATH*
20 *Holding Co., LLC*, No. 15-2062, 2019 WL 4193376, at *5 (S.D. Ind. Sept. 4, 2019);
21 *Krueger*, 2015 WL 4246879, at *2.

22 ERISA is a field in which top attorneys command top rates, as heightened skill
23 and labor are “required to adequately address complex issues of ERISA law.”
24 *Norris v. Mazzola*, No. 15-4962, 2017 WL 6493091, at *13 (N.D. Cal. Dec. 19,
25 2017) (*quoting Downey*, 2016 WL 5938722, at *10). Class Counsel is the
26 preeminent firm in this field with specialized experience in ERISA fiduciary breach
27 litigation. Their rates therefore reflect their reputation and expertise in this area.

28 As recently as January 28, 2020, Class Counsel’s reasonable hourly rates were

1 approved in a similar ERISA class action. *Kelly*, 2020 WL 434473, at *6. The
2 approved hourly rates were as follows: for attorneys with at least 25 years of
3 experience, \$1,060 per hour; for attorneys with 15–24 years of experience, \$900 per
4 hour; for attorneys with 5–14 years of experience, \$650 per hour; for attorneys with
5 2–4 years of experience, \$490 per hour; and for paralegals and law clerks, \$330 per
6 hour. *Id.* These prevailing rates have been approved for Class Counsel by other
7 district courts in similar ERISA class action litigation. *Bell*, 2019 WL 4193376, at
8 *5; *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 at 3 (M.D. Tenn. Oct. 22,
9 2019); *Clark*, 2019 WL 2579201, at *4; *Sims*, 2019 WL 1993519, at *4; *Ramsey v.*
10 *Philips N.A.*, No. 18-1099, Doc. 27 at 8 (S.D. Ill. Oct. 15, 2018).

11 These rates have been independently verified by a recognized national expert in
12 attorney fee litigation who practices in this District, and who opined that Class
13 Counsel’s requested rates were reasonable based on rates charged by national
14 attorneys of equivalent experience, skill, and expertise in complex class actions.
15 *Ramsey*, Doc. 27 at 9 (*citing* Sanford Rosen Decl. [Doc. 21-3 ¶ 52]). “In light of the
16 close similarities between the fiduciary breach claims in these cases and this one,
17 Class Counsel being the same, and the recency of the decisions,” the same rates are
18 appropriate. *Kelly*, 2020 WL 434473, at *7; *Clark*, 2019 WL 2579201, at *4.

19 Using the current approved rates for Class Counsel, the lodestar is \$6,038,535.
20 Struckhoff Decl. ¶ 17. This amount is significantly more—almost 50% more—than
21 Class Counsel’s attorney fee request of \$4,125,000. If Class Counsel requested their
22 lodestar fees, their “fee request under that method would have been presumptively
23 reasonable.” *Grabek*, 2017 WL 9614818, at *6 (*citing* *Fischel*, 307 F.3d at 1007).
24 And under the percentage-of-the-fund method, district courts have awarded a one-
25 third fee “when counsel’s lodestar was *less* than the fee award.” *Id.* (*citing* cases).

26 The reasonableness of Class Counsel’s fee request is further shown when
27 applying rates previously approved over *seven* years ago. In *Grabek*, this Court
28 found that a blended rate for attorney and paralegal time of \$514.60 per hour

1 approved in *Tussey v. ABB, Inc.*, 746 F.3d 327, 340–41 (8th Cir. 2014) was
2 reasonable. *Grabek*, 2017 WL 9614818, at *5.⁴ This was because much higher rates
3 were approved for Class Counsel since *Tussey. Id.* at *5 & n.2.⁵ Even applying the
4 blended rate from years ago, the lodestar is \$4,433,484, also much more than Class
5 Counsel’s attorney fee request. Struckhoff Decl. ¶ 18.

6 In determining a reasonable attorney fee in class action common fund cases, the
7 lodestar figure is routinely enhanced by a multiplier to compensate class counsel for
8 the risk of non-payment by litigating the case on a contingency basis. *WPPSS*, 19
9 F.3d at 1299–1300 (“It is an established practice in the private legal market to
10 reward attorneys for taking the risk of non-payment by paying them a premium
11 over their normal hourly rates for winning contingency cases”) (citation omitted);
12 *Vizcaino*, 290 F.3d at 1051 (“courts have routinely enhanced the lodestar to reflect
13 the risk of non-payment in common fund cases”).

14 The Ninth Circuit has approved a lodestar multiplier of up to 6.85. *Steiner v.*
15 *Am. Broadcasting Co., Inc.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming
16 multiplier of 6.85 and citing cases with comparable or higher multipliers); *Vizcaino*,
17 290 F.3d at 1051–52 & Appendix (affirming multiplier of 3.65 and reporting
18 multipliers of up to 19.6). In other ERISA fiduciary breach actions handled by
19 Class Counsel, a risk multiplier greater than 3 has been approved. *Kruger*, 2016
20 WL 6769066, at *5 (multiplier of 3.69); *Gordan v. Mass. Mut. Life Ins. Co.*, No.
21 13-30184, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (multiplier of 3.66).

22 The factors justifying a risk multiplier to Class Counsel’s lodestar are present
23 here. Like *Grabek*, Class Counsel “expended substantial effort on behalf of the
24 class in an unusually complex and difficult case to prosecute”, and they “assumed
25 great risk of non-payment” by litigating this case on a contingency fee basis.
26 *Grabek*, 2017 WL 9614818, at *6. Because Class Counsel is requesting less than

27 ⁴ The district court approved this rate in 2012. *Tussey*, 2012 WL 5386033, at *4.

28 ⁵ Class Counsel’s requested rates in this case reflect a modest 3% annual increase
from the 2016 approved rates noted in *Grabek. Sims*, 2019 WL 1993519, at *3.

1 their lodestar and much less than including any multiplier at all for risk, Class
 2 Counsel’s fee request for one third of the common fund is eminently reasonable.

3 **B. A one-third fee is supported by fees approved for Class Counsel in**
 4 **other complex ERISA class actions.**

5 In determining a reasonable attorney fee award, courts often consider fee awards
 6 in similar cases. *Vizcaino*, 290 F.3d at 1049–50; *Vasquez v. Coast Valley Roofing,*
 7 *Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (Wanger, J.); *Boyd*, 2014 WL 6473804,
 8 at *10; *Deaver*, 2015 WL 8526982, at *12. An attorney fee of one third of the
 9 settlement fund is routinely found to be reasonable in class actions. “Nationally, the
 10 average percentage of the fund award in class actions is approximately one-third.”
 11 *Multi-Ethnic Immigrant Workers Org. Network v. City of Los Angeles*, No. 07-
 12 3072-AHM, 2009 WL 9100391, at *4 (C.D. Cal. June 24, 2009); *see also Romero*
 13 *v. Producers Dairy Foods, Inc.*, No. 05-484, 2007 WL 3492841, at *4 (E.D. Cal.
 14 Nov. 14, 2007) (“fee awards in class actions average around one-third of the
 15 recovery”) (*quoting* NEWBERG ON CLASS ACTIONS § 14.6 (4th ed. 2007)). “An
 16 award of one third is within the range of percentages which courts have considered
 17 reasonable in other class action lawsuits.” *Boyd*, 2014 WL 6473804, at *10;
 18 *Barbosa*, 297 F.R.D. at 450 (one-third fee commensurate with other class actions).

19 This Court previously awarded Class Counsel a one-third fee from the common
 20 fund. *Grabek*, 2017 WL 9614818, at *2–4. In similar ERISA fiduciary breach
 21 settlements, district courts have consistently awarded Class Counsel a one-third fee.

Case	Fee %
<i>Kelly v. Johns Hopkins Univ.</i> , No. 16-2835, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020)	33.3%
<i>Cassell v. Vanderbilt Univ.</i> , No. 16-2086, Doc. 174 at 2 (¶ 5) (M.D. Tenn. Oct. 22, 2019)	33.3%
<i>Bell v. Pension Comm. Of ATH Holding Co., LLC</i> , No. 15-2062, 2019 WL 4193376, at *3 (S.D. Ind. Sept. 4, 2019)	33.3%
<i>Tussey v. ABB, Inc.</i> , No. 06-4305, 2019 WL 3859763, at *4, *6 (W.D. Mo. Aug. 16, 2019)	33.3%
<i>Clark v. Duke</i> , No. 16-1044, 2019 WL 2579201, at *3 (M.D. N.C. June 24, 2019)	33.3%

Case	Fee %
<i>Sims v. BB&T Corp.</i> , No. 15-1705, 2019 WL 1993519, at *2 (M.D. N.C. May 6, 2019)	33.3%
<i>Ramsey v. Philips N.A.</i> , No. 18-1099, Doc. 27 at 5–6 (S.D. Ill. Oct. 15, 2018)	33.3%
<i>Gordan v. Mass. Mut. Life Ins. Co.</i> , No. 13-30184, 2016 WL 11272044, at *2 (D. Mass. Nov. 3, 2016)	33.3%
<i>Kruger v. Novant Health, Inc.</i> , No. 14-208, 2016 WL 6769066, at *1, *5 (M.D. N.C. Sept. 29, 2016)	33.3%
<i>Spano v. Boeing Co.</i> , No. 06-743, 2016 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016)	33.3%
<i>Abbott v Lockheed Martin Corp.</i> , No. 06-701, 2015 WL 4398475, at *2 (S.D. Ill. July 17, 2015)	33.3%
<i>Krueger v. Ameriprise Fin., Inc.</i> , No. 11-2781, 2015 WL 4246879, at *1, *3 (D. Minn. July 13, 2015)	33.3%
<i>Beesley v. Int’l Paper Co.</i> , No. 06-703, 2014 WL 375432, at *2–3 (S.D. Ill. Jan. 31, 2014)	33.33%
<i>Nolte v. Cigna Corp.</i> , No. 07-2046, 2013 WL 12242015, at *2–3 (C.D. Ill. Oct. 15, 2013)	33.33%
<i>George v. Kraft Foods Global, Inc.</i> , Nos. 08-3899, 07-1713, 2012 WL 13089487, at *2–3 (N.D. Ill. June 26, 2012)	33.33%
<i>Will v. Gen. Dynamics Corp.</i> , No. 06-698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010)	33.33%
<i>Martin v. Caterpillar Inc.</i> , No. 07-1009, 2010 WL 11614985, at *1, 3–4 (C.D. Ill. Sept. 10, 2010)	33.33%

Other district courts within this Circuit have awarded, and the Ninth Circuit has approved, attorney fees of one third of the common fund. *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 379 (9th Cir. 1995) (one-third fee from a \$12 million common fund); *Morris v. Lifescan, Inc.*, 54 F. App’x 663, 664 (9th Cir. 2003) (one-third fee of \$14.8 settlement fund); *Heritage Bond*, 2005 WL 1594403, at *19 (one-third fee from \$27.8 million common fund); *Fernandez*, 2008 WL 8150856, at *16 (34% fee of \$8.5 million common fund); *Boyd*, 2014 WL 6473804, at *9–10 (one-third fee on \$5.8 million common fund); *Cheng*, 2019 WL 5173771, at *7 (one-third fee of \$2 million settlement); *cf. Norris*, 2017 WL 6493091, at *13 (44% fee awarded to experienced attorneys in ERISA litigation).

Class Counsel’s diligent efforts in pursuing their unlawful reimbursement claim against Defendants also added substantially more value to the Class than the recovery in this settlement. Because of their efforts, the Department of Labor began investigating potential violations from Plan payments to Northrop. Doc. 284-1 at 21

1 (¶ 136). In December 2016, Northrop settled with the DOL and paid \$4.2 million to
2 the Plan for payments Northrop received during the class period. Doc. 289-1 at 69
3 (¶ 201). Under the “catalyst theory”, these amounts should be considered in
4 determining an award of attorney fees to Class Counsel. *Barnes v. AT & T Pension*
5 *Benefit Plan-Nonbargained Program*, 963 F.Supp.2d 950, 963 (N.D. Cal. 2013). If
6 \$4.2 million is added to the settlement amount, Class Counsel’s fee request is only
7 25% of the total amount recovered for Plan participants during the class period.

8 **II. The Court should reimburse Class Counsel for litigation expenses.**

9 The Court may award reasonable litigation expenses as authorized by law and
10 the parties’ settlement agreement. Fed. R. Civ. P. 23(h); Doc. 321-1 §§ 2.4, 7.1.
11 “There is no doubt that an attorney who has created a common fund for the benefit
12 of the class is entitled to reimbursement of reasonable litigation expenses from that
13 fund.” *Heritage Bond*, 2005 WL 1594403, at *23 (citation omitted). These
14 expenses should be limited to expenses that are typically charged to fee paying
15 clients. *Emmons*, 2017 WL 749018, at *8. “Expenses such as reimbursement for
16 travel, meals, lodging, photocopying, long-distance telephone calls, computer legal
17 research, postage, courier service, mediation, exhibits, documents scanning, and
18 visual equipment are typically recoverable.” *Grabek*, 2017 WL 9614818, at *6
19 (quoting *Rutti v. Lojack Corp., Inc.*, No. 06-350-DOC, 2012 WL 3151077, at *12
20 (C.D. Cal. July 31, 2012)). Consulting and expert witness fees also are recoverable.
21 *Grabek*, 2017 WL 9614818, at *6 (citation omitted).

22 Class Counsel incurred \$390,587 in litigation expenses. O’Gorman Decl. ¶ 2.
23 These expenses include: (1) \$59,373.61 for depositions; (2) \$195,387.50 for experts
24 and consultants; (3) \$3,003.53 for filing, transcripts, subpoena services, and related
25 costs; (4) \$8,390.00 for mediation and settlement costs; (5) \$24,919.52 for copies,
26 postage, phone, and fax; (6) \$11,029.79 for data development and document
27 organization; (7) \$4,539.78 for research and investigation; (8) \$66,986.07 travel,
28 lodging, and parking; and (9) \$16,957.56 in trial costs. *Id.*

1 Because Class Counsel brought this case without guarantee of reimbursement or
2 recovery, they had a strong incentive to limit costs. And they did so. The
3 complexity and magnitude of this case necessarily required Class Counsel to incur
4 substantial costs. Schlichter Decl. ¶¶ 34–35, 39. The costs and expenses incurred by
5 Class Counsel are the types of costs and expenses that are routinely reimbursed by
6 fee paying clients. *Grabek*, 2017 WL 9614818, at *6. They also are substantially
7 less than expenses reimbursed in similar ERISA fiduciary breach actions, which
8 underscores their reasonableness. *See, e.g., Grabek*, 2017 WL 9614818, at *6 (\$1.2
9 million); *Tussey*, 2019 WL 3859763, at *6 (\$2.3 million); *Spano*, 2016 WL
10 3791123, at *4 (\$1.8 million); *Abbott*, 2015 WL 4398475, at *4 (\$1.6 million);
11 *Beesley*, 2014 WL 375432, at *3 (\$1.6 million); *George*, 2012 WL 13089487, at *4
12 (\$1.5 million); *Kanawi*, 2011 WL 782244, at *3 (\$1.5 million).

13 **III. The Court should approve incentive awards.**

14 The Court may grant incentive awards to class representatives, “both as an
15 inducement to participate in the suit and as compensation for time spent in litigation
16 activities, including depositions.” *Grabek*, 2017 WL 9614818, at *7 (citing *In re*
17 *Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)). These awards are
18 “fairly typical in class actions.” *Online DVD-Rental*, 779 F.3d at 943 (citation
19 omitted). Courts consider the following factors in determining whether to approve
20 an incentive award: “(1) the risk to the class representative in commencing suit,
21 both financial and otherwise; (2) the notoriety and personal difficulties encountered
22 by the class representative; (3) the amount of time and effort spent by the class
23 representative; (4) the duration of the litigation[;] and[] (5) the personal benefit (or
24 lack thereof) enjoyed by the class representative as a result of the litigation.”
25 *Grabek*, 2017 WL 9614818, at *7 (citation omitted). Weighing these factors, an
26 incentive award of \$25,000 to each Class representative is justified.

27 The Class representatives faced substantial risk if Defendants prevailed in this
28 lawsuit and sought to recover their attorney fees and costs from the named plaintiffs

1 under 29 U.S.C. § 1132(g) and Fed. R. Civ. P. 54(d). These costs can be substantial
2 as shown by the costs incurred by Class Counsel. *Cf. Grabek*, 2017 WL 9614818, at
3 *7 n.3. In *Tussey*, the defendants paid their attorneys over \$42 million through trial,
4 and paid one expert and his research firm over \$3.2 million. 2015 WL 8485265, at
5 *3, *6. Defendants’ experts in this case charged up to \$750 per hour, which totaled
6 substantial amounts for their time up to trial. Docs. 170-26, 176-2 183-1.

7 This case has garnered media attention since filing.⁶ Even if there had been no
8 media attention or difficulties encountered by the plaintiffs, that would not preclude
9 incentive awards. *Grabek*, 2017 WL 9614818, at *7 (*citing Razilov v. Nationwide*
10 *Mut. Ins. Co.*, No. 01-1466, 2006 WL 3312024, at *4 (D. Or. Nov. 13, 2006)).

11 Each of the Class representatives have been active participants in this litigation
12 for over three years. They came forward to initiate this action and remained in
13 regular contact with Class Counsel throughout the case. Struckhoff Decl. ¶ 13. Prior
14 to the filing of the lawsuit, they provided Class Counsel with relevant documents to
15 assist them during their investigation. *Id.* ¶ 14. The Class representatives assisted in
16 preparing their declarations in support of class certification, Docs. 83-6 – 83-11,
17 and sat for their depositions, Docs. 121-6 – 121-11. They responded to document
18 requests and interrogatories, and later supplemented their interrogatory responses.
19 Struckhoff Decl. ¶ 7. Mr. Marshall attended one of the mediation sessions in Los
20 Angeles. *Id.* ¶ 15. And each of the Class representatives was present at trial, became
21 fully informed about the terms of the settlement, and agreed to them on behalf of
22 the Class before the Court. *See* Oct. 15, 2019 Tr. at 6:25–9:16.

23 ⁶ *See, e.g.*, John Manganaro, *Northrop Grumman ERISA Suit Sounds Familiar*
24 *Claims*, PLANADVISER, Sept. 16, 2016, [https://www.planadviser.com/northrop-](https://www.planadviser.com/northrop-grumman-erisa-suit-sounds-familiar-claims/)
25 [grumman-erisa-suit-sounds-familiar-claims/](https://www.planadviser.com/northrop-grumman-erisa-suit-sounds-familiar-claims/); Rebecca Moore, *Northrop Excessive*
26 *Fee Case Moves Forward*, PLANSPONSOR, Nov. 6, 2017,
27 [https://www.plansponsor.com/northrop-grumman-excessive-fee-case-moves-](https://www.plansponsor.com/northrop-grumman-excessive-fee-case-moves-forward/)
28 [forward/](https://www.plansponsor.com/northrop-grumman-excessive-fee-case-moves-forward/); Nevin Adams, *Schlichter Wins One, Loses Several in Excessive Fee Suit*,
NAPA, Aug. 16, 2019, [https://www.napa-net.org/news-info/daily-news/schlichter-](https://www.napa-net.org/news-info/daily-news/schlichter-wins-one-loses-several-excessive-fee-suit)
[wins-one-loses-several-excessive-fee-suit](https://www.napa-net.org/news-info/daily-news/schlichter-wins-one-loses-several-excessive-fee-suit); Jaklyn Willie, *Northrop Grumman Gets*
401(k) Class Action Trimmed, BLOOMBERG LAW, Feb. 16, 2018,
[https://news.bloomberglaw.com/employee-benefits/northrop-grumman-gets-401-k-](https://news.bloomberglaw.com/employee-benefits/northrop-grumman-gets-401-k-fee-class-action-trimmed)
[fee-class-action-trimmed](https://news.bloomberglaw.com/employee-benefits/northrop-grumman-gets-401-k-fee-class-action-trimmed).

1 Absent an incentive award, the Class representatives will receive no relief
2 beyond that available to Class members. Without a substantial incentive award, the
3 Class Representatives would have little incentive to pursue this action to rectify the
4 potential fiduciary breaches that caused massive losses to their 401(k) plan.

5 Class Counsel requests \$25,000 to each of the six Class representatives. The
6 \$25,000 requested incentive award for each of the six Class representatives is only
7 0.20% of the total settlement fund, and combined are only 1.2%. District courts
8 within the Ninth Circuit have approved similar incentive awards. *Trujillo v. City of*
9 *Ontario*, No. 04-1015-VAP, 2009 WL 2632723, at *5 (C.D. Cal. Aug. 24, 2009)
10 (\$30,000 each to six class representatives); *Carlin v. DairyAmerica, Inc.*, 380
11 F.Supp.3d 998, 1026 (E.D. Cal. 2019) (\$45,000 each to four current class
12 representatives); *Nitsch v. DreamWorks Animation SKG Inc.*, No. 14-4062, 2017
13 WL 2423161, at *16 (N.D. Cal. June 5, 2017) (\$90,000 each to three class
14 representatives); *Pan v. Qualcomm Inc.*, No. 16-1885, 2017 WL 3252212, at *14
15 (S.D. Cal. July 31, 2017) (\$50,000 each to seven class representatives).

16 Indeed, this Court approved incentive awards of \$25,000 to each of the class
17 representatives in *Grabek*. 2017 WL 9614818, at *8. In other ERISA class action
18 settlements handled by Class Counsel, district courts have approved the same
19 amount or more. *Tussey*, 2019 WL 3859763, at *6; *Clark*, 2019 WL 2579201, at
20 *5; *Kruger*, 2016 WL 6769066, at *6; *Spano*, 2016 WL 3791123, at *4; *Abbott*,
21 2015 WL 4398475, at *4; *Krueger*, 2015 WL 4246879, at *3; *Beesley*, 2014 WL
22 375432, at *4; *Nolte*, 2013 WL 12242015, at *4; *Will*, 2010 WL 4818174, at *4.

23 CONCLUSION

24 Plaintiffs respectfully request that the Court grant their motion.

25 April 6, 2020

Respectfully submitted,

26 By: /s/ Jerome J. Schlichter
27 Jerome J. Schlichter (SBN 054513)
28 SCHLICHTER BOGARD & DENTON LLP
Class Counsel

1 JEROME J. SCHLICHTER (SBN 054513)
jschlichter@uselaws.com
2 NELSON G. WOLFF (admitted *pro hac vice*)
nwolff@uselaws.com
3 MICHAEL A. WOLFF (admitted *pro hac vice*)
mwolff@uselaws.com
4 KURT C. STRUCKHOFF (admitted *pro hac vice*)
kstruckhoff@uselaws.com
5 SEAN E. SOYARS (admitted *pro hac vice*)
ssoyars@uselaws.com
6 SCHLICHTER, BOGARD & DENTON LLP
100 South Fourth Street, Suite 1200
7 St. Louis, MO 63102
Telephone: (314) 621-6115
8 Facsimile: (314) 621-5934
Class Counsel

9
10 WILLIAM A. WHITE (SBN 121681)
wwhite@hillfarrer.com
11 HILL, FARRER & BURRILL LLP
One California Plaza, 37th Floor
12 300 South Grand Avenue
Los Angeles, CA 90071-3147
13 Telephone: (213) 620-0460
Facsimile: (213) 620-4840
14 *Local Counsel for Plaintiffs*

15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
(Western Division)

17 CLIFTON W. MARSHALL, et al.,
18
19 *Plaintiffs,*
20 v.

21 NORTHROP GRUMMAN
22 CORPORATION, et al.,

23 *Defendants.*
24
25
26
27
28

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

**DECL. OF JEROME J.
SCHLICHTER IN SUPPORT OF
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND INCENTIVE AWARDS FOR
CLASS REPRESENTATIVES**

Hon. André Birotte Jr.

1 I, Jerome J. Schlichter, of lawful age, declare as follows:

2 1. I am the founding partner of the law firm of Schlichter, Bogard &
3 Denton LLP, counsel for the Plaintiffs in the above-referenced matter. This
4 declaration is submitted in support of Plaintiffs' Motion for Attorneys' Fees,
5 Reimbursement of Expenses, and Incentive Awards to Class Representatives. I am
6 familiar with the facts set forth below and able to testify to them.

7 2. I received my Bachelor's degree in Business Administration from the
8 University of Illinois in 1969, with honors and was a James Scholar. I received my
9 Juris Doctorate from the University of California at Los Angeles (UCLA) Law
10 School in 1972, where I was an Associate Editor of UCLA Law Review. I am
11 licensed to practice law in the states of Missouri, Illinois, and California, and am
12 admitted to practice before the Supreme Court of the United States, the Second,
13 Third, Fourth, Fifth, Seventh, Eighth, and Ninth Circuit Courts of Appeal and
14 numerous U.S. District Courts. I have also been an Adjunct Professor teaching
15 trials at Washington University in St. Louis School of Law, and have been
16 repeatedly selected by my peers for the list of The Best Lawyers in America.

17 3. Through over 40 years of practice, I have handled, on behalf of
18 plaintiffs, substantial personal injury, civil rights class actions, mass torts and class
19 action fiduciary breach litigation under the Employee Retirement Income Security
20 Act (ERISA), on behalf of participants in large 401(k) and 403(b) plans. In 2014, I
21 was ranked number 4 in a list of the 100 most influential people nationally in the
22 401(k) industry in the industry publication 401(k) Wire. Examples of class action
23 cases I have successfully handled include: *Brown v. Terminal Railroad Association*,
24 a race discrimination case in the Southern District of Illinois on behalf of all
25 African-American and Hispanic employees at a railroad; *Mister v. Illinois Central*
26 *Gulf Railroad*, 832 F.2d 1427 (7th Cir. 1987), a failure-to-hire class action brought
27 on behalf of hundreds of African-American applicants from East St. Louis, Illinois
28 at a major railroad which was tried to conclusion and successfully appealed to the

1 Seventh Circuit Court of Appeals and finally concluded with more than \$10 million
2 for the class over twelve years of litigation; and *Wilfong v. Rent-A-Center*, No. 00-
3 680-DRH (S.D. Ill. 2002), a nationwide gender discrimination in employment case
4 on behalf of women, which was successfully settled for \$47 million and substantial
5 affirmative relief to the class of thousands, after defeating the defendant's attempt
6 to conduct a reverse auction.

7 4. My firm has been named class counsel in many cases involving claims
8 of fiduciary breaches in large 401(k) and 403(b) plans. *See Vellali v. Yale Univ.*,
9 333 F.R.D. 10 (D. Conn. 2019); *Munro v. Univ. of S. California*, No. 16-6191-
10 VAP, 2019 WL 7842551 (C.D. Cal. Dec. 20, 2019); *Bell v. Pension Cmte. of ATH*
11 *Holding Co.*, No. 15-2062, 2018 WL 4385025 (S.D. Ind. Sept. 14, 2018);
12 *Cunningham v. Cornell Univ.*, No. 16-6525, Doc. 219 (S.D. N.Y. Jan. 22, 2019);
13 *Cassell v. Vanderbilt Univ.*, No. 16-2086 (WDC), 2018 WL 5264640 (M.D. Tenn.
14 Oct. 23, 2018); *Cates v. Trustees of Columbia Univ.*, No. 16-6524, Doc. 218 (S.D.
15 N.Y. Nov. 8, 2018); *Henderson v. Emory Univ.*, No. 16-2920 (CAP), 2018 WL
16 6332343 (N.D. Ga. Sept. 13, 2018); *Clark v. Duke Univ.*, No. 16-1044, 2018 WL
17 1801946 (M.D. N.C. Apr. 13, 2018); *Sacerdote v. New York Univ.*, No. 16-6284,
18 2018 WL 840364 (S.D. N.Y. Feb. 13, 2018); *Ramos v. Banner Health*, 325 F.R.D.
19 382 (D. Colo. 2018); *Troudt v. Oracle Corp.*, 325 F.R.D. 373 (D. Colo. 2018),
20 *amended*, 2019 WL 1006019 (D. Colo. Mar. 1, 2019); *Pledger v. Reliance Trust*,
21 No. 15-4444, Doc. 101 (N.D. Ga. Nov. 7, 2017); *Marshall v. Northrop Grumman*
22 *Corp.*, No. 16-6794-AB, 2017 WL 6888281 (C.D. Cal. Nov. 2, 2017); *Sims v.*
23 *BB&T Corp.*, No. 15-732, 2017 WL 3730552 (M.D. N.C. Aug. 28, 2017); *Gordan*
24 *v. Mass. Mut. Life Ins. Co.*, No. 13-30184, Doc. 112 (D. Mass. June 22, 2016);
25 *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769054 (M.D. N.C. May 18,
26 2016); *Krueger v. Ameriprise Fin., Inc.*, 304 F.R.D. 559 (D. Minn. 2014); *Abbott v.*
27 *Lockheed Martin Corp.*, 286 F.R.D. 388 (S.D. Ill. 2012), and *Abbott*, No. 06-701,
28 Doc. 403 (S.D. Ill. Aug. 1, 2014); *Beesley v. Int'l Paper Co.*, No. 06-703, Doc. 240

1 (S.D. Ill. Sept. 30, 2008), and Doc. 543 (S.D. Ill. Oct. 10, 2013); *Nolte v. Cigna*
2 *Corp.*, No. 07-2046, 2013 WL 3586645 (C.D. Ill. July 3, 2013); *Spano v. Boeing*
3 *Co.*, 294 F.R.D. 114 (S.D. Ill. 2013); *George v. Kraft Foods Global Inc.*, No. 08-
4 3799, 2012 U.S. Dist. LEXIS 26536 (N.D. Ill. Feb. 29, 2012) (*George II*); *In re*
5 *Northrop Grumman Corp. ERISA Litig.*, No. 06-6213-MMM, 2011 WL 3505264
6 (C.D. Cal. Mar. 29, 2011); *Will v. Gen. Dynamics Corp.*, No. 06-698, 2010 WL
7 4818174 (S.D. Ill. Nov. 22, 2010); *Martin v. Caterpillar Inc.*, No. 07-1009, Doc.
8 173 (C.D. Ill. Apr. 21, 2010); *Tibble v. Edison Int'l*, No. 07-5359-SVW, 2009 WL
9 6764541 (C.D. Cal. June 30, 2009); *George v. Kraft Foods Global Inc.*, 251 F.R.D.
10 338 (N.D. Ill. 2008) (*George I*); *Taylor v. United Techs. Corp.*, No. 06-1494, 2008
11 WL 2333120 (D. Conn. June 3, 2008); *Kanawi v. Bechtel Corp.*, 254 F.R.D. 102
12 (N.D. Cal. 2008); *Tussey v. ABB, Inc.*, No. 06-4305, 2007 WL 4289694 (W.D. Mo.
13 Dec. 3, 2007); *Loomis v. Exelon Corp.*, No. 06-4900, 2007 WL 2060799 (N.D. Ill.
14 June 26, 2007). A brief biography of my firm, including summaries of our
15 professional experience, has previously filed with the Court. *See* Doc. 50-5.

16 5. Federal judges across the country have noted my and my firm's work
17 in plaintiffs' class action cases. Honorable James Foreman, in the *Mister* case,
18 *supra*, speaking of my efforts, stated:

19 This Court is unaware of any comparable achievement of public good
20 by a private lawyer in the face of such obstacles and enormous demand
21 of resources and finance.

22 Order on Attorney's Fees, *Mister v. Illinois Central Gulf R.R.*, No. 81-3006 (S.D.
23 Ill. 1993).

24 6. Honorable David R. Herndon wrote, regarding my and the firm's
25 handling of the *Wilfong* class action, *supra*:

26 Class counsel has appeared in this court and has been known to this
27 Court for approximately 20 years. This Court finds that Mr.
28 Schlichter's experience, reputation and ability are of the highest

1 caliber. Mr. Schlichter is known well to the District Court Judge and
2 this Court agrees with Judge Foreman’s review of Mr. Schlichter’s
3 experience, reputation and ability.

4 Order on Attorney’s Fees, *Wilfong v. Rent-A-Center*, No. 0068-DRH (S.D. Ill.
5 2002). Judge Herndon also noted in *Wilfong* that I “performed the role of a ‘private
6 attorney general’ contemplated under the common fund doctrine, a role viewed
7 with great favor in this Court” and described my action as “an example of advocacy
8 at its highest and noblest purpose.” *Id.*

9 7. In *Beesley v. International Paper*, a 401(k) ERISA excessive fee case
10 that resulted in a settlement of \$30 million plus substantial affirmative relief
11 following seven years of litigation, Judge Herndon observed: “Litigating this case
12 against formidable defendants and their sophisticated attorneys required Class
13 Counsel to demonstrate extraordinary skill and determination. Schlichter, Bogard &
14 Denton and lead attorney Jerome Schlichter’s diligence and perseverance, while
15 risking vast amounts of time and money, reflect the finest attributes of a private
16 attorney general.” *Beesley v. Int’l Paper Co.*, No. 06-703, 2014 WL 375432, at *2
17 (S.D. Ill. Jan. 31, 2014). Similarly, in *Abbot v. Lockheed Martin*, a 401(k) excessive
18 fee case that took over nine years, Chief Judge Michael J. Reagan observed that
19 “[t]he law firm Schlichter, Bogard & Denton has had a humongous impact over the
20 entire 401(k) industry, which has benefitted employees and retirees throughout the
21 country by bringing sweeping changes to fiduciary practices.” *Abbott v. Lockheed
22 Martin Corp.*, No. 06-701, 2015 WL 4398475, at *3 (S.D. Ill. July 17, 2015).

23 8. In *Will v. General Dynamics*, another ERISA excessive fee case,
24 Honorable Patrick Murphy found that litigating the case and achieving a successful
25 result for the class “required Class Counsel to be of the highest caliber and
26 committed to the interests of the participants and beneficiaries of the General
27 Dynamics 401(k) Plans.” *Will v. General Dynamics Corp.*, No. 06-698, 2010 WL
28 4818174, at *2 (S.D. Ill. Nov. 22, 2010).

1 9. Honorable Harold Baker, in *Nolte v. Cigna*, commented that
2 Schlichter, Bogard & Denton is the “preeminent firm in 401(k) fee litigation” and
3 has “persevered in the face of the enormous risks of representing employees and
4 retirees in this area.” *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015, at *2
5 (C.D. Ill. Oct. 15, 2013). Honorable Joe Billy McDade of the Central District of
6 Illinois, again speaking of the firm, observed that achieving a favorable result in
7 this type of case required extraordinary efforts because the “litigation entails
8 complicated ERISA claims”. *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL
9 3210448, at *2 (C.D. Ill. Aug. 12, 2010).

10 10. In approving a settlement including \$32 million plus significant
11 affirmative relief, in a 403(b) excessive fee case, Chief Judge William Osteen in
12 *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066, at *3 (M.D. N.C.
13 Sept. 29, 2016), found that “Class Counsel’s efforts have not only resulted in a
14 significant monetary award to the class but have also brought improvement to the
15 manner in which the Plans are operated and managed which will result in
16 participants and retirees receiving significant savings[.]”

17 11. In awarding attorney’s fees after the first 401(k) excessive fee trial in
18 the history of the United States, Honorable Nanette Laughrey concluded that
19 “Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey v. ABB, Inc.*,
20 No. 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012). Following
21 remand, the district court again awarded Plaintiffs’ attorney’s fees, emphasizing the
22 significant contribution Plaintiffs’ attorneys have made to ERISA litigation,
23 including educating the Department of Labor and federal courts about the
24 importance of monitoring fees in retirement plans:

25 Of special importance is the significant, national contribution made by
26 the Plaintiffs whose litigation clarified ERISA standards in the context
27 of investment fees. The litigation educated plan administrators, the
28 Department of Labor, the courts and retirement plan participants about

1 the importance of monitoring recordkeeping fees and separating a
2 fiduciary's corporate interest from its fiduciary obligations.

3 *Tussey v. ABB, Inc.*, No. 06-4305, 2015 WL 8485265, at *2 (W.D. Mo. Dec.
4 9, 2015).

5 12. After recognizing "their persistence and skill of their attorneys",
6 Honorable Nancy Rosenstengel similarly noted:

7 Class Counsel has been committed to the interests of the participants
8 and beneficiaries of Boeing's 401(k) plan in pursuing this case and
9 several other 401(k) fee cases of first impression. The law firm
10 Schlichter, Bogard & Denton has significantly improved 401(k) plans
11 across the country by bringing cases such as this one[.]

12 *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at *3 (S.D. Ill. Mar. 31,
13 2016).

14 13. Recently, Honorable Catherine Eagles noted that "these [ERISA] cases
15 require a high level of skill on behalf of plaintiffs to achieve any recovery." *Clark v.*
16 *Duke*, No. 16-1044, 2019 WL 2579201, at *3 (M.D. N.C. June 24, 2019). In
17 approving attorneys' fees, Judge Eagles concluded that "Class Counsel has
18 demonstrated diligence, skill, and determination in this matter and, more generally,
19 in an area of law in which few attorneys and law firms are willing or capable of
20 practicing." *Id.*

21 14. A few months ago, Honorable George L. Russell, III, in approving a
22 fee of one third of a \$14 million settlement in a similar case, noted that "Schlichter
23 Bogard & Denton's work on behalf of participants in large 401(k) and 403(b) plans
24 has significantly improved these plans, brought to light fiduciary misconduct that
25 has detrimentally impacted the retirement savings of American workers, and
26 dramatically brought down fees in defined contribution plans." *Kelly v. Johns*
27 *Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *2 (D. Md. Jan. 28, 2020). Judge
28 Russell continued, "[w]ithout the unique and unparalleled foresight for this novel

1 area of litigation by Schlichter, Bogard & Denton, the class would not have
2 obtained any recovery for the alleged fiduciary breaches that affected the Johns
3 Hopkins University 403(b) plan for years prior.” *Id.* at *4.

4 15. I have also spoken on ERISA litigation breach of fiduciary duty claims
5 at national ERISA seminars as well as other national bar seminars.

6 16. In the decades of my private practice, I have never been sanctioned or
7 otherwise disciplined with respect to any aspect of the practice of law.

8 17. Since 2005, my firm and I have been investigating, preparing and
9 handling, on behalf of plan participants, numerous cases against fiduciaries in large
10 401(k) cases alleging fiduciary breaches including excessive fees, conflicts of
11 interests and prohibited transactions under ERISA.

12 18. In 2006, my firm filed the first ERISA breach of fiduciary duty class
13 action for excessive fees in history.

14 19. My firm has filed ERISA fiduciary breach class actions in numerous
15 judicial districts throughout the United States, including districts within the First,
16 Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh
17 Circuits.

18 20. No law firm had ever brought an excessive 401(k) or 403(b) case
19 before my firm did, and no other law firm has brought the number of cases our firm
20 has brought, including:

- 21
- 22 • the first two trials of excessive 401(k) fee cases;
 - 23 • the first and only 401(k) case in the United States Supreme Court; and
 - 24 • the first and only trial of a 403(b) excessive fee case.

25 21. The first full trial of such a 401(k) case resulted in a judgment for the
26 plaintiffs, affirmed in part by the Eighth Circuit. *Tussey v. ABB, Inc.*, No. 06-4305,
27 2012 WL 1113291 (W.D. Mo. Mar. 31, 2012), *aff'd in part, rev'd in part*, 746 F.3d
28 327 (8th Cir. 2014). As Judge Laughrey noted in that case, “[i]t is well established
that complex ERISA litigation involves a national standard and special expertise.

1 Plaintiffs’ attorneys are clearly experts in ERISA litigation.” *Tussey*, 2012 WL
2 5386033, at *3 (citations omitted). That case involved two appeals, lasted twelve
3 and a half years, and was only recently settled.

4 22. In the other 401(k) excessive fee trial, *Tibble v. Edison Int’l*, the
5 United States Supreme Court granted our petition for writ of certiorari in the first
6 and only ERISA 401(k) excessive fee case taken by the Supreme Court. In a 9-0
7 unanimous decision, the Supreme Court vacated the Ninth Circuit’s affirmance of
8 the summary judgment order and unanimously held that an ERISA fiduciary has a
9 continuing duty to monitor plan investments and remove imprudent ones regardless
10 of when they were added. *Tibble v. Edison Int’l*, 135 S.Ct. 1823 (2015). This was a
11 landmark decision in ERISA litigation. Sitting *en banc*, ten judges of the Ninth
12 Circuit on remand unanimously vacated a Ninth Circuit panel decision and
13 remanded to the district court to determine whether the defendants violated their
14 continuing duty to monitor the 401(k) plan’s investments, stating that “cost-
15 conscious management is fundamental to prudence in the investment function”.
16 *Tibble v. Edison Int’l*, 843 F.3d 1187, 1199 (9th Cir. 2016) (citation omitted).
17 Following remand, in August 2017, the plaintiffs obtained a judgment of \$13.4
18 million in plan losses and lost investment opportunity. *Tibble*, No. 07-5359, 2017
19 WL 3523737 (C.D. Cal. Aug. 16, 2017); *Tibble*, Docs. 570, 572, 602.

20 23. My firm also handled the first excessive 403(b) case in history to go to
21 trial. *Sacerdote v. New York Univ.*, 328 F. Supp. 3d 273 (S.D. N.Y. 2018). That trial
22 occurred in April 2018, and judgment was entered on July 31, 2018, finding in
23 favor of New York University and against the plaintiffs. The parties are currently
24 briefing an appeal of that decision before the Second Circuit.

25 24. Before my firm brought ERISA 401(k) or 403(b) excessive fee cases,
26 virtually no firm was willing to bring such a case, and I know of no other firm that
27 has made anything close to the financial and attorney commitment to such cases to
28 this date. Given that no other private law firm or the Department of Labor brought

1 these cases before my firm entered this space, the ERISA fiduciary breach actions
2 brought by my firm were novel and certainly groundbreaking.

3 25. Several of the ERISA excessive fee cases my office filed were
4 dismissed and the dismissals upheld by the Courts of Appeals. *Hecker v. Deere &*
5 *Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir.
6 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Divane v.*
7 *Northwestern Univ.*, No. 16-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018),
8 *affirmed*, No. 18-2569, Doc. 55 (7th Cir. Mar. 25, 2020).

9 26. Others had summary judgment granted against the plaintiffs in whole
10 or in part. *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor*
11 *v. United Techs. Corp.*, No. 06-3194, 2009 WL 535779 (D. Conn. Mar. 3, 2009),
12 *aff'd*, 354 Fed. Appx. 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684
13 F. Supp. 2d 992 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble*
14 *v. Edison Int'l*, 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th
15 Cir. 2013), *vacated*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041 (9th
16 Cir. 2016); *Cunningham v. Cornell Univ.*, 16-6525, 2019 WL 4735876 (S.D. N.Y.
17 Sep. 27, 2019).

18 27. Prior to the filing of this action in September 2016, Class Counsel
19 spent substantial time investigating the continued unlawful payments made to
20 Northrop Grumman for services provided to the Plan that continued after the
21 *Grabek* class period. The firm investigated other potential fiduciary breach claims,
22 including those related to the alleged unreasonable compensation paid to the Plan's
23 former recordkeeper (Hewitt Associates) and the potentially imprudent retention of
24 the Plan's actively managed Emerging Markets Equity Fund (EM Fund). The
25 recordkeeping investigation required an analysis of the compensation paid to the
26 recordkeeper from all sources and the recordkeeper's financial relationship with the
27 Plan's investment advice provider (Financial Engines). Class Counsel consulted
28 with national experts in the recordkeeping field to develop this claim. We also

1 evaluated all of the Plan's investment options over the entire class period, including
2 their expenses and historical performance relative to their benchmarks and passive
3 index alternatives, as well as conducted an analysis of Defendants' transition of
4 certain investment options from active management to passive management during
5 2010 and 2011.

6 28. The Settlement Agreement provides that Class Counsel will continue
7 to monitor and conduct the process of enforcing the terms of the agreement.
8 Further, Class Counsel has committed to carry out the enforcement mechanism of
9 the Settlement Agreement, including seeking court action, and enforcing the
10 agreement, if necessary, without requesting any additional fee for these future
11 services.

12 29. Because of this monitoring, my firm will likely spend significant
13 future time and additional expenses without additional compensation both before
14 and after final approval and during the three-year settlement period. For instance,
15 with approximately 160,000 current and former participants who will be sent
16 notices, in my experience, the firm will receive a high volume of calls from Class
17 members to address questions related to the settlement. The firm also will work
18 with the settlement administrator to facilitate the settlement during the settlement
19 period.

20 30. In my opinion, the \$12.375 million settlement is a very significant
21 result for the Class. This is supported by Defendants' position that they were not
22 subject to any exposure, and if even Plaintiffs prevailed on their unlawful
23 reimbursement claim, this claim would be substantially reduced by offsets to
24 account for reasonable compensation for services rendered by Northrop Grumman
25 and for the settlement reached between Northrop Grumman and the U.S.
26 Department of Labor. Doc. 289-1 at 69 (¶¶ 200–201).

27 31. As a practical matter, litigants such as Clifton Marshall, Thomas Hall,
28 Manuel Gonzalez, Ricky Hendrickson, Phillip Brooks and Harold Hylton could not

1 afford to pursue litigation against well-funded fiduciaries of a multi-billion dollar
2 plan sponsored by a large employer such as Northrop Grumman in federal court on
3 any basis other than a contingent fee. I know of no law firm in the United States, of
4 the very few firms which would even consider handling such a case as this or that
5 would handle any ERISA class action, with an expectation of anything but a
6 percentage of the common fund created.

7 32. The contingency fee agreements entered into between my firm and the
8 Named Plaintiffs in this case provide for our fee to be one-third of any recovery
9 plus expenses. The plaintiffs in other ERISA fiduciary breach cases brought by my
10 firm have also signed similar agreements calling for a one-third contingency fee
11 plus expenses. I know of no firm in the country that accepts such cases for less than
12 a one-third contingency fee.

13 33. Prior to this lawsuit, my firm did not have a professional relationship
14 with any of the Named Plaintiffs.

15 34. These kinds of cases involve tremendous risk, require review and
16 analysis of thousands of documents, finding and obtaining opinions from
17 expensive, unconflicted, consulting and testifying national experts in finance,
18 investment management, fiduciary practices, and related fields, and are extremely
19 hard fought and well-defended.

20 35. A law firm that brings a putative class action such as this must be
21 prepared to finance the case for years through a trial and appeals, all at substantial
22 expense. These cases are vigorously defended by national firms with ERISA
23 experience. This has been my experience in handling these types of cases. For
24 example, in *Tussey v. ABB, Inc., supra*, seven experts testified at trial, and the two
25 defendant groups therein had 15 or more lawyers present in the courtroom
26 throughout the month long trial. In addition, all parties, including plaintiffs, had a
27 technology team present throughout. In addition, our firm expended over
28 \$2,000,000 in out-of-pocket expenses by the conclusion of the trial therein, and

1 carried the expense without reimbursement for more than twelve years. That case
2 continued after being tried almost ten years ago, followed by two appeals to the
3 Eighth Circuit, and multiple remandments to the district court. *Tibble v. Edison*
4 *Int'l, supra*, was also still pending until an appeal was decided earlier this year,
5 nearly 14 years after it was filed.

6 36. Before we filed this case, virtually no firm was willing to bring such a
7 case, and I know of no other firm that has made the financial and attorney
8 commitment to such cases to this date.

9 37. Based on my experience, the market for experienced and competent
10 lawyers willing to pursue ERISA fee litigation is a national market, and the rate of
11 one third of any recovery, plus costs is necessary to bring such cases. This is the
12 rate that a qualified and experienced attorney would negotiate at the beginning of
13 the litigation, and the rate found reasonable in similar ERISA fee cases in numerous
14 federal district courts, including:

- 15 • *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *2 (D. Md.
16 Jan. 28, 2020);
- 17 • *Cassell v. Vanderbilt Univ.*, No. 16-2086, Doc. 174 (M.D. Tenn. Oct. 22,
18 2019);
- 19 • *Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-2062, 2019 WL
20 4193376 (S.D. Ind. Sept. 4, 2019);
- 21 • *Tussey v. ABB, Inc.*, No. 06-4305, 2019 WL 3859763 (W.D. Mo. Aug. 16,
22 2019);
- 23 • *Clark v. Duke*, No. 16-1044, 2019 WL 2579201 (M.D. N.C. June 24, 2019);
- 24 • *Sims v. BB&T Corp.*, No. 15-1705, 2019 WL 1993519 (M.D. N.C. May 6,
25 2019);
- 26 • *Ramsey v. Philips*, No. 18-1099, Doc. 27 (S.D. Ill. Oct. 15, 2018);
- 27 • *In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213, 2017 WL
28 9614818 (C.D. Cal. Oct. 24, 2017);
- *Gordan v. Mass. Mutual Life Ins. Co.*, No. 13-30184, 2016 WL 11272044
(D. Mass. Nov. 3, 2016);
- *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL 6769066 (M.D. N.C.
Sept. 29, 2016);

- 1 • *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123 (S.D. Ill. Mar. 31, 2016);
- 2
- 3 • *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475 (S.D. Ill. July 17, 2015);
- 4 • *Krueger v. Ameriprise Financial Inc.*, No. 11-2781, 2015 WL 4246879 (D. Minn. July 13, 2015);
- 5
- 6 • *Beesley v. Int'l Paper Co.*, No. 06-703, 2014 WL 375432 (S.D. Ill. Jan. 31, 2014);
- 7 • *Nolte v. Cigna Corp.*, No. 07-2046, 2013 WL 12242015 (C.D. Ill Oct. 15, 2013);
- 8
- 9 • *George v. Kraft Foods Global*, No. 07-1713, 2012 WL 13089487 (N.D. Ill. June 26, 2012);
- 10 • *Will v. General Dynamics*, No. 06-698, 2010 WL 4818174 (S.D. Ill. Nov. 22, 2010); and
- 11
- 12 • *Martin v. Caterpillar, Inc.*, No. 07-1009, 2010 WL 11614985 (C.D. Ill. Sept. 10, 2010).

13 38. Our firm has been class counsel in over 30 ERISA breach of fiduciary
14 duty cases. In all of the ERISA cases we have settled, the fee award has always
15 been higher than 25% of the total recovery.

16 39. A long-term expensive commitment of time and resources is needed if
17 plan participants are to receive full compensation for their losses in such cases.
18 Because my firm has committed to doing this in each case we pursue, it is my
19 opinion that defendants take into account this firm's long-term commitment to
20 these cases in assessing their costs and the likelihood of success.

21 40. By my firm obtaining this settlement for the Class without further
22 delay, the Class members will benefit by not only avoiding risk but also avoiding
23 what would have been substantial additional costs and delay for a full trial and
24 potential appeals. In addition, they will benefit by being able to invest their
25 recoveries and benefit from the earnings much earlier than if there had been years
26 of delay.

27 41. Schlichter, Bogard & Denton does not bill clients on an hourly basis.
28 In January 2020, based on the national market for complex ERISA fiduciary breach

1 litigation, the following hourly rates for my firm were approved: \$1,060/hour for
2 attorneys with at least 25 years of experience, \$900/hour for attorneys with 15–24
3 years of experience, \$650/hour for attorneys with 5–14 years of experience,
4 \$490/hour for attorneys with 2–4 years of experience, and \$330/hour for Paralegals
5 and Law Clerks. *Kelly*, 2020 WL 434473, at *6.

6 42. These rates for our firm have been approved by numerous courts
7 across the country since October 2018. *Cassell*, Doc. 174 at 3; *Bell*, 2019 WL
8 4193376, at *5; *Clark*, 2019 WL 2579201, at *4; *Sims*, 2019 WL 1993519, at *4;
9 *Ramsey*, Doc. 27 at 8. As previously noted, this Court in *Grabek* approved a one-
10 third fee from the settlement fund, and also found that the blended rate approved in
11 *Tussey* from 2012 was reasonable in light of the much higher hourly rates that were
12 approved in 2016 by other courts. *Grabek*, 2017 WL 9614818, at *5 n.2. The
13 requested hourly rates herein reflect a modest 3% annual increase from the 2016
14 approved rates. *See Sims*, 2019 WL 1993519, at *3.

15
16 I declare under penalty of perjury that the foregoing is true and correct to the
17 best of my knowledge and belief.

18
19 Executed on April 6, 2020.

20
21 /s/ Jerome J. Schlichter
22 Jerome J. Schlichter

1 JEROME J. SCHLICHTER (SBN 054513)
 jschlichter@uselaws.com
 2 NELSON G. WOLFF (admitted *pro hac vice*)
 nwoff@uselaws.com
 3 MICHAEL A. WOLFF (admitted *pro hac vice*)
 mwolff@uselaws.com
 4 KURT C. STRUCKHOFF (admitted *pro hac vice*)
 kstruckhoff@uselaws.com
 5 SEAN S. SOYARS (admitted *pro hac vice*)
 ssoyars@uselaws.com
 6 SCHLICHTER, BOGARD & DENTON LLP
 100 South Fourth Street, Suite 1200
 7 St. Louis, MO 63102
 Telephone: (314) 621-6115
 8 Facsimile: (314) 621-5934
Class Counsel

9 WILLIAM A. WHITE (SBN 121681)
 wwhite@hillfarrer.com
 10 HILL, FARRER & BURRILL LLP
 One California Plaza, 37th Floor
 11 300 South Grand Avenue
 Los Angeles, CA 90071-3147
 12 Telephone: (213) 620-0460
 Facsimile: (213) 620-4840
 13 *Local Counsel for Plaintiffs*

14
 15 **IN THE UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
 16 **(Western Division)**

17 CLIFTON W. MARSHALL, et al.,

18 *Plaintiffs,*

19 v.

20 NORTHROP GRUMMAN
 21 CORPORATION, et al.,

22 *Defendants.*

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

**DECL. OF KURT C. STRUCKHOFF
 IN SUPPORT OF PLAINTIFFS'
 MOTION FOR ATTORNEYS' FEES,
 REIMBURSEMENT OF EXPENSES,
 AND INCENTIVE AWARDS FOR
 CLASS REPRESENTATIVES**

Hon. André Birotte Jr.

1 I, Kurt C. Struckhoff, of lawful age, declare as follows:

2 1. I am one of the attorneys in the law firm of Schlichter, Bogard & Denton
3 LLP, which represents the Plaintiffs in this case. I am licensed to practice in the
4 States of Missouri and Illinois, as well as numerous federal courts. I am admitted
5 *pro hac vice* in the above-referenced matter. If called as a witness, I could and
6 would competently testify to the facts set forth below as I know them to be true
7 based upon my own personal knowledge or upon my review of the records and files
8 maintained by the firm in the regular course of its representation of Plaintiffs in this
9 case.

10 2. On April 11, 2017, Plaintiffs served Defendants with their first set of
11 requests for production of documents. They responded on May 11, 2017.

12 3. On December 18, 2017, Plaintiffs served Defendants with their second set
13 of requests for production of documents. They responded on January 17, 2018.

14 4. On February 15, 2018, Plaintiffs served Defendants with their first set of
15 interrogatories. They responded on March 19, 2018.

16 5. Plaintiffs subpoenaed three third parties for documents. On January 23,
17 2018, Plaintiffs subpoenaed Financial Engines, Inc. On January 30, 2018, Plaintiffs
18 subpoenaed Hewitt Associates LLC. And on February 16, 2018, Plaintiffs
19 subpoenaed Callan Associates.

20 6. Defendants produced 39,451 documents (337,500 pages) and third parties
21 produced 2,339 documents (16,344 pages) during the litigation. In total, 41,790
22 documents were produced consisting of approximately 353,844 pages. Of these
23 documents, 16,685 were produced in native format, such as excel.

24 7. On April 14, 2017, Defendants served Plaintiffs with their first set of
25 requests for production and first set of interrogatories. Plaintiffs responded on May
26 15, 2017. Plaintiffs supplemented their interrogatories responses on October 1,
27 2018.

1 8. During the course of discovery, Plaintiffs deposed seven Northrop
2 Grumman current or former employees, a representative of Financial Engines, and
3 three of Defendants' expert witnesses. With the exception of two depositions that
4 occurred by remote video teleconference, the depositions occurred across the
5 country, including in Los Angeles, California; Oakland, California; Durham, North
6 Carolina; Boston, Massachusetts; Chicago, Illinois; and Washington D.C.

7 9. In June and July 2017, Defendants deposed each of the six Class
8 representatives. Plaintiffs' counsel prepared each of them for their depositions.

9 10. On May 16, 2018, Defendants served Plaintiffs with 44 requests for
10 admission. Plaintiffs responded on June 15, 2018.

11 11. On or about April 6, 2020, the settlement administrator sent notices to
12 Class members. In total, approximately 167,354 notices were sent.

13 12. As of the date of this filing, Plaintiffs' counsel has not received any
14 objections from Class members to Class Counsel's request for attorney fees and
15 reimbursement of expenses.

16 13. Throughout the course of the litigation, the Class representatives remained
17 in regular contact with Plaintiffs' counsel through e-mail and written
18 correspondence, and telephone calls.

19 14. Prior to the filing of the complaint, Class representatives collected and
20 provided to Plaintiffs' counsel documents related to their participation in the Plan.

21 15. Class representative Clifton Marshall attended the in-person mediation on
22 March 5, 2019 in Los Angeles, California.

23 16. As set forth in the Memorandum in Support of Plaintiffs' Motion for
24 Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards to Class
25 Representatives, the District of Maryland recently approved hourly rates for
26 Schlichter, Bogard & Denton. *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020
27 WL 434473, at *6 (D. Md. Jan. 28, 2020). These rates are: for attorneys with at
28

1 least 25 years of experience, \$1,060 per hour; for attorneys with 15–24 years of
 2 experience, \$900 per hour; for attorneys with 5–14 years of experience, \$650 per
 3 hour; for attorneys with 2–4 years of experience, \$490 per hour; and for paralegals
 4 and law clerks, \$330 per hour. *Id.*

5 17. To calculate the lodestar, Schlichter, Bogard & Denton applied these rates
 6 to the number of hours expended by attorneys and non-attorneys in this litigation.

7 This calculation is shown the following table:

Experience	Hours	Rate	Total
25 Years +	1,508.50	\$1,060	\$1,599,010
15–24 Years	845.60	\$900	\$761,040
5–14 Years	4,933.70	\$650	\$3,206,905
2–4 Years	209.20	\$490	\$102,508
Attorney Total	7,497.00		\$5,669,463
Paralegals and Law Clerks Total	1,118.40	\$330	\$369,072
Total of All Hours	8,615.40		\$6,038,535

17 18. As an alternative, Schlichter, Bogard & Denton also calculated the lodestar
 18 using the blended rate of \$514.60 approved in *Tussey v. ABB, Inc.*, No. 06-4305,
 19 2012 WL 5386033, at *4 (W.D. Mo. Nov. 2, 2012). Applying this blended rate to
 20 the total hours results in a lodestar of \$4,433,484.

21
 22 I declare under penalty of perjury under the laws of the United States of
 23 America that the foregoing is true and correct to the best of my knowledge and
 24 belief.

25 Executed on April 6, 2020.

26 /s/ Kurt C. Struckhoff

27 Kurt C. Struckhoff

1 JEROME J. SCHLICHTER (SBN 054513)
 jschlichter@uselaws.com
 2 NELSON G. WOLFF (admitted *pro hac vice*)
 nwoff@uselaws.com
 3 MICHAEL A. WOLFF (admitted *pro hac vice*)
 mwolff@uselaws.com
 4 KURT C. STRUCKHOFF (admitted *pro hac vice*)
 kstruckhoff@uselaws.com
 5 SEAN S. SOYARS (admitted *pro hac vice*)
 ssoyars@uselaws.com
 6 SCHLICHTER, BOGARD & DENTON LLP
 100 South Fourth Street, Suite 1200
 7 St. Louis, MO 63102
 Telephone: (314) 621-6115
 8 Facsimile: (314) 621-5934
Class Counsel

9 WILLIAM A. WHITE (SBN 121681)
 wwwhite@hillfarrer.com
 10 HILL, FARRER & BURRILL LLP
 One California Plaza, 37th Floor
 11 300 South Grand Avenue
 Los Angeles, CA 90071-3147
 12 Telephone: (213) 620-0460
 Facsimile: (213) 620-4840
 13 *Local Counsel for Plaintiffs*

14
 15 **IN THE UNITED STATES DISTRICT COURT**
FOR THE CENTRAL DISTRICT OF CALIFORNIA
 16 **(Western Division)**

17 CLIFTON W. MARSHALL, et al.,

18 *Plaintiffs,*

19 v.

20 NORTHROP GRUMMAN
 21 CORPORATION, et al.,

22 *Defendants.*

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

**DECL. OF SHERI O’GORMAN IN
 SUPPORT OF PLAINTIFFS’
 MOTION FOR ATTORNEYS’ FEES,
 REIMBURSEMENT OF EXPENSES,
 AND INCENTIVE AWARDS FOR
 CLASS REPRESENTATIVES**

Hon. André Birotte Jr.

1 I, Sheri O’Gorman, under penalty of perjury pursuant to 28 U.S.C. §1746,
2 declare as follows:

3 1. I am the Office Administrator of Schlichter, Bogard, & Denton, LLP and
4 the Custodian of Records, in charge of payment of expenses in this matter. I have
5 examined the records and we have incurred case expenses totaling \$390,587.36 as
6 of April 5, 2020.

7 2. Below is a list of expenses according to their categories:

Description	Total
Depositions	\$59,373.61
Experts and Consultants	\$195,387.50
Filing, Transcripts, Subpoena Services and Related Costs	\$3,003.53
Mediation and Settlement Costs	\$8,390.00
Copies, Postage, Phone and Fax	\$24,919.52
Data Development and Document Organization	\$11,029.79
Research and Investigation	\$4,539.78
Travel, Lodging, and Parking	\$66,986.07
Trial Costs	\$16,957.56
Total	\$390,587.36

16 3. The expenses listed above are those for which Schlichter, Bogard &
17 Denton, LLP is seeking reimbursement. The firm has incurred other expenses in
18 litigating this case for which it does not seek reimbursement, such as expenses
19 associated with meals.

20 4. I am also in charge of monitoring attorney and staff time billed. During the
21 litigation in these cases the following chart shows the amount of hours spent by
22 attorneys broken down by experience:
23
24
25
26
27
28

Description	Total Hours
0-4 Years	209.20
5-14 Years	4,933.70
15-24 Years	845.60
25 and Above	1,508.50
Total Attorney Hours	7,497.00

The following chart shows the amount of hours spent by staff:

Description	Total Hours
Paralegal	1,053.10
Law Clerk	65.30
Total Hours	1,118.40

5. More detailed billing records can be made available for the Court's review upon request.

6. On or about February 4, 2020, Schlichter, Bogard & Denton, LLP published a website, www.2019northrop401ksettlement.com, from which Class members could download the Settlement Agreement (with exhibits) and other documents relating to the settlement, including Plaintiffs' Motion and Memorandum in Support of Preliminary Approval, and the Court's Order granting preliminary approval of the class action settlement. In addition, the Class notices and claim forms have been published on the settlement website for Class members.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on April 6, 2020.



Sheri O'Gorman

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

CLIFTON W. MARSHALL, et al.,
Plaintiffs,
v.
NORTHROP GRUMMAN
CORPORATION, et al.,
Defendants.

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

**[PROPOSED] ORDER GRANTING
PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES,
AND INCENTIVE AWARDS FOR
CLASS REPRESENTATIVES**

Hon. André Birotte Jr.

INTRODUCTION

Before the Court is Plaintiffs' motion for attorneys' fees, reimbursement of expenses, and incentive awards for class representatives. Defendants do not oppose the motion. The Court heard oral argument on this motion on June 5, 2020. The Court will enter a separate order approving the settlement. This separate Order addresses the attorney fee request, reimbursement of expenses, and the lead Plaintiffs' incentive awards.

After more than three years of hard-fought litigation, the parties reached a settlement in the amount of \$12,375,000 to resolve all remaining claims. The settlement provides substantial relief on behalf of over 160,000 current and former participants of the Northrop Grumman Savings Plan. Class Counsel (Schlichter, Bogard & Denton LLP) requests an award of attorneys' fees in the amount of one

1 third of the settlement fund (or \$4,125,000), reimbursement of litigation expenses
2 of \$390,587, and \$25,000 as incentive awards to each of the six Class
3 representatives.

4 Class Counsel, Schlichter, Bogard & Denton, obtained an exceptional result
5 on behalf of the Class after years of litigation. They displayed tremendous skill and
6 determination at all stages of this case. Their request for a one-third fee of the
7 common fund is fair and reasonable compensation for their pioneering and
8 persevering efforts on behalf of the Class. Their request for reimbursement of out-
9 of-pocket litigation expenses also is reasonable based on the types of expenses
10 incurred in cases of this complexity and magnitude. Finally, incentive awards for
11 each of the Class representatives are justified by their efforts and risks they
12 assumed in this case. For the reasons explained below, the motion is **GRANTED**.

13 **BACKGROUND**

14 This settlement concludes over thirteen years of extensive litigation between
15 the parties. The litigation began in September 2006 with the filing of a substantially
16 related case—*In re Northrop Grumman Corp. ERISA Litig.*, No. 06-6213 (C.D.
17 Cal.) (“*Grabek*”)—that resulted in a settlement of \$16,750,000 in October 2017.
18 *Grabek*, Final Order and Judgment, Doc. 804 (filed Oct. 24, 2017). With the
19 settlement in this case, Class Counsel has recovered almost \$30 million for class
20 members based on allegations that the Northrop 401(k) plan fiduciaries breached
21 their fiduciary duties and committed prohibited transactions when administering the
22 Plan. Since the parties are familiar with the background of this case, the Court
23 confines its discussion to the facts relevant to the instant Motion for Attorneys’
24 Fees, Reimbursement of Expenses, and Incentive Awards to Class representatives.

25 **LEGAL STANDARD**

26 It is well established that class counsel is entitled to an award of reasonable
27 attorney fees and reimbursement of litigation expenses from the common fund they
28 created for the benefit of a class. Fed. R. Civ. P. 23(h); *Staton v. Boeing Co.*, 327

1 F.3d 938, 967 (9th Cir. 2003) (“Under the ‘common fund doctrine’, ‘a litigant or a
2 lawyer who recovers a common fund for the benefit of persons other than himself or
3 his client is entitled to a reasonable attorney’s fee from the fund as a whole.’”) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The purpose of the
4 “common fund” doctrine is to avoid unjust enrichment, requiring “those who
5 benefit from the creation of the fund [to] share the wealth with the lawyers whose
6 skill and effort helped create it.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19
7 F.3d 1291, 1300 (9th Cir. 1994) (“*WPPSS*”). The district court has discretion over
8 the amount of attorney fees to award. *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
9 1048 (9th Cir. 2002).

11 The district court may use the percentage-of-the-fund method to determine a
12 reasonable attorney fee. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th
13 Cir. 2016); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir.
14 2015). Although the Ninth Circuit has established 25% as the benchmark attorney
15 fee in common fund cases, that benchmark is “a starting point for analysis” because
16 it “may be inappropriate in some cases.” *Vizcaino*, 290 F.3d at 1048. The factors
17 that inform the district court whether to adjust the benchmark percentage include:
18 “(1) the result obtained for the class; (2) the effort expended by counsel; (3)
19 counsel’s experience; (4) the skill of counsel; (5) the complexity of the issues; (6)
20 the risks of non-payment assumed by counsel; (7) the reaction of the class; and (8)
21 comparison with counsel’s lodestar.” *In re Northrop Grumman Corp. ERISA Litig.*,
22 No. 06-6213, 2017 WL 9614818, at *2 (C.D. Cal. Oct. 24, 2017) (“*Grabek*”) (citing
23 *In re Quintus Sec. Litig.*, 148 F. Supp. 2d 967, 973–74 (N.D. Cal. 2001), among
24 others). A one-third percentage has been applied to the gross settlement amount to
25 calculate the fee award. *Powers v. Eichen*, 229 F.3d 1249, 1258 (9th Cir. 2000);
26 *Grabek*, 2017 WL 9614818, at *6; *Emmons v. Quest Diagnostics Clinical Labs.,*
27 *Inc.*, No. 13-474-DAD, 2017 WL 749018, at *8 (C.D. Cal. Feb. 24, 2017).

1 **DISCUSSION**

2 Having considered the papers submitted in support of the motion, and for
3 good cause having been shown, the Court grants Plaintiffs’ motion.

4 **I. Attorney Fees**

5 **A. The Exceptional Result Obtained for the Class**

6 Courts have consistently recognized that the result achieved is a major factor
7 to be considered in making a fee award. *Hensley v. Eckerhart*, 461 U.S. 424, 436,
8 103 S.Ct. 1933, 76 L.Ed.2d 40 (1983) (“the most critical factor is the degree of
9 success obtained”); *In re Heritage Bond Litig.*, No. 02-ML-1475-DT, 2005 WL
10 1594403, at *19 (C.D. Cal. June 10, 2005) (a “significant factor”); *Deaver v.*
11 *Compass Bank*, No. 13-222, 2015 WL 8526982, at *11 (N.D. Cal. Dec. 11, 2015)
12 (“the most critical factor”).

13 The Court finds that the \$12.375 million settlement fund obtained by
14 Schlichter, Bogard & Denton is an exceptional result for the Class. The settlement
15 fund represents approximately 29% of Plaintiffs’ claimed damages at trial. Doc.
16 284-1 at 65 (¶¶ 344–345). Moreover, excluding prejudgment interest, Schlichter,
17 Bogard & Denton contends that the amount is over 600% higher than what
18 Defendants viewed as their maximum exposure on Plaintiffs’ unlawful
19 reimbursement claim. Doc. 289-1 at 69 (¶¶ 200–201). They assert this percentage is
20 representative of what Defendants arguably viewed as their exposure in this case
21 because Defendants vigorously disputed they had any exposure on Plaintiffs’ claim
22 that Defendants imprudently retained the Plan’s Emerging Markets Equity Fund
23 (“EM Fund”). *Id.* at 59–67 (¶¶ 173–194).

24 The settlement fund, as a percentage of recovery, is greater than recoveries in
25 other cases where attorney fees of one third of the common fund were awarded. *See*
26 *Emmons*, 2017 WL 749018, at *5 (\$2.35 million settlement; 27.6% of claimed
27 damages of \$8.5 million); *Cheng Jiangchen v. Rentech, Inc.*, No. 17-1490-GW,
28

1 2019 WL 5173771, at *7 (C.D. Cal. Oct. 10, 2019) (\$2.05 million settlement; 10%
2 of maximum damages of \$20 million); *Deaver*, 2015 WL 8526982, at *7 (\$500,000
3 settlement; 14.2% of \$3,512,000 in “potential liability”); *see also In re Med. X-Ray*
4 *Film Antitrust Litig.*, No. 93-5904, 1998 WL 661515, at *7–8 (E.D. N.Y. Aug. 7,
5 1998) (settlement of 17% of claimed damages); *In re Crazy Eddie Sec. Litig.*, 824
6 F.Supp. 320, 326 (E.D. N.Y. 1993) (settlement of 10% of claimed damages); *In re*
7 *Gen. Instrument Sec. Litig.*, 209 F. Supp. 2d 423, 431, 434 (E.D. Pa. 2001)
8 (settlement of 15% of damages); *In re Corel Corp. Inc. Sec. Litig.*, 293 F. Supp. 2d
9 484, 489–490 (E.D. Pa. 2003) (settlement of 15% of the maximum recovery).

10 Accordingly, the Court concludes that the exceptional result achieved in this
11 action justifies an attorney fee award of one-third of the settlement fund.

12 **B. The Effort Expended by Schlichter, Bogard & Denton**

13 The Court finds that Class Counsel expended tremendous effort on behalf of
14 the Class in prosecuting this action. Schlichter, Bogard & Denton devoted over
15 8,600 hours of attorney, paralegal, and law clerk time over the three years this action
16 has been pending. O’Gorman Decl. ¶ 4.

17 The effort necessary to prosecute this action is shown by the fact that this
18 action was aggressively litigated at all stages. Schlichter, Bogard & Denton drafted
19 three complaints. Docs. 1, 70, 132. Before the litigation, they devoted substantial
20 time and resources by investigating the alleged unlawful reimbursement practices
21 from *Grabek* that continued during the class period and the other claims that
22 Plaintiffs pursued in this litigation. Schlichter Decl. ¶ 27. They successfully defeated
23 two motions to dismiss, obtained class certification over strong objection, defeated a
24 motion for partial summary judgment, and survived Defendants’ lengthy *Daubert*
25 challenges to Plaintiffs’ experts who would testify at trial. Docs. 68, 146, 264, 308,
26 310. Schlichter, Bogard & Denton reviewed and analyzed approximately 353,000
27 pages of documents, and took and defended 20 depositions of fact and expert
28

1 witnesses. Struckhoff Decl. ¶¶ 6, 8–9; Docs. 167-03, 167-04, 168-113 (expert
2 deposition excerpts). They also participated in two unsuccessful mediations, after
3 which the case proceeded to trial. Doc. 306. The case only settled on the very brink
4 of trial, approximately fourteen minutes before trial was scheduled to begin. Doc.
5 315. Because this case was litigated to trial, Schlichter, Bogard & Denton fully
6 prepared for trial, which required them to devote enormous efforts and resources to
7 this matter. *E.g.*, Docs. 269, 281, 282, 284-1, 304.

8 Several courts have awarded attorney fees of one third of a common fund
9 under similar circumstances, and with less time involved. *Boyd v. Bank of Am.*
10 *Corp.*, No. 13-561-DOC, 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014)
11 (counsel spent over 3,000 hours litigation the case); *Fernandez v. Victoria Secret*
12 *Stores, LLC*, No. 06-04149-MMM, 2008 WL 8150856, at *16 (C.D. Cal. July 21,
13 2008) (counsel invested thousands of hours in the case); *Garcia*, 2012 WL 5364575,
14 at *8 (counsel spent 3,700 hours on the matter); *Cullen v. Whitman Med. Corp.*, 197
15 F.R.D. 136, 150 (E.D. Pa. 2000) (counsel spent 3,900 hours on the litigation over
16 two years of litigation); *Corel*, 293 F. Supp. 2d at 496–97 (counsel spent 6,800 hours
17 spent litigating the case).

18 Accordingly, because Schlichter, Bogard & Denton exerted great effort on
19 behalf of the Class in litigating this action, the Court concludes that an award of one
20 third of the settlement fund in attorney fees is justified.

21 **C. The Experience of Schlichter, Bogard & Denton**

22 The experience of class counsel is relevant in determining the appropriate
23 attorney fee award. *Grabek*, 2017 WL 9614818, at *4; *Heritage Bond*, 2005 WL
24 1594403, at *20. A fee award of one third of the settlement fund is justified where
25 class counsel “has significant experience in the particular type of litigation at
26 issue[.]” *Deaver*, 2015 WL 8526982, at *11 (citation omitted). Moreover, a one-
27 third fee is appropriate where “[c]ounsel litigated effectively, and their experience
28

1 was essential for obtaining the result.” *Boyd*, 2014 WL 6473804, at *10.

2 The Court finds that Schlichter, Bogard & Denton is exceptionally skilled
3 having achieved unparalleled success in actually pioneering complex ERISA 401(k)
4 excessive fee litigation, such as this case and *Grabek*. The Court agrees with other
5 district courts that Schlichter, Bogard & Denton are attorneys of the “highest
6 caliber”. *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 WL 434473, at *4 (D.
7 Md. Jan. 28, 2020); *see also Beesley v. Int’l Paper Co.*, No. 06-703, 2014 WL
8 375432, at *2 (S.D. Ill. Jan. 31, 2014) (the firm’s diligence and perseverance
9 “reflect the finest attributes of a private attorney general”). This Court agrees that,
10 in creating the field of 401(k) excessive fee litigation, when neither the Department
11 of Labor or any private law firm had ever filed such a case, Schlichter Bogard &
12 Denton functioned as a private attorney general. The firm handled the first ever trial
13 of such case. It also successfully petitioned the United States Supreme Court to hear
14 its first ERISA fiduciary breach case regarding excessive fees in 401(k) plans, and
15 obtained a unanimous 9-0 decision holding that an ERISA fiduciary has a
16 continuing duty to monitor plan investments and remove imprudent ones. *Tibble v.*
17 *Edison Int’l*, 135 S.Ct. 1823, 1828–29 (2015).

18 Schlichter, Bogard & Denton also has “educated plan administrators, the
19 Department of Labor, the courts and retirement plan participants” about this
20 complex area of the law. *Tussey v. ABB, Inc.*, No. 06-4305, 2015 WL 8485265, at
21 *2 (W.D. Mo. Dec. 9, 2015). Their efforts have contributed to fee savings achieved
22 by employees and retirees by over \$2 billion. *Nolte v. Cigna Corp.*, No. 07-2046,
23 2013 WL 12242015, at *3 (C.D. Ill Oct. 15, 2013). The firm has had a
24 “humongous” impact on 401(k) fees. Linda Stern, *Stern Advice: How 401(k)*
25 *Lawsuits Are Bolstering Your Retirement Plan*, REUTERS (Nov. 5, 2013) [*Grabek*,
26 Doc. 783-10]. This Court agrees that Schlichter, Bogard & Denton has educated
27 plan fiduciaries, the DOL, and plan participants about the importance of 401(k)
28

1 fees, their efforts have led to enormous fee savings for plan participants, and the
2 firm has had a “humongous” impact on the 401(k) industry.

3 Over the past thirteen years, Schlichter, Bogard & Denton has zealously
4 represented employees and retirees of Northrop Grumman while taking on
5 enormous financial risks. Their experience and expertise in ERISA fiduciary breach
6 litigation has greatly benefitted Class members. The Court finds that the firm’s
7 reputation as “experts” in this field is well deserved. *See Tussey v. ABB, Inc.*, No.
8 06-4305, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012) (“Plaintiffs’ attorneys
9 are clearly experts in ERISA litigation.”).

10 Accordingly, the Court concludes that Schlichter, Bogard & Denton’s
11 specialized and vast experience representing plaintiffs in ERISA class actions
12 justifies an award of one third of the settlement fund in attorney fees.

13 **D. The Skill of Schlichter, Bogard & Denton and Complexity of**
14 **this Case**

15 “Courts have recognized that the novelty, difficulty and complexity of the
16 issues involved are significant factors in determining a fee award.” *Heritage Bond*,
17 2005 WL 1594403, at *20 (citing *Johnson v. Georgia Highway Express, Inc.*, 488
18 F.2d 714, 718 (5th Cir. 1974)). As this Court has recognized in the related *Grabek*
19 action, “ERISA 401(k) fiduciary breach class actions involve complex questions of
20 law and have not been widely litigated to this point.” *Grabek*, 2017 WL 9614818,
21 at *4. “[G]iven the transient nature of standing ERISA law,” these cases “require[]
22 highly skilled counsel who could understand the complexity of the law and adapt
23 case law accordingly.” *Downey Surgical Clinic, Inc. v. OptumInsight, Inc.*, No. 09-
24 5457-PSG, 2016 WL 5938722, at *10 (C.D. Cal. May 16, 2016).

25 This case involved complex claims of prohibited transactions under 29
26 U.S.C. § 1106 for which there are no reported cases directly on point. It thus
27 required Class Counsel to rely on detailed and complex regulations (29 C.F.R. §§
28

1 2550.408b-2, 2550.408c-2) and DOL advisory opinions. *See* Doc. 284-1 at 42–53
2 (¶¶ 239–291). The case also involved an imprudent investment claim related to
3 Defendants’ retention of the actively managed EM Fund. This claim required a fact-
4 intensive inquiry focusing on the methods Defendants employed to investigate the
5 merits and structure of the EM Fund. *See* Doc. 264 at 14–19. The summary
6 judgment record and the parties’ proposed findings of fact and conclusions of law
7 confirm the complexity of the factual and legal issues involved. *See* Doc. 284-1
8 (355 paragraphs); Doc. 289-1 (214 paragraphs).

9 Given the novel and complex nature of this area of law, the Court finds that
10 Schlichter, Bogard & Denton’s specialized experience and knowledge resulted in
11 the skillful prosecution of this action. Therefore, the Court concludes that a fee
12 award of one third of the settlement fund is justified.

13 **E. The Financial Risks Assumed by Schlichter, Bogard & Denton**

14 The risks assumed by class counsel, “particularly the risk of non-payment or
15 reimbursement of expenses, is a factor in determining counsel’s proper fee award.”
16 *Grabek*, 2017 WL 9614818, at *4. These risks must be considered. *Vizcaino*, 290
17 F.3d at 1048. “Contingent fees that may far exceed the market value of the services
18 if rendered on a non-contingent basis are accepted in the legal profession as a
19 legitimate way of assuring competent representation for plaintiffs who could not
20 afford to pay on an hourly basis regardless whether they win or lose.” *WPPSS*, 19
21 F.3d at 1299. The risk of non-payment after years of hard-fought litigation “weighs
22 substantially in favor” of a one-third fee. *Campbell v. Best Buy Stores, L.P.*, No. 12-
23 7794-JAK, 2016 WL 6662719, at *8 (C.D. Cal. Apr. 5, 2016); *Barbosa v. Cargill*
24 *Meat Solutions Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) (“where recovery is
25 uncertain, an award of one-third of the common fund as attorneys’ fees has been
26 found to be appropriate”).

27 The Court finds that Schlichter, Bogard & Denton assumed great financial
28

1 risk by litigating this complex action for years. The firm represented the plaintiffs
2 completely on a contingency basis and carried substantial litigation costs. They
3 invested thousands of attorney and staff hours in the case with no guarantee that
4 they would be compensated for their time or reimbursed for the expenses they
5 incurred.

6 These financial risks were compounded by the fact that recovery was
7 uncertain. Several of ERISA excessive fee cases filed by the firm were dismissed
8 and the dismissals were upheld by Courts of Appeal. *See, e.g., Hecker v. Deere &*
9 *Co.*, 556 F.3d 575 (7th Cir. 2009); *Loomis v. Exelon Corp.*, 658 F.3d 667 (7th Cir.
10 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Divane v.*
11 *Northwestern Univ.*, No. 16-8157, 2018 WL 2388118 (N.D. Ill. May 25, 2018),
12 *affirmed*, No. 18-2569, Doc. 55 (7th Cir. Mar. 25, 2020). In other cases, district
13 courts granted summary judgment against the plaintiffs in whole or part. *Kanawi v.*
14 *Bechtel Corp.*, 590 F. Supp. 2d 1213 (N.D. Cal. 2008); *Taylor v. United Techs.*
15 *Corp.*, No. 06-3194, 2009 WL 535779 (D. Conn. Mar. 3, 2009), *aff'd*, 354 Fed.
16 Appx. 525 (2d Cir. 2009); *George v. Kraft Foods Global, Inc.*, 684 F. Supp. 2d 992
17 (N.D. Ill. 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Tibble v. Edison Int'l*,
18 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110 (9th Cir. 2013),
19 *vacated*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041 (9th Cir. 2016);
20 *Cunningham v. Cornell Univ.*, 16-6525, 2019 WL 4735876 (S.D. N.Y. Sep. 27,
21 2019).

22 Even though Plaintiffs proceeded to trial on two claims, “trials of class
23 actions are inherently risky and unpredictable propositions.” *Cervantez v. Celestica*
24 *Corp.*, No. 07-729-VAP, 2010 WL 2712267, at *3 (C.D. Cal. July 6, 2010). The
25 settlement in this case also was not easily obtained. It only occurred after years of
26 litigation, two unsuccessful mediations, and just minutes before the trial was
27 scheduled to start.
28

1 Accordingly, the Court concludes that the great risk assumed by Schlichter,
2 Board & Denton justifies an award of one third of the settlement fund in attorney
3 fees.

4 **F. The Reaction of the Class**

5 “The presence or absence of objections from the class is also a factor in
6 determining the proper fee award.” *Grabek*, 2017 WL 9614818, at *5 (citations
7 omitted).

8 On or about April 6, 2020, the settlement administrator sent notices to over
9 167,000 Class members by first-class mail or e-mail for whom the settlement
10 administrator had current e-mail addresses. Struckhoff Decl. ¶ 11; Doc. 326 at 9–10
11 (¶ 4(B)). The settlement agreement and class notices were posted on the settlement
12 website maintained by counsel. Doc. 326 at 9 (¶ 4); O’Gorman Decl. ¶ 6. The
13 court-approved notices apprised Class members that Schlichter, Bogard & Denton
14 would seek up to one third of the settlement fund (or \$4,125,000) in attorney fees
15 and no more than \$450,000 as reimbursement for litigation expenses. *Cf.* Doc. 321-
16 1 at 49, 56 (notices). The notices also informed Class members of their right to
17 object to counsel’s fee request and the deadline to submit any objections. *Id.* at 48,
18 55.

19 The Court finds that notice to the Class was adequate. Because very few
20 Class members have objected to the requested attorney fees and reimbursement of
21 litigation expenses, the Court concludes that an attorney fee award of one third of
22 the settlement fund is justified.

23 **G. Comparison with Schlichter, Bogard & Denton’s lodestar**

24 Courts often compare the requested attorney fees to class counsel’s lodestar
25 to provide a “check on the reasonableness of the percentage award.” *Vizcaino*, 290
26 F.3d at 1050. Under the lodestar method, the court “must start by determining how
27 many hours were reasonably expended on the litigation, and then multiply those
28

1 hours by the prevailing local rate for an attorney of the skill required to perform the
2 litigation.” *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008).
3 Fair and reasonable compensation to class counsel “requires charging current rates
4 for all work done during the litigation, or by using historical rates enhanced by an
5 interest factor.” *WPPSS*, 19 F.3d at 1305. Using historical rates “inadequately
6 compensate[s] [a] firm for the delay in receiving its fees.” *Id.* As such, “[a]ttorneys
7 in common fund cases must be compensated for any delay in payment.” *Fischel v.*
8 *Equitable Life Assur. Soc’y of U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002); *Bouman v.*
9 *Block*, 940 F.2d 1211 (9th Cir. 1991) (affirming use of current hourly rate “to
10 compensate for the delay in receiving payment”) (citation omitted). Class counsel
11 need only submit documentation appropriate to meet the burden establishing an
12 entitlement to an award, not to satisfy “green-eyeshade accountants.” *Fox v. Vice*,
13 131 S.Ct. 2205, 2216 (2011).

14 Complex ERISA cases, such as this, “involve a national standard, and
15 attorneys practicing ERISA law in the Ninth Circuit tend to practice in different
16 districts.” *Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 2d 1181, 1191 (S.D.
17 Cal. 2003). As other district courts have concluded, the Court finds that the relevant
18 hourly rate for Class Counsel’s work is the “nationwide market rate”. *Kelly*, 2020
19 WL 434473, at *6; *Clark v. Duke*, No. 16-1044, 2019 WL 2579201, at *2 (M.D.
20 N.C. June 24, 2019); *Sims v. BB&T Corp.*, No. 15-1705, 2019 WL 1993519, at *2
21 (M.D. N.C. May 6, 2019); *Kruger v. Novant Health, Inc.*, No. 14-208, 2016 WL
22 6769066, at *4 (M.D. N.C. Sept. 29, 2016); *Beesley*, 2014 WL 375432, at *3;
23 *Abbott v. Lockheed Martin Corp.*, No. 06-701, 2015 WL 4398475, at *2 (S.D. Ill.
24 July 17, 2015); *Tussey*, 2015 WL 8485265, at *7.

25 Class Counsel has spent 7,497 attorney hours and 1,118.40 non-attorney
26 hours litigating this case. O’Gorman Decl. ¶ 4. The time and labor expended in this
27 case is consistent with other ERISA fiduciary breach class actions handled by Class
28

1 Counsel. *Clark*, 2019 WL 2579201, at *3; *Sims*, 2019 WL 1993519, at *2; *Bell v.*
2 *Pension Comm. Of ATH Holding Co., LLC*, No. 15-2062, 2019 WL 4193376, at *5
3 (S.D. Ind. Sept. 4, 2019); *Spano v. Boeing Co.*, No. 06-743, 2016 WL 3791123, at
4 *2 (S.D. Ill. Mar. 31, 2016); *Abbott*, 2015 WL 4398475, at *2; *Krueger v.*
5 *Ameriprise Fin., Inc.*, No. 11-2781, 2015 WL 4246879, at *2 (D. Minn. July 13,
6 2015).

7 Schlichter, Bogard & Denton has submitted the following hourly rates: for
8 attorneys with at least 25 years of experience, \$1,060 per hour; for attorneys with
9 15–24 years of experience, \$900 per hour; for attorneys with 5–14 years of
10 experience, \$650 per hour; for attorneys with 2–4 years of experience, \$490 per
11 hour; and for paralegals and law clerks, \$330 per hour. These rates were approved
12 for Schlichter, Bogard & Denton as recently as January 28, 2020 in similar ERISA
13 litigation. *Kelly*, 2020 WL 434473, at *6. They also were approved by several other
14 district courts. *Bell*, 2019 WL 4193376, at *5; *Cassell v. Vanderbilt Univ.*, No. 16-
15 2086, Doc. 174 at 3 (M.D. Tenn. Oct. 22, 2019); *Clark*, 2019 WL 2579201, at *4;
16 *Sims*, 2019 WL 1993519, at *4; *Ramsey v. Philips N.A.*, No. 18-1099, Doc. 27 at 8
17 (S.D. Ill. Oct. 15, 2018).

18 These rates have been independently verified by a recognized expert in
19 attorney fee litigation who opined that Schlichter, Bogard & Denton’s requested
20 rates were reasonable based on rates charged by national attorneys of equivalent
21 experience, skill, and expertise in complex class action litigation. *Ramsey*, Doc. 27
22 at 9 (*citing* Declaration of Sanford Rosen [Doc. 21-3 ¶52]). “In light of the close
23 similarities between the fiduciary breach claims in these cases and this one, Class
24 Counsel being the same, and the recency of the decisions,” the Court concludes that
25 the same rates are reasonable for Schlichter, Bogard & Denton. *Kelly*, 2020 WL
26 434473, at *7; *Clark*, 2019 WL 2579201, at *4.

27 Using the current approved rates for Schlichter, Bogard & Denton, the
28

1 lodestar is \$6,038,535. Struckhoff Decl. ¶ 17. This amount is much more than the
2 requested attorney fee of \$4,125,000. The Court notes that if counsel had requested
3 their lodestar fees, their “fee request under that method would have been
4 presumptively reasonable.” *Grabek*, 2017 WL 9614818, at *6 (citing *Fischel*, 307
5 F.3d at 1007). Moreover, under the percentage-of-the-fund method, district courts
6 have awarded a one-third fee “when counsel’s lodestar was *less* than the fee
7 award.” *Id.* (citing cases).

8 The reasonableness of Schlichter, Bogard & Denton’s fee request is further
9 shown when applying rates previously approved over *seven* years ago. In *Grabek*,
10 this Court found that a blended rate for attorney and paralegal time of \$514.60 per
11 hour approved in *Tussey v. ABB, Inc.*, 746 F.3d 327, 340–41 (8th Cir. 2014) was
12 reasonable for Schlichter, Bogard & Denton’s work. *Grabek*, 2017 WL 9614818, at
13 *5.¹ This was because much higher rates were approved for Class Counsel since
14 *Tussey*. *Id.* at *5 & n.2. Even applying the blended rate, Schlichter, Bogard &
15 Denton’s lodestar is \$4,433,484, also more than their attorney fee request.
16 Struckhoff Decl. ¶ 18.

17 In determining a reasonable attorney fee in class action common fund cases,
18 the lodestar figure is routinely enhanced by a multiplier to compensate class
19 counsel for the risk of non-payment by litigating the case on a contingency basis.
20 *WPPSS*, 19 F.3d at 1299–1300 (“It is an established practice in the private legal
21 market to reward attorneys for taking the risk of non-payment by paying them a
22 premium over their normal hourly rates for winning contingency cases”) (citation
23 omitted); *Vizcaino*, 290 F.3d at 1051 (“courts have routinely enhanced the lodestar
24 to reflect the risk of non-payment in common fund cases”).

25 The Ninth Circuit has approved a lodestar multiplier of up to 6.85. *Steiner v.*
26 *Am. Broadcasting Co., Inc.*, 248 Fed. Appx. 780, 783 (9th Cir. 2007) (affirming
27

28 ¹ The district court approved this rate in 2012. *Tussey*, 2012 WL 5386033, at *4.

1 multiplier of 6.85 and citing cases with comparable or higher multipliers); *Vizcaino*,
2 290 F.3d at 1051–52 & Appendix (affirming multiplier of 3.65 and reporting
3 multipliers of up to 19.6). In other ERISA fiduciary breach actions handled by
4 Class Counsel, a risk multiplier greater than 3 has been approved. *Kruger*, 2016
5 WL 6769066, at *5 (multiplier of 3.69); *Gordan v. Mass. Mut. Life Ins. Co.*, No.
6 13-30184, 2016 WL 11272044, at *3 (D. Mass. Nov. 3, 2016) (multiplier of 3.66).

7 The factors justifying a risk multiplier to Schlichter, Bogard & Denton’s
8 lodestar are present here. Like *Grabek*, Class Counsel “expended substantial effort
9 on behalf of the class in an unusually complex and difficult case to prosecute”, and
10 they “assumed great risk of non-payment” by litigating this case on a contingency
11 fee basis. *Grabek*, 2017 WL 9614818, at *6. Because Schlichter, Bogard & Denton
12 is requesting less than their lodestar and without a risk multiplier at all, the Court
13 finds that their fee request for one third of the common fund is reasonable.

14 H. Comparison to Fee Awards in Similar Class Action Settlements

15 In determining a reasonable attorney fee award, courts often consider fee
16 awards in similar cases. *Vizcaino*, 290 F.3d at 1049–50; *Vasquez v. Coast Valley*
17 *Roofing, Inc.*, 266 F.R.D. 482, 492 (E.D. Cal. 2010) (Wanger, J.); *Boyd*, 2014 WL
18 6473804, at *10; *Deaver*, 2015 WL 8526982, at *12. An attorney fee of one third
19 of the settlement fund is routinely found to be reasonable in class actions.
20 “Nationally, the average percentage of the fund award in class actions is
21 approximately one-third.” *Multi-Ethnic Immigrant Workers Org. Network v. City of*
22 *Los Angeles*, No. 07-3072-AHM, 2009 WL 9100391, at *4 (C.D. Cal. June 24,
23 2009); *see also Romero v. Producers Dairy Foods, Inc.*, No. 05-484, 2007 WL
24 3492841, at *4 (E.D. Cal. Nov. 14, 2007) (“fee awards in class actions average
25 around one-third of the recovery”) (*quoting* NEWBERG ON CLASS ACTIONS § 14.6
26 (4th ed. 2007)). “An award of one third is within the range of percentages which
27 courts have considered reasonable in other class action lawsuits.” *Boyd*, 2014 WL
28

1 6473804, at *10; *Barbosa*, 297 F.R.D. at 450 (one-third fee commensurate with
2 other class actions).

3 A one-third fee also consistent with awards in similar ERISA fiduciary
4 breach class actions handled by Schlichter, Bogard & Denton. In *Grabek*, this Court
5 previously awarded the firm a one-third fee from the common fund. *Grabek*, 2017
6 WL 9614818, at *2–4. In 17 other ERISA fiduciary breach settlements, Schlichter,
7 Bogard & Denton was awarded attorney fees of one third of the settlement fund.
8 *Kelly*, 2020 WL 434473, at *3; *Cassell*, Doc. 174 at 2 (¶ 5); *Tussey v. ABB, Inc.*,
9 No. 06-4305, 2019 WL 3859763, at *4, *6 (W.D. Mo. Aug. 16, 2019); *Clark*, 2019
10 WL 2579201, at *3; *Sims*, 2019 WL 1993519, at *2; *Ramsey*, Doc. 27 at 5–6; *Bell*
11 *v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-2062, 2019 WL 4193376, at
12 *3 (S.D. Ind. Sept. 4, 2019); *Gordan*, 2016 WL 11272044, at *2; *Kruger*, 2016 WL
13 6769066, at *1, *5; *Spano*, 2016 WL 3791123, at *2; *Abbott*, 2015 WL 4398475, at
14 *2; *Krueger*, 2015 WL 4246879, at *1, *3; *Beesley*, 2014 WL 375432, at *2–3;
15 *Nolte*, 2013 WL 12242015, at *2–3; *George v. Kraft Foods Global, Inc.*, Nos. 08-
16 3899, 07-1713, 2012 WL 13089487, at *2–3 (N.D. Ill. June 26, 2012); *Will v. Gen.*
17 *Dynamics Corp.*, No. 06-698, 2010 WL 4818174, at *3 (S.D. Ill. Nov. 22, 2010);
18 *Martin v. Caterpillar Inc.*, No. 07-1009, 2010 WL 11614985, at *1, 3–4 (C.D. Ill.
19 Sept. 10, 2010).

20 The Ninth Circuit and other district courts within this Circuit have awarded
21 attorney fees of one third of the common fund. *In re Pacific Enters. Sec. Litig.*, 47
22 F.3d 373, 379 (9th Cir. 1995) (one-third fee from a \$12 million common fund);
23 *Morris v. Lifescan, Inc.*, 54 F. App'x 663, 664 (9th Cir. 2003) (one-third fee of
24 \$14.8 settlement fund); *Heritage Bond*, 2005 WL 1594403, at *19 (one-third fee
25 from \$27.8 million common fund); *Fernandez*, 2008 WL 8150856, at *16 (34% fee
26 of \$8.5 million common fund); *Boyd*, 2014 WL 6473804, at *9–10 (one-third fee
27 on \$5.8 million common fund); *Cheng*, 2019 WL 5173771, at *7 (one-third fee of
28

1 \$2 million settlement); *cf. Norris*, 2017 WL 6493091, at *13 (44% fee awarded to
2 experienced attorneys in ERISA litigation).

3 In careful consideration of all of the above factors, this Court finds one third
4 of the settlement fund of \$12,375,000 to be a reasonable percentage award. As
5 such, this Court awards attorney fees totaling \$4,125,000.

6 **II. Reimbursement of Schlichter, Bogard & Denton’s expenses**

7 The Court may award reasonable litigation expenses as authorized by law
8 and the parties’ settlement agreement. Fed. R. Civ. P. 23(h); Doc. 321-1 §§ 2.4, 7.1.
9 “There is no doubt that an attorney who has created a common fund for the benefit
10 of the class is entitled to reimbursement of reasonable litigation expenses from that
11 fund.” *Heritage Bond*, 2005 WL 1594403, at *23 (citation omitted). These
12 expenses should be limited to expenses that are typically charged to fee paying
13 clients. *Emmons*, 2017 WL 749018, at *8. “Expenses such as reimbursement for
14 travel, meals, lodging, photocopying, long-distance telephone calls, computer legal
15 research, postage, courier service, mediation, exhibits, documents scanning, and
16 visual equipment are typically recoverable.” *Grabek*, 2017 WL 9614818, at *6
17 (quoting *Rutti v. Lojack Corp., Inc.*, No. 06-350-DOC, 2012 WL 3151077, at *12
18 (C.D. Cal. July 31, 2012)). Consulting and expert witness fees also are recoverable.
19 *Grabek*, 2017 WL 9614818, at *6 (citing *In re Media Vision Tech. Secs. Litig.*, 913
20 F. Supp. 1362, 1366–67 (N.D. Cal. 1996).

21 Schlichter, Bogard & Denton seeks \$390,587 in litigation expenses. These
22 expenses include: (1) \$59,373.61 for depositions; (2) \$195,387.50 for experts and
23 consultants; (3) \$3,003.53 for filing, transcripts, subpoena services, and related
24 costs; (4) \$8,390.00 for mediation and settlement costs; (5) \$24,919.52 for copies,
25 postage, phone, and fax; (6) \$11,029.79 for data development and document
26 organization; (7) \$4,539.78 for research and investigation; (8) \$66,986.07 travel,
27 lodging, and parking; and (9) \$16,957.56 in trial costs. O’Gorman Decl. ¶ 2.
28

1 This case was litigated for over three years. Schlichter, Bogard & Denton
2 reviewed over 353,000 pages of documents produced by Defendants and third
3 parties, took and defended 20 depositions across the country, engaged three expert
4 witnesses, and fully prepared for trial that was set to begin on October 15, 2019.
5 Struckhoff Decl. ¶¶ 6, 8–9; Doc. 170-90 (Schmidt Rpt.); Doc. 172-03 (Pomerantz
6 Rpt.); Doc. 172-2 (Witz Rpt.); Docs. 167-03, 167-04, 168-113 (expert deposition
7 excerpts). They also participated in two unsuccessful mediations in Los Angeles,
8 California. Doc. 306.

9 The expenses requested by Schlichter, Bogard & Denton are substantially
10 less than expenses reimbursed to the firm in similar ERISA fiduciary breach
11 settlements. *See, e.g., Grabek*, 2017 WL 9614818, at *6 (\$1.2 million); *Tussey*,
12 2019 WL 3859763, at *6 (\$2.3 million); *Spano*, 2016 WL 3791123, at *4 (\$1.8
13 million); *Abbott*, 2015 WL 4398475, at *4 (\$1.6 million); *Beesley*, 2014 WL
14 375432, at *3 (\$1.6 million); *George*, 2012 WL 13089487, at *4 (\$1.5 million);
15 *Kanawi v. Bechtel, Corp.*, No. 06-5566, 2011 WL 782244, at *3 (N.D. Cal. Mar. 1,
16 2011). (\$1.5 million).

17 Given that the expenses sought are the type of costs typically recovered in
18 similar cases, and based on the significant efforts expended by Schlichter, Bogard
19 & Denton over the extended litigation, the Court finds their request of
20 reimbursement of litigation expenses reasonable.

21 **III. The Class Representatives' Incentive Awards**

22 Schlichter, Bogard & Denton requests that each Class representative—
23 Clifton Marshall, Thomas Hall, Manuel Gonzalez, Ricky Hendrickson, Phillip
24 Brooks and Harold Hylton—receive an incentive award of \$25,000. It is well
25 established that the court may grant incentive awards to class representatives, “both
26 as an inducement to participate in the suit and as compensation for time spent in
27 litigation activities, including depositions.” *Grabek*, 2017 WL 9614818, at *7
28

1 (citing *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454, 463 (9th Cir. 2000)). These
2 awards are “fairly typical in class actions.” *Online DVD-Rental*, 779 F.3d at 943
3 (citation omitted). Courts consider the following factors in determining whether to
4 approve an incentive award: “(1) the risk to the class representative in commencing
5 suit, both financial and otherwise; (2) the notoriety and personal difficulties
6 encountered by the class representative; (3) the amount of time and effort spent by
7 the class representative; (4) the duration of the litigation[;] and[] (5) the personal
8 benefit (or lack thereof) enjoyed by the class representative as a result of the
9 litigation.” *Grabek*, 2017 WL 9614818, at *7 (quoting *Van Vranken v. Atlantic*
10 *Richfield Co.*, 901 F.Supp. 294, 299 (N.D. Cal. 1995)).

11 **A. Risk to Class Representatives**

12 The Court finds that the Class representatives faced substantial risk if
13 Defendants prevailed in this lawsuit and sought to recover their attorney fees and
14 costs from the named plaintiffs under 29 U.S.C. §1132(g) and Fed. R. Civ. P. 54(d).
15 These costs can be substantial as shown by the costs incurred by Schlichter, Bogard
16 & Denton and the hourly rates charged by Defendants’ experts. In *Tussey*, the
17 defendants in a similar ERISA fiduciary breach class action paid their attorneys
18 over \$42 million through trial, and paid one expert and his research firm over \$3.2
19 million. 2015 WL 8485265, at *3, *6. This factor weighs in favor of granting
20 incentive awards.

21 **B. The Notoriety and Personal Difficulties Encountered by the**
22 **Class Representatives**

23 This case has garnered media attention since filing.² Even if there was no

24
25 ² See, e.g., John Manganaro, *Northrop Grumman ERISA Suit Sounds Familiar*
26 *Claims*, PLANADVISER, Sept. 16, 2016, <https://www.planadviser.com/northrop-grumman-erisa-suit-sounds-familiar-claims/>; Rebecca Moore, *Northrop Excessive*
27 *Fee Case Moves Forward*, PLANSPONSOR, Nov. 6, 2017, <https://www.plansponsor.com/northrop-grumman-excessive-fee-case-moves-forward/>; Nevin Adams, *Schlichter Wins One, Loses Several in Excessive Fee Suit*,
28 NAPA, Aug. 16, 2019, <https://www.napa-net.org/news-info/daily-news/schlichter->

1 media attention or difficulties encountered by the Class representatives, that would
2 not preclude the Court from awarding incentive awards. *Grabek*, 2017 WL
3 9614818, at *7 (citing *Razilov v. Nationwide Mut. Ins. Co.*, No. 01-1466, 2006 WL
4 3312024, at *4 (D. Or. Nov. 13, 2006)). This factor weighs slightly in favor of
5 granting the incentive awards.

6 **C. The Amount of Time and Effort Expended by the Class**
7 **Representatives**

8 “An incentive award is appropriate where the ‘class representatives remained
9 fully involved and expended considerable time and energy during the course of the
10 litigation.’” *Grabek*, 2017 WL 9614818, at *7 (quoting *Razilov*, 2006 WL 3312024,
11 at *4).

12 Schlichter, Bogard & Denton asserts that each of the Class representatives
13 has actively participated in this litigation since they came forward to initiate this
14 action. They remained in regular contact with Schlichter, Bogard & Denton
15 throughout the case and provided counsel documents to assist them during their
16 pre-filing investigation. Struckhoff Decl. ¶¶ 13–14. The Class representatives
17 assisted in preparing their declarations in support of class certification, Docs. 83-6 –
18 83-11, sat for depositions, Docs. 121-6 – 121-11, and responded to discovery
19 requests. Struckhoff Decl. ¶ 7. Mr. Marshall attended one of the mediation sessions
20 in Los Angeles, California. *Id.* ¶ 15. Also, the Class representatives were present at
21 trial, became fully informed about the terms of the settlement, and agreed to them
22 on behalf of the Class. *See* Oct. 15, 2019 Tr. at 6:25–9:16.

23 Given their involvement throughout this litigation, the Court finds this factor
24 weighs in favor of incentive awards.

25 **D. The Duration of the Litigation**

26 _____
27 wins-one-loses-several-excessive-fee-suit; Jaklyn Willie, *Northrop Grumman Gets*
28 *401(k) Class Action Trimmed*, BLOOMBERG LAW, Feb. 16, 2018,
<https://news.bloomberglaw.com/employee-benefits/northrop-grumman-gets-401-k-fee-class-action-trimmed>.

1 A class representative’s participation through “years of litigation” supports
2 an incentive award. *Grabek*, 2017 WL 9614818 (quoting *Van Vranken*, 901 F.Supp.
3 at 299). Because this case has been pending for over three years and the Class
4 representatives were involved throughout the case, the Court finds this factor
5 weighs in favor of incentive awards.

6 **E. The Personal Benefit Enjoyed by the Class Representatives as a**
7 **Result of the Litigation**

8 An incentive award may be appropriate when a class representative will not
9 gain any benefit beyond that they would receive as an ordinary class member.
10 *Grabek*, 2017 WL 9614818, at *8 (citing *Razilov*, 2006 WL 3312024, at *4, *Van*
11 *Vranken*, 901 F.Supp. at 299).

12 Absent an incentive award, the Class representatives in this action will
13 receive no relief beyond that available to Class members. The \$25,000 requested
14 incentive award for each of the six Class representatives is only 0.20% of the total
15 settlement fund, and combined are only 1.2%.

16 District courts within the Ninth Circuit have approved similar incentive
17 awards. *Trujillo v. City of Ontario*, No. 04-1015-VAP, 2009 WL 2632723, at *5
18 (C.D. Cal. Aug. 24, 2009) (\$30,000 each to six class representatives); *Carlin v.*
19 *DairyAmerica, Inc.*, 380 F.Supp.3d 998, 1026 (E.D. Cal. 2019) (\$45,000 each to
20 four current class representatives); *Nitsch v. DreamWorks Animation SKG Inc.*, No.
21 14-4062, 2017 WL 2423161, at *16 (N.D. Cal. June 5, 2017) (\$90,000 each to three
22 class representatives); *Pan v. Qualcomm Inc.*, No. 16-1885, 2017 WL 3252212, at
23 *14 (S.D. Cal. July 31, 2017) (\$50,000 each to seven class representatives).

24 Indeed, this Court approved an incentive award of \$25,000 to each class
25 representative in *Grabek*. 2017 WL 9614818, at *8. In other ERISA class action
26 settlements handled by Schlichter, Bogard & Denton, district courts have approved
27 the same amount or more to each class representative. *Tussey*, 2019 WL 3859763,
28

1 at *6; *Clark*, 2019 WL 2579201, at *5; *Kruger*, 2016 WL 6769066, at *6; *Spano*,
2 2016 WL 3791123, at *4; *Abbott*, 2015 WL 4398475, at *4; *Krueger*, 2015 WL
3 4246879, at *3; *Beesley*, 2014 WL 375432, at *4; *Nolte*, 2013 WL 12242015, at *4;
4 *Will*, 2010 WL 4818174, at *4.

5 **F. Weighing the Factors**

6 Considering all the relevant factors, the Court concludes that an incentive
7 award of \$25,000 each for Clifton Marshall, Thomas Hall, Manuel Gonzalez, Ricky
8 Hendrickson, Phillip Brooks and Harold Hylton is reasonable under the
9 circumstances.

10 **CONCLUSION**

11 For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion for
12 Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards to Class
13 Representatives. It awards Schlichter, Bogard & Denton \$4,125,000 in attorney fees
14 and \$390,587 in expenses, and each Class representative an incentive award of
15 \$25,000.

16 **IT IS SO ORDERED.**

17 DATED: _____, 2020

18
19
20 _____
21 André Birotte Jr.
22 United States District Court Judge
23
24
25
26
27
28