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13
 14 **UNITED STATES DISTRICT COURT**
 15 **CENTRAL DISTRICT OF CALIFORNIA**

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

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

**PLAINTIFFS' MEMORANDUM IN
 SUPPORT OF FINAL APPROVAL OF
 CLASS ACTION SETTLEMENT**

Hon. André Birotte Jr.

Final approval hearing:
 August 20, 2020 9:00 a.m.

Courtroom 7B – Teleconference
 Dkt. No. 348

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INTRODUCTION

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2 The settlement of this action provides the participants in the Northrop Grumman
3 Savings Plan (the “Plan”) a significant economic recovery of \$12,375,000. In
4 addition, this action and the preceding action (*In re Northrop Grumman Corp.*
5 *ERISA Litigation*, No. 06-6213-AB (JCx)) prompted action by the U.S. Department
6 of Labor that resulted in restitution to the Plan in January 2017 of an additional
7 \$4,200,000. *See* Dkt. No. 289-1 at 69 (¶201). Only 5 of the class members out of
8 over 165,000 object to the settlement. Those objections lack merit for the reasons
9 stated in the Joint Response To Objectors (Dkt. No. 340).

10 In addition, by Amendment To Class Action Settlement published on the
11 Settlement Website (2019northrop401ksettlement.com) as of July 8, 2020, the
12 parties have clarified the limited scope of the releases and covenants not to sue
13 contained in the Settlement Agreement and resolved the objections in Dkt. No. 333
14 and the concerns expressed by the Court in Dkt. No. 349.

15 Because of the overwhelming benefit to the class and the risks of continuing
16 litigation, the Court should finally approve the settlement.

BACKGROUND

A. Procedural History.

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18
19 This settlement marks the end of a prolonged battle between the parties that
20 began 14 years ago with *In re Northrop Grumman Corp. ERISA Litigation*, No. 06-
21 6213-AB (JCx) (“*Grabek*”). After the Court limited the *Grabek* damages discovery
22 period to May 11, 2009 (*Grabek* Dkt. No. 652), Plaintiffs filed this action on
23 September 9, 2016 alleging continued unlawful payments to Northrop Grumman
24 Corporation after that date. Dkt. No. 132 (operative complaint). Plaintiffs also
25 alleged that defendants imprudently managed the Plan’s Emerging Markets Equity
26 Fund (“EM Fund”) and caused the Plan to pay unreasonable recordkeeping fees. *Id.*
27 The *Grabek* case did not settle until March 2017 and specifically excluded the
28 claims in this action. The *Grabek* settlement recovered for the Northrop Grumman

1 Savings Plan \$14,237,500 (85% of the \$16,750,000 settlement) on the unlawful
2 reimbursements claim at issue in that case. *Grabek*, Dkt. No. 788-1 at 16 (§6.4.3).

3 Plaintiffs' claims survived two motions to dismiss (Dkt. Nos. 68, 146), and all
4 but the claim for unreasonable recordkeeping fees survived summary judgment
5 (Dkt. No. 264). The claims were certified as a class action over defendants'
6 objection on November 2, 2017. Dkt. No. 130; *see also* Dkt. No. 322 at 8–10 (mem.
7 3–5, describing procedural history); Dkt. No. 331-1 at 9–12 (mem. 2–5, Case
8 History).

9 This case was set for trial on October 15, 2019. Dkt. No. 311. The parties filed
10 extensive pretrial documents. Dkt. Nos. 269, 270, 279–282, 284-1, 289-1, 291–294,
11 311. They also filed motions in limine. Dkt. Nos. 266, 267, 268. The parties
12 designated 1135 exhibits for potential use at trial and over 20 witnesses, including 4
13 experts. Dkt. No. 322 at 10 (mem. 5). They reached a settlement in principle 14
14 minutes before the start of trial. Dkt. No. 315. They had previously conducted
15 mediation of this dispute with Margaret A. Levy (one of the mediators in *Grabek*),
16 on March 5 and October 2, 2019, and continued discussions with the assistance of
17 Ms. Levy thereafter. Dkt. No. 306.

18 **B. Preliminary settlement approval and motion for fees and costs.**

19 The parties continued to negotiate the Settlement Agreement after October 15
20 and presented the Settlement Agreement to the Court on January 13, 2020. Dkt. No.
21 321. The Court preliminarily approved the settlement on February 3, 2020. Dkt.
22 No. 326.

23 In accordance with the Court's Order, the Settlement Administrator sent 167,354
24 notices to class members by email or physical mail on April 6, 2020. Dkt. No. 342-
25 2 at 3 (¶¶6–7). Notices were mailed to 8,564 participants whose emails were
26 undeliverable. *Id.* at 4 (¶9). Of all physically mailed notices, 1,106 were returned as
27 undeliverable and alternative addresses could not be found. *Id.* (¶10). The Notice
28 specified that Plaintiffs would seek \$4,125,000 in attorneys' fees, up to \$450,000 to

1 reimburse litigation costs, and \$25,000 incentive awards for the 6 class
2 representatives. *Id.* at 12; Dkt. No. 321-1 at 49. On April 6, 2020, Plaintiffs filed
3 their motion for attorneys' fees (\$4,125,000), reimbursement of expenses
4 (\$390,587), and \$25,000 incentive awards for the class representatives. Dkt. No.
5 331.

6 **C. Class member reaction.**

7 The Court's preliminary approval order allowed class members up to May 6,
8 2020 (30 days before the fairness hearing) to object to the settlement, any aspect of
9 the Settlement Agreement, the plan of allocation of the net settlement amount, the
10 proposed award of attorneys' fees and costs, or the incentive awards to the class
11 representatives. Dkt. No. 326 at 11 (Order at 10). Only 5 class members objected to
12 the settlement, with 3 joining in the same objection over the scope of the release in
13 the Settlement Agreement (the "Carlson Objection"). The parties filed their Joint
14 Response To Objectors refuting each of these objections. Dkt. No. 340.

15 **D. Independent Fiduciary's approval of the settlement.**

16 Gallagher Fiduciary Advisors LLC is the Independent Fiduciary under §2.28
17 and Article 3 of the Settlement Agreement and PTE 2003-39, charged with the
18 responsibility to determine independently whether to approve and authorize the
19 settlement of Released Claims on behalf of the Plan. Dkt. No. 321-1 at 5, 8–11. The
20 Independent Fiduciary reviewed the pleadings in this case and interviewed counsel
21 for the class and defendants and the mediator. Dkt. No. 342-3 at 2. The Independent
22 Fiduciary approves of the settlement and class counsel's requested attorneys' fees
23 and expenses. *Id.* at 3–4.

24 **E. The initial fairness hearing and continuance.**

25 The fairness hearing under Federal Rule of Civil Procedure 23(e) and the
26 hearing of Plaintiffs' motion for award of attorneys' fees, reimbursement of
27 expenses, and incentive awards for the class representatives were originally set for
28 June 5, 2020. Dkt. Nos. 331, 341. Any objection to the settlement in this case was

1 waived if it was not filed by May 6, 2020 and any objector waived its right to speak
2 at the hearing if it did not file a notice of intention to speak at the hearing by May 6,
3 2020. Dkt. No. 326 at 10–13 (§§5–6). These deadlines were provided in the notices
4 delivered to class members. Dkt. No. 342-2 at 11, 16. The Court reserved its right
5 to continue the fairness hearing without further notices. Dkt. No. 326 at 13 (§11).

6 On June 5, 2020, the Court continued the fairness hearing to June 30, 2020. Dkt.
7 No. 346. In accordance with the Court’s instruction, Plaintiffs published on the
8 Settlement Website notice of the continued fairness hearing date. Dkt. Nos. 347 at 2
9 (¶¶2–3), 349 at 4:14–27.

10 At the June 30 fairness hearing, the Court allowed Objector John Murray to
11 argue his objection (Tr. 7:3–13:6), even though he did not file a notice of intention
12 to speak in compliance with the Court’s order (Dkt. No. 326 at 12–13 (§6)). The
13 Court also heard Plaintiffs’ response to that objection. Tr. 13:7–23:7.

14 Upon consideration of the Carlson Objection (Dkt. No. 333) and the Court’s
15 rejection of the parties’ clarification of the limited scope of the releases and
16 covenants not to sue contained in the Settlement Agreement (Dkt. No. 340 at 4
17 (mem. 3)), Plaintiffs and Defendants announced their decision to amend the
18 Settlement Agreement to document that clarification. Tr. 23:8–27:1, 28:13–23. The
19 Court continued the fairness hearing to August 20 to allow the parties to amend the
20 Settlement Agreement and ordered Plaintiffs to post the amendment on the
21 Settlement Website by July 13. Tr. 37:18–38:9. Upon Plaintiffs’ request, the Court
22 also continued to that date the hearing on Plaintiffs’ motion for attorneys’ fees,
23 expenses, and incentive awards. Tr. 39:20–25. The Court then denied the pending
24 motion for final approval and motion for attorneys’ fees, expenses, and incentive
25 awards without prejudice. Dkt. No. 349.

26 **F. The Amendment.**

27 The parties have executed the Amendment To Class Action Settlement
28 Agreement that is submitted as Motion Exhibit 1 and Exhibit 1 to the Declaration of

1 Michael A. Wolff filed herewith. In accordance with the Court’s order, the
2 Settlement Agreement, and the Notice of Settlement, Plaintiffs posted the
3 Amendment on the Settlement Website on July 8, along with a notice of the August
4 20, 2020 fairness hearing. Wolff Decl. ¶4. Plaintiffs also delivered the Amendment
5 to R. Joseph Barton, counsel filing the Carlson Objection, who confirmed that the
6 Amendment resolves his clients’ objections. *Id.* ¶3.

7 The parties believe that the Amendment resolves the Court’s concerns with the
8 scope of the releases and covenants not to sue in the following manner. The
9 Amendment replaces section 2.39, including its subparts, with text that specifically
10 limits “Released Claims” to the facts alleged in the operative complaint. Section
11 2.39.1 specifically limits the scope of Released Claims to those
12 based on the facts alleged in the operative complaint of the Class
13 Action, specifically, that the Defendants (1) distributed the Saving
14 Plan’s assets to Defendant Northrop Grumman Corporation as
15 payment for services it provided to the Savings Plan, (2) paid
16 unreasonable recordkeeping fees to the Saving Plan’s recordkeeper,
17 and (3) used an active-management strategy for the Savings Plan’s
18 Emerging Markets Equity Fund and failed to consider whether to fully
19 convert the Emerging Markets Equity Fund to passive management.

20 A new Subsection 2.39.9 specifically excludes the *Carlson* lawsuit from its scope.
21 A new section 8.4 reiterates the limited scope of the release by specifying that the
22 Released Claims and the releases and covenants not to sue that are set forth in
23 §§8.1–8.3 and 2.39 are limited to claims based on the identical factual predicate of
24 the operative complaint in this lawsuit. A redline comparing the original text and
25 the new text of these sections is submitted herewith as Exhibit 3 of the Wolff
26 Declaration.

27 The Independent Fiduciary has approved the Amendment. Wolff Decl. Exhibit 1
28 at 5. Plaintiffs published the Independent Fiduciary’s approval on the Settlement

1 Website on July 9, 2020. Wolff Decl. ¶4.

2 Class members have received notice of the Amendment. Section 3.2.1 of the
3 Settlement Agreement provides that:

4 notice of changes to the Settlement Agreement, future orders
5 regarding the Settlement, modifications to the Class Notice, changes
6 in the date or timing of the Fairness Hearing, or other modifications to
7 the Settlement, including the Plan of Allocation, may be provided to
8 the Class through the Settlement Website without requiring additional
9 mailed notice[.]

10 Dkt. No. 321-1 at 9 (§3.2.1). Class members also were informed in the Notice Of
11 Settlement:

12 Any amendments to the Settlement Agreement or any other settlement
13 documents will be posted on that website
14 [www.2019northrop401ksettlement.com]. You should visit that
15 website if you would like more information about the Settlement and
16 any possible amendments to the Settlement Agreement or other
17 changes, including changes to the Plan of Allocation, the date, time,
18 or location of the Fairness Hearing, or other Court orders concerning
19 the Settlement.

20 Dkt. No. 342-2 at 33, 42.

21 In sum, the Amendment resolves all ambiguity and objections regarding the
22 scope of the release contained in the original Settlement Agreement by expressly
23 and repeatedly stating that it is limited to the facts of the operative complaint.

24 Consequently, in light of the Amendment, there is no basis for the Carlson
25 Objection (Dkt. No. 333) and the Court should summarily overrule it if it is not
26 withdrawn before the fairness hearing.

27 **LEGAL STANDARD**

28 “The claims, issues, or defenses of a certified class may be settled, voluntarily

1 dismissed, or compromised only with the court’s approval.” Fed.R.Civ.P. 23. The
2 Court may approve the settlement “only after a hearing and on finding that it is fair,
3 reasonable, and adequate.” Fed.R.Civ.P. 23(e)(2). “[T]here is a strong judicial
4 policy that favors settlements, particularly where complex class action litigation is
5 concerned.” *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1101 (9th Cir. 2008) (citing
6 *Class Plaintiffs v. Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992)). This policy
7 recognizes that “[p]arties represented by competent counsel are better positioned
8 than courts to produce a settlement that fairly reflects each party’s expected
9 outcome in the litigation.” *In re Pacific Enters. Sec. Litig.*, 47 F.3d 373, 378 (9th
10 Cir. 1995). “[T]he court’s intrusion upon what is otherwise a private consensual
11 agreement negotiated between the parties to a lawsuit must be limited to the extent
12 necessary to reach a reasoned judgment that the agreement is not the product of
13 fraud or overreaching by, or collusion between, the negotiating parties, and that the
14 settlement, taken as a whole, is fair, reasonable and adequate to all concerned.”
15 *Officers for Justice v. Civil Service Comm’n*, 688 F.2d 615, 625 (9th Cir. 1982).
16 “The proposed settlement is not to be judged against a hypothetical or speculative
17 measure of what *might* have been achieved by the negotiators.” *Id.* (emphasis in
18 original, citations omitted).

19 In evaluating the fairness of a settlement, the Court should consider:

- 20 (1) the strength of the plaintiff’s case; (2) the risk, expense, complexity, and
21 likely duration of further litigation; (3) the risk of maintaining class action
22 status throughout the trial; (4) the amount offered in settlement; (5) the extent
23 of discovery completed and the stage of the proceedings; (6) the experience
24 and view of counsel; (7) the presence of a governmental participant; and (8)
25 the reaction of the class members of the proposed settlement.

26 *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 944 (9th Cir. 2015)
27 (“*Churchill factors*”) (quotations and citation omitted).

28

ARGUMENT

A. The settlement did not result from fraud or collusion.

The settlement was not the product of fraud or collusion. It resulted from lengthy, contentious, and complex litigation and arm's-length negotiations over months up to the day of trial, including two mediations with an experienced mediator, which demonstrates the settlement was reached in good faith. *In re Heritage Bond Litig.*, No. 02-1475-RGK, 2005 WL 1594403, *6 (C.D.Cal. June 10, 2005); *Hightower v. JPMorgan Chase Bank, N.A.*, No. 11-1802-PSG (PLAx), 2015 WL 9664959, *7 (C.D.Cal. Aug. 4, 2015) (good faith settlement was reached under guidance from experienced mediator). Because settlement was reached shortly before trial, “both plaintiffs and defendants had a clear view of the strengths and weaknesses of their cases.” *Vasquez v. Coast Valley Roofing, Inc.*, 266 F.R.D. 482, 489 (C.D.Cal. 2010) (Wagner, J., internal quotations and alterations and citation omitted).

There are no elements of collusion in this settlement. There is no “clear sailing” arrangement. *In re Bluetooth Headset Products Liability Litig.*, 654 F.3d 935, 947 (9th Cir. 2011). None of the settlement funds will revert to defendants. *Id.*; Dkt. No. 321-1 at 15–20 (Art. 6). The class members will receive a monetary distribution and class counsel will not receive a disproportionate distribution of the settlement. *Id.* The 1/3 fee counsel seeks is the market rate for similar cases and is what this Court awarded in *Grabek*. Dkt. No. 331-1 at 27–29 (mem. 20–22); *Grabek*, Dkt. No. 803 (Oct. 24, 2017). The Independent Fiduciary agrees that the fee request is reasonable. Dkt. No. 342-3 at 4.

B. The settlement is fair, reasonable, and adequate.

The *Churchill* factors demonstrate that the settlement is fair, reasonable, and adequate.

1. The strength of Plaintiffs’ case.

Plaintiffs have a strong case that survived two motions to dismiss and a motion

1 for summary judgment. *See* Dkt. Nos. 68, 146, 246. One of the claims is based on
2 the same theory of liability that was asserted in *Grabek* and resulted in a settlement
3 in favor of the Plan, as well as a subsequent restitution to the Plan from a DOL
4 investigation. Nonetheless, defendants denied any liability, denied any relation of
5 this case to *Grabek*, and disputed the measure by which to bring current the Plan’s
6 losses, and furthermore asserted affirmative defenses and claimed a right to a setoff
7 for the DOL-induced restitution. Dkt. No. 273. In addition, the Court granted
8 defendants’ motion to exclude fact witnesses from *Grabek* from testifying at this
9 trial. Dkt. No. 311 at 22. The parties were prepared to present at trial 1135 exhibits
10 and over 20 witnesses within an allotted 30 hours. Dkt. Nos. 269, 270, 302. Thus,
11 “while Plaintiffs are confident of the strength of their case, it is imprudent to
12 presume ultimate success at trial and thereafter.” *Heritage Bond*, 2005 WL
13 1594403, *7.

14 **2. The risk, expense, complexity, and likely duration of further**
15 **litigation.**

16 “[T]rials of class actions are inherently risky and unpredictable propositions.”
17 *Cervantez v. Celestica Corp.*, No. 07-729-VAP (OPx), 2010 WL 2712267, *3
18 (C.D.Cal. July 6, 2010). “[I]t is the very uncertainty of outcome in litigation and
19 avoidance of wasteful and expensive litigation that induce consensual settlements.”
20 *Officers*, 688 F.2d at 625.

21 This case particularly concerned complex factual and legal issues. Dkt. Nos.
22 284-1 (Pla. Proposed Findings, 67 pages), 289-1 (Def. Proposed Findings, 72
23 pages). The numerous contested issues between the parties confirms the risk of
24 proceeding to trial and the likely prolongation of the case on appeal. *See also*
25 *Millan v. Cascade Water Servs. Inc.*, No. 12-1821, 2016 WL 3077710, *7 (E.D.Cal.
26 June 2, 2016) (approving settlement where plaintiff’s “claims would almost
27 certainly face issues of proof” at trial); *Noll v. eBay, Inc.*, 309 F.R.D. 593, 605–06
28 (N.D.Cal. 2015) (approving settlement where defendant had “maintained a vigorous

1 defense throughout the litigation” and the court had previously dismissed several
2 claims); *Nat’l Rural Telecomms. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526–27
3 (C.D. Cal. 2004) (Baird, J., approving settlement that “compare[d] favorably to the
4 uncertainties associated with continued litigation regarding the contested issues”).

5 Even if completely successful at trial, an appeal likely would have delayed
6 recovery for years. The plan participants in *Tibble v. Edison International*, another
7 ERISA class action, obtained a modest judgment in their favor in 2010 (No. 07-
8 5359-SVW (AGRx), 2010 WL 2757153 (C.D.Cal. July 8, 2010)), but then had to
9 endure six years of appeals through the Supreme Court and Court of Appeals (843
10 F.3d 1187, 1191–93 (9th Cir. 2016)), and only this year are expecting to receive
11 distribution of the damages they ultimately recovered (enhanced significantly after
12 trial on remand). No. 07-5359-SVW (AGRx), Dkt. No. 609.

13 “By participating in the settlement, class members have an opportunity for an
14 immediate, guaranteed payout now in lieu of the possibility of an uncertain
15 recovery that will take months, if not years, to achieve.” *Rodriguez v. Kraft Foods*
16 *Group, Inc.*, No. 14-1137, 2016 WL 5844378, *7 (E.D.Cal. Oct. 5, 2016); *see also*
17 *Deaver v. Compass Bank*, No. 13-222, 2015 WL 8526982, *7 (N.D.Cal. Dec. 11,
18 2015) (“Although [p]laintiffs might have received more if they proceeded through
19 litigation and prevailed on the merits of their case, they might also receive less and
20 there is a value to the class in obtaining the money now.”); *Boyd v. Bank of Am.*
21 *Corp.*, No. 13-561-DOC (JPRx), 2014 WL 6473804, *5 (C.D.Cal. Nov. 18, 2014)
22 (“This settlement appears to be an expeditious way to resolve this litigation and
23 provide class members a disbursement in a timely matter.”). This “militates in favor
24 of settlement rather than further protracted and uncertain litigation.” *Nat’l Rural*,
25 221 F.R.D. at 527.

26 **3. The risk of maintaining class action status throughout trial.**

27 The Court certified this case as a class action on November 2, 2017. Dkt. No.
28 130. There was little risk of not maintaining class action status throughout trial or

1 on appeal, so this factor is neutral and does not weigh against approving the
2 settlement. *Apparicio v. RadioShack Corp.*, No. 08-1145-GAF (AJWx), 2010 WL
3 11507856, *3 (C.D.Cal. June 7, 2010).

4 **4. The amount offered in settlement.**

5 The maximum amount of damages Plaintiffs claimed was just over \$42 million,
6 plus an interest factor to bring those damages current from 2018. Dkt. No. 284-1 at
7 65 (¶¶344–46). That was based on a full disgorgement of all amounts the Plan paid
8 Northrop Grumman (just over \$6 million), *i.e.*, providing *no* compensation for any
9 services Northrop provided, compounded at the rate of return of an S&P 500 Index
10 fund for a total of about \$14 million as of August 31, 2018. *Id.* at 64–65 (¶¶341–
11 44). The EM Fund claim was for just over \$28 million. *Id.* at 33 (¶183). Defendants
12 disputed liability and losses, argued that the S&P 500 is an inappropriate interest
13 factor, that they were entitled to credit for the \$4.2 million Northrop paid to the
14 Plan to resolve the DOL investigation, and that they were entitled to pay Northrop
15 reasonable compensation for the services it rendered. Dkt. No. 273 at 11–14.
16 Therefore, even if Plaintiffs successfully proved liability, the amount of damages
17 they could have recovered was uncertain. Defendants also contended that they
18 prudently transitioned the EM Fund to passive management by 2015. *Id.* at 14–15.

19 Recovering for Plan participants an immediate payment of \$12,375,000 is a fair
20 settlement amount in light of the risks and delay involved in trying this case to
21 judgment and through appeal. The settlement amount is 29% of the maximum
22 amount of Plaintiffs’ claims and 34% of the disgorgement amount and EM Fund
23 damages amounts combined (just over \$34 million). These percentages are
24 adequate to justify a settlement. *Millan*, 2016 WL 3077710, *7 (25% recovery
25 “well with the acceptable range”); *Deaver*, 2015 WL 8526982, *7 (10.7% recovery
26 approved); *Noll*, 309 F.R.D. at 607 (9% recovery approved). Moreover, the
27 Independent Fiduciary agrees that the settlement is reasonable. Dkt. No. 342-3.

28

1 **5. The extent of discovery completed and stage of the proceedings.**

2 Plaintiffs engaged in extensive fact discovery from March 17, 2017 through
3 August 14, 2018, as well as their pre-discovery investigation, and expert discovery
4 through November 13, 2018, including the examination of 41,790 documents and
5 taking 11 depositions. Dkt. Nos. 79, 158, 331-3 at 2–3. The parties prepared for
6 trial with 1135 exhibits and over 20 witnesses and extensive briefing on the legal
7 and factual issues. Dkt. Nos. 269, 270, 273–74, 284-1, 289-1. Coming to a
8 settlement on the day of trial after that much discovery and preparation for trial,
9 especially after two mediations, is presumptively fair. *Nat’l Rural*, 221 F.R.D. at
10 527–28.

11 **6. The experience and view of counsel.**

12 “Parties represented by competent counsel are better positioned than courts to
13 produce a settlement that fairly reflects each party’s expected outcome in
14 litigation.” *Pacific*, 47 F.3d at 378. Therefore, “[g]reat weight is accorded to the
15 recommendation of counsel, who are most closely acquainted with the facts of the
16 underlying litigation.” *Nat’l Rural*, 221 F.R.D. at 528 (quotation marks and citation
17 omitted). The Court “should be hesitant to substitute its own judgment for that of
18 counsel.” *Id.* (quoting *Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)); *Noll*,
19 309 F.R.D. at 607–08.

20 Class counsel was unquestionably competent to litigate this case and conduct
21 this settlement. This Court has recognized class counsel’s extensive and preeminent
22 experience in litigating these types of cases and consequent capability of evaluating
23 the settlement. *Grabek*, Dkt. No. 803 at 6–7 (citing cases). Counsel’s managing
24 partner, Jerome J. Schlichter, has been practicing law for 40 years and has
25 represented plaintiffs in dozens of class actions in civil rights cases and 401(k)
26 excessive fee cases. Dkt. No. 331-2 at 1–10. He thoroughly explains why this
27 settlement is fair. *Id.* at 10–11. This weighs in favor of approving the settlement.

28

1 **7. The presence of a governmental participant.**

2 No governmental entity participated directly in this litigation. However, the
3 DOL pursued a separate investigation regarding claims similar to this case and
4 *Grabek* and through a settlement obtained restitution to the Plan of \$4.2 million
5 while *Grabek* and this case were pending.¹

6 The Settlement Administrator mailed all required Class Action Fairness Act
7 notices under 28 U.S.C. §1715(b) to the attorneys general of all of the United States
8 and the District of Columbia, the U.S. Virgin Islands, Guam, and Puerto Rico. Dkt.
9 No. 342-2 at 2 (¶3). No attorney general has objected to the settlement. *Id.* at 3 (¶4).
10 That weighs in favor of approving the settlement. *Noll*, 309 F.R.D. at 608.

11 **8. The reaction of class members to the proposed settlement.**

12 In accordance with the Court's order (Dkt. No. 326 at 9–10 (§4)), on April 6,
13 2020, the Settlement Administrator mailed and emailed to 167,354 class members
14 notice of this settlement. Dkt. No. 342-2 at 3–4 (¶¶5–10). The Settlement
15 Administrator also maintained a toll-free phone number and received 4,652 calls.
16 *Id.* at 5 (¶11).

17 As stated in those notices and the Court's order, the deadline for filing an
18 objection to the settlement was May 6, 2020. Dkt. Nos. 326 at 10–11 (§5), 342-2 at
19 11. As of that date, only 3 objections to this settlement by 5 participants (3 joining
20 in one objection) were filed. Dkt. Nos. 333, 335, 338.

21 In order to speak at the fairness hearing, those objectors had to file a notice of
22 intention to speak by May 6, 2020. Dkt. Nos. 326 at 12–13 (§6), 342-2 at 11. Only
23 the Carlson objectors filed such a notice. Dkt. No. 334. Nonetheless, the Court
24 allowed Objector John Murray to present argument on his objection at the June 30
25 hearing. Tr. 7:3–13:6.

26 _____
27 ¹ The *Grabek* Plaintiffs sought leave to provide the DOL information from their
28 case to aid the DOL's investigation. Dkt. No. 284-1 at 24 (¶136). Northrop
 Grumman settled the investigation in December 2016, shortly after this action
 commenced. *Id.* at 24–25 (¶137).

1 None of the objections have merit, for the reasons stated in the Joint Response
2 To Objectors (Dkt. No. 340) and at the June 30 hearing (Tr. 7:3–23:7). In addition,
3 the Amendment to the Settlement Agreement resolves all of the Carlson objections
4 (Dkt. No. 333). That objection should be withdrawn immediately. If the Carlson
5 Objection is not withdrawn by the August 20 fairness hearing, the Court should
6 overrule it.

7 “[T]he absence of a large number of objections to a proposed class action
8 settlement raises a strong presumption that the terms of a proposed class settlement
9 ... are favorable to the class members.” *Nat’l Rural*, 221 F.R.D. at 529; *Noll*, 309
10 F.R.D. at 608 (“A low number of opt-outs and objections in comparison to class
11 size is typically a factor that supports settlement approval.”). The fact that only 5
12 out of over 165,000 class members object to this settlement “indicate[s] a favorable
13 reaction by class members and their overall satisfaction with the [s]ettlement.” *Noll*,
14 306 F.R.D. at 608.

15 **C. The notice, publication notice, and notice methodology were performed**
16 **as directed by the Court.**

17 As indicated repeatedly above, the Settlement Administrator provided all notices
18 required by the Court in its Order Granting Preliminary Approval Of Settlement.
19 Dkt. No. 326 at 9–12 (§5). Notices to attorneys general under CAFA were delivered
20 on January 23, 2020. Dkt. No. 342-2 at 2 (¶3). Notices to the class members were
21 delivered on April 6, 2020. *Id.* at 3–4 (¶¶5–10). On April 6, 2020, the Settlement
22 Administrator established a toll-free phone number for class members to call, and
23 received 4,652 calls. *Id.* at 5 (¶11).

24 The Settlement Website (2019northrop401ksettlement.com) was first published
25 on February 4, 2020 and has been maintained and updated continuously. Dkt. No.
26 331-4 at 3 (¶6). Plaintiffs published on that website notice of the continuances of
27 the fairness hearing, including the current August 20 date of the fairness hearing, as
28 well as the Amendment To Class Action Settlement Agreement. Dkt. No. 347;

1 Wolff Decl. ¶4.

2 All notices have been provided as the Court has required.

3 **D. The Court should approve payment of Plaintiffs’ attorneys’ fees and**
4 **reimbursement of expenses.**

5 For the reasons stated in Plaintiffs’ Memorandum In Support (Dkt. No. 331-1 at
6 8–30 (mem. 1–23)), the Court should approve payment from the Settlement Fund of
7 attorneys’ fees in the amount of \$4,125,000 and reimbursement of litigation
8 expenses in the amount of \$390,587. Those fees are limited to 1/3 of the settlement
9 amount and are far less than the lodestar by which Plaintiffs’ attorneys would be
10 compensated for the time they have expended in this case. Dkt. No. 331-1 at 24–26
11 (mem. 17–19). The hours included in that lodestar calculation do not include the
12 many hours Plaintiffs’ attorneys have spent in this case since the filing of that
13 memorandum on April 6, 2020. The expenses also do not include expenses
14 Plaintiffs have incurred since April 6. No one has objected to this payment.

15 **E. The Court should approve payment of incentive awards to the Class**
16 **Representatives.**

17 For the reasons stated in Plaintiffs’ Memorandum In Support (Dkt. No. 331-1 at
18 30–32 (mem. 23–25)), the Court should approve payment from the Settlement Fund
19 of \$25,000 to each of the 6 Class Representatives (\$150,000 total). No one has
20 objected to this payment.

21 **F. The Court should approve payment of Administrative Expenses**
22 **incurred and the reserve for future expenses and claims.**

23 The Settlement Administrator has paid total Administrative Expenses from the
24 Gross Settlement Amount of \$65,974.96. Wolff Decl. Exhibit 4 (¶2) (including
25 itemization). The Settlement Administrator will reserve \$150,000 for unanticipated
26 future Administrative Expenses and adjustments due to data or calculation errors to
27 be paid under §5.8 of the Settlement Agreement. *Id.* (¶2). These expenses and the
28 reserve are reasonable and should be approved by the Court.

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CONCLUSION

This settlement satisfies all of the *Churchill* factors and Rule 23(e). The parties have complied with all aspects of the Court’s Order Granting Preliminary Approval of Settlement (Dkt. No. 326) and all subsequent orders. Therefore, the Court should approve the settlement.

DATED: July 15, 2020

Respectfully submitted,

By: /s/ Michael A. Wolff
Jerome J. Schlichter (SBN 054513)
Nelson G. Wolff (admitted *pro hac vice*)
Michael A. Wolff (admitted *pro hac vice*)
Kurt C. Struckhoff (admitted *pro hac vice*)
SCHLICHTER BOGARD & DENTON LLP

Class Counsel

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 jschlichter@uselaws.com
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 nwolff@uselaws.com
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 9 HILL, FARRER & BURRILL LLP
 One California Plaza, 37th Floor
 10 300 South Grand Avenue
 Los Angeles, CA 90071-3147
 11 Telephone: (213) 620-0460
 Facsimile: (213) 620-4840
 12 *Local Counsel for Plaintiffs*

13 **IN THE UNITED STATES DISTRICT COURT**
 14 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

15 CLIFTON W. MARSHALL, et al.,
 16
 17 *Plaintiffs,*
 18 v.
 19 NORTHROP GRUMMAN
 20 CORPORATION, et al.,
 21 *Defendants.*

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

**DECLARATION OF
 MICHAEL A. WOLFF**

Hon. André Birotte Jr.

Final approval hearing:
 August 20, 2020 9:00 a.m.

Courtroom 7B – Teleconference
 Dkt. No. 348

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1 I, Michael A. Wolff, declare under 28 U.S.C. §1746:

2 1. I am an attorney with Schlichter Bogard and Denton LLP (“SBD”),
3 class counsel in this case. I make this declaration in support of final approval of the
4 class action settlement in this case.

5 2. Exhibit 1 filed herewith is a true and correct copy of the Amendment
6 To Class Action Settlement Agreement signed by the parties and approved by the
7 Independent Fiduciary, Gallagher Fiduciary Advisors, LLC.

8 3. I emailed the Amendment to counsel for the Carlson Objectors, R.
9 Joseph Barton, who confirmed by email dated July 7, 2020 that the Amendment
10 sufficiently addresses and resolves his clients’ objection (Dkt. No. 333).

11 4. Exhibit 1, without the signed approval of the Independent Fiduciary,
12 was published on the Settlement Website (2019northrop401ksettlement.com) on
13 July 8, 2020, along with a notice that the Fairness Hearing has been postponed to
14 August 20, 2020 at 9:00 a.m. Pacific Time. Exhibit 1 with the signed approval of
15 the Independent Fiduciary was published on July 9, 2020. Attached as Exhibit 2 is a
16 copy of the home page of that website, which continues to be published.

17 5. Attached as Exhibit 3 is a redline showing the changes of the text
18 referenced in the Amendment (ex. 1) compared to the original text of the Settlement
19 Agreement, including exhibit 5 to the Settlement Agreement (Proposed Order).

20 6. Attached as Exhibit 4 is the Declaration of Analytics Consulting LLC,
21 the Settlement Administrator, signed by Christopher D. Amundson, Project
22 Manager, regarding Administrative Expenses.

23 I declare under penalty of perjury that the foregoing is true and correct to the
24 best of my knowledge and belief.

25 Executed on July 15, 2020.

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/s/ Michael A. Wolff

**AMENDMENT TO
CLASS ACTION SETTLEMENT AGREEMENT**

This is an amendment to a Class Action Settlement Agreement executed on January 13, 2020 and filed in *Marshall v. Northrop Grumman Corporation*, No. 16-cv-6794-AB-JC in the United States District Court for the Central District of California on January 13, 2020 as Document 321-1 (“Settlement Agreement”). This amendment is made under §11.14 of the Settlement Agreement. All capitalized terms herein have the same meaning as in the Settlement Agreement.

1. Section 2.39 of the Settlement Agreement is hereby deleted and replaced by the following:

- 2.39 “Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether arising under local, state, or federal law, whether by statute, contract, common law, equity, or otherwise, whether brought in an individual or representative capacity whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen that occurred prior to or during the Class Period only, that:
- 2.39.1 Are based on the facts alleged in the operative complaint of the Class Action, specifically, that the Defendants (1) distributed the Saving Plan’s assets to Defendant Northrop Grumman Corporation as payment for services it provided to the Savings Plan, (2) paid unreasonable recordkeeping fees to the Saving Plan’s recordkeeper, and (3) used an active-management strategy for the Savings Plan’s Emerging Markets Equity Fund and failed to consider whether to fully convert the Emerging Markets Equity Fund to passive management.;
 - 2.39.2 Would be barred by the principles of res judicata or collateral estoppel had the claims asserted in the operative complaint of the Class Action been fully litigated and resulted in a final judgment;
 - 2.39.3 Relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund pursuant to the Plan of Allocation (including allocations to the Plan or any member of the Class and payment of Attorneys’ Fees, Class Representative Compensation, and expenses from the Qualified Settlement Fund);
 - 2.39.4 Relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone;
 - 2.39.5 Seek any remedy against Defendants’ insurers;
 - 2.39.6 Seek attorneys’ fees and costs related to the Class Action in addition to the Attorneys’ Fees and Costs specified in Paragraph 7.1; or
 - 2.39.7 Constitute individual claims asserted or that could have been asserted by the Class Representatives or Members for alleged losses in their individual accounts prior

to or during the Class Period based on the facts alleged in the operative complaint in the Class Action.

2.39.8 “Released Claims” specifically excludes claims of individual denial of benefits under ERISA § 502(a)(1)(B) other than claims for benefits under the Plan prior to or during the Class Period based on the facts alleged in the operative complaint in the Class Action.

2.39.9 “Released Claims” specifically excludes any claim asserted in *Carlson v. Northrop Grumman Corporation*, No. 13-2635 in the United States District Court for the Northern District of Illinois.

2. Article 8 of the Settlement Agreement is amended to add the following section 8.4:

8.4 All of the Released Claims and releases and covenants not to sue stated in the preceding sections 8.1–8.3 as well as in section 2.39 are limited to claims based on the identical factual predicate of the operative complaint in the Class Action.

3. Exhibit 5 to the Settlement Agreement (referred to in §§2.23, 4.1, and 11.20), is hereby deleted and replaced by the Exhibit 5 attached hereto

4. All other provisions of the Settlement Agreement remain in effect.

ON BEHALF OF PLAINTIFFS, Clifton Marshall, Thomas Hall, Manuel Gonzalez, Ricky Hendrickson, Phillip Brooks, and Harold Hylton, Individually and as Representatives of the Class.

Dated: 7/8/2020

SCHLICHTER BOGARD & DENTON LLP



Jerome J. Schlichter (SBN 054513)

Michael A. Wolff

Kurt C. Struckhoff

100 South Fourth Street, Suite 1200

St. Louis, MO 63102

Tel: (314) 621-6115

Fax: (314) 621-5934

Attorneys for Plaintiffs and Class Representatives

ON BEHALF OF DEFENDANTS, Northrop Grumman Corporation, the Northrop Grumman Savings Plan Administrative Committee, the Northrop Grumman Savings Plan Investment Committee, Denise Peppard, Michael Hardesty, Kenneth Bedingfield, Kenneth Heintz, Prabu Natarajan, Mark Caylor, Mark Rabinowitz, Richard Boak, Debora Catsavas, Teri Herzog, Tiffany McConnell King, Christopher McGee, Gary McKenzie, Constance Soloway, Rajender Chandhok, Gloria Flach, James Myers, Sunil Navale, Eric Scholten, and Steven Spiegel.

Dated: July 8, 2020

MAYER BROWN LLP

/s/ Nancy G. Ross

Nancy G. Ross

Brian D. Netter

MAYER BROWN LLP

71 South Wacker Drive

Chicago, Illinois 60606

Tel: (312) 782-0600

Fax: (312) 701-7711

Attorneys for Defendants

APPROVED BY Gallagher Fiduciary Advisors, LLC, as the independent fiduciary of the Northrop Grumman Corporation Savings Plan (the "Plan") in connection with the Settlement Agreement (the "Settlement Agreement") in Marshall et al. v. Northrop Grumman Corporation et al., 2:16-cv-6794 (C.D. Cal.).

GALLAGHER FIDUCIARY ADVISORS, LLC

By: 

Darin R. Hoffner

Area Senior Vice President and Area Counsel

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**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
FINAL APPROVAL OF
SETTLEMENT**

Date: August 20, 2020

Time: 9:00 a.m.

Courtroom 7B – 7th Floor

Hon. André Birotte Jr.

1 Upon consideration of the Settling Parties’ Joint Motion For Final Approval Of
2 Class Settlement of this action (the “Class Action”) in accordance with the terms of
3 a Class Action Settlement Agreement dated January 13, 2020 (Dkt. No. 321-1), as
4 amended by the Amendment To Class Action Settlement Agreement dated July 8,
5 2020 (Dkt. No. ___) (the “Settlement Agreement”), the Court hereby orders and
6 adjudges as follows:

7 1. For purposes of this Final Order and Judgment, all capitalized terms
8 used herein have the Definitions in the Settlement Agreement, which is
9 incorporated herein by reference.

10 2. In accordance with the Court’s Orders, and as determined by this
11 Court previously, notice was timely distributed by first-class or electronic mail to
12 all Class Members who could be identified with reasonable effort, and notice was
13 published on the website maintained by Class Counsel. In addition, in accordance
14 with the Class Action Fairness Act, 28 U.S.C. §1711, *et seq.*, notice was provided
15 to the Attorneys General for each of the states in which a Class Member resides, the
16 Attorney General of the United States, and the United States Secretary of Labor.

17 3. The form and methods of notifying the Class of the terms and
18 conditions of the proposed Settlement Agreement met the requirements of Rule
19 23(c)(2) of the Federal Rules of Civil Procedure, any other applicable law, and due
20 process, and constituted the best notice practicable under the circumstances. Due
21 and sufficient notices of the fairness hearing and the rights of all Class Members
22 have been provided to all people, powers and entities entitled to notice.

23 4. All requirements of the Class Action Fairness Act, 28 U.S.C. §1711, *et*
24 *seq.*, have been met.

25 5. Class Members had the opportunity to be heard on all issues regarding
26 the resolution and release of their claims by submitting objections to the Settlement
27 Agreement to the Court.
28

1 6. The Amendment To Class Action Settlement Agreement resolves the
2 objections of Alan Carlson, Peter DeLuca and Robert Stolte (Dkt. No. 333) and
3 those objections are overruled with prejudice.

4 7. The remaining objections to the Settlement are overruled with
5 prejudice.

6 8. The motion for final approval of the Settlement Agreement as
7 amended (Dkt. No. ___) is hereby GRANTED, the Settlement of the Class Action
8 is APPROVED as fair, reasonable and adequate to the Northrop Grumman Savings
9 Plan (the “Plan”) and the Class, and the Settling Parties are hereby directed to take
10 the necessary steps to effectuate the terms of the Settlement Agreement.

11 9. The operative complaint and all claims asserted at any point in the
12 litigation, whether by Class Representatives on their own behalf or on behalf of the
13 Class, or derivatively to secure relief for the Plan, are hereby dismissed with
14 prejudice and without costs to any of the Settling Parties other than as provided for
15 in the Settlement Agreement.

16 10. The Plan, the Class Representatives, and the Class Members (and their
17 respective heirs, beneficiaries, executors, administrators, estates, successors, assigns
18 agents and attorneys) on behalf of themselves and on behalf of the Plan, hereby
19 fully, finally, and forever settle, release, relinquish, waive and discharge
20 Defendants, the Plan, and all Released Parties from the Released Claims, regardless
21 of whether or not such Class Members have executed and delivered a Former
22 Participant Claim Form, whether or not such Class members qualify for a
23 distribution under the terms of the Settlement Agreement, whether or not such
24 Class Members have filed an objection to the Settlement or to any application by
25 Class Counsel for an award of Attorneys’ Fees and Costs, and whether or not the
26 objections to the Settlement Agreement or claims for distribution of such Class
27 Members have been approved or allowed. However, nothing herein releases claims
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1 of any Released Party or the Plan against any other Released Party for claims for, or
2 arising out of, insurance coverage against their insurers.

3 11. The Class Members and the Plan acting individually or together, or in
4 combination with others, are hereby barred from suing or seeking to institute,
5 maintain, prosecute, argue, or assert in any action or proceeding (including but not
6 limited to an IRS determination letter proceeding, a Department of Labor
7 proceeding, an arbitration or a proceeding before any state insurance or other
8 department or commission), any cause of action, demand, or claim for any of the
9 Released Claims. Nothing herein shall preclude any action to enforce the terms of
10 the Settlement Agreement in accordance with the procedures set forth in the
11 Settlement Agreement.

12 12. Class Counsel, the Class Representatives, the Class Members, or the
13 Plan may hereafter discover facts in addition to or different from those that they
14 know or believe to be true with respect to the Released Claims. Such facts, if
15 known by them, might have affected the decision to settle with Defendants, the Plan
16 and the Released Parties or the decision to release, relinquish, waive, and discharge
17 the Released Claims, or might have affected the decision of a Class Member not to
18 object to the Settlement. Notwithstanding the foregoing, each Class Representative,
19 Class Member and the Plan has hereby fully, finally and forever settled, released,
20 relinquished, waived and discharged any and all Released Claims, and each Class
21 Representative.

22 13. As to the Released Claims, the Class Representatives, Class Members
23 and the Plan hereby settle, release, relinquish, waive and discharge any and all
24 rights or benefits they may now have, or in the future may have, under any law
25 relating to the releases of unknown claims, including without limitation, Section
26 1542 of the California Civil Code, which provides: "A general release does not
27 extend to claims that the creditor or releasing party does not know or suspect to
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1 exist in his or her favor at the time of executing the release and that, if known by
2 him or her, would have materially affected his or her settlement with the debtor or
3 released party.” The Class Representatives, Class Members and the Plan with
4 respect to the Released Claims also hereby waive any and all provisions, rights and
5 benefits conferred by any law or any State or territory within the United States or
6 any foreign country, or any principle of common law, which is similar, comparable
7 or equivalent in substance to Section 1542 of the California Civil Code.

8 14. The Court finds that it has subject matter jurisdiction over the claims
9 herein and personal jurisdiction over Class Members herein under with the
10 provisions of ERISA, and expressly retains that jurisdiction for purposes of
11 enforcing this Final Order and the Settlement Agreement. Any motion to enforce
12 paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including
13 by way of injunction, may be filed in this Court, and the provisions of the
14 Settlement Agreement and/or this Final Order may also be asserted by way of an
15 affirmative defense or counterclaim in response to any action that is asserted to
16 violate the Settlement Agreement.

17 15. The Settlement Administrator shall have final authority to determine
18 the share of the Net Settlement Amount to be allocated to each Current Participant
19 and each Authorized Former Participant.

20 16. The Settlement Administrator has the sole and exclusive discretion to
21 determine, with respect to payments or distributions to Authorized Former
22 Participants, all questions not addressed in or resolved by the Settlement
23 Agreement, including whether a Former Participant Claim Form should be accepted
24 by the Settlement Administrator in the first instance.

25 17. With respect to any matters that arise concerning distributions to
26 Current Participants (after allocation decisions have been made by the Settlement
27 Administrator in its sole discretion), all questions not resolved by the Settlement
28

1 Agreement shall be resolved by the Plan Fiduciary under the applicable law and
2 governing Plan terms. The Plan Fiduciary shall not have any liability with respect
3 to any questions it resolves regarding distributions beyond that provided for in
4 applicable law and governing Plan terms.

5 18. Within twenty-one (21) calendar days following the issuance of all
6 settlement payments to Class Members, as provided by Paragraph 4.1.12 of the
7 Settlement Agreement, the Settlement Administrator shall prepare and provide to
8 Class Counsel, and Defense Counsel and the Plan Fiduciary a list of each person
9 who was issued a settlement payment and the amount of such payment.

10 Upon entry of this Order, all Class Members and the Plan shall be bound by the
11 Settlement Agreement and by this Final Order.

12
13 **IT IS SO ORDERED.**

14 DATED: _____, 2020

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16 _____
17 André Birotte Jr.
18 United States District Court Judge
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Welcome to the home page of the

2019 Northrop 401(k) Settlement

The Court has postponed the Fairness Hearing on the settlement in this case to August 20, 2020 at 9:00 a.m. Pacific Time. Please see this Order.

The purpose of this website is to inform current and former participants and beneficiaries of the Northrop Grumman Savings Plan about the settlement of this Action, including that you may be entitled to benefits under the class action settlement. This website includes links to settlement documents explaining the details of the settlement. Additional materials will be posted on this website as the settlement approval process moves forward and notices are mailed to class members.

[Amendment to Settlement Agreement](#)

[Joint Motion for Final Approval](#)

[Plaintiffs' Memorandum in Support of Motion for Final Approval of Class Action Settlement](#)

[Motion for Attorneys' Fees](#)

[Online Claim Form Submission \(Link\)](#)

[Former Participant Claim Form](#)

[Notice to Former Participants](#)

[Notice to Current Participants](#)

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Motion for Preliminary Approval of Settlement

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Second Amended Complaint

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Settlement Agreement and Attachments

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Order Granting Preliminary Approval

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**AMENDMENT TO
CLASS ACTION SETTLEMENT AGREEMENT**

This is an amendment to a Class Action Settlement Agreement executed on January 13, 2020 and filed in *Marshall v. Northrop Grumman Corporation*, No. 16-cv-6794-AB-JC in the United States District Court for the Central District of California on January 13, 2020 as Document 321-1 (“Settlement Agreement”). This amendment is made under §11.14 of the Settlement Agreement. All capitalized terms herein have the same meaning as in the Settlement Agreement.

1. Section 2.39 of the Settlement Agreement is hereby deleted and replaced by the following:

~~2.39~~ 2.39 “Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether arising under local, state, or federal law, whether by statute, contract, common law, equity, or otherwise, whether brought in an individual, ~~or~~ representative, ~~or any other~~ capacity, ~~whether involving legal, equitable, injunctive, declarative, or any other type of relief (including, without limitation, indemnification or contribution);~~ whether known or unknown, suspected or unsuspected, asserted or unasserted, foreseen or unforeseen, ~~actual or contingent, liquidated or unliquidated, for actions or omissions~~ that occurred prior to or during the Class Period only, that:

~~2.39.1~~ 2.39.1 ~~Were asserted in the Class Action and any claims that might have been asserted in the Class Action, arising under ERISA, or any other local, state, or federal statute or law (or any rule or regulation associated therewith or promulgated thereunder) or the common law, that arise out of, relate to, or are based on any of the actions or omissions that occurred during the Class Period;~~

2.39.1 ~~Are based on the facts alleged in the operative complaint of the Class Action, specifically, that the Defendants (1) distributed the Saving Plan’s assets to Defendant Northrop Grumman Corporation as payment for services it provided to the Savings Plan, (2) paid unreasonable recordkeeping fees to the Saving Plan’s recordkeeper, and (3) used an active-management strategy for the Savings Plan’s Emerging Markets Equity Fund and failed to consider whether to fully convert the Emerging Markets Equity Fund to passive management.;~~

~~2.39.2~~ 2.39.2 ~~Would be barred by the principles of res judicata or collateral estoppel had the claims asserted in the operative complaint of the Class Action been fully litigated and resulted in a final judgment;~~

~~2.39.3~~ 2.39.3 ~~Relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund pursuant to the Plan of Allocation (including allocations to the Plan or any member of the Class and payment of Attorneys’ Fees, Class Representative Compensation, and expenses from the Qualified Settlement Fund);~~

~~2.39.4~~ 2.39.4 Relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone;

2.39.5 Seek any remedy against Defendants' insurers;

~~2.39.5~~ 2.39.6 Seek attorneys' fees and costs related to the Class Action in addition to the Attorneys' Fees and Costs specified in Paragraph 7.1; or

~~2.39.6~~ 2.39.7 Constitute individual claims asserted or that could have been asserted by the Class Representatives or Members for alleged losses in their individual accounts prior to or during the Class Period based on the facts alleged in the operative complaint in the Class Action.

2.39.8 "Released Claims" specifically excludes claims of individual denial of benefits under ERISA § 502(a)(1)(B) other than claims for benefits under the Plan prior to or during the Class Period, ~~wages, labor or employment claims of~~ based on the facts alleged in the operative complaint in the Class Action.

2.39.9 "Released Claims" specifically excludes any ~~type, including but~~ claim asserted in *Carlson v. Northrop Grumman Corporation*, No. 13-2635 in the United States District Court for the Northern District of Illinois.

2. Article 8 of the Settlement Agreement is amended to add the following section 8.4:

8.4 All of the Released Claims and releases and covenants not to sue stated in the preceding sections 8.1–8.3 as well as in section 2.39 are limited to claims based on the identical factual predicate of the operative complaint in the Class Action.

3. Exhibit 5 to the Settlement Agreement (referred to in §§2.23, 4.1, and 11.20), is hereby deleted and replace by the Exhibit 5 attached hereto

4. All other provisions of the Settlement Agreement remain in effect.

ON BEHALF OF PLAINTIFFS, Clifton Marshall, Thomas Hall, Manuel Gonzalez, Ricky Hendrickson, Phillip Brooks, and Harold Hylton, Individually and as Representatives of the Class.

Dated: _____

SCHLICHTER BOGARD & DENTON LLP

Jerome J. Schlichter (SBN 054513)
Michael A. Wolff
Kurt C. Struckhoff
100 South Fourth Street, Suite 1200
St. Louis, MO 63102
Tel: (314) 621-6115
Fax: (314) 621-5934

Attorneys for Plaintiffs and Class Representatives

ON BEHALF OF DEFENDANTS, Northrop Grumman Corporation, the Northrop Grumman Savings Plan Administrative Committee, the Northrop Grumman Savings Plan Investment Committee, Denise Peppard, Michael Hardesty, Kenneth Bedingfield, Kenneth Heintz, Prabu Natarajan, Mark Caylor, Mark Rabinowitz, Richard Boak, Debora Catsavas, Teri Herzog, Tiffany McConnell King, Christopher McGee, Gary McKenzie, Constance Soloway, Rajender Chandhok, Gloria Flach, James Myers, Sunil Navale, Eric Scholten, and Steven Spiegel.

Dated: _____

MAYER BROWN LLP

Nancy G. Ross
Brian D. Netter
MAYER BROWN LLP
71 South Wacker Drive
Chicago, Illinois 60606
Tel: (312) 782-0600
Fax: (312) 701-7711

Attorneys for Defendants

APPROVED BY Gallagher Fiduciary Advisors, LLC, as the independent fiduciary of the Northrop Grumman Corporation Savings Plan (the “Plan”) in connection with the Settlement Agreement (the “Settlement Agreement”) in Marshall et al. v. Northrop Grumman Corporation et al., 2:16-cv-6794 (C.D. Cal.).

GALLAGHER FIDUCIARY ADVISORS, LLC

By: _____
Darin R. Hoffner
Area Senior Vice President and Area Counsel

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**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
FINAL APPROVAL OF
SETTLEMENT**

Date: August 20, 2020

Time: 9:00 a.m.

Courtroom 7B – 7th Floor

Hon. André Birotte Jr.

1 Upon consideration of the Settling Parties' Joint Motion ~~for~~For Final Approval
2 ~~of the~~Of Class Settlement of this action (the "Class Action") in accordance with the
3 terms of a Class Action Settlement Agreement dated January 13, 2020, (Dkt. No.
4 321-1), as amended by the Amendment To Class Action Settlement Agreement
5 dated July 8, 2020 (Dkt. No. _____) (the "Settlement Agreement"), the Court hereby
6 orders and adjudges as follows:

7 1. For purposes of this Final Order and Judgment, all capitalized terms
8 used herein have the Definitions in the Settlement Agreement, which is
9 incorporated herein by reference.

10 2. In accordance with the Court's Orders, and as determined by this
11 Court previously, notice was timely distributed by first-class or electronic mail to
12 all Class Members who could be identified with reasonable effort, and notice was
13 published on the website maintained by Class Counsel. In addition, in accordance
14 with the Class Action Fairness Act, 28 U.S.C. §1711, *et seq.*, notice was provided
15 to the Attorneys General for each of the states in which a Class Member resides, the
16 Attorney General of the United States, and the United States Secretary of Labor.

17 3. The form and methods of notifying the Class of the terms and
18 conditions of the proposed Settlement Agreement met the requirements of Rule
19 23(c)(2) of the Federal Rules of Civil Procedure, any other applicable law, and due
20 process, and constituted the best notice practicable under the circumstances. Due
21 and sufficient notices of the fairness hearing and the rights of all Class Members
22 have been provided to all people, powers and entities entitled to notice.

23 4. All requirements of the Class Action Fairness Act, 28 U.S.C. §1711, *et*
24 *seq.*, have been met.

25 5. Class Members had the opportunity to be heard on all issues regarding
26 the resolution and release of their claims by submitting objections to the Settlement
27 Agreement to the Court.

1 6. ~~Each~~The Amendment To Class Action Settlement Agreement resolves
2 the objections of Alan Carlson, Peter DeLuca and every Objection to the Settlement
3 ~~is~~Robert Stolte (Dkt. No. 333) and those objections are overruled with prejudice.

4 7. The remaining objections to the Settlement are overruled with
5 prejudice.

6 7.8. The motion for final approval of the Settlement Agreement (~~Does~~
7 amended (Dkt. No. ____) is hereby GRANTED, the Settlement of the Class Action
8 is APPROVED as fair, reasonable and adequate to the Northrop Grumman Savings
9 Plan (the “Plan”) and the Class, and the Settling Parties are hereby directed to take
10 the necessary steps to effectuate the terms of the Settlement Agreement.

11 8.9. The operative complaint and all claims asserted at any point in the
12 litigation, whether by Class Representatives on their own behalf or on behalf of the
13 Class, or derivatively to secure relief for the Plan, are hereby dismissed with
14 prejudice and without costs to any of the Settling Parties other than as provided for
15 in the Settlement Agreement.

16 9.10. The Plan, the Class Representatives, and the Class Members (and their
17 respective heirs, beneficiaries, executors, administrators, estates, successors, assigns
18 agents and attorneys) on behalf of themselves and on behalf of the Plan, hereby
19 fully, finally, and forever settle, release, relinquish, waive and discharge
20 Defendants, the Plan, and all Released Parties from the Released Claims, regardless
21 of whether or not such Class Members have executed and delivered a Former
22 Participant Claim Form, whether or not such Class members qualify for a
23 distribution under the terms of the Settlement Agreement, whether or not such
24 Class Members have filed an objection to the Settlement or to any application by
25 Class Counsel for an award of Attorneys’ Fees and Costs, and whether or not the
26 objections to the Settlement Agreement or claims for distribution of such Class
27 Members have been approved or allowed. However, nothing herein releases claims
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1 of any Released Party or the Plan against any other Released Party for claims for, or
2 arising out of, insurance coverage against their insurers.

3 ~~10.11.~~ The Class Members and the Plan acting individually or together, or in
4 combination with others, are hereby barred from suing or seeking to institute,
5 maintain, prosecute, argue, or assert in any action or proceeding (including but not
6 limited to an IRS determination letter proceeding, a Department of Labor
7 proceeding, an arbitration or a proceeding before any state insurance or other
8 department or commission), any cause of action, demand, or claim ~~on the basis of,~~
9 ~~connected with, or arising out of or substantially related to, for~~ any of the Released
10 Claims. Nothing herein shall preclude any action to enforce the terms of the
11 Settlement Agreement in accordance with the procedures set forth in the Settlement
12 Agreement.

13 ~~11.12.~~ Class Counsel, the Class Representatives, the Class Members, or the
14 Plan may hereafter discover facts in addition to or different from those that they
15 know or believe to be true with respect to the Released Claims. Such facts, if
16 known by them, might have affected the decision to settle with Defendants, the Plan
17 and the Released Parties or the decision to release, relinquish, waive, and discharge
18 the Released Claims, or might have affected the decision of a Class Member not to
19 object to the Settlement. Notwithstanding the foregoing, each Class Representative,
20 Class Member and the Plan has hereby fully, finally and forever settled, released,
21 relinquished, waived and discharged any and all Released Claims, and each Class
22 Representative.

23 ~~12.13.~~ ~~The~~ As to the Released Claims, the Class Representatives, Class
24 Members and the Plan hereby settle, release, relinquish, waive and discharge any
25 and all rights or benefits they may now have, or in the future may have, under any
26 law relating to the releases of unknown claims, including without limitation,
27 Section 1542 of the California Civil Code, which provides: “A general release does
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1 not extend to claims that the creditor or releasing party does not know or suspect to
2 exist in his or her favor at the time of executing the release and that, if known by
3 him or her, would have materially affected his or her settlement with the debtor or
4 released party.” The Class Representatives, Class Members and the Plan with
5 respect to the Released Claims also hereby waive any and all provisions, rights and
6 benefits conferred by any law or any State or territory within the United States or
7 any foreign country, or any principle of common law, which is similar, comparable
8 or equivalent in substance to Section 1542 of the California Civil Code.

9 13-14. The Court finds that it has subject matter jurisdiction over the claims
10 herein and personal jurisdiction over Class Members herein under with the
11 provisions of ERISA, and expressly retains that jurisdiction for purposes of
12 enforcing this Final Order and the Settlement Agreement. Any motion to enforce
13 paragraphs 8 through 12 of this Final Order or the Settlement Agreement, including
14 by way of injunction, may be filed in this Court, and the provisions of the
15 Settlement Agreement and/or this Final Order may also be asserted by way of an
16 affirmative defense or counterclaim in response to any action that is asserted to
17 violate the Settlement Agreement.

18 ~~14.— Each Class Member shall hold harmless Defendants, Defense Counsel,~~
19 ~~the Released Parties, and the Plan for any claims, liabilities, attorneys’ fees and~~
20 ~~expenses arising from the allocation of the Gross Settlement Amount or Net~~
21 ~~Settlement Amount and for all tax liability and associated penalties and interest as~~
22 ~~well as related attorneys’ fees and expenses.~~

23 15. The Settlement Administrator shall have final authority to determine
24 the share of the Net Settlement Amount to be allocated to each Current Participant
25 and each Authorized Former Participant.

26 16. The Settlement Administrator has the sole and exclusive discretion to
27 determine, with respect to payments or distributions to Authorized Former
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1 Participants, all questions not addressed in or resolved by the Settlement
2 Agreement, including whether a Former Participant Claim Form should be accepted
3 by the Settlement Administrator in the first instance.

4 17. With respect to any matters that arise concerning distributions to
5 Current Participants (after allocation decisions have been made by the Settlement
6 Administrator in its sole discretion), all questions not resolved by the Settlement
7 Agreement shall be resolved by the Plan Fiduciary under the applicable law and
8 governing Plan terms. The Plan Fiduciary shall not have any liability with respect
9 to any questions it resolves regarding distributions beyond that provided for in
10 applicable law and governing Plan terms.

11 18. Within twenty-one (21) calendar days following the issuance of all
12 settlement payments to Class Members, as provided by Paragraph 4.1.12 of the
13 Settlement Agreement, the Settlement Administrator shall prepare and provide to
14 Class Counsel, and Defense Counsel and the Plan Fiduciary a list of each person
15 who was issued a settlement payment and the amount of such payment.

16 Upon entry of this Order, all Class Members and the Plan shall be bound by the
17 Settlement Agreement and by this Final Order.

18 **IT IS SO ORDERED.**

19 DATED: _____, 2020

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22 _____
23 André Birotte Jr.
24 United States District Court Judge
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Local Counsel for Plaintiffs

17
 18 **UNITED STATES DISTRICT COURT**
 19 **CENTRAL DISTRICT OF CALIFORNIA**

20 CLIFTON W. MARSHALL *et al.*,

21 *Plaintiffs,*

22 v.

23 NORTHROP GRUMMAN
 24 CORPORATION *et al.*,

25 *Defendants.*

No. 16-cv-6794 AB (JCx)

**DECLARATION OF ANALYTICS
 CONSULTING LLC**

Hon. André Birotte Jr.

DATE: August 20, 2020

TIME: 9:00 a.m.

Courtroom 7B – Teleconference

Dkt. No. 348

28

1 Christopher D. Amundson, under penalty of perjury pursuant to 28 U.S.C.
2 §1746, declares:

3 1. I am a Project Manager at Analytics Consulting LLC (“Analytics”), a
4 firm with offices in Chanhassen, Minnesota that provides consulting services
5 relating to the design and implementation of class action and mass tort litigation
6 settlements and notice programs. I am responsible for Analytics’ consulting
7 services, including the implementation of the notice program in this matter. The
8 following statements are based on my personal knowledge and information
9 provided by other Analytics employees working under my supervision, and if
10 called as a witness, could and would testify competently thereto. I previously filed
11 a declaration in this case dated May 21, 2020 (Doc. 342-2). This declaration
12 provides additional information regarding Administrative Expenses paid or to be
13 paid from the Gross Settlement Amount under Article 5 of the Settlement
14 Agreement.

15 2. Analytics has paid the following Administrative Expenses from the
16 Gross Settlement Amount: 1.) Analytics Invoice 10794 re: Notice, postage, and
17 materials, \$15,254.96; 2.) Gallagher Fiduciary Fee (installment 1), \$12,500.00; 3.)
18 Gallagher Fiduciary Fee (installment 2), \$12,500.00; 4.) UMB Bank Escrow Fee,
19 \$5,000.0; 5.) OSI Digital (recordkeeper), \$20,720.00. Analytics will reserve
20 \$150,000 of the Gross Settlement Amount as a reserve for unanticipated future
21 Administrative Expenses and adjustments due to data or calculation errors to be
22 paid under §5.8 of the Settlement Agreement.

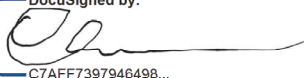
23 I declare under penalty of perjury under the laws of the United States that
24 the foregoing is true and correct.

25 Executed on 14th day of July, 2020 in Minneapolis, Minnesota.

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Christopher D. Amundson
Project Manager – Analytics LLC