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7
8 **UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

9 CRISTINA TOBIAS, ANTHONY BRIGGS,
ANN MACDONALD and DAVID CALDER,
10 individually and on behalf of all others similarly
situated,

11 Plaintiffs,

12 v.

13 NVIDIA CORPORATION, THE BOARD OF
14 DIRECTORS OF NVIDIA CORPORATION,
THE NVIDIA CORPORATION 401(K) PLAN
15 BENEFITS COMMITTEE, and JOHN
DOES 1-30,

16 Defendants.
17
18

Case No. 4:20-cv-06081-JST

**PLAINTIFFS' NOTICE OF MOTION
AND MOTION FOR AN AWARD OF
ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES
AND CASE CONTRIBUTION
AWARDS AND MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF**

Date: December 18, 2025
Time: 2:00 p.m.
Location: Zoom Videoconference
Judge: Hon. Jon Tigar

NOTICE OF MOTION AND UNOPPOSED MOTION

PLEASE TAKE NOTICE that Plaintiff, Cristina Tobias, Anthony Briggs, Ann MacDonald and David Calder (“Plaintiffs”), hereby move the Court to grant Plaintiffs’ Motion for an Award of Attorneys’ Fees and Reimbursement of Expenses and Case Contribution Awards pursuant to the Court’s Order Granting Preliminary Approval of Class Action Settlement, Preliminarily Certifying Class for Settlement Purposes, Approving Form and Manner of Class Notice, and Scheduling a Date for a Final Approval Hearing, entered on September 9, 2025 (hereinafter, “Preliminary Approval Order”) (ECF No. 139).

The hearing on this Motion will take place on December 18, 2025, at 2:00 pm on Zoom Videoconferencing before the Honorable Jon S. Tigar.

Plaintiffs bring this Motion pursuant to Federal Rule of Civil Procedure 23(e), and it is supported by the below Memorandum of Points and Authorities; the Declaration of Mark Gyandoh (“Gyandoh Decl.”); the Declaration of Peter Muhic (“Muhic Decl.”); the Declaration of Daniel Germain (“Germain Decl.”); the Declaration of Cristina Tobias (“Tobias Decl.”); the Declaration of Anthony Briggs (“Briggs Decl.”); the Declaration of Ann MacDonald (“MacDonald Decl.”); and the Declaration of David Calder (“Calder Decl.”), and supporting exhibits; the pleadings, records, and papers on file in this action; and all other matters properly before the Court.

Plaintiffs stand ready to provide any additional information or materials that the Court may require in connection with consideration of the Motion.

Dated: October 14, 2025

Respectfully submitted,

CAPOZZI ADLER, P.C.

/s/ Mark K. Gyandoh

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10 *Gordan v. Massachusetts Mut. Life Ins. Co.*,
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17 *In re Omnivision Techs., Inc.*,
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Other Sources

Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed.) 17

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Newberg on Class Actions (4th 2002)3

MEMORANDUM OF POINTS AND AUTHORITIES

Court-appointed Class counsel, Capozzi Adler, P.C. (“Capozzi Adler” or “Class Counsel”), respectfully submits this memorandum of law in support of its Motion for and Award of Attorneys’ Fees and Reimbursement of Expenses and Case Contribution Awards.

I. INTRODUCTION

Pursuant to the proposed Settlement in this action under the Employee Retirement Income Security Act (“ERISA”), this Motion seeks approval of awards of attorneys’ fees, reimbursement of expenses and case contribution awards. Class Counsel has succeeded in obtaining a \$2,500,000 settlement (the “Settlement”)¹ for the benefit of the Settlement Class who were participants and beneficiaries in the NVIDIA Corporation 401(k) Plan (the “Plan”) during the Class Period. This is an extremely favorable outcome in the face of substantial risks, and it is the result of Class Counsel’s vigorous, persistent, and skilled efforts. Class Counsel now respectfully moves the Court for an award of attorneys’ fees in the amount of one-third of the Settlement Fund (*i.e.*, \$833,333.33), and reimbursement of \$24,262.39 for out-of-pocket costs incurred by Class Counsel while prosecuting the Action. Notice of the Settlement to the Settlement Class will commence on October 14, 2025. To date, there have been no objections to any aspect of the Settlement or the related applications.

Achieving the Settlement was only obtained after vigorous representation of Plaintiffs and the Class. Defendants were represented by highly skilled litigators, and Class Counsel faced numerous hurdles and risks from the outset.

Despite facing long odds, Class Counsel has aggressively litigated this case, working close to 1,000 hours, all on a contingent basis. *See* Gyandoh Decl., ¶¶ 73-79, Ex. 2. As compensation for Class Counsel’s significant efforts on behalf of the Settlement Class, Class Counsel respectfully requests a

¹ The Settlement Agreement and its exhibits are attached to the Declaration of Mark K. Gyandoh in support of Plaintiffs’ Notice of Unopposed Revised Motion to Preliminarily Approve Settlement and Class Notice and Memorandum of Points and Authorities in Support Thereof. *See* ECF No. 137.

1 fee award in the amount of one-third of the Settlement Fund. The requested fee is consistent with fee
2 awards in comparable class action settlements, whether considered as a percentage of the Settlement
3 Fund, or in relation to Class Counsel’s lodestar. In fact, the requested fee represents only a 1.38
4 multiplier of Class Counsel’s lodestar.

5 Class Counsel also seeks reimbursement of \$24,262.39 in out-of-pocket litigation expenses.
6 Gyandoh Decl. ¶ 71. The expenses are reasonable in amount and were necessarily incurred in the
7 successful prosecution of the Action. Accordingly, they should be approved.

8 Finally, Class Counsel also requests that the Court approve Case Contribution Awards of
9 \$5,000 to Plaintiffs for their work done on behalf of the Class in bringing the action. But for Plaintiffs’
10 “commitment to pursuing these claims, the successful recovery for the [Settlement] Class would not
11 have been possible.” *See Bell v. Pension Comm. Of ATH Holding Co., LLC*, No. 15-cv-2062, 2019
12 WL 4193376, at *6 (S.D. Ind. Sept. 4, 2019).

13 For all the reasons set forth herein, and in the Gyandoh Declaration, Class Counsel
14 respectfully requests that the Court award attorneys’ fees equal to one-third of the Settlement Fund,
15 approve reimbursement of \$24,262.39 in litigation expenses incurred by Class Counsel, and award
16 Plaintiffs a Case Contribution Award of \$5,000 each.

17 **II. STANDARDS FOR AWARDS OF ATTORNEYS’ FEES IN CLASS ACTION**
18 **SETTLEMENTS**

19 Pursuant to Rule 23(h), the Court may award reasonable attorneys’ fees and nontaxable costs
20 “authorized by law or by agreement of the parties[.]” *Staton v. Boeing*, 327 F.3d 939, 963 (9th Cir.
21 2003). A district court must therefore “carefully assess the reasonableness of a fee amount spelled out
22 in a class action settlement agreement.” *Id.* “It is well established that a private plaintiff, or his
23 attorney, whose efforts create, discover, increase or preserve a fund to which others also have a claim
24 is entitled to recover from the fund the costs of his litigation, including attorneys’ fees.” *In re*

1 *Omnivision Techs., Inc.*, 559 F. Supp. 2d 1036, 1046 (N.D. Cal. 2008) (quoting *Vincent v. Hughes*
2 *Air W., Inc.*, 557 F.2d 759, 769 (9th Cir. 1977)) (internal quotation marks omitted).

3 Applying Ninth Circuit precedent, a court may exercise discretion to calculate attorneys' fees
4 using either the lodestar method or the percentage-of-the-fund method. See *Vizcaino v. Microsoft*
5 *Corp.*, 290 F.3d 1043, 1047 (9th Cir. 2002). "[N]o presumption in favor of either the percentage or
6 the lodestar method encumbers the district court's discretion to choose one or the other." See *In re*
7 *Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291, 1296 (9th Cir.1994). "As always, when
8 determining attorneys' fees, the district court should be guided by the fundamental principle that fee
9 awards out of common funds be 'reasonable under the circumstances.'" *Id.* (internal citations
10 omitted). Plaintiffs' requested fees are warranted under either method.

11 Case law surveys suggest that 50% is the upper limit, with 30-50% commonly being awarded
12 in cases in which the common fund is relatively small. See *Newberg on Class Actions* (4th 2002) §
13 14:6. Small cases tend to have fees above the 25% benchmark in California. *Craft v. County of San*
14 *Bernardino*, 624 F.Supp.2d 1113, 1127 (C.D. Cal. 2008) (holding that attorneys' fees for mega fund
15 cases are typically under the 25% benchmark and cases below \$10 million are often more than the
16 25% benchmark).

17 As discussed in Section III.E., *infra*, California District Courts usually award attorneys' fees
18 in the range of 30-33 1/3% in ERISA class actions that result in the recovery of a common fund under
19 \$10 million. Moreover, this District has awarded attorneys' fees of 33 1/3% of the common fund plus
20 reasonable litigation costs in other class action settlements.

21 To date, Class Counsel has collectively incurred over \$600,000.00 in lodestar attorneys' fees
22 and \$24,262.39 in costs. These amounts do not include the time and expense associated with drafting
23 the upcoming supplemental brief in support of final approval of class action settlement, preparation
24 for and the interview with the Independent Fiduciary, preparation for and presentation at the Final
25 Approval Hearing, and the more time-consuming administration of the settlement following approval.

1 Gyandoh Decl., at. ¶ 80. Any amounts awarded will constitute complete consideration to Class
2 Counsel for all work performed and expenses incurred to date and for all work to be performed and
3 expenses to be incurred through the completion of the Action and the Settlement. Defendants will not
4 oppose a request for approval of Class Counsel’s fees and litigation costs. In the event that the Court
5 awards lesser attorneys’ fees or costs than requested, any portion of the requested amounts not
6 awarded to Class Counsel shall become part of the Net Settlement Amount. The Court’s ruling on
7 Class Counsel’s application for attorneys’ fees and litigation costs shall not terminate the Parties’
8 Agreement. Consequently, the Court should approve the requested attorney’s fees of 33 1/3% as
9 adequate and reasonable.

10 **III. THE COMPENSATION PROVIDED IN THE SETTLEMENT AGREEMENT IS**
11 **FAIR AND REASONABLE UNDER THE APPLICABLE LEGAL STANDARDS**

12 The Parties did not negotiate attorneys’ fees and expenses until after they reached an
13 agreement on the relief for the Class. Class Counsel requests an award of attorneys’ fees in the amount
14 of \$833,333.33. This sum represents 33 1/3% of the \$2,500,000 settlement. This is within the range
15 customarily awarded by California District Courts. *See* Subsection III.E., *infra*.

16 In assessing whether the percentage requested is fair and reasonable, courts generally consider
17 the following factors: 1.) the results achieved; 2.) the risk of litigation; 3.) the skill required; 4.) the
18 quality of work performed; 5.) the contingent nature of the fee and the financial burden; and 6.) the
19 awards made in similar cases. *See Barbosa v. Cargill Meat Solutions Corp.*, 297 F.R.D. 431, 449
20 (E.D. Cal. 2013). As explained below, the *Cargill* factors support Plaintiffs’ requested attorneys’ fees
21 of 33 1/3% of the common fund.

22 **A. The Settlement Represents an Excellent Result for Class Members**

23 The Claims Administrator, appointed by the Court in this matter, will track numerous statistics
24 relating to the Class Members’ response to the Settlement. Class Counsel will supplement the final
25 number of Class Members that objected, if any, to the Settlement and/or the requested attorneys’ fees
26

1 when Class Counsel files its supplemental brief in support of motion for final approval of class action
2 settlement. *See* Preliminary Approval Order, ¶¶ 10-11.

3 **B. The Risks Involved**

4 “The risk that further litigation might result in Plaintiffs not recovering at all, particularly a
5 case involving complicated legal issues, is a significant factor in the award of fees.” *See Omnivision*,
6 559 F. Supp. 2d at 1046 (citing *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043, 1048 (9th Cir. 2002)).
7 Prevailing on the merits in complex cases such as this was by no means guaranteed, regardless of
8 Class Counsel’s preparations. Defense Counsel is experienced in ERISA litigation, had aggressively
9 litigated the case up to settlement, and undoubtedly would have continued to litigate this Action in
10 the same manner.

11 Likewise, even if Plaintiffs prevailed on liability at trial, there was no guarantee that the Court
12 would award damages or, if it did, that those damages would equal or exceed the amount of the
13 Settlement. *Urakhchin*, 2018 WL 8334858, at *6 (“ERISA 401(k) litigation is risky and even had
14 Plaintiffs prevailed on the merits, there would be significant uncertainty as to a damage award
15 following trial.”). Further, had Plaintiffs prevailed, Defendants almost certainly would have appealed
16 the decision, resulting in further delay, risk, and expenses. The Settlement represents a reasonable
17 compromise that alleviates the risks associated with further litigation.

18 **1. The Extraordinary Factual and Legal Complexity of The Action**

19 As demonstrated by the lengthy briefing from both sides during the motion to dismiss phase,
20 this Action was legally complex and challenging. The number of Plan participants and the enormous
21 amount of data that Plaintiffs would have to analyze and retention of expert witnesses to establish
22 breaches of fiduciary duties and calculating damages also present a challenge. The legal and factual
23 complexity of this matter further supports an award of 33 1/3%. *See* Gyandoh Decl., at ¶¶ 14-19, 47-
24 51.

1 Plaintiffs filed this action at a time when there was uncertainty concerning ERISA claims
2 alleged in the complaint. As demonstrated by the numerous Statements of Recent Decisions (*see*
3 Section III.B.2., *infra*) filed in support of the Parties' respective positions concerning Defendants'
4 motions to dismiss, case law regarding the legal sufficiency of Plaintiffs' claims continued to evolve.
5 In fact, while Defendants' motion to dismiss the first amended complaint was pending, the Supreme
6 Court decided *Hughes v. Northwestern University*, 142 S. Ct. 737 (2022) which required the Court to
7 order supplemental briefs to discuss the impact of the decision. *See* ECF No. 84. The legal
8 uncertainties have required Plaintiffs to pursue this case under the threat of receiving adverse legal
9 interpretations that may eviscerate both their claims and any prospect of recovering attorneys' fees.
10 The unusual legal complexity and risks associated with this type of case support an attorney fee award
11 of 33 1/3%. This is particularly appropriate where, as here, no class member has asserted an objection
12 to date.

13 2. Plaintiffs' Counsel Engaged in Extensive Motion Practice

14 No progress in this case has come quickly or easily, including the settlement negotiations
15 which were conducted at arm's length with the assistance of Robert Meter of JAMS, who is well-
16 versed and experienced in mediating ERISA matters.

17 Following the filing of the initial complaint on August 28, 2020, Defendants moved to dismiss
18 the Action. Following briefing on Defendants' motion to dismiss, as well as several Statements of
19 Recent Decisions (*see* ECF Nos. 27, 28, 29, 32, 33, 34, 35, 36, 38, 41, 42, 43), the Court granted
20 Defendants' motion to dismiss with leave for Plaintiffs to amend the complaint. Plaintiffs filed their
21 amended complaint on November 12, 2021. *See* ECF No. 51. Another round of motion to dismiss
22 briefing commenced with Defendants filing a motion to dismiss the first amended complaint on
23 December 23, 2021. *See* ECF No. 52. Following briefing on the motion to dismiss the first amended
24 complaint, the Court terminated Defendants' motion to dismiss due to the intervening Supreme Court
25 decision *Hughes v. Northwestern University*, 142 S. Ct. 737 (2022). *See* ECF No. 66.

1 Defendants commenced the third round of briefing the motion to dismiss on April 15, 2022.
2 Following complete briefing on Defendants' third round of briefing, and several more Statements of
3 Recent Decisions (ECF Nos. 76, 77, 78, 80, 81, 82, and 83), the Court Ordered simultaneous
4 supplemental briefing to discuss the impact of the decisions that were included in the Statements of
5 Recent Decisions. *See* ECF No. 84. On April 11, 2023, the Parties filed their supplemental briefs, and
6 on April 18, 2023, the Parties filed their responses to the supplemental briefs. *See* ECF Nos. 85-88.

7 On September 11, 2023, the Court denied Defendants' motion to dismiss the first amended
8 complaint. *See* ECF No. 93. After the Parties served and responded to written discovery requests,
9 Plaintiffs filed their motion for class certification on March 12, 2024. *See* ECF No. 110. Briefing for
10 Plaintiffs' motion for class certification was completed on May 28, 2024. Prior to the hearing on
11 Plaintiffs' motion for class certification, the Parties filed a stipulation to stay proceedings pending
12 mediation on June 24, 2024.

13 C. Skills Required and Quality of Work Performed

14 A third factor justifying the percentage requested involves the skills required by Class Counsel
15 to adequately litigate this type of case. As set forth in the supporting declaration of Mark Gyandoh,
16 Class Counsel has experienced class action litigators, including in the area of ERISA litigation. It is
17 well understood that ERISA claims, such as the claims here, are particularly complex. *See Toumajian*
18 *v. Frailey*, 135 F.3d 648, 650 (9th Cir. 1998) ("Once again the mysteries of the Employee Retirement
19 Income Security Act of 1974 ("ERISA") - a statute intended to provide a system of uniformity and
20 simplicity in the complex regulatory field of employee benefits - provides added complexity in this
21 action.").

22 Plaintiffs retained attorneys who are highly qualified, experienced, and able to litigate this
23 matter. Capozzi Adler and Mark K. Gyandoh, Plaintiffs' Counsel in this Action, readily meet these
24 criteria. Capozzi Adler has been named Lead or Co-Lead interim Class Counsel in numerous breach
25 of fiduciary duty class actions in this District and across the nation and has settled multiple ERISA
26

1 actions for millions of dollars. *See* Gyandoh Decl., ¶¶ 102-07. Mr. Gyandoh, chair of the Fiduciary
2 Practice Group at Capozzi Adler, is a highly qualified ERISA class action attorney and unequivocally
3 recommends this Settlement. *Id.* at ¶¶ 97, 109.

4 Plaintiffs' Counsel demonstrated its skill at every stage of this litigation. Counsel engaged in
5 extensive pre-filing investigation and filed detailed pleadings, including initial and amended
6 Complaints. (ECF Nos. 1, 51, 102). Class Counsel effectively navigated the discovery process to
7 develop an extensive record, including reviewing thousands of pages of documents. *See* Gyandoh
8 Decl., ¶¶ 33-44. Likewise, Plaintiffs' counsel prevailed opposing Defendants' motion to dismiss the
9 amended complaint (ECF No. 93).

11 Additionally, courts have factored in the quality of opposing counsel in evaluating the quality
12 of work by Class Counsel. *See In re Equity Funding Corp. Sec. Litig.*, 438 F.Supp. 1303, 1337
13 (C.D.Cal.1977). This Action required specialized skills to litigate the legal theories relating to breach
14 of fiduciary duties, as Class Counsel was faced with formidable legal opposition. Defendants here are
15 represented by Trucker Huss, a leading nationwide labor and employment law firm. "A significant
16 portion of the practices at Trucker Huss are devoted to advising our clients on legal compliance issues
17 related to qualified retirement plans." *See* <https://www.truckerhuss.com/portfolio/retirement-plans/>.

18 Defendants have litigated this case vigorously for four years and mounted formidable defenses
19 against whether Plaintiffs can establish breaches of fiduciary duties, and whether Plaintiffs will be
20 able to maintain class certification status. Class Counsel's negotiation of the terms reflected in the
21 Settlement Agreement in the face of the foregoing challenges also supports an award of 33 1/3%. The
22 specialized skill of Class Counsel in complex litigation with an emphasis in ERISA law weighs in
23 favor of approving the fee request. *See* Gyandoh Decl., ¶ 96-110.

24 **D. The Contingent Nature of The Representation**

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1 Class Counsel litigated the case on a contingency fee basis, which necessarily presented
2 considerable risk with no guarantee of recovering the time and expenses invested in the case. *Cargill,*
3 *supra*, at 450, citing *In re Sumitomo Copper Litig.*, 74 F.Supp.2d 393, 396–98 (S.D.N.Y.1999) (“No
4 one expects a lawyer whose compensation is contingent on the success of his services to charge, when
5 successful, as little as he would charge a client who in advance of the litigation has agreed to pay for
6 his services, regardless of success. Nor, particularly in complicated cases producing large recoveries,
7 is it just to make a fee dependent solely on the reasonable amount of time expended.”).

8 Class Counsel took this case on a wholly contingent basis. *See* Gyandoh Decl., ¶¶ 60, 69, 76.
9 The economical and logistical unattractiveness of this case required a legal team with significant
10 expertise in ERISA class action litigation who could manage this case in a cost-effective and
11 comprehensive way. The Plaintiffs would not have been able to pursue this litigation other than on a
12 contingency fee basis and no competent plaintiffs’ lawyer or law firm would take on such risky
13 representation for less than one-third of any monetary recovery. *See* Gyandoh Decl., ¶ 81. Class
14 Counsel effectively and efficiently litigated this action from its inception. In that time, Class Counsel
15 has never been paid for its work on this matter, taking the case on a wholly contingent basis.

16 Plaintiffs’ counsel devoted a total of 959.4 hours to date litigating this case over a four-year
17 period. *See* Gyandoh Decl., ¶ 79. During that time, they faced the very real risk, in the face of staunch
18 opposition from highly qualified Defense counsel, that they would receive nothing for this
19 professional time and cash outlay. *Id.* at ¶ 76. Many courts find that this factor weighs in favor of
20 approving the requested fee. *See Baird v. BlackRock Institutional Tr. Co., N.A.*, No. 17-cv-01892,
21 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (“Class Counsel ran the risk of receiving nothing
22 if the case was unsuccessful because they operated on a contingent-fee basis and advanced all
23 litigation costs.”).

24 As reflected by the sheer number of hours devoted by the attorneys and staff involved in
25 litigating this case, a substantial amount of their time was devoted to this case at the preclusion of
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1 other work. *See* Gyandoh Decl. ¶ 79. While not a specific factor considered in the Ninth Circuit, this
2 consideration is relevant in terms of taking this case on a contingent fee basis. *See e.g., Shaw v.*
3 *Interthinx, Inc.*, No. 13-cv-01229, 2015 WL 1867861, at *6 (D. Colo. Apr. 22, 2015) (“[t]here is an
4 inherent preclusion of other work in litigating a complex case such as this on a contingency fee
5 basis.”). This fourth factor cuts in favor of the fee award requested.

6 **E. Awards Made in Similar Cases**

7 The fifth factor considers awards granted in other similar cases. *See Omnivision*, 559 F. Supp.
8 2d at 1046. Although the Ninth Circuit has established a general benchmark of 25% in contingent fee
9 litigation, courts in this District have noted that “in most common fund cases, the award exceeds that
10 benchmark.” *See Omnivision*, 559 F. Supp. 2d at 1047. Indeed, courts in this district have deviated
11 from the 25% in ERISA cases like this case. *See Baird v. BlackRock Institutional Tr. Co., N.A.*, No.
12 17-cv-01892, 2021 WL 5113030, at *7 (N.D. Cal. Nov. 3, 2021) (“[29%] is higher than the
13 presumptively reasonable benchmark amount of 25%, but in this case, the Court finds that the higher
14 percentage is reasonable and justified”).

15 In class actions brought under ERISA in this district and the Ninth Circuit, courts have found
16 that 33 1/3% is a reasonable fee for class counsel. “[A] 33.3% recovery is on par with settlements in
17 other complex ERISA class actions.” *Foster v. Adams & Assocs., Inc.*, No. 18-cv-02723, 2022 WL
18 425559, at *10 (N.D. Cal. Feb. 11, 2022); *see also Norris v. Mazzola*, No. 15-cv-04962, 2017 WL
19 6493091, at *13 (N.D. Cal. Dec. 19, 2017) (44% of \$2,000,000 settlement fund); *In re LinkedIn*
20 *ERISA Litig.*, No. 20-cv-05704, 2023 WL 8631678, at *10 (N.D. Cal. Dec. 13, 2023) (awarding one-
21 third of the settlement fund as attorneys’ fees); *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998,
22 1023 (E.D. Cal. 2019) (awarding attorneys’ fees in the amount of 33.3% of the settlement fund);
23 *Schwartz v. Cook*, No. 15-CV-03347-BLF, 2017 WL 2834115, at *5 (N.D. Cal. June 30, 2017)
24 (same); *Marshall v. Northrop Grumman Corp.*, No. 16-cv-6794, 2020 WL 5668935, at *3 (C.D. Cal.
25 Sept. 18, 2020) (same); *Nguyen v. Westlake Servs. Holding Co.*, No. 23-cv-00854, 2025 WL 2087575,

1 at *8 (C.D. Cal. Jan. 27, 2025) (“The court observes that, although 25% is the benchmark, courts
2 frequently award requests for 33% of the fund, and finds that doing so is appropriate here.”).

3 Moreover, courts nationwide have found an attorneys’ fees award of 33 1/3% of the settlement
4 fund fair and reasonable in ERISA cases. *See, e.g., Griffin v. Flagstar Bancorp, Inc.*, No. 10-cv-
5 10610, 2013 WL 6511860, at *8 (E.D. Mich. Dec. 12, 2013) (holding that plaintiffs’ counsels’
6 “requested fee is consistent with standard fee awards as a percentage of the fund in ERISA actions
7 which typically award between 30% and 33% on a percentage of the fund fee calculation”); *Pledger*
8 *v. Reliance Tr. Co.*, No. 15-cv-4444, 2021 WL 2253497, at *7 (N.D. Ga. Mar. 8, 2021) (awarding
9 attorneys’ fees of one-third the common fund because “[t]he percentage used to calculate the
10 requested fee in this case is consistent with experienced attorneys who handle complex ERISA
11 litigation, and has been found reasonable in numerous cases in federal district courts.”); *Karpik v.*
12 *Huntington Bancshares Inc.*, No. 17-cv-1153, 2019 WL 7482134, at *7 (S.D. Ohio Sept. 26, 2019)
13 (same); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-cv-22782, 2017 WL
14 7798110, at *5 (S.D. Fla. Dec. 18, 2017) (same); *Eslava v. Gulf Telephone Co., Inc.*, No. 04-cv-0297,
15 2007 WL 4105977, at *2 (S.D. Ala. Nov. 16, 2007) (same); *Ramos v. Banner Health*, No. 15-cv-
16 2556, 2020 WL 6585849, at **4-5 (D. Colo. Nov. 10, 2020) (same); *Feinberg v. T. Rowe Price Grp.,*
17 *Inc.*, 610 F. Supp. 3d 758, 771 (D. Md. 2022) (same); *Kelly v. Johns Hopkins Univ.*, No. 16-cv-2835,
18 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020) (same); *Spano v. Boeing Co.*, No. 06-cv-743, 2016
19 WL 3791123, at *2 (S.D. Ill. Mar. 31, 2016) (same); *Kruger v. Novant Health, Inc.*, No. 14-cv-208,
20 2016 WL 6769066, at *2 (M.D.N.C. Sept. 29, 2016) (same); *Gordan v. Massachusetts Mut. Life Ins.*
21 *Co.*, No. 13-cv-30184, 2016 WL 11272044, at *2 (D. Mass. Nov. 3, 2016) (same).
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25 The requested 33 1/3% fee is reasonable under the percentage of the fund method.
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1 **IV. THE LODESTAR CROSS-CHECK CONFIRMS THAT THE REQUESTED FEES**
2 **ARE FAIR AND REASONABLE**

3 Pursuant to Ninth Circuit case law, in making the decision of reasonableness of attorneys'
4 fees, the court in a common fund case has discretion to use either the lodestar method or the
5 percentage method. *Vizcaino v. Microsoft Corp.*, 142 F. Supp. 2d 1299, 1305 (W.D. Wash. 2001)
6 (citing *See In re Washington Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d at 1295-96). Class Counsel's
7 lodestar may "provide a useful perspective on the reasonableness of a given percentage award."
8 *Vizcaino*, 290 F.3d at 1050; *see also Perez v. Rash Curtis & Associates*, 2020 WL 1904533, at *18
9 (N.D. Cal. Apr. 17, 2020) (observing that "courts in the Ninth Circuit sometimes examine the lodestar
10 calculation as a crosscheck on the percentage fee award to ensure the reasonableness of the percentage
11 award"). The lodestar method consists of two steps. *Kelly v. Wengler*, 822 F.3d 1085, 1099 (9th Cir.
12 2016). *First*, a court multiplies a reasonable number of hours expended on the litigation by a
13 reasonable hourly rate to arrive at a lodestar figure. *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734,
14 738 (9th Cir. 2016); *Kelly*, 822 F.3d at 1099. *Second*, the court determines whether to adjust the
15 lodestar figure upward or downward using a multiplier based on factors not subsumed in the lodestar
16 calculation. *Id.*

17 **A. Class Counsel's Hourly Rates Are Reasonable Given The Experience, Skill, And**
18 **Expertise Required To Litigate A Complex ERISA Case**

19 The established standard for determining a reasonable hourly rate is the rate "prevailing in the
20 community for similar services of lawyers of reasonably comparable skill, experience, and
21 reputation." *Blum v. Stenson*, 465 U.S. 886, 895 n.11 (1984); *Camacho v. Bridgeport Fin. Inc.*, 523
22 F.3d 973, 979 (9th Cir. 2008). A reasonable hourly rate "must be based on the 'experience, skill, and
23 reputation of the attorney requesting fees' as well as 'the rate prevailing in the community for similar
24 work performed by [comparable] attorneys'" *Rodman v. Safeway Inc.*, No. 11-cv-03003, 2018 WL
25 4030558, at *6 (N.D. Cal. Aug. 23, 2018) (quoting *Chalmers v. City of Los Angeles*, 796 F.2d 1205,
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1 1210–11 (9th Cir. 1986), *amended by* 808 F.2d 1373 (9th Cir. 1987)). “Affidavits of the plaintiffs’
2 attorney and other attorneys regarding prevailing fees in the community, and rate determinations in
3 other cases, particularly those setting a rate for the plaintiffs’ attorney, are satisfactory evidence of
4 the prevailing market rate.” *United Steelworkers of Am. v. Phelps Dodge Corp.*, 896 F.2d 403, 407
5 (9th Cir. 1990); *Chaudhry v. City of L.A.*, 751 F.3d 1096, 1110 (9th Cir. 2014). “Complex ERISA
6 cases, such as this, ‘involve a national standard, and attorneys practicing ERISA law in the Ninth
7 Circuit tend to practice in different districts.’” *Marshall*, 2020 WL 5668935, at *6 (quoting *Mogck v.*
8 *Unum Life Ins. Co. of Am.*, 289 F.Supp.2d 1181, 1191 (S.D. Cal. 2003)). The “relevant hourly rate
9 for Class Counsel’s work” is thus “the ‘nationwide market rate.’” *Id.* A “district court has discretion
10 to compensate delay in payment in one of two ways: (1) by applying the attorneys’ current rates to
11 all hours billed during the course of the litigation; or (2) by using the attorneys’ historical rates and
12 adding a prime rate enhancement.” *In re Wash. Pub. Power Supply Sys. Sec. Litig.*, 19 F.3d 1291,
13 1305 (9th Cir. 1994).

14 Here, application of the lodestar method demonstrates that the fees requested by Class Counsel
15 are reasonable, especially given that the requested fee of \$833,333.33 is just slightly above Class
16 Counsel’s lodestar of \$602,861.00. Plaintiffs’ Counsel expended a total of 959.4 hours of attorney
17 and paralegal time prosecuting these cases (excluding time Counsel will spend finalizing and
18 administering the settlement). *See Gyandoh Decl.*, ¶ 79. Plaintiffs’ Counsel charged \$335-350 for
19 paralegal and professional staff, \$450-550 for associates, and \$700-950 for partners. *See Gyandoh*
20 *Decl.*, ¶¶ 73, 83. These rates are within the reasonable range and are comparable to other nationwide
21 plaintiffs’ firms that prosecute ERISA actions. *Id.* at ¶¶ 84-95; *see also, In re LinkedIn ERISA Litig.*,
22 No. 20-CV-05704, 2023 WL 8631678 at *10 (N.D. Cal. Dec. 13, 2023) (finding similar rates charged
23 by Class Counsel “reasonable and commensurate with those charged by attorneys with similar
24 experience in the market.”); *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723, 2022 WL 425559 at
25 *9 (N.D. Cal. Feb. 11, 2022) (finding similar rates reasonable).

1 Class Counsel’s fee request is consistent with reasonable attorneys’ fees as calculated under
2 the lodestar method. The cross-check multiplier of 1.38 is at or below the range typically approved in
3 the Ninth Circuit. *See, e.g., In re LinkedIn ERISA Litig.*, No. 20-cv-05704, 2023 WL 8631678, at *10
4 (N.D. Cal. Dec. 13, 2023) (“[1.22] multiplier is within the range of modest multipliers accepted and
5 approved in this Circuit.”); *Bayat v. Bank of the W.*, No. 13-cv-2376, 2015 WL 1744342, at *10 (N.D.
6 Cal. Apr. 15, 2015) (“Thus, the Court will award \$455,224.50 in attorneys’ fees which reflects a 1.5
7 multiplier.”); *Wilson v. Metals USA, Inc.*, No. 12-cv-00568, 2021 WL 516585, at *8 (E.D. Cal. Feb.
8 11, 2021) (finding a 1.2 multiplier to be reasonable for a gross settlement amount of \$2,800,000);
9 *Emmons v. Quest Diagnostics Clinical Lab’ys, Inc.*, No. 13-cv-00474, 2017 WL 749018, at *8 (E.D.
10 Cal. Feb. 27, 2017) (“Given the requested one-third award of \$783,333 in attorneys’ fees, the lodestar
11 cross-check reflects a multiplier of approximately 1.7, which is on the low end of acceptable potential
12 modifiers. This too supports the reasonableness of an award of attorneys’ fees equal to one-third of
13 the total fund in this case.”); *Tom v. Com Dev USA, LLC*, No. 16-cv-1363, 2017 WL 10378629, at *9
14 (C.D. Cal. Dec. 4, 2017) (“Given potential outcome of the litigation and Class Counsel’s diligence in
15 pursuing this case, the Court finds the multiplier of 1.4 more than justified and well within the range
16 of approval.”); *Kutzman v. Derrel's Mini Storage, Inc.*, No. 18-cv-00755, 2020 WL 5909151, at *12
17 (E.D. Cal. Oct. 6, 2020) (applying a lodestar multiplier of 2.3); *Lee v. Glob. Tel*link Corp.*, No. 15-
18 cv-02495, 2018 WL 4625677, at *11 (C.D. Cal. Sept. 24, 2018) (applying a lodestar multiplier of
19 3.0); *Taylor v. FedEx Freight, Inc.*, No. 13-cv-01137, 2016 WL 6038949, at *7 (E.D. Cal. Oct. 13,
20 2016) (“Here, the multiplier of 2.26 [] falls within the range of multipliers generally awarded to
21 counsel in successful class action litigation.”). The cross-check multiplier of 1.38 is reasonable
22 because it accounts for the risks and complexity of the litigation, while also recognizing that the
23 Settlement resolves this litigation prior to summary judgment, trial and potential appeals that would
24 have generated a substantially larger lodestar that at this point. Moreover, as Class Counsel continues
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1 to prepare this case for final approval and oversee the administration of the Settlement, the multiplier
2 will continue to decrease.

3 **B. The Number of Hours That Class Counsel Worked is Reasonable**

4 The amount of time expended by Class Counsel was appropriate and necessary. The legal
5 services Class Counsel provided, and continues to provide, require significant time and labor because
6 of the complexity and volume of the legal and factual questions during litigation and the due diligence
7 that will be required in monitoring the settlement distribution as well as answering questions from
8 Class Members regarding the terms and nature of the settlement.

9 The following categories of work performed by Class Counsel, among others, are
10 compensable time within the lodestar method: (a) drafting and revising pleadings and other legal
11 documents; (b) conferring with clients and class members, opposing counsel, or both; (c) legal
12 research and briefing; (d) preparing and responding to written discovery; (e) reviewing policy
13 documents, and other Plan-related document production items; (g) meeting with and/or corresponding
14 with putative class members as well as with Plaintiffs; (h) drafting the motion for class certification
15 and reply; (i) analyzing data, preparing for and attending mediation; and (j) preparing settlement
16 documents including motions for preliminary and final approval as well as fee application. Gyandoh
17 Decl. ¶¶ 3-52, 76. The hours set forth in the accompanying declarations of Mark Gyandoh, Plaintiffs'
18 counsel Peter Muhic and Daniel Germain, are reasonable, given the complexity of the issues.

19 The billing records were prepared by Plaintiffs' counsel as part of their normal business
20 operations, and reflect the time worked by attorneys and legal assistants with the time stated in one
21 tenth hour increments. Based on those records, the chart below summarizes the hourly rates and time
22 spent by all Plaintiffs' counsel and are supported by the accompanying declarations.

Name	Position	Hourly Rate	Total Hours	Total
Mark K. Gyandoh	Partner	\$915.00	184.9	\$169,183.50
Donald R. Reavey	Partner	\$885.00	75.1	\$66,463.50
James Maro	Partner	\$900.00	36.5	\$32,850.00

Jay Wells	Partner	\$700.00	88.3	\$61,810.00
Gabrielle P. Kelerchian	Mid-Level Associate	\$550.00	77.3	\$42,515.00
Giulia Conboy	Mid-Level Associate	\$450.00	58.1	\$26,145.00
Brandon Williams	Mid-Level Associate	\$550.00	27.7	\$15,235.00
Thomas Sinclair	Mid-Level Associate	\$550.00	98.4	\$54,120.00
Linda Gussler	Paralegal	\$350.00	98.1	\$34,335.00
Lauren Phillips	Paralegal	\$335.00	4.6	\$1,541.00
Tina Scheetz	Paralegal	\$335.00	52.3	\$17,520.50
Jessica Murphy	Paralegal	\$250.00	46.2	\$11,550.00
Kendall Adams	Paralegal	\$250.00	1	\$250.00
Kathleen Hughes	Paralegal	\$250.00	2.7	\$675.00
Raashira Ragland	Legal Secretary	\$250.00	25.3	\$6,325.00
Hugh Murchie	Paid Legal Intern	\$250.00	2.6	\$650.00
Peter Muhic of Muhic Law, LLC	Co-Counsel	\$950	35.4	\$33,630.00
Daniel L. Germain of Rosman & Germain APC	Liaison Counsel	\$625	44.90	\$28,062.50
Total			959.4	\$602,861.00

Gyandoh Decl., at ¶¶ 73-82. All of this work was necessary for the prosecution of this case and justify an award of the amount requested based upon the excellent results obtained for the putative class members, the expertise of Class Counsel in complex litigation and class actions, and the efficient use of time in every aspect of this case. Moreover, this fee is within the range of fees charged by class action attorneys within this community. Thus, the Court should find that the number of hours Class Counsel expended was reasonable.

V. THE COURT SHOULD REIMBURSE PLAINTIFFS’ COUNSEL FOR EXPENSES INCURRED

1 Class Counsel requests to be reimbursed for \$24,262.39 in litigation expenses incurred in
2 prosecuting this case under FED. R. CIV. P. 23(h). As a leading treatise states:

3 An attorney who creates or preserves a common fund by judgment or
4 settlement for the benefit of a class is entitled to receive reimbursement of
5 reasonable fees and expenses involved. The equitable principle that all
6 reasonable expenses incurred in the creation of a fund for the benefit of a
7 class are reimbursable proportionately by those who accept benefits from
8 the fund authorizes reimbursement of full reasonable litigation expenses as
costs of the suit in contrast to the more narrowly defined rules of taxable
costs of suit under Fed. R. Civ. P. 54 (d). . . . The prevailing view is that
expenses are awarded in addition to the fee percentage.

9 Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed.) *see also Sprague v. Ticonic*, 307 U.S. 161, 166-
10 67 (1939) (recognizing a federal court’s equity power to award costs from a common fund).

11 “Attorneys may recover their reasonable expenses that would typically be billed to paying
12 clients in non-contingency matters.” *In re Omnivision*, 559 F. Supp. 2d at 1048; *see also Harris v.*
13 *Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (“Harris may recover as part of the award of attorney’s fees
14 those out-of-pocket expenses that ‘would normally be charged to a fee paying client.’”). Such costs
15 typically include “photocopying, printing, postage, court costs, research on online databases, experts
16 and consultants, and reasonable travel expenses.” *Thomas v. MagnaChip Semiconductor Corp.*, No.
17 14-cv-01160, 2018 WL 2234598, at *4 (N.D. Cal. May 15, 2018); *Carlin v. DairyAmerica, Inc.*, 380
18 F. Supp. 3d 998, 1024 (E.D. Cal. 2019) (reimbursing \$823,904.04 for costs including filing fees,
19 copying, postage, document storage, depositions, travel, experts, transcripts, computer research, the
20 cost of the mediator, and common-fund contributions).

21 Plaintiffs’ Counsel incurred total expenses of \$24,262.39 including costs related to filing fees,
22 mediation, and legal research. *See* Gyandoh Decl., at ¶¶ 71-2.¹ All expenses for which reimbursement

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¹ These amounts are exclusive of the cost of the Settlement Administrator which are estimated to be in excess of
\$75,000.00. *See* Gyandoh Decl. ¶ 65; *Baird*, 2021 WL 5113030, at *8 (“Counsel’s request for reimbursement of
expenses does not include the “Administrative Expenses” defined in the Settlement Agreement, which include, among
other things, the costs of the Settlement Administrator.”).

1 is sought were necessary for the prosecution of this litigation and are of the type that would be billed
2 to hourly clients of the firm. *Id.*; *see also Baird*, 2021 WL 5113030, at *7 (“[t]he Court is satisfied
3 that these costs were reasonably incurred”). Class Counsel brought this case without guarantee of
4 reimbursement or recovery, so they had a strong incentive to keep costs at a reasonable level, and
5 they did so. The expenses are reasonable and should be reimbursed to class counsel.

6 **VI. THE REQUESTED CASE CONTRIBUTION AWARDS FOR THE NAMED PLAINTIFFS**
7 **ARE REASONABLE**

8 Plaintiffs request Class Representatives Ms. Tobias, Mr. Briggs, Ms. MacDonald and Mr.
9 Calder, be granted a Case Contribution Award in compensation for the time and effort they expended
10 in successfully prosecuting this case to a successful resolution. *See Gyandoh Decl.*, ¶¶ 111-12. Case
11 contribution “awards that are intended to compensate class Representatives for work undertaken on
12 behalf of a class ‘are fairly typical in class action cases.’” *In re Online DVD-Rental Antitrust Litig.*,
13 779 F.3d 934, 943 (9th Cir. 2015) (citation omitted). Such awards are “intended to compensate class
14 representatives for work done on behalf of the class, to make up for financial or reputational risk
15 undertaken in bringing the action, and, sometimes, to recognize their willingness to act as a private
16 attorney general.” *Rodriguez v. West Publishing Corp.*, 563 F.3d 948, 958–59 (9th Cir. 2009); *see*
17 *also Johnson v. Fujitsu Tech. & Bus. of Am., Inc.*, No. 16-CV-03698-NC, 2018 WL 2183253, at *8
18 (N.D. Cal. May 11, 2018) (granting case contribution awards based on class counsel’s attestation as
19 “to each class representative’s cooperation and work.”); *Bellinghausen v. Tractor Supply Co.*, 306
20 F.R.D. 245, 266 (N.D. Cal. 2015) (collecting cases showing service awards typically range from
21 \$2,000–\$10,000); *Wren v. RGIS Inventory Specialists*, No. 06-cv-05778 JCS, 2011 WL 1230826, at
22 *31 (N.D. Cal. Apr. 1, 2011) (“It is well-established in this circuit that named plaintiffs in a class
23 action are eligible for reasonable incentive payments, also known as service awards.”).

24 Each Plaintiff has submitted a declaration in support of their request for case contribution
25 awards. The declarations are attached to the Gyandoh Declaration as Exhibit 14 (Tobias Declaration),
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1 Exhibit 15 (Briggs Declaration), Exhibit 16 (MacDonald Declaration), and Exhibit 17 (Calder
2 Declaration). These Declarations demonstrate how each Plaintiff actively participated in the case by
3 providing relevant documents to their Counsel, reviewing case related filings and documents,
4 responded to written discovery requests, and monitoring the case through contact with Counsel. The
5 participation of the Named Plaintiffs was crucial in prosecuting the case and bringing it to settlement.
6 *See* Gyandoh Decl., ¶ 112.

7 The Court should also approve the requested \$5,000 Case Contribution Award to Named
8 Plaintiffs because the awards are reasonable. Courts in this district generally find \$5,000 service
9 awards to be presumptively reasonable. *See, e.g., Hopson v. Hanesbrands Inc.*, No. 08-cv-0844, 2009
10 WL 928133, at *10 (N.D. Cal. Apr. 3, 2009) (“In general, courts have found that \$5,000 incentive
11 payments are reasonable.”); *Harris v. Vector Mktg. Corp.*, No. 08-cv-5198, 2012 WL 381202, at *7
12 (N.D. Cal. Feb. 6, 2012) (noting that for service awards “\$5,000 is a reasonable amount”).

13 **VII. CONCLUSION**

14 Plaintiffs respectfully submit that the Court award attorneys’ fees in the amount of
15 \$833,333.33, approve the reimbursement of litigation expenses in the amount of \$24,262.39, and
16 approve Case Contribution Awards in the amount \$5,000 for named Plaintiffs.

17 Dated: October 14, 2025

CAPOZZI ADLER, P.C.

/s/ Mark K. Gyandoh

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2025, a true and correct copy of the foregoing document was filed with the Court utilizing its ECF system, which will send notice of such filing to all counsel of record.

By: /s/Mark K. Gvandoh
Mark K. Gyandoh, Esq.