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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BRIAN SMITH, JACQUELINE MOONEY, ANGELA BAKANAS, and MATTHEW COLÓN, individually and on behalf of all others similarly situated,

Plaintiffs,

v.

VCA, INC., and THE PLAN COMMITTEE FOR THE VCA, INC. SALARY SAVINGS PLAN, and JOHN AND JANE DOES 1-50,

Defendants.

Case No. 2:21-cv-09140-GW-AGR

PLAINTIFFS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR AWARD OF ATTORNEYS' FEES, COSTS, AND SERVICE PAYMENTS

Hearing: June 26, 2023
Time: 8:30 a.m.
Judge: Hon. George Wu
Ctrm: 9D

[Concurrently filed Declarations of Erich P. Schork and Andrew W. Ferich]

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MEMORANDUM OF POINTS AND AUTHORITIES

Plaintiffs Brian Smith, Jacqueline Mooney, Angela Bakanas, and Matthew Colon ("Plaintiffs" or "Class Representatives"), by and through Class Counsel, respectfully submit this memorandum in support of their motion for an award of attorneys' fees, costs, and Service Payments.[1]

I. INTRODUCTION

After more than a year of hard-fought litigation, Class Counsel, Michael L. Roberts and Erich P. Schork of Roberts Law Firm, US, PC, and Robert R. Ahdoot and Andrew W. Ferich of Ahdoot & Wolfson ("AW"), secured an exceptional Settlement that provides for the creation of a $1.5 million qualified settlement fund and timely and significant cash payments to Class Members.

Plaintiffs respectfully request an award of $500,000 in attorneys' fees. The requested award equating to 1/3 of the Settlement Fund is consistent with fee awards granted in connection with other complex ERISA class actions. It is also reasonable and justified given the excellent result obtained for the Class, the skill and experience of Class Counsel, the complexity of the case, and the significant risks of non-payment Class Counsel assumed by prosecuting this matter on a contingent basis. The fact that the requested award equates to a lodestar multiplier of 1.12—a number that will be further reduced by Class Counsels' preparation and appearance at the final fairness hearing, continued coordination with the Settlement Administrator, and overseeing of the Settlement distribution process—further demonstrates the reasonableness of the requested award.

Plaintiffs also request reimbursement of $50,000 in out-of-pocket costs. These costs were reasonable and necessary to pursue this litigation and secure the Settlement.

Finally, Plaintiffs request that the Court award Service Payments of $3,000 to each of the four Class Representatives (for a total of $12,000). Each Class Representative did

[1] Except as otherwise specified, capitalized words and terms herein have the same meaning ascribed to them in the Class Action Settlement Agreement, ECF 75-1.

everything in their power to represent the best interests of the Class and devoted a significant amount of time communicating with attorneys, gathering evidence, reviewing and approving the complaint, and ultimately reviewing and approving the Settlement. No Settlement would have been possible without their vital role.

I. BACKGROUND

The Parties' negotiations regarding fees, costs, and Service Payments were conducted only after agreement was reached on all of the other material terms of the Settlement. Schork Decl. ¶ 16; Ferich Decl. ¶ 15. The Settlement itself was reached after extensive investigation, hard-fought litigation, targeted discovery and consultation with experts, and negotiations and with the assistance of David Gereonemus of JAMS. Schork Decl. ¶ 12; Ferich Decl. ¶ 12.

A. History of the Litigation

Plaintiffs in this Action allege that VCA, Inc. and the Plan Committee for the VCA, Inc. Salary Savings Plan (together, "VCA" or "Defendants") breached fiduciary duties in violation of ERISA, 29 U.S.C. §§ 1001-1461 by failing to ensure that Plan members' payment of recordkeeping and administrative ("RK&A") fees were fair, reasonable, and appropriate. Schork Decl. ¶ 3; Ferich Decl. ¶ 3.

On November 22, 2021, Plaintiffs filed their Class Action Complaint against Defendants alleging that, inter alia, VCA: (a) breached their duty of prudence to the Plan as fiduciaries by allowing the Plan to pay multiplies of the reasonable per participant amount for the Plan's retirement plan services fees, failing to properly disclose the fees charged to Participants in the Plan, failing to defray reasonable expenses of administering the plan, and failing to act with the required due care and diligence in the administration of the Plan; and (b) breached their duty to adequately monitor ERISA fiduciaries of the Plan by failing to monitor and evaluate their performance, failing to monitor the process by which Plan recordkeepers were evaluated, and failing to remove individuals responsible for Plan monitoring who caused excessive cost and detriment to the Plan. ECF No. 1 ¶¶ 176-181, 183-188.

Almost immediately after Plaintiffs filed their Complaint, Defendants moved to stay the litigation pending the Supreme Court's decision in the ERISA litigation in *Hughes v. Northwestern Univ.*, No. 19-1401, 141 S. Ct. 2882 (U.S. July 2, 2021). ECF No. 25. Plaintiffs opposed this motion. ECF No. 28. *Hughes* was decided during the pendency of the motion to stay, resulting in VCA's withdrawal of the motion. ECF No. 36.

On February 17, 2022, VCA moved to dismiss the litigation in its entirety (ECF No. 40), which Plaintiffs vehemently opposed. ECF No. 47. Ultimately, the Court denied the motion to dismiss in its entirety and allowed Plaintiffs to continue to litigate all claims against VCA. ECF Nos. 55, 56. On April 28, 2022, VCA answered the Complaint. ECF No. 57.

B. Mediation and the Settlement Negotiations

In July 2022 the Parties discussed the prospect of early resolution. Schork Decl. ¶ 10; Ferich Decl. ¶ 12. As a result of this discussion, the Parties mutually agreed to mediate this matter. *Id.* An all-day mediation session was reserved with David Gereonemus of JAMS for November 9, 2022. Schork Decl. ¶ 12; Ferich Decl. ¶ 13. In the meantime, the Parties began engaging in settlement negotiations and preparing for the November 9, 2022 mediation. Schork Decl. ¶ 11; Ferich Decl. ¶ 13.

On November 9, 2022, the Parties participated in an all-day mediation session with Mr. Geronemus. Schork Decl. ¶ 12; Ferich Decl. ¶ 12. With Mr. Geronemus's guidance, the parties had a productive mediation session. *Id.* Late in the day, the Parties reached an agreement in principle to settle the litigation, and agreed to the creation of a Qualified Settlement Fund consisting of a Gross Settlement Amount of $1,500,000. Schork Decl. ¶ 13; Ferich Decl. ¶ 13.

Following the mediation, the Parties engaged in extensive subsequent discussions to finalize the Settlement's terms. Schork Decl. ¶ 16; Ferich Decl. ¶ 16. During negotiations, the Parties deferred discussions concerning the Service Payments to be sought on behalf of the Class Representatives and the amount of Attorneys' Fees and Costs to be sought by

Plaintiffs' counsel until after reaching an agreement on all material terms of the Settlement. Schork Decl. ¶ 15; Ferich Decl. ¶ 15. Negotiations regarding the Settlement were conducted at arm's length, in good faith, and under the supervision of Mr. Geronemus. Schork Decl. ¶ 12; Ferich Decl. ¶ 12. After comprehensive negotiations and diligent efforts, Plaintiffs and VCA finalized the terms of the Settlement and executed the Settlement on January 30, 2023. Schork Decl. ¶ 18; Ferich Decl. ¶ 18.

II. ARGUMENT

A. The Court Should Approve the Requested Attorneys' Fees

"In a certified class action, the court may award reasonable attorney's fees . . . that are authorized by law or by the parties' agreement." Fed. R. Civ. P. 23(h). The Supreme Court has recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *see also, e.g.*, *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016) ("In the absence of a contractual or statutory basis for awarding fees, the district court may award reasonable fees as a matter of federal common law when class counsel has recovered a 'common fund.'") (quoting Fed. R. Civ. P. 23(h)). In deciding whether the requested fee amount is appropriate, the Court's role is to determine whether such amount is "fundamentally 'fair, adequate, and reasonable.'" *Staton v. Boeing Co.*, 327 F.3d 938, 963 (9th Cir. 2003) (quoting Fed. R. Civ. P. 23(e)).

Where a class settlement results in the creation of a common fund, "[t]he district court may use the percentage-of-the-fund method to determine a reasonable attorney fee." *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794, 2020 WL 5668935, at *1-2 (C.D. Cal. Sept. 18, 2020) (citing *Stanger v. China Elec. Motor, Inc.*, 812 F.3d 734, 738 (9th Cir. 2016); *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 953 (9th Cir. 2015)). "Although the Ninth Circuit has established 25% as the benchmark attorney fee in common fund cases, that benchmark is 'a starting point for analysis' because it 'may be inappropriate in some cases.'" *Id.* (quoting *Viscaino v. Microsoft Corp.*, 290

F.3d 1043, 1048 (9th Cir. 2002)). When determining whether to adjust the benchmark percentage, district courts consider: "(1) the result obtained for the class; (2) the effort expended by counsel; (3) counsel's experience; (4) the skill of counsel; (5) the complexity of the issues; (6) the risks of non-payment assumed by counsel; (7) the reaction of the class; and (8) comparison with counsel's lodestar." *Id.* (citations omitted).

Here, the excellent results obtained for the Class, experience and skill of Class Counsel, complexity of the case, time and effort expended by Class Counsel to prosecute this matter, the risks of non-payment assumed by Class Counsel, awards in similar cases, and a lodestar cross-check support the reasonableness of the requested fee award.

1. The Settlement Is an Excellent Result for the Class

The "degree of success obtained" is the most critical factor in analyzing a fee request. *Hensley v. Eckerhart*, 461 U.S. 424, 436 (1983); *see also Marshall*, 2020 WL 5668935, at *2.

The results achieved through the Settlement are exceptional. The $1,500,000 Qualified Settlement Fund represents approximately 25 percent of the maximum damages Plaintiffs could collect at trial—that is, under Plaintiffs' best-case-scenario. As a percentage of recovery, the Settlement Fund is equal to or greater "than recoveries in other cases where attorney fees of one third of the common fund were awarded." *Marshall*, 2020 WL 5668935, at *2 (approving fee award of 1/3 of the settlement fund in ERISA case where the fund represented 29% of the plaintiffs' claimed damages at trial); *Hurtado v. Rainbow Disposal Co.*, No. 8:17-CV-1605, 2021 WL 2327858, at *4 (C.D. Cal. May 21, 2021) (approving request for fees amounting to 30% of the settlement fund in ERISA case where the settlement fund amount represented between "23.4% and 34.0% of the maximum amount that the Class Members could recover if the liability were successfully litigated through trial on all counts"). This factor supports the reasonableness of the requested fee award.

2. The Experience of Class Counsel

"The experience of counsel is also a factor in determining the appropriate fee award." *Waldbuesser v. Northrop Grumman Corp.*, No. CV 06-6213, 2017 WL 9614818, at *3 (C.D. Cal. Oct. 24, 2017); *see also In re Pac. Enterprises Secs. Litig.*, 47 F.3d 373, 378 (9th Cir. 1995) ("Parties represented by competent counsel are better positioned than courts to produce a settlement that fairly reflects each party's expected outcome in litigation."). Class Counsel have substantial experience leading the prosecution of complex actions, including cases involving ERISA claims. Schork Decl. ¶ 32–36; Ferich Decl. ¶ 32–40. Class Counsel utilized that experience to litigate this matter efficiently and effectively prior to reaching the Settlement. This factor supports approval of the requested fee award. *Marshall*, 2020 WL 5668935, at *3 (recognizing that a "one-third fee is appropriate where counsel litigated effectively, and their experience was essential for obtaining the result") (citing *Boyd v. Bank of Am. Corp.*, No. SACV 13–0561, 2014 WL 6473804, at *10 (C.D. Cal. Nov. 18, 2014)).

3. The Skill of Class Counsel and the Complexity of the Case

"[T]he novelty, difficulty and complexity of the issues involved are significant factors in determining a fee award." *Marshall*, 2020 WL 5668935, at *4. "The prosecution and management of a complex national class action requires unique legal skills and abilities [and] [t]he single clearest factor reflecting the quality of class counsels' services to the class are the results obtained." *Waldbuesser*, 2017 WL 9614818, at *4 (citations and internal quotations omitted). "ERISA actions are notoriously complex cases." *Hurtado*, 2021 WL 2327858, at *4-5.

Class Counsel have substantial experience prosecuting complex national class actions, including cases involving ERISA claims. Schork Decl. ¶¶ 32–36; Ferich Decl. ¶ 35. They have a thorough understanding of the issues presented by these types of cases and through their skill and reputation, were able to obtain an excellent settlement for the Class.

This litigation was not easy. Defendants retained Morgan, Lewis & Bockius LLP—a highly capable law firm with one of the most well-respected ERISA practice groups in the country—to mount an aggressive defense. Schork Decl. ¶¶ 5–6; Ferich Decl. ¶ 5. Plaintiffs' Class Action Complaint was filed following an extensive prefiling investigation and extensive discussions with Plaintiffs' consulting experts. Schork Decl. ¶ 9; Ferich Decl. ¶ 9. These efforts paved the way for Plaintiffs to successfully oppose a motion to stay and defeat a comprehensive motion to dismiss, but substantial obstacles remained to litigating this action to judgment. Schork Decl. ¶ 6; Ferich Decl. ¶ 6. A battle of the experts was almost a certainty absent the Settlement. In discussions regarding Plaintiffs' written discovery requests, VCA's counsel made it clear that they intended to challenge, among other items, what constituted a reasonable RK&A fee for the Plan, the actual RK&A fees charged by the Plan, and the figures that should be used to calculate the RK&A fees charged by the Plan. While Class Counsel believe in the strength of Plaintiffs' claims, there is no guarantee Plaintiffs would have prevailed at class certification, summary judgment, trial, and on appeal. *See Marshall*, 2020 WL 5668935, at *4 (recognizing that "ERISA 401(k) fiduciary breach class actions involve complex questions of law and have not been widely litigated to this point [and that] [g]iven the transient nature of standing ERISA law, these cases requirehighly skilled counsel who could understand the complexity of the law and adapt case law accordingly") (citations and quotations omitted).

The Settlement provides Class Members with timely, substantial, cash relief and avoids the risks of the liability phase, which could have taken years to resolve. Class Counsels' ability to obtain the Settlement despite the work done by Defendants' highly skilled counsel is an additional indicator of their skill and the quality of their work. *See, e.g., Barbosa v. Cargill Meat Sols. Corp.*, 297 F.R.D. 431, 449 (E.D. Cal. 2013) ("The quality of opposing counsel is important in evaluating the quality of Class Counsel's work."). This factor supports approval of the requested fee award.

4. The Financial Risks Assumed by Class Counsel and the Substantial Resources They Devoted to the Prosecution of this Matter

"The risks assumed by class counsel, particularly the risk of non-payment or reimbursement of expenses, is a factor in determining counsel's proper fee award." *Marshall*, 2020 WL 5668935, at *5. Attorneys are entitled to a larger fee award when their compensation is contingent in nature, as here. *Carter v. San Pasqual Fiduciary Tr. Co*., No. SACV 15-1507-JVS, 2018 WL 6174767, at *9 (C.D. Cal. Feb. 28, 2018); *Vizcaino*, 290 F.3d at 1048-50; *In re Omnivision Techs., Inc*., 559 F. Supp. 2d 1036, 1047 (N.D. Cal. 2008). "It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for contingency cases." *Carter*, 2018 WL 6174767, at *9.

Class Counsel prosecuted this litigation on a contingency basis, assuming the risk of no payment for a considerable amount of work over an extended period of time. Schork Decl. ¶ 21; Ferich Decl. ¶ 22. They and other attorneys and non-attorneys from their firms devoted over 570 hours to litigating this case and advanced more than $50,000 in costs with no guarantee they would ever receive any compensation for their efforts in this matter. Schork Decl. ¶¶ 19, 29; Ferich Decl. ¶ 30. These financial risks were further "compounded" by the fact that "recovery was uncertain" in this ERISA excessive fees case. *See generally Marshall*, 2020 WL 5668935, at *5 (collecting cases where ERISA excessive fee cases were dismissed and those dismissals were upheld on appeal). These factors weigh "substantially in favor" of the requested 1/3 fee award. *See id.* (quoting *Campbell v. Best Buy Stores, L.P.*, No. 12-7794, 2016 WL 6662719, at *8 (C.D. Cal. Apr. 5, 2016)).

5. Class Members' Reactions to the Settlement

"The presence or absence of objections from the class is also a factor in determining the proper fee award." *Marshall*, 2020 WL 5668935, at *6 (citation omitted). On March 24, 2023, the Settlement Administrator: (1) mailed the Settlement Postcard Notice to 23,930 Class Members that had a mailing address available in the Class Data; and (2) emailed the Settlement Postcard Notice to 17,862 Class Members who had an

email address available in the Class Data. ECF 87-2, Decl. of Richard W. Simmons in Support of Plaintiffs' Unopposed Motion for Final Approval of Class Action Settlement. The same day, the Settlement and class notices were posted on a settlement website maintained by the Settlement Administrator. *Id.* ¶ 19. The Court-approved notices apprised Class Members that Class Counsel would seek an award of attorneys' fees of up to 1/3 of the Settlement Fund and reimbursement of out-of-pocket costs and expenses not to exceed $50,000. *Id*. at 43, 53–54 (notices). The notices also informed Class Members of their right to object to Class Counsels' fee request on or before May 26, 2023. *Id.* As of the date of this filing, no Class Members had submitted an objection to Class Counsels' fee request.

6. Fee Awards in Similar Cases

Courts oftentimes look to fee awards in similar cases in assessing the reasonableness of a fee request. *Marshall*, 2020 WL 5668935, at *8 (citing *Viscaino*, 290 F.3d at 1049-50). Fee awards in most common fund cases exceed the 25% benchmark. *Id.* (citing *Knight v. Red Door Salons, Inc.*, No. 8-01520 SC, 2009 248367, at *6 (N.D. Cal. Feb. 2, 2009)); *Romero v. Producers Dairy Foods, Inc.*, No. 1:05-cv-0484-DLB, 2007 WL 3492841, at *4 (E.D. Cal. Nov. 14, 2007) ("Empirical studies show that, regardless of whether the percentage method or the lodestar method is used, fee awards in class actions average around one-third of the recovery") (quoting 4 Newberg & Conte, Newberg on Class Actions § 14.6 (4th ed. 2007)).

Class Counsels' request for a fee award of 1/3 of the common fund is "on par with" fee awards granted in connection with "settlements in other complex ERISA class actions." *Foster v. Adams & Assocs., Inc.*, No. 18-CV-02723, 2022 WL 425559, at *10 (N.D. Cal. Feb. 11, 2022) (approving 1/3 of the fund fee request); *Marshall*, 2020 WL 5668935, at *8 (same); *Waldbuesser*, 2017 WL 9614818, (same). The request is also consistent with the fact that courts commonly award 33.3% of the fund—as opposed to the 25% benchmark—in cases involving smaller funds of less than 10 million dollars. *Hardmon v. Ascena Retail Grp., Inc.*, No. 19-CV-2207, 2022 WL 17572098, at *7 (C.D.

Cal. Nov. 29, 2022) (collecting authorities). This factor further supports approval of the requested fee award.

7. A Lodestar Cross-Check Confirms the Reasonableness of the Requested Award

Application of a lodestar cross-check confirms the reasonableness of the requested fees. When engaging in a lodestar cross-check, courts "start by determining how many hours were reasonably expended on the litigation, and then multiply those hours by the prevailing local rate for an attorney of the skill required to perform the litigation." *Marshall*, 2020 WL 5668935, at *6 (quoting *Moreno v. City of Sacramento*, 534 F.3d 1106, 1111 (9th Cir. 2008)). Because "attorneys in common fund cases must be compensated for any delay in payment," courts look to "current rates for all work done in the litigation" when applying a cross-check. *Id.* (citations and quotations omitted). Class Counsel need only submit documentation appropriate to meet the burden establishing an entitlement to an award, not to satisfy "green-eyeshade accountants." *Id.* (quoting *Fox v. Vice*, 131 S. Ct. 2205, 2216 (2011)).

The accompanying declarations of Class Counsel set forth the hours of work and billing rates used to calculate the lodestars here. As described in those declarations, Class Counsel and their staff have devoted more than 570 hours to this litigation and have a total lodestar to date of $444,946. Schork Decl. ¶¶ 19, 25; Ferich Decl. ¶¶ 21, 26, 30. All of this time was reasonable and necessary for the prosecution of this action. Class Counsel took meaningful steps to ensure the efficiency of their work. Schork Decl. ¶ 23; Ferich Decl. ¶¶ 23–25. And, as explained further below, these amounts do not include the additional time that Class Counsel will have to spend through the Final Approval Hearing and beyond. *See Caudle v. Bristow Optical Co.*, 224 F.3d 1014, 1028 (9th Cir. 2000) (counsel entitled to recover for all hours reasonably expended).

Because complex ERISA cases, such as this matter, "involve a national standard" and attorneys practicing ERISA law in the Ninth Circuit tend to practice in courts

throughout the nation, "the nationwide market rate" is the relevant hourly rate for Class Counsels' work in this matter. *Marshall*, 2020 WL 5668935, at *6 (collecting authority).

Class Counsel are highly regarded members of the bar with extensive experience prosecuting complex class actions, including ERISA cases. Schork Decl. ¶¶ 32–36; Ferich Decl. ¶¶ 32–40. Class Counsel submitted the following hourly rates: attorneys with more than 30 years of experience ($1040 to $1200 per hour), attorneys with between 20 and 29 years of experience ($950 per hour); attorneys with between 10 and 19 years of experience ($850 to $860 per hour); attorneys with between 7 and 9 years of experience ($750 per hour); attorneys with between 4 and 6 years experience ($560); attorneys with up to 3 years of experience ($450); and paralegals ($170 to $250). Schork Decl. ¶ 25; Ferich Decl. ¶ 26. Their hourly rates are consistent with the "nationwide market rate" and those approved in analogous complex ERISA cases. *See, e.g., Marshall*, 2020 WL 5668935, at *6 (endorsing the following hourly rates or ERISA attorneys: 25+ years of experience ($1060), 15-24 years of experience ($900), 5-14 years of experience ($650), 2-4 years of experience ($490)).

Multiplying the hours Class Counsel and others from their firms spent advancing the litigation by their hourly rates results in a lodestar multiplier of 1.12. This number will continue to be reduced as Class Counsel spend additional time preparing for the final approval hearing, coordinating with the settlement administrator, and overseeing the settlement distribution process.

"In determining a reasonable attorney fee in class action common fund cases, the lodestar figure is routinely enhanced by a multiplier to compensate class counsel for the risk of non-payment by litigating the case on a contingency basis." *Marshall*, 2020 WL 5668935, at *8 (citing *In re Washington Pub. Power Supply Sys. Secs. Litig.*, 19 F.3d 1291, 1299–1300 (9th Cir. 1994) ("It is an established practice in the private legal market to reward attorneys for taking the risk of non-payment by paying them a premium over their normal hourly rates for winning contingency cases"); *Vizcaino*, 290 F.3d at 1051 ("courts have routinely enhanced the lodestar to reflect the risk of non-payment in

common fund cases"). Class Counsels' miniscule 1.12 multiplier is readily justified because they devoted substantial time and effort to advancing a complex ERISA class action cases and assumed a significant risk of non-payment by litigating the matter on a contingency fee basis. This factor further supports the reasonableness of the requested fee award.

B. Class Counsel Are Entitled to Reimbursement of Litigation Costs

Class Counsel are entitled to recover "out-of-pocket expenses that would normally be charged to a fee-paying client." *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994) (internal citation and quotation marks omitted). It is appropriate to reimburse Class Counsel for such expenses from the common fund. *See, e.g., Leonard, et al. v. Baumer (In re United Energy Corp. Solar Power Modules Tax Shelter Inv. Sec. Litig.*), No. 87-CV-3962, 1989 WL 73211, at *6 (C.D. Cal. Mar. 9, 1989). In common-fund cases, the Ninth Circuit has stated that the reasonable expenses of acquiring the fund can be reimbursed to counsel who has incurred the expense. *See Vincent v. Hughes Air W., Inc*., 557 F.2d 759, 769 (9th Cir. 1977). Such expense awards comport with the notion that the district court may "spread the costs of the litigation among the recipients of the common benefit." *Wininger v. SI Mgmt. L.P*., 301 F.3d 1115, 1121 (9th Cir. 2002).

To date, Class Counsels' firms have collectively incurred more than $50,000 in unreimbursed litigation costs. Schork Decl. ¶ 30; Ferich Decl. ¶ 30. The costs for which Class Counsel seek reimbursement were reasonably necessary for the continued prosecution and resolution of this litigation and were incurred by Plaintiffs' Counsel for the benefit of Class Members with no guarantee that they would be reimbursed. *See Staton,* 327 F.3d at 974 (class counsel are entitled to reimbursement of expenses they reasonably incurred). The requested $50,000 in litigation costs are reasonable in amount, and the Court should approve their reimbursement.

C. The Requested Service Payments Are Reasonable and Appropriate

The requested Service Payments of $3,000 to each of the four Class Representatives ($12,000 total) are reasonable and appropriate to compensate these

individuals for stepping forward to represent the Class, devoting substantial time and effort to overseeing this matter, and the excellent recovery they achieved on behalf of the Class. "It is well-established in this circuit that named plaintiffs in a class action are eligible for reasonable incentive payments, also known as service awards." *Viceral v. Mistras Grp., Inc.*, No. 15-cv-02198-EMC, 2017 WL 661352, at *4 (N.D. Cal. Feb. 17, 2017) (citation omitted). When determining whether to approve a requested service award, courts may consider:

> 1) the risk to the class representative in commencing suit, both financial and otherwise; 2) the notoriety and personal difficulties encountered by the class representative; 3) the amount of time and effort spent by the class representative; 4) the duration of the litigation and; 5) the personal benefit (or lack thereof) enjoyed by the class representative as a result of the litigation.

Marshall, 2020 WL 5668935, at *10.

Here, the Settlement and Detailed Notice specifically disclosed Plaintiffs' intent to seek Service Payments of $3,000 for each of the four Class Representatives. While Class Members have until May 26, 2023, to file any objections, as of this filing, no Class Member had filed an objection to the requested Service Payments. The requested Service Payments of $3,000 are in accord with—and indeed less than—"service awards considered reasonable in the Central District and other districts of California." *Id.* (approving service awards of $5,000 per plaintiff and collecting authorities). In pursuing this matter on behalf of the Class, Plaintiffs took on the financial risk that they could be held liable for costs awarded in Defendants' favor and spent substantial time and effort communicating with Class Counsel regarding the allegations at issue, locating and providing documentation to Class Counsel, keeping apprised of the advancement of the litigation, and reviewing and approving the Settlement. The requested Service Payments are justified and appropriate.

V. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court enter an Order awarding attorneys' fees of $500,000, costs in the amount of $50,000, and Service Payments in the amount of $3,000 to each of the four Class Representatives.

Dated: April 28, 2023

Respectfully submitted,

/s/ Erich P. Schork

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Class Counsel

CERTIFICATE OF COMPLIANCE PURSUANT TO L.R. 11-6.2

The undersigned, counsel of record for Plaintiffs certifies that this brief contains 4,506 words, excluding caption, the table of contents, the table of authorities, the signature block, and this certification, which complies with the word limit of L.R. 11-6.1.

/s/ Erich P. Schork
Erich P. Schork