

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

Case No. 1:21-cv-2940

DENIS J. CONLON, DIANE M. MATO, BRIAN
J. SCHROEDER, PATRICK A. JACEK, PETER
HANSELMANN, and ALEXANDER PASCALE,
Individually, on Behalf of The Northern Trust
Company Thrift-Incentive Plan, and on Behalf of
All Others Similarly Situated,

Plaintiffs,

v.

THE NORTHERN TRUST COMPANY;
THE NORTHERN TRUST COMPANY
EMPLOYEE BENEFIT ADMINISTRATIVE
COMMITTEE; and KIMBERLY SOPPI;

Defendants.

Hon. Keri L. Holleb Hotaling

**NOTICE OF PLAINTIFFS' MOTION FOR ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FOR PLAINTIFFS**

PLEASE TAKE NOTICE that on July 29, 2025, at 10:00 a.m., or as soon as this Motion may be heard, counsel for plaintiffs Denis J. Conlon, Diane M. Mato, Brian J. Schroeder, Patrick A. Jacek, Peter Hanselmann, and Alexander Pascale (collectively, “Plaintiffs”), individually, and on behalf of a Class of participants in The Northern Trust Thrift-Incentive Plan (the “Plan”), shall appear before the Honorable Keri L. Holleb Hotaling in Courtroom 1700 of the Everett McKinley Dirksen United States Courthouse, 219 South Dearborn Street, Chicago, IL 60604, and present Plaintiffs’ Motion for Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for Plaintiffs.

This Motion is supported by Plaintiffs' Memorandum of Law in Support of Unopposed Motion for Preliminary Approval of Proposed Class Settlement and Authorization to Disseminate Notice (ECF No. 116); this Court's Order preliminarily approving this Settlement (ECF No. 121); Plaintiffs' Memorandum of Law in Support of Final Approval of Class Settlement (filed herewith); Plaintiffs' Memorandum of Law in Support of Motion for Attorneys' Fees, Reimbursement of Expenses, and Service Awards for Plaintiffs (filed herewith); Declarations of Garrett Wotkyns, Daryl Scott on behalf of Scott+Scott Attorneys At Law LLP, Michael M. Mulder on behalf of Law Offices of Michael M. Mulder, Jamie L. Falgout on behalf of Peiffer Wolf Carr Kane Conway & Wise, LLP in Support of Plaintiffs' Motion for an Award of Attorneys' Fees, Reimbursement of Expenses, and Service Awards (filed herewith); and Declaration of Jeffrey Mitchell of Analytics Consulting, LLC in Support of Plaintiffs' Motion for Final Approval of Class Action Settlement (filed herewith).

Dated: June 16, 2025

Respectfully submitted,

/s/ Kristen Anderson

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system to send notification of such filing to all counsel of record.

/s/ Kristen Anderson

Kristen Anderson

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR
ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS
FOR PLAINTIFFS**

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INTRODUCTION

Class Counsel expended substantial effort and hours, and advanced significant costs in successfully litigating this matter, obtaining \$6.9 million in monetary relief for the Settlement Class.¹ In achieving this result, Class Counsel leveraged its experience in 401(k) litigation by aggressively pursuing this case for over four years without any compensation or guarantee of payment. For this effort, risk taken, and success achieved, Class Counsel request a market rate percentage of one-third of the Qualified Settlement Fund (after subtracting Administrative Expenses and Service Awards) as an award of attorneys' fees, reimbursement of reasonable expenses, interest on the fees and expenses awarded, and Service Awards for Plaintiffs.

Under the “common fund” doctrine, Class Counsel is entitled to an award of reasonable attorneys' fees from the settlement proceeds. *US Airways, Inc. v. McCutchen*, 569 U.S. 88, 96 (2013) (“Under [the common fund doctrine], 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.”) (quoting *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)); *Gaskill v. Gordon*, 160 F.3d 361, 362 (7th Cir. 1998) (“[I]t is commonplace” to award lawyers a percentage of a common fund.). A common-fund attorneys' fee award must reflect “the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time.” *Sutton v. Bernard*, 504 F.3d 688, 692 (7th Cir. 2007) (citation modified).

In class actions in this Circuit—and ERISA 401(k) cases in particular—courts have recognized that the appropriate market is a contingent fee market rather than an hourly fee market,

¹ Unless otherwise defined herein, all capitalized terms herein have the meanings ascribed to them in the class action Settlement Agreement. ECF No. 117-1 (“Settlement Agreement”).

and the market rate for a contingent fee is a one-third percentage of the monetary recovery. The Court should award the same percentage here.

While the Court is not required to cross-check the contingency fee award against a “lodestar” fee, the lodestar amount reflects a “negative multiplier”² of 0.28, further supporting the reasonableness of the requested fee. Moreover, the requested fee does not take into account the additional time that Class Counsel has spent since reaching an agreement in principle to settle with Defendants and will expend in bringing this case to a final conclusion, including applying for final approval of the Settlement and supervising the dissemination of Notices and the claims and distribution processes.

For these reasons, the Court should award Class Counsel attorneys’ fees of \$2,273,332 (one-third of the monetary recovery after subtracting Administrative Expenses and Service Awards³). The Court should also award a reimbursement of Class Counsel’s reasonable expenses of \$799,185.13, as well as Service Awards of \$7,500 to each of the six Named Plaintiffs (\$45,000 in total).

I. BACKGROUND

On June 1, 2021, Plaintiffs Denis J. Conlon and Nicole Travis brought this action on behalf of participants in The Northern Trust Thrift-Incentive Plan (the “Plan”) against The Northern Trust Company, The Northern Trust Company Employee Benefit Administrative Committee, and

² The phrase “negative multiplier” as a way of referring to a multiplier that decreases the lodestar when applied. “Strictly speaking, the phrase ‘negative multiplier’ is a misnomer. The multiplier itself is not a negative number; it is a positive number with a value of less than 1, such that applying the multiplier decreases the lodestar.” *Pacheco v. Ford Motor Co.*, 2022 WL 845108, at *6 n.1 (C.D. Cal. Mar. 22, 2022).

³ Administrative Expenses are estimated to be \$35,004, and Plaintiffs request \$45,000 in Service Awards in total. Accordingly, Class Counsel requests as attorneys’ fees one third of the net fund amount of \$6,860,496.

Kimberly Soppi (“Defendants”) for alleged violations of the Employee Retirement Income Security Act of 1974. ECF No. 1. Plaintiffs Denis J. Conlon, Nicole Travis,⁴ Diane M. Mato, Brian J. Schroeder, Patrick A. Jacek, Peter Hanselmann, and Alexander Pascale filed the operative Amended Complaint on October 22, 2021. ECF No. 25. Broadly stated, Plaintiffs alleged that Defendants breached their fiduciary duties by maintaining underperforming proprietary Northern Trust Focus Funds in the Plan since June 1, 2015. Plaintiffs allege that Defendants’ decision to maintain the Focus Funds while excluding superior alternatives from other fund families constituted a breach of fiduciary duty, causing the Plan to suffer millions of dollars in losses. ECF No. 25 ¶112.

For over four years, this case was extensively litigated with substantial discovery and motion practice. On August 5, 2022, the Court denied Defendants’ Motion to Dismiss for Failure to State a Claim, after lengthy briefing and submission of numerous supplemental authorities. ECF No. 51. Following the Court’s Order Denying Defendants’ Motion to Dismiss, the Parties engaged in fact discovery, which included six depositions of Plaintiffs, 13 depositions of Defendant witnesses, Plaintiffs’ review of 24,899 documents (348,998 pages) produced by Defendants and 1,440 documents (11,357 pages) produced by a non-party, and Plaintiffs’ production of 29 documents (154 pages). Declaration of Garrett Wotkyns in Support of Motion for Final Approval and Award of Attorneys’ Fees, Expenses, and Service Awards (“Wotkyns Decl.”) ¶5. Fact discovery closed on November 30, 2023, with the exception of a document production by Defendants in December and a non-party production in January 2024. ECF No. 89.

The Parties then proceeded to expert discovery, which included the disclosure of two expert reports by Plaintiffs and two expert reports by Defendants. Each expert also submitted a rebuttal

⁴ Nicole Travis subsequently voluntarily withdrew as a named plaintiff. ECF Nos. 78, 105.

report (four in total). The Parties completed four expert depositions in June 2024, and expert discovery closed on June 24, 2024. ECF No. 9 ¶2; Wotkyns Decl. ¶6.

The Parties attempted to settle the case at various stages in the litigation. The Parties first mediated in May 2022 while Defendants' Motion to Dismiss was pending but were unable to reach an agreement at that time. ECF No. 45 ¶¶3-4. The Parties next mediated in February 2024, after the close of fact discovery, but before expert discovery was completed. ECF No. 91 ¶2. This mediation did not result in a settlement. *Id.* Finally, after the close of expert discovery, the Parties requested a settlement conference conducted by a magistrate judge. ECF No. 93 ¶4. On October 8, 2024, a three-hour in-person settlement conference was held before the Honorable Keri L. Holleb Hotaling. ECF Nos. 94-95, 97, 99. Following the October 8, 2024 settlement conference, settlement discussions continued, and on October 10, 2024, the Parties reached an agreement in principle to settle the case. ECF Nos. 101, 103; Wotkyns Decl. ¶¶9-11.

The Parties negotiated the terms of the Settlement Agreement, which they executed on December 6, 2024. Settlement Agreement; Wotkyns Decl. ¶12. On January 28, 2025, the Court preliminarily approved the Settlement. ECF No. 121.

II. ARGUMENT

A. The Court Should Award Class Counsel One-Third of the Qualified Settlement Fund as Attorneys' Fees

Class Counsel is entitled to a reasonable fee award from the Qualified Settlement Fund in an amount that reflects "the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *Sutton*, 504 F.3d at 692 (citation modified). In both ERISA cases and class action settlements that involve a common-fund recovery, the appropriate market rate for an award of attorneys' fees is a one-third percentage of the recovery. Here, the requested attorneys' fee award, consisting of one-third of the settlement

amount (after deducting Administrative Expenses and Service Awards), is consistent with the Seventh Circuit’s method of calculating attorneys’ fee awards. *See Pearson v. NBTY, Inc.*, 772 F.3d 778, 781 (7th Cir. 2014) (holding that courts must deduct the costs of administering the fund and service awards from the settlement amount when determining the reasonableness of the fee); *Redman v. RadioShack Corp.*, 768 F.3d 622, 630 (7th Cir. 2014); *see, e.g., Leung v. XPO Logistics, Inc.*, 326 F.R.D. 185, 201 (N.D. Ill. 2018).

In this case, Class Counsel achieved an excellent result for the Settlement Class. By undertaking this litigation on a contingency fee basis, Class Counsel bore the risk of not only a non-recovery, but also not being reimbursed for the substantial costs incurred in advancing the litigation. A one-third percentage is often awarded in settlements such as this. A lodestar cross-check analysis, though not necessary in the Seventh Circuit, leaves no doubt that Class Counsel’s requested fee is reasonable.

1. Class Counsel’s Requested Fee Is a Reasonable “Market Price” that Takes Into Account the Substantial Risk of Non-Payment and the Excellent Results Achieved for the Settlement Class

“In a certified class action, the court may award reasonable attorney’s fees and nontaxable costs that are authorized by law or by the parties’ agreement.” Fed. R. Civ. P. 23(h). The award of attorneys’ fees and costs in this case is authorized by the common-fund doctrine (*Boeing*, 444 U.S. at 478), Class Counsel’s agreements with Plaintiffs,⁵ and the terms of Settlement Agreement §6.1. *See In re Sw. Airlines Voucher Litig.*, 898 F.3d 740, 745-47 (7th Cir. 2018).

In common-fund cases, “the measure of what is reasonable is what an attorney would receive from a paying client in a similar case.” *Montgomery v. Aetna Plywood, Inc.*, 231 F.3d 399,

⁵ *See* Declaration of Jamie L. Falgout in Support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards filed on behalf of Peiffer Wolf Carr Kane Conway & Wise, LLP (“Falgout Decl.”) ¶10.

408 (7th Cir. 2000); *In re Cont'l Ill. Secs. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992). The Court's objective is to "estimate the terms of the contract that private plaintiffs would have negotiated with their lawyers, had bargaining occurred at the outset of the case (that is, when the risk of loss still existed)." *In re Synthroid Mktg. Litig.*, 264 F.3d 712, 718 (7th Cir. 2001). The fee award must reflect "the market price for legal services, in light of the risk of nonpayment and the normal rate of compensation in the market at the time." *Sutton*, 504 F.3d at 692 (citation modified). "When the 'prevailing' method of compensating lawyers for 'similar services' is the contingent fee, then the contingent fee is the 'market rate.'" *Kirchoff v. Flynn*, 786 F.2d 320, 324 (7th Cir. 1986).

2. The Market for an Attorney Fee Structure in a Common-Fund Settlement Is a Contingent-Fee Arrangement

In most class actions, the prevailing, if not exclusive, method of compensating class counsel is by a contingent-fee arrangement: "The lawyers for the class receive no fee if the suit fails, so their entitlement to fees is inescapably contingent." *Florin v. Nationsbank of Ga., N.A.*, 34 F.3d 560, 565 (7th Cir. 1994) (quoting *Cont'l Ill.*, 962 F.2d at 569); *Gaskill*, 160 F.3d at 362. In an ERISA fiduciary breach litigation such as this matter, the recovery for the class as a whole may be large, but individual class members' damages may be relatively small. Thus, no class member has an incentive to finance complex, costly, and potentially protracted litigation on an hourly basis. *Carnegie v. Household Int'l, Inc.*, 376 F.3d 656, 661 (7th Cir. 2004). Only through retaining counsel on a contingent-fee arrangement can the rights of 401(k) participants be advanced and potentially vindicated. Here, each Plaintiff signed a 40% contingency-fee contract plus costs with Class Counsel, with the understanding that the claims would be brought as a class action. *See* Falgout Decl. ¶10. Further, Class Counsel knows of no law firm in the United States that would handle any ERISA class action with an expectation of anything but a percentage of the

common fund created. Wotkyns Decl. ¶14. For these reasons, the appropriate market for determining Class Counsel's fee is a contingent-fee arrangement.

3. A Fee of One-Third of the Recovery from the Common Fund Is the Standard Market Rate for a Contingency-Fee Arrangement

Given that Class Counsel's fees for its services in this case are determined on a contingency basis, the question before the Court is simply whether Class Counsel's requested fee of one-third of the monetary recovery is a reasonable market rate. *See Synthroid*, 264 F.3d at 718. The market rate "depends in part on the risk of nonpayment a firm agrees to bear, in part on the quality of its performance, in part on the amount of work necessary to resolve the litigation, and in part on the stakes of the case." *Sutton*, 504 F.3d at 693 (quoting *Synthroid*, 264 F.3d at 721). Courts may also consider factors such as actual fee contracts in similar litigation and data on fees awarded in other class actions in the jurisdiction. *Taubenfeld v. AON Corp.*, 415 F.3d 597, 599-600 (7th Cir. 2005). These factors all support the requested award.

a. Class Counsel Took on the Risk of Nonpayment

"[T]he higher the risk of failure the higher the contingent fee that a client would have to pay in an arm's length negotiation with the lawyer in advance of the suit." *In re Trans Union Corp. Priv. Litig.*, 629 F.3d 741, 746 (7th Cir. 2011). ERISA litigation involves substantial risk of loss: "Plaintiffs claiming a breach of fiduciary duty do not often succeed." *Florin v. Nationsbank of Ga., N.A.*, 60 F.3d 1245, 1248 (7th Cir. 1995).

Class Counsel undertook substantial risk in bringing this Action starting with significant financial exposure, including expensive expert witnesses, substantial discovery costs, and multi-year litigation expenses with no guarantee of recovery. In addition, Class Counsel also bears the risk of half of the costs of Notice if the Settlement is not approved or otherwise terminated.

The legal hurdles faced were also significant, particularly given the stringent standards courts apply when evaluating fiduciary processes under ERISA, which would require Plaintiffs to prove not just that Northern Trust's decisions were wrong in hindsight, but that their actual decision-making process was objectively unreasonable at the time decisions were made. Substantively, performance-based claims are notoriously difficult since courts are reluctant to second-guess investment decisions based solely on poor results, requiring proof that the underlying process was flawed rather than just disappointing. *Martin v. CareerBuilder, LLC*, 2020 WL 3578022, at *4 (N.D. Ill. July 1, 2020) ([T]he prudence standard is process-based, not outcome-based [A] Plan's mere underperformance is not actionable so long as the fund administrators act[] prudently."). Indeed, Defendants disputed that any of the Plan's fiduciaries committed or participated in any fiduciary breach related to the use of the Focus Funds. Defendants contended that they followed a rigorous decision-making and monitoring process, adhered to a reasonable investment policy statement, and that Plan investment decisions were in the hands of highly-qualified investment professionals. Additionally, Class Counsel faced significant litigation risk due to Northern Trust's deep financial resources enabling them to fund prolonged and aggressive defense strategies, combined with their sophisticated legal team's experience in ERISA defense matters. Wotkyns Decl. ¶15.

These factors presented a significant risk of nonpayment, which mandates an appropriate contingent fee percentage. *Trans Union*, 629 F.3d at 746; *Silverman v. Motorola Sols., Inc.*, 739 F.3d 956, 958 (7th Cir. 2013).

b. The Case Required a Tremendous Amount of Work

A second factor in establishing an appropriate market rate is the amount of work necessary to resolve the litigation. *Sutton*, 504 F.3d at 693. The work required to resolve this case was substantial. First, Class Counsel spent a substantial number of hours investigating this case and

developing the claims and theories. Next, Class Counsel spent substantial time drafting the original Complaint and Amended Complaint, and fending off the various challenges made by Defendants at the pleading stage. Thousands of additional hours were spent obtaining and analyzing discovery, conducting depositions, and reporting on the status of discovery to the Court. Additionally, the Parties engaged in expert discovery, which included the disclosure of two expert reports by Plaintiffs and two expert reports by Defendants, rebuttal reports, and four expert depositions. Wotkyns Decl. ¶¶16-17. After the close of expert discovery, the referral to the Magistrate Judge was set to be closed and the case returned to the District Judge for dispositive motion practice and trial. ECF No. 92. Accordingly, Class Counsel were actively preparing for class certification and summary judgment proceedings when the case settled. *Id.* ¶18.

In total, Class Counsel spent 12,829.60 hours on this case from inception through October 10, 2024, when the Parties agreed to a settlement in principle. *Id.* ¶19. Needless to say, with nearly 13,000 hours devoted to prosecuting the case, Class Counsel easily devoted more than enough effort and expended more than enough resources to warrant the requested fee.

c. The Class Representatives Agreed to Contracts with Class Counsel Providing for a Contingency Fee of 40% of Any Recovery Plus Costs

Courts may consider actual fee contracts as evidence of the market rate. *Taubenfeld*, 415 F.3d at 599. Prior to joining this case, each of the Named Plaintiffs signed agreements with Class Counsel agreeing to a 40% fee, plus costs. *See* Falgout Decl. ¶10.

d. Courts in Other Cases Routinely Award One-Third of the Recovery

The Seventh Circuit has endorsed the use of data on fee awards in other cases as evidence of an appropriate contingency-fee market rate. *Taubenfeld*, 415 F.3d at 600. “Substantial empirical evidence indicates that a one-third fee is a common benchmark in private contingency

fee cases.” Theodore Eisenberg & Geoffrey P. Miller, *Attorney Fees in Class Action Settlements: An Empirical Study*, 1 J. OF EMPIRICAL LEGAL STUD. 27, 35 (2004). Courts throughout the Seventh Circuit routinely conclude “that a one-third contingency fee is standard.” *City of Greenville v. Syngenta Crop Prot., Inc.*, 904 F. Supp. 2d 902, 909 (S.D. Ill. 2012); *Will v. Gen. Dynamics Corp.*, 2010 WL 4818174, at *2 (S.D. Ill. Nov. 22, 2010) (“Where the market for legal services in a class action is only for contingency fee agreements, and there is a substantial risk of nonpayment for the attorneys, the normal rate of compensation in the market is 33.33% of the common fund recovered.”) (citation modified); *Teamsters Loc. Union No. 604 v. Inter-Rail Transp., Inc.*, 2004 WL 768658, at *1 (S.D. Ill. Mar. 19, 2004) (“In this Circuit, a fee award of thirty-three and one-third (33 1/3%) in a class action in [sic] not uncommon.”).⁶

As for ERISA fee litigation specifically, a one-third contingency fee has been consistently approved in district courts in this Circuit, including the Southern, Central, and Northern Districts of Illinois and the Southern District of Indiana. *See, e.g., Wachala v. Astellas US LLC*, No. 1:20-cv-3882, ECF No. 241, at 4 (N.D. Ill. Nov. 2, 2023); *Bell v. Pension Comm. of ATH Holding Co.*, 2019 WL 4193376, at *6 (S.D. Ind. Sept. 4 2019); *Spano v. Boeing Co.*, 2016 WL 3791123, at *4 (S.D. Ill. March 31, 2016); *Abbott v. Lockheed Martin Corp.*, 2015 WL 4398475, at *4 (S.D. Ill. July 17, 2015); *Beesley v. Int’l Paper Co.*, 2014 WL 375432, at *4 (S.D. Ill. Jan. 31, 2014); *Nolte v. Cigna Corp.*, 2013 WL 12242015, at *4-5 (C.D. Ill. Oct. 15, 2013); *Martin v. Caterpillar, Inc.*,

⁶ Even higher percentages are awarded. *Gaskill*, 160 F.3d at 363 (affirming award of 38%); *Mansfield v. Air Line Pilots Ass’n Int’l*, 2009 U.S. Dist. LEXIS 132346, at *13 (N.D. Ill. Dec. 14, 2009) (“[A] fee award of 35% of the Aggregate Settlement Fund is consistent with awards in similarly complex cases.”); *Meyenburg v. Exxon Mobil Corp.*, 2006 WL 2191422, at *5 (S.D. Ill. July 31, 2006) (“33 1/3% to 40% (plus the cost of litigation) is the standard contingent fee percentages in this legal marketplace for comparable commercial litigation.”).

2010 WL 11614985, at *5-6 (C.D. Ill. Sept. 10, 2010); *Will*, 2010 WL 4818174, at *4; *George v. Kraft Foods Global, Inc.*, 2012 WL 13089487, at *4-5 (N.D. Ill. June 26, 2012).⁷ It is noteworthy that in two breach of fiduciary-duty excessive-fee cases involving the same Northern Trust target date funds that were at issue in this case, class counsel were awarded a fee of one-third of the settlement. *Ford v. Takeda Pharms. U.S.A., Inc.*, 2023 WL 3679031, at *3 (D. Mass. Mar. 31, 2023); *Allegretti v. Walgreen Co.*, 2022 WL 484216, at *2 (N.D. Ill. Jan. 4, 2022). These fee awards represent undeniable recognition that one-third of the monetary recovery was and is the appropriate market rate in cases of this type. This Court should reach the same conclusion here.

4. A Lodestar Cross-Check Confirms that the Fee Is Reasonable

As noted above, in settlements involving a common fund, the Seventh Circuit requires the aforementioned “market-based approach” to be followed when awarding attorneys’ fees. *Sutton*, 504 F.3d at 692. As explained above, the most common method of determining a market-based fee in an ERISA class action common-fund settlement is the percentage method. That is the approach that should be followed here given that the percentage approach best approximates the market rate at the time of the commencement of the action. *Synthroid*, 264 F.3d at 718.

⁷ See also *Sweda v. Univ. of Pa.*, 2021 WL 5907947, at *8 (E.D. Pa. Dec. 14, 2021); *Cates v. Trs. of Columbia Univ. in City of N.Y.*, 2021 WL 4847890, at *9 (S.D.N.Y. Oct. 18, 2021); *Pledger v. Reliance Tr. Co.*, 2021 WL 2253497, at *11 (N.D. Ga. Mar. 8, 2021); *Henderson v. Emory Univ.*, 2020 WL 9848975, at *7 (N.D. Ga. Nov. 4, 2020); *Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *3 (C.D. Cal. Sept. 18, 2020); *Troudt v. Oracle Corp.*, No. 1:16-cv-00175, ECF No. 236, at 7 (D. Col. July 10, 2020); *Kelly v. Johns Hopkins Univ.*, 2020 WL 434473, at *8 (D. Md. Jan. 28, 2020); *Tussey v. ABB, Inc.*, 2019 WL 3859763, at *6 (W.D. Mo. Aug. 16, 2019); *Sims v. BB&T Corp.*, 2019 WL 1993519, at *4-5 (M.D.N.C. May 6, 2019); *Clark v. Duke Univ.*, 2019 WL 2579201, at *4 (M.D.N.C. June 24, 2019); *Cassell v. Vanderbilt Univ.*, No. 16-02086, ECF No. 174, at 5 (M.D. Tenn. Oct. 22, 2019); *Waldbuesser v. Northrop Grumman Corp.*, 2017 WL 9614818, at *3 (C.D. Cal. Oct. 24, 2017); *Gordan v. Mass. Mutual Life Ins. Co.*, 2016 WL 11272044, at *3-4 (D. Mass. Nov. 3, 2016); *Kruger v. Novant Health, Inc.*, 2016 WL 6769066, at *6 (M.D.N.C. Sept. 29, 2016); *Krueger v. Ameriprise Fin. Inc.*, 2015 WL 4246879, at *4 (D. Minn. July 13, 2015); *Bilewicz v. FMR LLC*, 2014 WL 8332137, at *6 (D. Mass. Oct. 16, 2014).

Nevertheless, as the Court has discretion in selecting the method of arriving at a market-based fee, Class Counsel's requested one-third of the common fund is also justified under the lodestar method. Indeed, the lodestar comparison reveals that the Class Counsel's requested contingency fee would result in a negative multiplier of 0.28. *Wotkyns Decl.* ¶19.

To determine attorneys' fees under the lodestar method, the first step is to "multiply[] a reasonable hourly rate by the number of hours reasonably expended." *Gastineau v. Wright*, 592 F.3d 747, 748 (7th Cir. 2010) (citing *Hensley v. Eckerhart*, 461 U.S. 424, 433-37 (1983)). A reasonable hourly rate should be in line with the prevailing rate in the "community for similar services by lawyers of reasonably comparable skill, experience and reputation." *Jeffboat, LLC v. Dir., Office of Workers' Comp. Programs*, 553 F.3d 487, 489 (7th Cir. 2009) (citation modified); *see also Denius v. Dunlap*, 330 F.3d 919, 930 (7th Cir. 2003).

The relevant community for determining the hourly market rate for ERISA class actions "is a national one." *Beesley*, 2014 WL 375432, at *3; *see also Tussey v. ABB, Inc.*, 2012 WL 5386033, at *3 (W.D. Mo. Nov. 2, 2012), *vacated and remanded on other grounds*, 746 F.3d 327 (8th Cir. 2014) ("[C]omplex ERISA litigation involves a national standard."); *Spano*, 2016 WL 3791123, at *3 n.2.

In this matter, Class Counsel spent 12,829.60 hours.⁸ A straight lodestar fee calculation is \$8,070,712. This lodestar amount is significantly higher than the requested contingency fee

⁸ In their declarations in support of this motion, each Class Counsel firm includes a breakdown of their lodestar by timekeeper; however, the voluminous individual time entries have not been provided (but can be provided at the Court's request). This is consistent with the limited purpose of the lodestar calculation when used only as a cross-check. *See In re Tremont Secs. Law, State Law and Ins. Litig.*, 2019 WL 516148 (S.D.N.Y. Feb. 11, 2019) ("[W]here a lodestar is acting as a 'cross-check' to determine the appropriateness of a percentage fee award . . . , the hours documented by counsel need not be exhaustively scrutinized by the district court.") (citation modified); *In re Dairy Farmers of Am., Inc.*, 80 F. Supp. 3d 838, 850 (N.D. Ill. 2015) (stating that "[f]or attorneys who are arguing for a percentage-of-the-fund fee award, any delineation of hours

(\$2,273,332), which further demonstrates the fairness and reasonableness of the request.⁹ Wotkyns Decl. ¶19.

Consistent with the Settlement Agreement, Class Counsel further request that the attorneys' fees, costs, and interest awarded¹⁰ by the Court become payable from the Qualified Settlement Fund immediately upon entry by the Court of an order awarding such amounts, notwithstanding the existence of any timely filed objections thereto, or potential for appeal or collateral attack on the Settlement or any part thereof, subject to repayment if the attorneys' fee and expenses award is overturned or reduced or the Settlement is terminated or does not become final. Settlement Agreement §6.1.¹¹

is seemingly unnecessary" and overruling objection arguing that detailed time records should be submitted).

⁹ This lodestar does not even take into account a multiplier which would increase the lodestar amount. *Harman v. Lyphomed, Inc.*, 945 F.2d 969, 974 (7th Cir. 1991).

¹⁰ Courts both within this circuit and other circuits commonly awarded interest on attorneys' fees. *See, e.g., In re Broiler Chicken Antitrust Litig.*, No. 1:16-cv-08637, ECF No. 5543 at 3 (N.D. Ill. April 19, 2022) (awarding interim attorneys' fees amounting to one third of the settlement fund, with a "proportional share of interest"); *In re Xcel Energy, Inc., Secs., Derivative & "ERISA" Litig.*, 364 F. Supp. 2d 980, 1004 (D. Minn. 2005) (awarding attorneys' fees "plus interest at the same rate earned by the settlement fund") (citation modified). Roughly two-thirds of the interest earned would go to the Class and one-third would be awarded to Class Counsel.

¹¹ Payment of attorneys' fees and expenses upon an award by the court is a common settlement provision, and courts typically approve payment of fees when awarded. *See In re AT & T Corp.*, 455 F.3d 160, 174-75 (3d Cir. 2006) (rejecting objectors' argument that "a portion of the attorneys' fees should be withheld pending payment of claims to class members" because the district court had found that "there was no indication class counsel would stop working diligently on behalf of the class" and the settlement amount was fixed, not contingent on the claims process); *In re NASDAQ Mkt.-Makers Antitrust Litig.*, 187 F.R.D. 465, 479 (S.D.N.Y. 1998) ("Numerous courts have directed that the entire fee award be disbursed immediately upon entry of the award, or within a few days thereafter.") (collecting cases); *In re TFT-LCD (Flat Panel) Antitrust Litig.*, 2011 WL 7575004, at *1 (N.D. Cal. Dec. 27, 2011) ("Federal courts, including this Court and others in this District, routinely approve settlements that provide for payment of attorneys' fees prior to final disposition in complex class actions.") (collecting cases); *Corzo v. Brown Univ.*, 2024 WL 3506498, at *4 (N.D. Ill. July 20, 2024) (ordering payment of attorneys' fees and expenses upon entry of final approval order); *In re Groupon, Inc. Secs. Litig.*, 2016 WL 3896839, at *5 (N.D. Ill. July 13, 2016) (ordering payment of attorneys' fees and expenses within five days

B. The Court Should Award Reimbursement of Class Counsel's Costs

Reimbursement of \$799,185.13 in litigation expenses that Class Counsel advanced in prosecuting this case is warranted. Fed. R. Civ. P. 23(h). A cost award is authorized by both the parties' Settlement Agreement and the common-fund doctrine. Settlement Agreement §6.1; *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391-92 (1970); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 166-67 (1939). "It is well established that counsel who create a common fund like this one are entitled to the reimbursement of litigation costs and expenses." *Spano*, 2016 WL 3791123, at *4 (quoting *Beesley*, 2014 WL 375432, at *3). Costs should be awarded based on the types of "expenses private clients in large class actions (auctions and otherwise) pay." *Synthroid*, 264 F.3d at 722; *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994). Reimbursable expenses include "expert witness costs; computerized research; court reporters; travel expense[s]; copy, phone and facsimile expenses and mediation." *Abbott*, 2015 WL 4398475, at *4.

After a thorough review of Class Counsel's necessary expenses incurred in this litigation, Class Counsel requests the reimbursement of \$799,185.13. A significant portion of these requested fees were spent on necessary and vital expert witness fees and mediation costs. These expenses are costs that are routinely reimbursed by paying clients and should be reimbursed here. *Wotkyns Decl.* ¶20.

C. The Court Should Approve Service Awards for Plaintiffs

In coming forward to initiate this action, the Plaintiffs were willing to and did devote significant personal time pursuing these claims on behalf of their fellow Plan participants. In

of entry of final approval order); *Pension Tr. Fund for Operating Eng'rs v. Assisted Living Concepts, Inc.*, 2013 WL 12180867, at *1 (E.D. Wis. Dec. 19, 2013) (ordering payment of attorneys' fees and expenses immediately upon entry of final approval order).

stepping forward, Named Plaintiffs exposed themselves to potential financial and career risk. By suing their current or former employer, each Plaintiff risked “alienation from employers or peers.” *Beesley*, 2014 WL 375432, at *4. That risk should be acknowledged and rewarded. In terms of their involvement, each Plaintiff remained in frequent contact with Class Counsel throughout this litigation, providing pre-filing investigation assistance, producing documents, and attending depositions. Falgout Decl. ¶12. Given the length of this case, an award of \$7,500 for each Plaintiff is well within the range of other awards.¹² Plaintiffs’ requested service awards are appropriate and reasonable.

CONCLUSION

For these reasons, Plaintiffs request that the Court grant their Motion for Attorneys’ Fees, Reimbursement of Expenses, and Service Awards for Plaintiffs. A proposed order granting this relief will be submitted on reply.

Dated: June 16, 2025

Respectfully submitted,

/s/ Kristen Anderson

¹² See, e.g., *Barcenas v. Rush Univ. Med. Ctr.*, No. 1:22-cv-366, ECF No. 73, at 7 (N.D. Ill. Jan. 19, 2023) (awarding \$7,500 service awards each to four named plaintiffs in ERISA case); *Lafreniere v. R.R. Donnelly & Sons, Inc.*, No. 1:20-cv-7158, ECF No. 121 (N.D. Ill. May 23, 2024) (awarding \$7,500 service awards each to two named plaintiffs in ERSIA case); *Beesley*, 2014 WL 375432, at *4 (awarding \$25,000 service awards each to six named plaintiffs); *Nolte*, 2013 WL 12242015, at *4-5 (awarding \$25,000 service awards each to five named plaintiffs); *Spano*, 2016 WL 3791123, at *4 (awarding \$25,000 service awards each to three named plaintiffs and \$10,000 service awards each to two named plaintiffs); *Cook v. Niedert*, 142 F.3d 1004, 1016 (7th Cir. 1998) (upholding service award of \$25,000).

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CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system to send notification of such filing to all counsel of record.

/s/ Kristen Anderson

Kristen Anderson

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DENIS J. CONLON, NICOLE TRAVIS,
DIANE M. MATO, BRIAN J. SCHROEDER,
PATRICK A. JACEK, PETER
HANSELMANN, and ALEXANDER
PASCALE, Individually, on Behalf of The
Northern Trust Company Thrift-Incentive
Plan, and on Behalf of All Others Similarly
Situating,

Plaintiffs,

v.

THE NORTHERN TRUST COMPANY;
THE NORTHERN TRUST COMPANY
EMPLOYEE BENEFIT
ADMINISTRATIVE COMMITTEE;
KIMBERLY SOPPI; and DOES 1-30,

Defendants.

Case No. 1:21-cv-2940

Hon. Keri L. Holleb Hotaling

**DECLARATION OF DARYL SCOTT IN SUPPORT OF
PLAINTIFF'S MOTION FOR AN AWARD OF ATTORNEYS' FEES,
REIMBURSEMENT OF EXPENSES, AND SERVICE AWARDS FILED ON BEHALF
OF SCOTT+SCOTT ATTORNEYS AT LAW LLP**

I, Daryl Scott, declare as follows:

1. I am the Chief Financial Officer and a partner at the law firm of Scott+Scott Attorneys at Law LLP (the “Firm”), counsel for Plaintiffs in the above-captioned action (the “Action”). I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. The information in this declaration regarding my Firm’s time and expenses is taken from contemporaneous time and expense records and supporting documentation prepared and maintained by the Firm in the ordinary course of business. At my direction, a member of the team assigned to this matter reviewed these records (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment.

3. Based on this review and the adjustments made, I believe that the time reflected in my Firm’s lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation.

4. After the reductions referred to above, the number of hours spent on the litigation by my Firm from case inception through and including October 10, 2024 (the date the Parties reached an agreement in principle to settle the case) is 10,930.6. A breakdown of the lodestar by timekeeper is provided in the following chart:

NAME	STATUS*	HOURLY RATE	HOURS	LODESTAR
Garrett Wotkyns	P	\$1,300	1,280.90	\$ 1,665,170.00

* (P) Partner, (OC) Of Counsel, (A) Associate, (SA) Staff Attorney, and (PL) Paralegal.

NAME	STATUS*	HOURLY RATE	HOURS	LODESTAR
Hal Cunningham	P	\$895	27.00	\$ 24,165.00
Agatha Cole	OC	\$1,095	888.80	\$ 973,236.00
Mario Cacciola	A	\$720	274.90	\$ 197,928.00
Ricardo Dominguez	A	\$720	253.20	\$ 182,304.00
Tanya Korkhov	A	\$725	941.30	\$ 682,442.50
Alyssa Schneider	SA	\$450	960.20	\$ 432,090.00
Deniece Kuwahara	SA	\$450	1,338.00	\$ 602,100.00
Melanie Porter	SA	\$450	2,103.60	\$ 946,620.00
Mingzhao Xu	SA	\$450	830.70	\$ 373,815.00
Nga Cunningham	SA	\$450	1,691.40	\$ 761,130.00
Victoria Burke	SA	\$450	47.70	\$ 21,465.00
Allen West	PL	\$435	50.40	\$ 21,924.00
Angelique Lewis	PL	\$435	55.00	\$ 23,925.00
Ellen Dewan	PL	\$435	38.40	\$ 16,704.00
Matthew Molloy	PL	\$415	66.80	\$ 27,722.00
Michael Himes	PL	\$435	60.10	\$ 26,143.50
Sumner Caesar	PL	\$435	22.20	\$ 9,657.00
TOTAL			10,930.6	\$ 6,988,541.00

5. Based on the Firm's current billing rates, the lodestar value of the time expended amounts to \$6,988,541.00. The Firm primarily represents clients on a contingency-fee basis. The billing rates listed in the chart above are consistent with those the Firm has submitted in other class action cases, where courts have awarded attorneys' fees and conducted lodestar cross-checks using the Firm's then-prevailing rates. See, e.g., *Barrett v. Apple Inc.*, No. 5:20-CV-04812-EJD, 2025 WL 1002786, at *3 (N.D. Cal. Apr. 3, 2025); *In re Eur. Gov't Bonds Antitrust Litig.*, No. 19-CV-2601, 2024 WL 5315290, at *2 (S.D.N.Y. Dec. 9, 2024); *Abadilla v. Precigen, Inc.*, No. 20-CV-06936-BLF, 2023 WL 7305053, at *15 (N.D. Cal. Nov. 6, 2023). No time expended on Class Counsel's application for attorneys' fees and reimbursement of litigation expenses has been included in these calculations.

6. As noted above, my Firm's lodestar figures are based on the Firm's current billing rates. These rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my Firm's billing rates.

7. As detailed in the chart below, my firm is seeking reimbursement for a total of \$770,465.94 in litigation expenses incurred in connection with the prosecution of this Action:

EXPENSE	AMOUNT
Courier	\$ 299.33
Court Reporters/Transcripts	\$ 88,714.99
Document Production/Storage	\$ 80,006.31
Experts	\$ 520,676.25
Filing, Witness & Other Fees	\$ 499.00
Mediation	\$ 25,537.50
Photocopies	\$ 7,005.75
Travel (Meals, Hotels, & Transportation)	\$ 47,726.81
TOTAL	\$ 770,465.94

8. These incurred expenses are reflected in the books and records of my firm, which were prepared from actual receipts, expense vouchers, credit card statements, and other source materials and accurately reflect the expenses incurred. There are no administrative charges included in any of these figures.

9. My firm has reviewed the time and expense records that form the basis of this declaration to correct any billing errors.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on June 16, 2025.



Daryl Scott

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DENIS J. CONLON, NICOLE TRAVIS,
DIANE M. MATO, BRIAN J. SCHROEDER,
PATRICK A. JACEK, PETER
HANSELMANN, and ALEXANDER
PASCALE, Individually, on Behalf of The
Northern Trust Company Thrift-Incentive
Plan, and on Behalf of All Others Similarly
Situated,

Plaintiffs,

v.

THE NORTHERN TRUST COMPANY;
THE NORTHERN TRUST COMPANY
EMPLOYEE BENEFIT
ADMINISTRATIVE COMMITTEE;
KIMBERLY SOPPI; and DOES 1-30,

Defendants.

Case No. 1:21-cv-2940

Hon. Keri L. Holleb Hotaling

**DECLARATION OF MICHAEL M. MULDER IN SUPPORT OF PLAINTIFF'S
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF
EXPENSES, AND SERVICE AWARDS FILED ON BEHALF OF LAW OFFICES OF
MICHAEL M. MULDER**

I, Michael M. Mulder, declare as follows:

1. I have been a member in good standing of the State Bar of Illinois since November 26, 1975, and of this Court since 1976. I am also admitted to practice before the United States Supreme Court, several United States Courts of Appeals, and district courts throughout the country, where I have litigated and argued cases.

2. I am the principal of LAW OFFICES OF MICHAEL M. MULDER (the “Firm”), counsel for Plaintiffs in the above-captioned action (the “Action”). I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

3. Over the past 43 years, I, in conjunction with my law firm and its predecessor firm, have successfully prosecuted numerous complex federal class action cases, including several ERISA class actions. For example, we litigated and reached settlement in *In re: Sears Retire Group Life Insurance Litigation*, No. 97-C-7453 (N.D. Ill.), which involved issues concerning whether retiree life insurance benefits were vested for life or were subject to reduction. That case involved approximately 80,000 class members. I was appointed liaison counsel and headed the steering committee responsible for coordinating the prosecution of the case. The case ultimately settled for approximately \$28 million and included an agreement by Sears not to reduce class members’ benefits below a certain floor. At that time, this agreement was estimated to provide a present value of \$204 million in net savings to the class, and the amount of life insurance expected to be paid to beneficiaries of the class was approximately \$450 million.

4. I also served as co-lead counsel in *Millsap v. McDonnell Douglas Corporation*, 162 F.Supp.2d 1262 (N.D. Okla. 2001), an ERISA section 510 class action. In that case, I tried liability

issues to a favorable verdict on behalf of a class of 1,200 hourly and management employees. In reviewing class counsel's work, the *Millsap* court observed that, "at all stages of this nine-year litigation, Class Counsel has been faced with novel questions and significant obstacles. In every instance, the Court finds that Class Counsel demonstrated the requisite skill necessary to provide high quality legal services to class members." *Millsap v. McDonnell Douglas*, 2003 WL 21277124, at *11 (N.D. Okla. May 28, 2003). The case was partially settled for approximately \$38 million. As part of the settlement, an appeal of the district court's ruling that the class was entitled to additional relief in the form of back pay was certified for review by the Tenth Circuit. The Court of Appeals reversed, with one judge dissenting. *Millsap v. McDonnell Douglas*, 368 F.3d 1246 (10th Cir. 2004). The class's back pay claims were then settled for approximately \$8 million, bringing the total value of the settlement to around \$46 million.

5. I also served as co-lead counsel in *Neil v. Zell*, No. 1:08-cv-06833 (N.D. Ill.), representing participants in the Tribune Employee Stock Ownership Plan. Plaintiffs alleged that the defendants breached their fiduciary duty to the class and engaged in prohibited transactions, all in violation of ERISA. On March 4, 2011, the Court certified the class. Based on the work performed by counsel prior to class certification and the declarations submitted, the Court found that Rule 23(g) was satisfied and appointed me as co-counsel for the class. *Neil v. Zell*, 275 F.R.D. 256, 270 (N.D. Ill. 2011). In March 2012, the case was resolved in favor of the class through a \$32 million settlement.

6. In *In re J.P. Morgan Stable Value Fund ERISA Litigation*, No. 1:12-cv-2548 (S.D.N.Y.), I served as co-lead counsel in an ERISA breach of fiduciary duty action for a class of employees who invested their retirement savings in J.P. Morgan stable value products. The complaint alleged that J.P. Morgan violated federal law by failing to prudently manage its stable

value funds—for example, by investing in risky mortgage assets, thereby breaching its fiduciary duty to the class. On November 3, 2017, the parties entered into a settlement agreement for \$75 million. On September 23, 2019, the U.S. District Court for the Southern District of New York entered a Final Order Approving the Class Action Settlement, permitting distribution of the settlement funds to the class.

7. Although I did not appear in the case, my predecessor firm was co-counsel in *George v. Kraft Foods Global, Inc.*, 2012 WL 13089487 (W.D. Ill. Jun 26, 2012), one of the first ERISA breach of fiduciary duty excessive fee cases (like the instant case) brought in the country by Schlichter, Bogard & Denton. The case settled for \$9.5 million. The court awarded attorneys' fees of \$3,166,666 (equal to one-third of the common fund), costs of \$1,496,371.33, and service awards of \$15,000 to each of the four named plaintiffs.

8. In *Tracey v. Massachusetts Inst. of Tech.*, No. 16-11620-NMG (D. Mass.) the Firm worked with Schlichter, Bogard & Denton, LLP in another ERISA breach of fiduciary duty excessive fee case concerning MIT's supplemental 401(k) plan. On October 19, 2018, the Court certified a class of plan participants. *Tracey v. MIT*, No. 16-11620-NMG, 2018 WL 5114167, at *7 (D. Mass. Oct. 19, 2018). Employees and retirees in *Tracey v. Massachusetts Inst. of Tech.* alleged that MIT's retirement plan overcharged participants and offered poorly performing investments. The parties reached a settlement for \$18.1 million as well as nonmonetary relief for the plan participants, which was approved by the U.S. District Court in 2020.

9. Elena N. Liveris was an associate with the Firm and has been practicing law for sixteen years. She has experience in excessive fee class actions and complex litigation, including *Tracey v. MIT*, No. 16-11620-NMG (D. Mass.), and *In re J.P. Morgan Stable Value Fund ERISA Litigation*, No. 1:12-cv-2548 (S.D.N.Y.), both of which are described above. Ms. Liveris worked

on the instant matter until June 7, 2023, when she became of counsel to the Firm.

10. The information in this declaration regarding my Firm's time and expenses is taken from contemporaneous time and expense records and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business. I reviewed these records (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation.

11. The number of hours reported below by the Firm on the litigation is conservative, as it does not include time expended after October 10, 2024—the date the parties reached an agreement in principle to settle the case—and also because no additional compensation will be sought for time expended by the Firm after approval of the Settlement.

12. Based on this review, I believe that the time reflected in my Firm's lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation.

13. The number of hours spent on the litigation by my Firm from case inception through and including October 10, 2024 (the date the Parties reached an agreement in principle to settle the case) is 1457.4. A breakdown of the lodestar by timekeeper is provided in the following chart:

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Michael M. Mulder	520.8	\$1,000.00	\$520,800.00
Associates			
Elena N. Liveris	76.5	\$750.00	\$57,375.00
Paralegals			
Alexander J. Donnelly	860.1	\$260.00	\$223,626.00
TOTALS	1457.4		\$801,801.00

14. The lodestar amount for the Firm's time, based on the Firm's current rates, is \$801,801.00. The hourly rates shown in the chart above are the Firm's standard rates for contingent cases and are consistent with hourly rates submitted by the Firm in other class action litigation. No time expended on Class Counsel's application for attorneys' fees and reimbursement of litigation expenses has been included in these calculations.

15. Approval of the Firm's hourly rates is reasonable and conservative because they are below national ERISA hourly rates approved in Illinois and other courts for similar services performed by attorneys of reasonably comparable skill, experience, and reputation. The hourly rates of the attorneys and paralegal at the Firm who worked on this action range from \$1000 for myself, \$750 for associate Elena Liveris, and \$260 for our paralegal, Alex Donnelly.

16. The Firm does not bill clients on an hourly basis, instead representing them on a contingency fee basis. However, in June 2019, based on the national market for complex ERISA fiduciary breach litigation, Judge Vernon S. Broderick of the Southern District of New York approved the Firm's attorneys' fee award of one-third of the settlement proceeds, relying in part on a lodestar cross-check using 2019 hourly rates for the Firm's attorneys of \$900 per hour for Mr. Mulder and \$695 for Ms. Liveris and \$240 per hour for paralegal, Mr. Donnelly. *In re J.P. Morgan Stable Value Fund ERISA Litigation*, No. 1:12-cv-2548, Doc. 466, p. 8, ¶ 2(x). *Id.* Memorandum Doc. 450 p. 22 and Mulder Declaration Doc. 449-1, pp. 16-17, ¶¶ 70-81.

17. Since 2019, it is evident that rates have increased from those approved in the last comparative lodestar check-check performed in *In re J.P. Morgan Stable Value Fund ERISA Litigation*. For example, in a 2023 ERISA fiduciary breach excessive fee class action involving the same Northern Trust target date funds at issue in the instant case, a district court found "[s]ince 2020...national attorney billing rates have greatly increased. Relying on Mr. Sanford J. Rosen, a

recognized expert on attorneys' fees, the court approved as reasonable the following current national hourly rates: \$1,370 for attorneys with at least 25 years of experience; \$1,165 for attorneys with 15-24 years of experience; \$840 for attorneys with 5-14 years of experience, \$635 for attorneys with 0-4 years of experience; and \$425 for paralegals and law clerks. *Ford, et al., v. Takeda Pharmaceuticals U.S.A., Inc. et. al.*, No. 1:21-cv-10090, Doc. 127 (03/31/23) at p. 4. The rates in *Ford* were approved for Schlichter Bogard & Denton (SBD), with whom, as explained above, the Firm has co-counseled with in similar cases.

18. The District Court for Southern District of Illinois has also approved similar rates in breach of fiduciary duty excessive fee litigation for purposes of cross-checking the lodestar. For example, in 2018 the court found a fee range of up to \$1,060 per hour—depending on years of attorney experience—to be reasonable:

this Court finds that the reasonable hourly rates for Class Counsel's services at this time are as follows: for attorneys with at least 25 years of experience, \$1,060 per hour; for attorneys with 15–24 years of experience, \$900 per hour; for attorneys with 5–14 years of experience, \$650 per hour; for attorneys with 2–4 years of experience, \$490 per hour; for Paralegals and Law Clerks, \$330 per hour.

Ramsey et al. v. Phillips North America LLC, No., 3:18-cv-01099-NJR-RJD, Doc. 27 at 8 (S.D. Ill. Oct. 15, 2018). See too, approved rates for ERISA 401(k) fiduciary breach excessive fee class actions, such as those approved in *Spano v. Boeing Co.*, No. 06-743, Doc. 587 at 6-7 (S.D. Ill. March 31, 2016) (finding in a fiduciary breach excessive fee case, “that reasonable hourly rate for Class Counsel's services” at that time was \$998 for attorneys with at least 25 years of experience, \$850 for attorneys with 15-24 years of experience, \$612 for attorneys with 5-14 years of experience, \$460 for attorneys with 2-4 years of experience, \$309 for paralegals and law clerks, and \$190 for legal assistants.)

19. Over the past six years, the Firm's hourly rates have modestly increased to \$1,000

and \$750 for attorneys Mulder and Liveris, and \$260 for paralegal Donnelly. The average annual increase in the Firm's current hourly rates is modest, representing less than a 2% annual increase over the past six years and less than the increases reflected in *Ford*, *Ramsey* and *Spano*.

20. The Firm's lodestar figures are based on the Firm's current billing rates. These rates do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my Firm's billing rates.

21. As detailed in the chart below, my firm is seeking reimbursement for a total of \$2,442.35 in litigation expenses incurred in connection with the prosecution of this Action:

CATEGORY	AMOUNT
Filing, Witness, and Other Fees	\$402.00
Messenger, Overnight Delivery	\$450.20
Transportation, Hotels, and Meals	\$1,590.15
TOTAL EXPENSES:	\$2,442.35

22. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from actual receipts, expense vouchers, credit card statements, and other source materials and are an accurate record of the expenses incurred. There are no administrative charges included in any of these figures.

23. My firm has reviewed the time and expense records that form the basis of this declaration to correct any billing errors.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed on June 12, 2025.

Dated: June 12, 2025



Michael M. Mulder (Bar No. 1984268)

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**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

DENIS J. CONLON, NICOLE TRAVIS,
DIANE M. MATO, BRIAN J. SCHROEDER,
PATRICK A. JACEK, PETER
HANSELMANN, and ALEXANDER
PASCALE, Individually, on Behalf of The
Northern Trust Company Thrift-Incentive
Plan, and on Behalf of All Others Similarly
Situated,

Plaintiffs,

v.

THE NORTHERN TRUST COMPANY;
THE NORTHERN TRUST COMPANY
EMPLOYEE BENEFIT
ADMINISTRATIVE COMMITTEE;
KIMBERLY SOPPI; and DOES 1-30,

Defendants.

Case No. 1:21-cv-2940

Hon. Jorge L. Alonso
Magistrate Judge Susan E. Cox

**DECLARATION OF JAMIE L. FALGOUT IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT
OF EXPENSES, AND SERVICE AWARDS FILED ON BEHALF OF
PEIFFER WOLF CARR KANE CONWAY & WISE, LLP**

I, Jamie L. Falgout, declare as follows:

1. I am a partner at the law firm of Peiffer Wolf Carr Kane Conway & Wise, LLP (the “Firm”), counsel for Plaintiffs in the above-captioned action (the “Action”). I submit this declaration in support of Plaintiffs’ Motion for an Award of Attorneys’ Fees, Reimbursement of Expenses, and Service Awards. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify thereto.

2. The information in this declaration regarding my Firm’s time and expenses is taken from contemporaneous time and expense records and supporting documentation prepared and/or maintained by the Firm in the ordinary course of business. At my direction, members of the team assigned to this matter reviewed these records (and backup documentation where necessary or appropriate) in connection with the preparation of this declaration. The purpose of this review was to confirm both the accuracy of the entries as well as the necessity for, and reasonableness of, the time and expenses committed to the litigation. As a result of this review, reductions were made to both time and expenses in the exercise of billing judgment.

3. Based on this review and the adjustments made, I believe that the time reflected in my Firm’s lodestar calculation and the expenses for which payment is sought herein are reasonable and were necessary for the effective and efficient prosecution and resolution of the litigation.

4. After the reductions referred to above, the number of hours spent on the litigation by my Firm from case inception through and including October 10, 2024 (the date the Parties reached an agreement in principle to settle the case) is 441.6. A breakdown of the lodestar by timekeeper is provided in the following chart:

NAME	HOURS	HOURLY RATE	LODESTAR
Partners			
Daniel J. Carr	211.6	\$700.00	\$148,120.00

NAME	HOURS	HOURLY RATE	LODESTAR
Of Counsel			
Jamie L. Falgout	230.00	\$575.00	\$132,250.00
TOTALS	441.6		\$280,370.00

5. The lodestar amount for the Firm's time, based on the Firm's reasonable hourly rates, is \$280,370.00. Peiffer Wolf predominantly represents clients on a contingency-fee basis, but the hourly rates shown in the chart above are consistent with hourly rates submitted by the Firm in other class action litigation. The Firm is confident that those rates are reasonable, as they are comparable to the rates approved for Peiffer Wolf attorneys nearly five years ago in *Nevarez v. Forty Niners Football Company, LLC, et al.*, N.D. Cal., Case No. 16-cv-07013 [Dkt. 416]. A copy of the order granting final approval of the settlement and awarding fees in that case is attached as Exhibit A. The Declaration of Adam Wolf [Dkt. 408-2], which constituted Peiffer Wolf's fee submission in that case, is attached as Exhibit B. No time expended on Class Counsel's application for attorneys' fees and reimbursement of litigation expenses has been included in these calculations.

6. My firm's lodestar figures are based on rates that do not include charges for expense items. Expense items are billed separately, and such charges are not duplicated in my Firm's hourly rates used to calculate its lodestar.

7. As detailed in the chart below, my firm is seeking reimbursement for a total of **\$26,276.83** in litigation expenses incurred in connection with the prosecution of this Action:

CATEGORY	AMOUNT
Filing, Witness, and Other Fees	\$600.00
Transportation, Hotels, and Meals	\$25,676.83
TOTAL EXPENSES:	\$26,276.83

8. The expenses incurred in this Action are reflected on the books and records of my firm. These books and records are prepared from actual receipts, expense vouchers, credit card statements, and other source materials and are an accurate record of the expenses incurred. There are no administrative charges included in any of these figures.

9. My firm has reviewed the time and expense records that form the basis of this declaration to correct any billing errors.

10. The contingency fee agreements entered into between my Firm and each of the named Plaintiffs in this case provide for our fee to be 40% of any recovery, plus expenses.

11. As a practical matter, litigants such as plaintiffs Denis J. Conlon, Diane M. Mato, Brian J. Schroeder, Patrick A. Jacek, Peter Hanselmann, and Alexander Pascale could not afford to pursue litigation against well-funded fiduciaries of a multi-billion dollar plan sponsored by a large employer such as Northern Trust in federal court on any basis other than a contingent fee.

12. Plaintiffs provided Class Counsel with critical documents prior to preparing the complaints in this Action, including fee and performance disclosures concerning the Plan's investments and expenses. It has been my experience that participants are hesitant to bring these large, complex suits against their employer for fear of alienation. Plaintiffs also stayed apprised of the proceedings at each stage of the case and produced documents and sat for depositions.

13. Plaintiffs were not promised a "bonus" for their participation and were not asked to keep records for time spent devoted to this case. Plaintiffs have no hourly rate for time spent on this case, and they were not promised any payment for their services by Class Counsel.

I declare, under penalty of perjury, that the foregoing facts are true and correct. Executed
on June 2, 2025.



Jamie L. Falgout

EXHIBIT A

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABDUL NEVAREZ, et al.,
Plaintiffs,
v.
FORTY NINERS FOOTBALL
COMPANY, LLC, et al.,
Defendants.

Case No. 16-CV-07013-LHK

**ORDER GRANTING MOTION FOR
FINAL APPROVAL OF CLASS
ACTION SETTLEMENT; GRANTING
MOTION FOR SERVICE AWARDS;
AND GRANTING MOTION FOR
ATTORNEY'S FEES, COSTS, AND
EXPENSES**

Re: Dkt. No. 394, 395, 396, 408

Before the Court are Plaintiffs' (1) motion for final approval of a class action settlement, ECF No. 395; (2) motion for service awards, ECF No. 394; and (3) motion for reasonable attorney's fees, costs, and expenses, ECF No. 408.¹ Having considered the parties' briefs, the relevant law, and the record in this case, the Court GRANTS Plaintiffs' motion for final approval, Plaintiffs' motion for service awards, and Plaintiffs' motion for attorney's fees, as set forth below. The Court considers each motion in turn.

¹ Plaintiffs originally filed the motion for attorney's fees on May 25, 2020, ECF No. 396, but Plaintiffs refiled their motion on June 25, 2020 to correct a number of errata, ECF No. 408.

I. MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT

Plaintiffs have moved the Court for an order granting final approval of the class action Settlement Agreement and Release of Claims (“Settlement Agreement”), ECF No. 395, which was filed with the Court at ECF Nos. 375-2; 391. The Court preliminarily approved the Settlement Agreement in this action by order entered on March 9, 2020. *See* ECF No. 392 (“Preliminary Approval Order”). On July 16, 2020 the Court held a Final Approval hearing to consider final approval of the Settlement Agreement and to determine, among other things, whether the settlement is fair, reasonable, and adequate. Having considered the motions, the oral arguments, the relevant law, and the record in this case, the Court GRANTS the Plaintiffs’ motion for final approval of the class action settlement as follows:

1. All terms used herein, unless otherwise defined, shall have the same meanings as set forth in the Settlement Agreement.

2. The Court finds that the Parties complied with the Notice procedures set forth in the Court’s Preliminary Approval Order and Settlement Agreement by disseminating the Court-approved long-form Notice (ECF No. 390-3) and Claim Form (ECF No. 390-3) to Class Members by mail and email; providing the long-form Notice to the agreed-upon membership and/or service organizations for individuals with mobility disabilities; posting the Court-approved short-form Notice (ECF No. 390-1) at conspicuous locations throughout Levi’s Stadium and on websites controlled by Defendants; and creating and maintaining a Settlement website, email address, and toll-free telephone number. The Court further finds that these methods:

a. constituted the best practicable notice to members of the Plaintiff Classes under the circumstances of the Action;

b. constituted reasonable, due, adequate and sufficient notice to all Persons entitled to receive notice; and

c. constituted notice that met all applicable requirements of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the Due Process Clause of the United States Constitution,

1 and any other applicable law, as well as this District's Procedural Guidance for Class Action
2 Settlements.

3 3. The Court finds that the Claim Form distributed to the Damages Class met all
4 applicable requirements of the Federal Rules of Civil Procedure, 28 U.S.C. § 1715, the Due
5 Process Clause of the United States Constitution, and any other applicable law. The Court further
6 finds that the Claims Process set forth in the Settlement Agreement provides Damages Class
7 Members with a full and fair opportunity to submit claims for damages, an effective method of
8 distributing monetary relief to the Damages Class, and provides for an equitable plan of allocation
9 of money damages between Damages Class Members. *See* Rule 23(e)(2)(A)(ii), (D).

10 4. On March 9, 2020, the Court preliminarily certified the following classes for
11 settlement purposes under Fed. R. Civ. P. 23(a) and (b)(3):

12 **Injunctive Relief Class:** All persons with mobility disabilities who use wheelchairs,
13 scooters, or other mobility aids who will attempt to purchase accessible seating for a
14 public event at Levi's Stadium and who will be denied equal access to the Stadium's
15 facilities, services, accessible seating, parking, amenities, and privileges, including
16 ticketing, from December 7, 2013 through the date of the Court's Order Granting
17 Preliminary Approval of Class Action Settlement.

18 **Companion Injunctive Relief Class:** All persons who are companions of persons
19 with mobility disabilities who use wheelchairs, scooters or other mobility aids and
20 who have used or will use companion seating for public events located at Levi's
21 Stadium from December 7, 2013 through the date of the Court's Order Granting
22 Preliminary Approval of Class Action Settlement.

23 **Damages Class:** All persons with mobility disabilities who use wheelchairs, scooters
24 or other mobility aids who have purchased, attempted to purchase, or for whom third
25 parties purchased accessible seating and who have been denied equal access to Levi's
26 Stadium's facilities, services, accessible seating, parking, amenities, and privileges at
27 an event controlled by the Forty Niners Football Company, LLC; Forty Niners SC
28 Stadium Company, LLC; or Forty Niners Stadium Management Company, LLC, from
April 13, 2015 through the date of the Court's Order Granting Preliminary Approval
of Class Action Settlement.

See ECF No. 392.

5. The Court finds that the Plaintiff Classes continue to meet the requirements for

1 class certification under Federal Rule of Civil Procedure 23 and all other applicable laws and
2 rules.

3 6. The Injunctive Relief Class and Companion Injunctive Relief Class are finally
4 certified under Fed. R. Civ. P. 23(b)(2). The Court concludes that: (a) joinder of all Class
5 Members in a single proceeding would be impracticable, if not impossible, because of their
6 numbers and dispersion; (b) there are questions of law and fact common to the Plaintiff Classes;
7 (c) Plaintiffs' claims are typical of the claims of the Plaintiff Classes that they seek to represent for
8 purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the
9 Classes and will continue to do so; (e) Plaintiffs and the Plaintiff Classes are represented by
10 qualified, reputable counsel who are experienced in preparing and prosecuting class actions,
11 including those involving the sort of practices alleged in the Complaint; and (f) Defendants acted
12 or refused to act on grounds that apply to the Injunctive Relief Class and Companion Injunctive
13 Relief Class as a whole.

14 7. The Damages Class is finally certified under Fed. R. Civ. P. 23(b)(3). The Court
15 concludes that: (a) joinder of all Damages Class Members in a single proceeding would be
16 impracticable, if not impossible, because of their numbers and dispersion; (b) there are questions
17 of law and fact common to the Damages Class; (c) Plaintiff Abdul Nevarez's claims are typical of
18 the claims of the Damages Class that he seeks to represent for purposes of settlement; (d) Plaintiff
19 Abdul Nevarez has fairly and adequately represented the interests of the Damages Class and will
20 continue to do so; (e) Plaintiff Abdul Nevarez and the Damages Class are represented by qualified,
21 reputable counsel who are experienced in preparing and prosecuting class actions, including those
22 involving the sort of practices alleged in the Complaint; (f) questions of law or fact common to the
23 Damages Class predominate over any questions affecting only individual members; and (g) a class
24 action is superior to other available methods for fairly and efficiently adjudicating the controversy.

25 8. Class certification is therefore an appropriate method for protecting the interests of
26 the Plaintiff Classes and resolving the common issues of fact and law arising out of the Plaintiffs'

claims while also eliminating the risk of duplicative litigation. Accordingly, the Court hereby makes final its earlier certification of the Plaintiff Classes and confirms its appointment of Plaintiffs Abdul Nevarez and Sebastian DeFrancesco as Injunctive Relief Class Representatives; Plaintiff Priscilla Nevarez as the Companion Injunctive Relief Class Representative; Plaintiff Abdul Nevarez as the Damages Class Representative; and Guy Wallace of Schneider Wallace Cottrell Konecky LLP, Linda M. Dardarian of Goldstein Borgen Dardarian & Ho, and Adam Wolf of Peiffer Wolf Carr & Kane as Class Counsel.

9. The Court grants final approval of the Settlement and finds that it is fair, reasonable, adequate, and in the best interests of the Plaintiff Classes as a whole. First, the Settlement offers Class Members significant injunctive relief regarding all of the claims in the Fourth Amended Complaint, including Defendants' failure to provide physical access and Defendants' failure to make reasonable modifications in policy and practice to ensure equal access to the Stadium's facilities and services. Second, the non-reversionary damages fund offers substantial monetary relief to Damages Class Members. Third, as set forth below, the Court finds that Plaintiffs' requested attorneys' fees, costs, and expenses, and Class Representative service awards are reasonable and supported by applicable law, as modified by the Court. Finally, the absence of any objections or exclusions further supports final approval of the Settlement. In sum, when considered against the potential risks, expense, complexity and duration of further litigation, and the importance of the accessibility of the Stadium and its related facilities to the Class Members, the Court finds the relief secured by the Settlement to be more than adequate. *See* Fed. R. Civ. P. 23(e)(2)(C).

10. The Parties and Settlement Administrator are hereby directed to implement and consummate the Settlement according to its terms and provisions and the Court's Preliminary Approval Order. Class Counsel and Defendants shall take all steps necessary and appropriate to provide the Plaintiff Class Members with the benefits to which they are entitled under the terms of the Settlement.

11. The Plaintiffs and all Plaintiff Class Members (and their respective heirs, assigns, successors, executors, administrators, agents and representatives) are conclusively deemed to have released and forever discharged the Released Parties from all released claims as set forth in Section XIII of the Settlement Agreement. All members of the Injunctive Relief Class and Companion Injunctive Relief Class are bound by this Order. All members of the Damages Class, except for those individuals who filed valid and timely Opt-Outs, are bound by this Order. Damages Class Members who submitted timely and valid Opt-Out requests are neither permitted to share in the benefits of the damages fund nor bound by this Final Order and Judgment as to claims for Unruh Act statutory minimum damages against the Forty Niners Defendants. Damages Class Members who did not opt out of the case at the class certification stage were afforded a new opportunity to do so. *See* Fed. R. Civ. P. 23(e)(4). Throughout the Term of the Settlement Agreement, Plaintiff Class Members are enjoined from asserting or prosecuting any claims that are released by the Settlement Agreement.

12. The Settlement Agreement and this Order are not admissions of liability or fault by Defendants or other Released Parties, or a finding of the validity of any claims in this action or of any wrongdoing or violation of law by Defendants or other Released Parties. The Settlement Agreement is not a concession by the Parties and, to the fullest extent permitted by law, neither this Order, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be offered as evidence or received in evidence in any pending or future civil, criminal, or administrative action or proceeding to establish any liability of, or admission by Defendants or other Released Parties. Notwithstanding the foregoing, nothing in this Order shall be interpreted to prohibit the use of this Order to consummate or enforce the Settlement Agreement or Order, or to defend against the assertion of Released Claims in any other proceeding, or as otherwise required by law.

13. Within 21 days after the distribution of the settlement funds and payment of attorneys' fees, expenses and costs, the Parties are ordered to file a Post-Distribution Accounting,

which provides the following information in accordance with the Northern District's Procedural Guidance for Class Action Settlements: The total settlement fund, the total number of class members; the total number of class members to whom notice was sent and not returned as undeliverable; the number and percentage of claim forms submitted; the number and percentage of opt-outs; the number and percentage of objections; the average and median recovery per claimant; the largest and smallest amounts paid to class members; the methods of notice and the methods of payment to class members; the number and value of checks not cashed; the amounts distributed to each *cy pres* recipient; the administrative costs; the attorneys' fees and costs; and the benefit conferred on the classes by the injunctive relief obtained. Within 21 days after the distribution of the settlement funds and award of attorneys' fees, the Parties should post the Post-Distribution Accounting, including an easy-to-read chart that allows for quick comparisons with other cases, on the settlement website. The Court may hold a hearing following submission of the parties' Post-Distribution Accounting.

14. In accordance with the terms of the Settlement Agreement, the Court shall maintain continuing jurisdiction over Plaintiffs, the Class Members, Defendants, and the Settlement Agreement throughout the term of the Settlement Agreement, for the purpose of supervising the implementation, enforcement, construction, and interpretation of the Settlement Agreement and this Order, through the term of the Settlement Agreement. In that regard, any challenges to the Settlement Agreement's terms or implementation, whether under state or federal law, shall be subject to the exclusive and continuing jurisdiction of this Court.

15. This Action is hereby dismissed on the merits and with prejudice as to the Released Claims, without fees or costs to any Party except as otherwise provided in the Court's Order on Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs and Expenses, and the Settlement Agreement.

II. MOTION FOR SERVICE AWARDS

In addition, Plaintiffs filed a motion for service awards, ECF No. 394. The motion

1 requests \$5,000 in service awards for each of three class representatives: Abdul Nevarez, Priscilla
2 Nevarez, and Sebastian DeFrancesco. *Id.* at 1. The motion is unopposed, and no Class members
3 have filed objections to the Settlement Agreement.

4 In order to evaluate the reasonableness of the size of a service award, the Ninth Circuit
5 looks to “the number of named plaintiffs receiving incentive payments, the proportion of the
6 payments relative to the settlement amount, and the size of each payment.” *In re Online DVD-*
7 *Rental Antitrust Litig.*, 779 F.3d 934, 947 (9th Cir. 2015) (internal quotation marks omitted).
8 Here, the three class representatives, Abdul Nevarez, Priscilla Nevarez, and Sebastian
9 DeFrancesco, seek Service Awards of \$5,000 each. ECF No. 394. The contemplated Service
10 Awards total to \$15,000 out of the \$24,000,000 Plaintiffs’ settlement, which is less than .1% of the
11 \$24 million Damages Fund. The number of service awards requested and the respective amounts
12 fall well below the levels that the Ninth Circuit has scrutinized in the past. *Id.* at 948 (finding
13 service awards to be reasonable in part because there were “nine class representatives” and
14 because “the \$45,000 in incentive awards ma[de] up a mere .17% of the total settlement”).
15 Moreover, the requested amount of \$5,000 is considered “presumptively reasonable” in this
16 district. *See Villegas v. J.P. Morgan Chase & Co.*, No. CV 09-00261 SBA EMC, 2012 WL
17 5878390, at *7 (N.D. Cal. Nov. 21, 2012).

18 Thus, having considered the motion, Plaintiffs’ declarations and exhibits thereto, the
19 arguments of counsel, and all files, records, and proceedings in this action, the Court finds that
20 good cause exists to approve the motion. All three Plaintiffs have diligently fulfilled their duties
21 as Class Representatives. All have expended significant effort and made personal sacrifices in
22 order to obtain an excellent result for the Classes they represent. The class representatives
23 participated in numerous aspects of the litigation, including responding to written discovery,
24 drafting declarations, preparing and sitting for depositions, advising counsel on factual
25 investigation and settlement, and class outreach. ECF No. 394 at 7–8. Over the course of over
26 three years, “Mr. Nevarez estimates that he has spent at least 72 hours working on this case; Ms.

Nevarez estimates at least 90 hours; and Mr. DeFrancesco estimates at least 52 hours.” ECF No. 394 at 7.

Accordingly, Plaintiffs’ motion is GRANTED. The Court hereby approves: a service award to Plaintiff Abdul Nevarez in the amount of \$5,000; a service award to Plaintiff Priscilla Nevarez in the amount of \$5,000; and a service award to Plaintiff Sebastian DeFrancesco in the amount of \$5,000.

III. MOTION FOR ATTORNEY’S FEES, COSTS, AND EXPENSES

Finally, Plaintiffs also filed a motion for reasonable attorney’s fees, costs, and expenses. ECF No. 408. Specifically, Plaintiffs move for \$1,199,148.87 in out-of-pocket litigation costs and expenses, and \$12,258,003.53 in attorney’s fees, which together amounts to the \$13,457,152.40 cap on attorney’s fees, costs, and expenses set forth in Section XIV.A of the Settlement Agreement. The motion is unopposed, and no Class members have filed objections to the Settlement Agreement. Below, the Court first considers the costs and expenses, before considering the reasonableness of Plaintiffs’ request for attorney’s fees.

As the prevailing parties, Plaintiffs are entitled to recover their reasonable attorneys’ fees, costs and expenses. *See* 42 U.S.C. § 12205 (ADA) and Cal. Civ. Code § 52(a) (Unruh Civil Rights Act). A party that obtains a judicially enforceable settlement agreement that provides some of the relief sought is a “prevailing party” for purposes of fee-shifting statutes. *See, e.g., La Asociacion de Trabajadores de Lake Forest v. City of Lake Forest*, 624 F.3d 1083, 1089 (9th Cir. 2010); *Folsom v. Butte County Assn. of Govts.*, 32 Cal.3d 668, 671 (1982). Here, Plaintiffs have prevailed under both federal and state law by achieving a global settlement that resolves all federal and state law claims. The Settlement provides comprehensive injunctive relief to both injunctive relief classes under both federal and state law and establishes a damages fund for the damages class under California law. The factual and legal issues that were litigated would reasonably be attributed to both federal and state law claims. Accordingly, both federal and state law apply to Plaintiffs’ application for fees, costs and litigation expenses.

A. Costs and Expenses

Plaintiffs' costs and out-of-pocket expenses, including expert witness fees, are recoverable. *See* 42 U.S.C. § 12205; *Lovell v. Chandler*, 303 F.3d 1039, 1058 (9th Cir. 2002). Through May 15, 2020, Class Counsel incurred \$1,199,148.87 in litigation costs and expenses. Plaintiffs' costs and out-of-pocket expenses are well-documented. The Court finds that the declarations of Class Counsel and accompanying exhibits and the record in this case demonstrate that these costs and expenses were reasonable and necessary for the prosecution of this litigation. Accordingly, the Court GRANTS Class Counsel \$1,199,148.87 in costs and out-of-pocket expenses.

B. Attorney's Fees

As discussed above, Section XIV.A of the Settlement Agreement caps Plaintiffs' request for attorney's fees, costs, and expenses at \$13,457,152.40. Because Plaintiffs seek \$1,199,148.87 in costs and expenses, which the Court awarded in full, Plaintiffs request the remaining \$12,258,003.53 of the cap in attorney's fees. Although the Court grants Plaintiffs the full \$12,258,003.53 amount in attorney's fees below, the Court's calculation of attorney's fees differs from that of Plaintiffs. The Court first discusses Plaintiffs' lodestar calculation before turning to the requested lodestar multiplier.

1. Lodestar Calculation

Plaintiffs state that their lodestar in the instant case is \$11,605,473. ECF No. 408 at 13. The Court finds that the lodestar is reasonable and fair, with the exception of the hourly rate billed for contract attorneys, which the Court discusses below.

Specifically, Plaintiffs argue that their lodestar in the instant case was initially \$12,994,251, which was then reduced by approximately 10.69% through the exercise of billing judgment² to arrive at the lodestar of \$11,605,473. *See* ECF No. 408 at 20. The Court has reviewed the hours spent by Plaintiffs in litigating this case over the course of three-and-a-half years and finds that the hours

² Specifically, Plaintiffs explain that they "removed from their lodestar all time spent by attorneys and staff who billed less than 30 hours on the case . . . [and] exercised additional billing judgment as set forth in the declarations of counsel." ECF No. 408 at 20.

expended are reasonable. This case involved over three years of contentious and extensive litigation, including the following:

- Three motions to dismiss filed by Defendants, which this Court largely denied;
- Eighteen joint discovery letters—for many of which the Court granted Plaintiffs full relief;
- Thirteen sets of document requests and interrogatories, fifteen sets of requests for admission, and propounding six sets of subpoenas for documents;
- Production of 3,400,000 pages of documents by Defendants and third parties;
- Fourteen days of inspections of the Stadium, parking lots, and connecting pedestrian rights of way, from which Plaintiffs identified over 2,600 physical barriers to access at the Stadium;
- 48 depositions, including depositions of 16 experts;
- Two sets of cross-motions for partial summary judgment;
- Eight formal mediations; and
- Many informal settlement discussions, several in-person with all counsel.

Thus, Plaintiffs' hours are amply justified in light of the extensive litigation that has occurred to date over the course of three and a half years.

Moreover, the Court has reviewed the billing rates for the attorneys, paralegals, and litigation support staff at each of the firms representing Plaintiffs and the Certified Classes in this case. The Court finds that these rates are reasonable in light of prevailing market rates in this district and that counsel for Plaintiffs have submitted adequate documentation justifying those rates, with the exception of the hourly rates billed by Schneider Wallace Cottrell Konecky LLP ("Schneider Wallace") for the use of staff attorneys.

However, as to the staff attorneys, the Court notes that Schneider Wallace requests a rate of \$625 per hour for each of three staff attorneys. *See* ECF No. 408-1 ("Wallace Decl.") ¶ 117. However, at the July 16, 2020 Final Approval hearing, Mr. Wallace acknowledged that these attorneys are paid at an hourly rate substantially less than \$625 per hour, which constitutes a markup

of \$595 per staff attorney per hour. Schneider Wallace requests \$625 per hour for each of these three staff attorneys for a total of 1,811.9 hours of work, which the Court estimates to constitute a markup of \$1,078,080.50 or about 15% of Schneider Wallace's lodestar. *See id.* Although the Court has historically declined to apply a "categorical rule that contract and staff attorneys must be billed at cost," the Court has previously rejected such a high markup on a contract attorney's hourly rate and instead awarded an hourly rate of \$240.00. *In re Anthem, Inc. Data Breach Litig.*, No. 15-MD-02617-LHK, 2018 WL 3960068, at *18–20 (N.D. Cal. Aug. 17, 2018). As in the Court's decision in *In re Anthem, Inc. Data Breach Litigation*, the Court will adopt the \$240.00 hourly rate for Schneider Wallace's staff attorneys based on precedent and in the absence of any argument to justify a different markup on the staff attorney rate. *See id.* at *20 ("In future cases, the Court is willing to receive documentation justifying a lower or higher rate, but for purposes of the rough lodestar calculation here, the Court finds that \$240.00 per hour for contract and staff attorney time is a reasonable rate."). At the July 16, 2020 Final Approval hearing, Mr. Wallace stated that he did not oppose the Court's adoption of the \$240 hourly rate for these three staff attorneys. After adjusting Schneider Wallace's staff attorney rate to \$240.00 per hour, the Court finds that the total lodestar of \$11,605,473 is reduced to \$10,907,891.50.

2. Lodestar Multiplier

Next, Plaintiffs argue that they are entitled to a positive lodestar multiplier of up to 1.5. However, the actual requested lodestar multiplier is significantly lower due to the \$13,457,152.40 cap on attorney's fees, costs, and expenses. Specifically, to arrive at the requested attorney's fees amount of \$12,258,003.53 from the lodestar of \$10,907,891.50, Plaintiffs need only be entitled to a lodestar multiplier of approximately 1.124, which is a factor of four times less than the 1.5 lodestar multiplier they request.

The Court agrees that Plaintiffs are entitled to a lodestar multiplier of at least 1.124 in consideration of the following factors (1) contingent risk to counsel, (2) novelty and difficulty of the questions involved, (3) skill required to perform the legal service properly, (4) preclusion of

other employment by the attorneys, and (5) the result obtained and the importance of the lawsuit to the public. *See Ketchum v. Moses*, 24 Cal. 4th 1122, 1132 (2001); *Serrano v. Priest*, 20 Cal. 3d 25, 49 (1977).

In particular, the Court notes the outstanding result obtained for the class and the importance of the lawsuit to the public. Specifically, the Settlement Agreement “will remediate more than 2,600 barriers in [Levi’s Stadium], the parking lots and the pedestrian rights of way that serve the Stadium,” which is “over 99% of the barriers identified by Plaintiffs.” ECF No. 408 at 23. Such relief will bring Levi’s Stadium “into compliance with the 2010 [Americans with Disability Act Standards] or the 2019 [California Building Code], whichever provides greater access, thus dramatically improving accessibility and usability for person with mobility disabilities and their nondisabled companions.” *Id.* The costs to remediate the over 2,600 barriers is estimated to cost Defendants at least \$12.2 million. ECF No. 408-6 ¶ 67.

Moreover, the Settlement Agreement provides for a \$24 million non-reversionary damages fund, which Plaintiffs believe to be “the largest such fund ever achieved in a case alleging claims under the public facilities and accommodations provisions of the ADA.” *Id.* The Settlement Agreement prompted a participation rate of almost 94%. There were an estimated 5,779 potential Damages Class Members, and 5,418 claim forms were submitted. *See* ECF No. 395 at 5. Furthermore, there were no opt-outs and no objections. *See* ECF No. 411 at 2. At the July 16, 2020 Final Approval hearing, Plaintiffs estimated that the average recovery for each Damages Class Member would be at least \$4,000, and on average over \$4,400. The Court finds that the Settlement achieved by Plaintiffs’ counsel provides considerable and substantial relief to the class members, which therefore justifies a lodestar multiplier of at least 1.124.

3. Percentage of Recovery Cross-Check

To guard against an unreasonable result, the Ninth Circuit generally encourages district courts to “cross-check[] their calculations against a second method.” *In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935, 944 (9th Cir. 2011). However, the Ninth Circuit has explained

that in cases vindicating civil rights, “the relief sought—and obtained—is often primarily injunctive in nature and thus not easily monetized.” *See id.* at 941.

In this case, the Court likewise finds that it would be difficult to monetize the extensive injunctive relief, which remediates over 2,600 access barriers at Levi’s Stadium. Nonetheless, if the Court assumes that the approximately \$12.2 million expected Stadium remediation cost is a good substitute to monetize the increased accessibility for the Stadium’s patrons, ECF No. 408-6 ¶ 67, the amount of attorney’s fees, including the 1.124 multiplier, would constitute about 24.7% of a “constructive common fund” in this case, which would be comprised of the \$24 million Damages Fund, the approximately \$12.2 million cost of injunctive relief, the \$15,000 service awards, \$12,258,003.53 attorney’s fees, and \$1,199,148.87 costs. *See In re Bluetooth*, 654 F.3d at 945 (calculating an analogous percentage-of-recovery using a “constructive common fund”). This result of 24.7% of the total recovery is below the 25% benchmark percentage and confirms that the requested \$12,258,003.53 in attorney’s fees is a reasonable amount. *See id.* at 945 (“If the lodestar amount overcompensates the attorneys according to the 25% benchmark standard, then a second look to evaluate the reasonableness of the hours worked and rates claimed is appropriate.”) (quoting *In re Coordinated Pretrial Proceedings*, 109 F.3d 602, 607 (9th Cir.1997)).

Accordingly, based on the factors considered above and the applicable law, the Court finds that a lodestar multiplier of 1.124 is reasonable and justified.

4. Total Attorney’s Fees

The Court finds that Plaintiffs are entitled to a lodestar of \$10,907,891.50 and a multiplier of 1.124. Accordingly, the Court GRANTS Plaintiffs’ full requested amount of \$12,258,003.53 in attorney’s fees.

IV. CONCLUSION

For the foregoing reasons, the Court GRANTS Plaintiffs’ motion for final approval of the proposed class action settlement, GRANTS Plaintiffs’ motion for service awards, and GRANTS

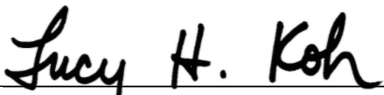
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Plaintiffs’ motion for attorneys’ fees, costs, and expenses as follows:

- \$15,000 in service awards, comprised of \$5,000 for each of three class representatives:
Abdul Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco;
- \$12,258,003.53 in attorneys’ fees to Class Counsel; and
- \$1,199,148.87 in costs and expenses to Class Counsel.

IT IS SO ORDERED.

Dated: July 23, 2020



LUCY H. KOH
United States District Judge

United States District Court
Northern District of California

EXHIBIT B

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Attorneys for Plaintiffs and the Certified
 Classes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ABDUL NEVAREZ and PRISCILLA NEVAREZ,
 on behalf of themselves and all others similarly
 situated, and SEBASTIAN DEFRANCESCO,

Plaintiffs,

vs.

FORTY NINERS FOOTBALL COMPANY, LLC,
 a Delaware limited liability company, et al.,

Defendants.

CLASS ACTION

Case No.: 5:16-cv-07013-LHK (SVK)

**[CORRECTED] DECLARATION OF
 ADAM B. WOLF IN SUPPORT OF
 PLAINTIFFS' MOTION FOR
 REASONABLE ATTORNEY FEES, COSTS,
 AND EXPENSES**

Date: July 16, 2020
 Time: 1:30 p.m.
 Dept: Courtroom 8
 Before: Hon. Lucy H. Koh

1 I, Adam B. Wolf, hereby declare as follows:

2 1. I am a member in good standing of the Bar of the State of California and a shareholder
3 at the law firm of Peiffer Wolf Carr & Kane (“Peiffer Wolf”). I am co-counsel representing Plaintiffs
4 and Class Representatives Abdul Nevarez, Priscilla Nevarez, and Sebastian DeFrancesco (collectively,
5 “Plaintiffs”), as well as the certified classes of persons with mobility disabilities and their companions
6 (“Class Members”), and I have been appointed Class Counsel by the Court in this action. I submit this
7 Declaration in support of Plaintiffs’ Motion for Reasonable Attorneys’ Fees, Costs, and Expenses. I
8 have personal knowledge of the facts set forth in this Declaration and could and would testify
9 competently to them.

10 **BACKGROUND AND EXPERIENCE OF PEIFFER WOLF**

11 2. Peiffer Wolf is a nationwide law firm that litigates cases to advance the public interest.
12 With 20 lawyers and offices throughout the country, Peiffer Wolf represents individuals, classes, and
13 entities who have been the victims of corporate and/or governmental misconduct. The firm has
14 represented plaintiffs at all levels of the judiciary, including arguing cases before the U.S. Supreme
15 Court, numerous federal courts of appeals, district courts throughout the country, and state appellate
16 courts.

17 3. Peiffer Wolf litigates civil-rights cases, groundbreaking complex civil matters, and
18 important class actions. Two of Peiffer Wolf’s practice areas are disability access and civil rights. The
19 firm and its attorneys have extensive experience in disability-rights matters, in particular, having been
20 counsel in approximately 150 such cases. We also have litigated dozens of civil-rights cases. Through
21 this work, we have a long and successful history of noteworthy victories to eradicate access barriers
22 and vindicate civil rights.

23 4. For the past nineteen years, the focus of my practice has been civil rights, class actions,
24 and other complex litigation.

25 5. I graduated, *cum laude*, from Amherst College in 1998 and the University of Michigan
26 Law School in 2001. Upon graduating from law school, I served as a judicial law clerk to The
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1 Honorable Robert J. Timlin, of the U.S. District Court for the Central District of California, and then to
2 The Honorable Ronald Lee Gilman, of the U.S. Court of Appeals for the Sixth Circuit.

3 6. Following my clerkships, I was an attorney with Altshuler, Berzon, Nussbaum, Rubin &
4 Demain (now Altshuler Berzon LLP) and the Natural Resources Defense Council. I then became a
5 Staff Attorney with the national legal department of the American Civil Liberties Union, where my
6 focus was civil litigation related to criminal-justice matters.

7 7. Approximately six years later, I joined the firm that is now known as Schneider Wallace
8 Cottrell Konecky (“Schneider Wallace”). I later joined—as a shareholder—the law firm that is now
9 known as Peiffer Wolf Carr & Kane.

10 8. Through my employment at Schneider Wallace, where I worked on some disability-
11 rights matters with Guy Wallace, I came to recognize the exceptional work of Mr. Wallace and his
12 firm. When I thought that further resources would help to prosecute the claims for the Nevarezes in
13 this matter, Mr. Wallace and his firm immediately came to mind. (While I had not previously served as
14 co-counsel with Goldstein, Borgen, Dardarian & Ho (“GBDH”), through this case I now recognize the
15 exceptional work product generated by that firm, as well.)

16 9. I have argued cases successfully in the United States Supreme Court and courts of
17 appeals around the country. I have been recognized with various awards over the years including, in
18 2009, being named a *California Lawyer* Attorney of the Year. Additionally, I have been selected for
19 many consecutive years (through the present) as a Northern California or Southern California “Super
20 Lawyer.”

21 10. I am a member in good standing of the following courts: United States Supreme Court;
22 United States Court of Appeals for the Fifth, Sixth, Eighth, Ninth, Tenth, and Eleventh Circuits; United
23 States District Court for the Northern District of Ohio; United States District Court for the District of
24 Colorado; and all federal and state courts within California.

25 11. I teach various seminars and continuing legal education classes around the country
26 regarding civil rights and class actions. I also appear frequently on television shows concerning legal
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1 matters and been quoted in thousands of newspapers throughout the world on matters concerning civil-
2 rights and class-action lawsuits.

3 12. My work on this case included assisting with the drafting of the complaints,
4 conceptualizing the matter as a class case (instead of individual claims on behalf of the Nevarezes),
5 drafting and editing motions, taking a deposition and otherwise participating in discovery, working
6 extensively on damages issues, assisting with expert reports and other expert work, engaging in
7 strategic decision making, and actively participating in settlement negotiations.

8 13. My 2019 hourly rate is \$830. Both this rate and my historical rates cited below (see
9 paragraph 41) are the rates that I charge and receive from cash-paying clients.

10 **PEIFFER WOLF'S REASONABLE TIME SPENT**

11 14. I was the lead counsel from Peiffer Wolf on this litigation. I supervised a team of
12 attorneys and paralegals from Peiffer Wolf in doing the work necessary to prepare this case for trial
13 and negotiate the class settlement. I also coordinated litigation and settlement strategy with other
14 members of Class Counsel, including members of Schneider Wallace and GBDH.

15 15. Peiffer Wolf's representation of the Plaintiff Class was on a wholly contingent basis.
16 The firm devoted substantial resources to this matter, and we have received no payment for any of the
17 more than 2,390 hours of services performed or the hundreds of thousands of dollars in out-of-pocket
18 costs and expenses that my firm committed to the litigation of this case. We did this, with no guarantee
19 of repayment, because of the importance of this case and the benefits it would bring to thousands of
20 individuals with mobility disabilities who visited Levi's Stadium.

21 16. All attorneys and legal staff at Peiffer Wolf are instructed to maintain contemporaneous
22 time records reflecting the time spent on this and other matters. The timekeeper indicates the date and
23 amount of time spent on a task to one-tenth of an hour; describes the work that was performed during
24 the indicated time period; and identifies the case to which the time should be charged. It is my practice
25 to review Peiffer Wolf's billing records regularly to ensure these billing practices are followed.

26 17. I made every effort to litigate this matter efficiently by coordinating the work of Peiffer
27 Wolf's attorneys and paralegals, minimizing duplication, and assigning tasks in a time and cost-

1 efficient manner, based on the timekeepers' experience levels and talents. In particular, I regularly
2 assigned work to the associate or paralegal with the lowest billing rate commensurate with the skill
3 required for the task.

4 18. I reviewed the records of all time that all Peiffer Wolf timekeepers billed to this matter.
5 I exercised billing judgment by deleting time entries that were duplicative, inefficient, vague,
6 administrative, or otherwise non-compensable. In addition, I eliminated all Peiffer Wolf time entries
7 billed by timekeepers who expended less than 30 hours, time entries that were related to *Maranon v.*
8 *Santa Clara Stadium Authority, et al*, No. 15-cv-04709-BLF (N.D. Cal.), a substantial number of time
9 entries for one-tenth of an hour that likely were accomplished in a very short time period, all time
10 entries related to attorney Catherine Cabalo and/or I attending a football game and a concert at Levi's
11 Stadium specifically to observe the barriers during an event, most time devoted to drafting Requests
12 for Admission concerning measurements for each Stadium barrier, all time entries for preparation of
13 errata related to the Fourth Amended Complaint, and all time that Ms. Cabalo devoted to this matter
14 between the Fall of 2015 and January 18, 2016. Additionally, we do not seek reimbursement for time
15 that Ms. Cabalo attended court hearings in addition to other attorneys arguing/defending motions or
16 appearing for Case Management Conferences.

17 19. I reduced the total lodestar of Peiffer Wolf timekeepers by \$212,930.50, or
18 approximately 10.75% of the total lodestar (\$1,980,865) my firm billed to the case from inception
19 through May 15, 2020.

20 20. The remaining hours Peiffer Wolf billed were properly and necessarily spent on the
21 firm's assigned tasks and projects. The detailed time records for the remaining hours spent by my firm
22 and billed to this case through May 15, 2020 are attached hereto as Exhibit A. That time amounts to
23 2,390.9 attorney and staff hours, for a total lodestar of \$1,767,934.50 after the exercise of billing
24 judgment. These fee records accurately reflect work actually, reasonably, and necessarily performed in
25 connection with the litigation and settlement of this matter.

**PEIFFER WOLF'S REPRESENTATION OF THE PLAINTIFF CLASS AND REASONABLE
HOURLY RATES**

1 lawyers that represent individuals and institutions in arbitrations to recover money lost by investment
2 banks and brokerage firms. He graduated *cum laude*, in 1999, from Tulane Law School, where he
3 served on the Tulane Law Review.

4 27. Mr. Peiffer's work on this matter included assisting with strategic decision making
5 concerning major motions and participating in settlement negotiations. Along with me, Mr. Peiffer
6 conceptualized the idea of bringing this matter as a class case, instead of individual claims on behalf of
7 the Nevarezes.

8 28. Mr. Peiffer's 2019 hourly rate is \$975. This hourly rate is based on the fact that he is
9 paid this amount (actually, slightly more) from his hourly, cash-paying clients. In fact, from 2017
10 through the present, Mr. Peiffer has charged—and has been paid—\$1,000 per hour.

11 29. Catherine Cabalo graduated, *cum laude* and Phi Beta Kappa, from the University of
12 Puget Sound in 1998 and the University of Washington School of Law in 2001. Upon graduating from
13 law school, Ms. Cabalo served as a judicial law clerk to Justice Mario R. Ramil of the Hawaii Supreme
14 Court. She is licensed in both Washington state and California.

15 30. Since 2009, Ms. Cabalo's practice has focused on civil rights, with an emphasis on
16 ADA claims and other disability-access matters. Ms. Cabalo has successfully litigated a substantial
17 number of cases on behalf of disabled persons against the largest companies in the country, including
18 Marriott International, Hilton Worldwide, Starbucks, Bank of America, McDonald's, and Target.

19 31. Ms. Cabalo worked on all facets of this case. Through the Nevarezes, Ms. Cabalo
20 recognized the viability of disability-access claims against the current defendants, drafted the
21 complaint, developed substantial knowledge regarding access barriers in the Stadium, participated in
22 all stadium inspections, drafted and edited numerous motions, participated in every aspect of
23 discovery, worked extensively with Plaintiffs' experts, participated in the taking and defending of
24 multiple depositions, and was a key participant in the injunctive relief portions of the settlement
25 discussions. Ms. Cabalo's 2019 hourly rate is \$785.

26 32. Tracey Cowan is a Shareholder in the firm. She graduated, with honors, from New York
27 University, and she graduated as a member of the Dean's List in 2006 from Northwestern University
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1 School of Law. Ms. Cowan was an associate with the law firm Bingham McCutchen, where she
 2 practiced complex litigation for 6 years before joining the firm that became Peiffer Wolf.

3 33. Ms. Cowan has worked on litigation at all levels of the federal and state judiciary,
 4 including in the United States Supreme Court. In this matter, she assisted on various research and
 5 discovery matters. Her 2019 hourly rate is \$710.

6 34. In order to assist with the case when others were not available, Ms. Cowan performed
 7 some document review for this matter. For such document-review time, we are not requesting fees at
 8 Mr. Cowan's normal hourly rate, but instead at an hourly rate of \$680.

9 35. Brandon Wise graduated *magna cum laude* from Illinois State University and then, in
 10 2014, from Saint Louis University School of Law. Mr. Wise joined Peiffer Wolf after managing his
 11 own private practice that focused on class, collective, and employment matters. Over the past five
 12 years, Mr. Wise has served as class or collective counsel in more than one dozen cases. Additionally,
 13 Mr. Wise was selected by the court sit on the Plaintiff's Executive Committee in a Philadelphia-based
 14 multi-district litigation alleging one of the nation's largest loan servicers defrauded student loan
 15 borrowers (*In re: FedLoan Student Loan Servicing Ligation*, 2:18-md-02833 (E.D. Pa.)). Mr.
 16 Wise also served as counsel in a student-loan fraud class action where the Seventh Circuit ruled in his
 17 client's favor and issued an important opinion concerning express and conflict preemption. *Nelson v.*
 18 *Great Lakes Educ. Loan Servs.*, 928 F.3d 639 (7th Cir. 2019). In this case, Mr. Wise assisted with
 19 discovery efforts. His 2019 hourly rate is \$510.

20 36. Drew Morock graduated in 2015 from Loyola University of New Orleans College of
 21 Law, where he was a member of the law review. He has been an associate with Peiffer Wolf since
 22 January 2016, where he has managed briefing and discovery in multiple complex national class
 23 actions. Mr. Morock's work on this case consisted of reviewing documents that defendants produced.
 24 Mr. Morock's 2019 hourly rate is \$435.

25 37. Tien Le has been a Legal Assistant for the past 14 years. A graduate of San Francisco
 26 State University, with a B.A. in English Literature, Ms. Le has been a Paralegal at Peiffer Wolf since
 27 2014. Ms. Le organized and saved documents, managed the calendars of the attorneys who worked on
 28

the case, engaged in brief production, and filed and served documents. Ms. Le's 2019 hourly rate is \$290.

38. Peiffer Wolf periodically (typically, annually) establishes hourly rates for the firm's billing personnel. Peiffer Wolf establishes the rates based on prevailing market rates for attorneys and law firms in the San Francisco Bay Area that have attorneys and staff of comparable skill, experience, and qualifications. My firm obtains information concerning market rates from other attorneys in the area that have similar experience doing similar work, from information that occasionally appears in the local press and national bar publications, and in orders awarding attorney fees in similar cases.

39. The bulk of Peiffer Wolf's practice is contingency litigation. In contingent-risk civil rights cases, my firm and other firms doing this type of work frequently advance tens or hundreds of thousands of dollars in expenses and costs and defer all payment of our fees for several years, with no guarantee that any of the fees we incurred or costs we advanced would ever be recovered. In this case, my co-counsel and Peiffer Wolf had such a contingent-risk arrangement.

40. I have calculated our attorney fees in this matter using my firm's 2019 rates. The following chart calculates the lodestar for Peiffer Wolf in this matter, after my exercising billing discretion to reduce our lodestar by 10.75%.

Name	Position	Grad. Year	Hours	2019 Rates	Total
Joseph Peiffer	Managing Shareholder	1999	39.2	\$975	\$38,220.00
Adam Wolf	Shareholder	2001	526.1	\$830	\$436,663.00
Catherine Cabalo	Of Counsel	2001	1394.1	\$785	\$1,094,368.50
Tracey Cowan	Shareholder	2006	56.9	\$710	\$38,761.00
Brandon Wise	Of Counsel	2014	76.0	\$510	\$38,760.00
Drew Morock	Associate	2015	238.4	\$435	\$103,704.00
Tien Le	Paralegal	N/A	60.2	\$290	\$17,458.00
Total Lodestar					\$1,767,934.50

As discussed above (paragraph 34), Ms. Cowan's lodestar is less than her 2019 hourly rate times the number of hours she worked because we charged a lower rate for time that she filled in when needed for document review.

41. At the January 30, 2020 hearing on Plaintiffs' Motion for Preliminary Approval of this settlement, the Court requested information on Class Counsel's historic billing rates over the time

period covered by this action. Peiffer Wolf's billing rates over the course of this litigation are as follows:

Name	Position	Grad. Year	2017 Rate	2018 Rate	2019 Rate
Joseph Peiffer	Managing Shareholder	1999	\$975	\$975	\$975
Adam Wolf	Shareholder	2001	\$790	\$790	\$830
Catherine Cabalo	Of Counsel	2001	\$740	\$765	\$785
Tracey Cowan	Shareholder	2006	\$690	\$700	\$710
Brandon Wise	Of Counsel	2014	\$485	\$495	\$510
Drew Morock	Associate	2015	\$410	\$420	\$435
Tien Le	Paralegal	N/A	\$270	\$280	\$290

42. These rates are consistent with, if not lower than, the rates charged by comparable attorneys in the San Francisco Bay Area for similar class action work and complex litigation, including particular firms that regularly prosecute or defend complex disability rights class actions. We have determined that the rates we charge are reasonable for attorneys of our experience, reputation and expertise practicing complex and class action litigation in the San Francisco Bay Area.

43. This litigation precluded Peiffer Wolf from engaging in other work. As discussed above, Peiffer Wolf expended 2,390.9 hours on this matter. Consequently, Peiffer Wolf turned down meritorious cases—which likely would have generated substantial fees on a shorter timeframe—if it had not been consumed with this matter.

PEIFFER WOLF'S REASONABLE COSTS AND EXPENSES

44. Peiffer Wolf is seeking reimbursement of its reasonable out-of-pocket costs and expenses incurred in this matter, as permitted under the settlement agreement and case law.

45. The items we have included in our costs and expenses are billed separately and are not included in my firm's lodestar. For accounting purposes and to ensure that all costs and expenses are accurately assigned to the appropriate case, it is my firm's practice to assign a unique billing code for each case that we litigate. This case had a unique billing code, and all expense records, receipts and billing statements reflecting costs associated with this case were assigned to that billing code.

46. My firm's costs and expenses in this matter through May 15, 2020 total \$310,221.27. This sum includes court filing fees, postage and delivery services, outside copying, and expert witness

1 fees, among other recoverable costs and expenses. For all of these costs, we received invoices and
2 already have paid them.

3 47. In fact, my firm's costs were higher than this amount, but we have elected not to seek
4 reimbursement for most electronic research, in-house black-and-white copying and printing, telephone
5 charges, meals, and the travel and ticketing costs for attending one game and one concert at Levi's
6 Stadium to observe the Stadium's barriers during events. Those excluded expenses are typically
7 charged to clients, but we are waiving our right to recover such costs in this matter.

8 48. Peiffer Wolf's costs that it is seeking to recover has the following breakdown:

9 a. Peiffer Wolf paid the amount of \$999.45 for Class Notice Administration costs. True
10 and correct copies of the invoices paid by Peiffer Wolf are attached as part of Exhibit A to the Cost
11 Appendix and are identified in the itemization as having been paid by Peiffer Wolf.

12 b. Peiffer Wolf paid the amount of \$843.59 for in-house copying and printing costs. These
13 costs are only for color printing, and we charge the amount that our office charges us for such costs.
14 We do not charge for black-and-white in-house printing. True and correct copies of the invoices paid
15 by Peiffer Wolf are attached as part of Exhibit B to the Cost Appendix and are identified in the
16 itemization as having been paid by Peiffer Wolf.

17 c. Peiffer Wolf paid the amount of \$24,927.08 for outside copying and printing costs. True
18 and correct copies of the invoices paid by Peiffer Wolf are attached as part of Exhibit C to the Cost
19 Appendix and are identified in the itemization as having been paid by Peiffer Wolf.

20 d. Peiffer Wolf paid invoices or portions of invoices in the amount of \$86,588.89 for
21 deposition reporting services and transcripts of depositions that were reasonably taken in this case. Mr.
22 Wallace's and Ms. Perez's declarations include information regarding the precise reporting services for
23 each such cost. True and correct copies of these invoices are included in Exhibit E of the Cost
24 Appendix and are identified in the itemization as having been paid by Peiffer Wolf.

25 e. Peiffer Wolf expended the amount of \$445.77 for document management and hosting
26 services necessary to the prosecution of this case. Mr. Wallace's and Ms. Perez's declarations include
27 information regarding the need for these services and the total amounts for these costs. True and
28

1 correct copies of these invoices are included in Exhibit F of the Cost Appendix and are identified in the
2 itemization as having been paid by Peiffer Wolf.

3 f. Peiffer Wolf paid invoices or portions of invoices in the amount of \$148,312.74 for
4 expert fees. Mr. Wallace's and Ms. Perez's declarations include information regarding the precise
5 experts and the need for each. True and correct copies of these experts' invoices are included in
6 Exhibit G of the Cost Appendix and are identified in the itemization as having been paid by Peiffer
7 Wolf.

8 g. Peiffer Wolf paid the amount of \$400.00 for filing fees. A true and correct copy of the
9 invoice paid by Peiffer Wolf is attached as part of Exhibit H to the Cost Appendix.

10 h. Peiffer Wolf paid the amount of \$107.30 for legal research costs. True and correct
11 copies of the invoices paid by Peiffer Wolf are attached as part of Exhibit J to the Cost Appendix and
12 are identified in the itemization as having been paid by Peiffer Wolf.

13 i. Peiffer Wolf paid the amount of \$27,209.25 for mediation services. True and correct
14 copies of the invoices paid by Peiffer Wolf are attached as part of Exhibit K to the Cost Appendix.

15 j. Peiffer Wolf paid the amount of \$101.81 for miscellaneous costs. True and correct
16 copies of the invoices paid by Peiffer Wolf are attached as part of Exhibit M to the Cost Appendix and
17 are identified in the itemization as having been paid by Peiffer Wolf.

18 k. Peiffer Wolf paid the amount of \$62.74 for overnight mail. True and correct copies of
19 the invoices paid by Peiffer Wolf are attached as part of Exhibit N to the Cost Appendix and are
20 identified in the itemization as having been paid by Peiffer Wolf.

21 l. Peiffer Wolf paid the amount of \$55.56 for postage costs. True and correct copies of the
22 invoices paid by Peiffer Wolf are attached as part of Exhibit O to the Cost Appendix and are identified
23 in the itemization as having been paid by Peiffer Wolf.

24 m. Peiffer Wolf paid invoices or portions of invoices in the amount of \$626.05 in fees for
25 service of process. True and correct copies of these invoices are included in Exhibit P of the Cost
26 Appendix and are identified in the itemization as having been paid by Peiffer Wolf.

27 n. Peiffer Wolf expended at least \$19,541.04 in travel and transportation related to
28

1 depositions, site inspections, mediation and other settlement negotiations and court appearances. My
2 policy for flights, especially short flights between Los Angeles and San Francisco, is to book economy
3 tickets when they are available. This travel was necessary for the prosecution of this case. True and
4 correct copies of receipts and invoices for these travel expenses are included in Exhibit Q of the Cost
5 Appendix.

6 49. Should Peiffer Wolf incur additional costs and expenses, I will provide updated figures
7 to the Court before the hearing on this motion.

8 50. True and correct copies of invoices for Peiffer Wolf's costs and expenses are combined
9 with those of my co-counsel and are attached to the Declaration of Jennifer A. Perez in Support of
10 Plaintiffs' Motion for Reasonable Attorneys' Fees, Costs, and Expenses.

11 ***

12 51. In my professional judgment and based on my nearly two decades of experience
13 litigating and resolving civil rights and other complex actions, the terms of the settlement are truly
14 outstanding for the Plaintiff Classes. As outlined above, these remarkable outcomes were founded not
15 just on our settlement negotiations but on the innovative and extensive fact investigation, sophisticated
16 legal work on complex issues, and our effective advocacy and early discovery efforts.
17

18
19 I declare under penalty of perjury under the laws of the State of California and of the United
20 States that the foregoing is true and correct, and that this Declaration was executed this 22nd day of
21 June 2020, in Los Angeles, California.

22
23 /s/ Adam B. Wolf
24 Adam B. Wolf
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