

**UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA**

ROBERT J. STENGL, DANIEL)
WILL, GARY K. COLLEY,)
LESLIE D. DIAZ, AMAYA)
JOHNSON, WILLIAM A.)
MCKINLEY and JOHN KARIPAS,)
individually and on behalf of all)
others similarly situated,)

Plaintiffs,

v.

L3HARRIS TECHNOLOGIES,)
INC., THE BOARD OF)
DIRECTORS OF L3HARRIS)
TECHNOLOGIES, INC., and THE)
INVESTMENT COMMITTEE OF)
L3HARRIS TECHNOLOGIES,)
INC.)

Defendants.)

**CASE NO:
6:22-cv-00572-PGB-LHP**

**PLAINTIFFS' MOTION FOR AWARD OF ATTORNEYS' FEES AND
REIMBURSEMENT OF EXPENSES AND PLAINTIFFS' CASE
CONTRIBUTION AWARDS AND MEMORANDUM IN SUPPORT**

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I. INTRODUCTION

Plaintiffs, Robert J. Stengl, Daniel Will, Gary K. Colley, Leslie D. Diaz, Amaya Johnson, William A. McKinley, and John Karipas (collectively “Plaintiffs”), by and through their undersigned counsel on behalf of the L3 Technologies Master Savings Plan (the “Plan”), respectfully submit this Motion for Award of Attorneys’ Fees and Reimbursement of Expenses, and Plaintiffs’ Case Contribution Awards and Memorandum in Support. The instant motion is being filed concurrently as Plaintiffs’ Motion for Final Approval of Class Action Settlement and Memorandum in Support (“Final Approval Memorandum”).

Plaintiffs herein request an award of attorneys’ fees of thirty-three and one third percent (33 1/3%) of the Settlement Amount of \$650,000.00 (a maximum amount of \$216,645). Courts routinely support counsel fees of 33 1/3% in analogous class actions advanced under ERISA.¹

¹ See e.g. *Pledger v. Reliance Trust Co.*, No. 1:15-CV-4444-MHC, 2021 WL 2253497 (N.D. Ga. Mar. 8, 2021); *Fernandez v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, No. 15-22782-CIV, 2017 WL 7798110, at * (S.D. Fla. Dec. 18, 2017); *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020); *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020 WL 5668935, at *3 (C.D. Cal. Sep. 18, 2020); *Tussey v. ABB, Inc.*, No. 06-CV-04305 NKL, 2019 WL 3859763, at *2 (W.D.Mo. Aug. 16, 2019); *Bell v. Pension Comm. of ATH Holding Co., LLC*, 2019 WL 4193376 (S.D. Ind. Sept. 4, 2019); *Clark v. Duke Univ.*, No. 1:16-CV-1044, 2019WL 2579201 (M.D.N.C. June 24, 2019); *Cates v. Trustees of Columbia Univ.*, No. 1:16-cv-06524-GBD, 2021 WL 4847890 (S.D.N.Y. Oct. 18, 2021); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 270 (S.D.N.Y. 2020) (listing ERISA cases awarding one-third of settlement fund); *Ramos v. Banner Health*, 2020 WL 6585849, at * 4-5 (D. Colo. Nov. 10, 2020); *Schapker v. Waddell & Reed Fin., Inc.*, No. 17-cv-2365 (Final Approval Order and Judgment) (D. Kan. Apr. 8, 2019); *Pinnell v. Teva Pharmaceuticals USA, Inc.*, No. 2:19-cv-05738-MAK (E.D. Pa.); *Hay v. Gucci America, Inc.*, No. 17-cv-7148 (D.N.J.); *Spano v. Boeing Co.*, No. 06-cv-0743 (S.D. Ill.); *Troutt et al. v. Oracle Corp., et al.*, No. 1:16-cv-00175, ECF No. 236 (Order Granting

In addition, Plaintiffs request reimbursement of out-of-pocket costs and expenses incurred in connection with the prosecution of this Action in the amount of \$71,696.37. Class Counsel also asks the Court to approve the payment of Case Contribution Awards in the amount of \$5,000.00 to each Plaintiff in recognition of their contributions to this Action.

II. BACKGROUND

To avoid unnecessary repetition, Plaintiffs incorporate and refer to Sections II and III of the accompanying Final Approval Memorandum which discusses the settlement and the proposed terms of settlement. *See also* Gyandoh Decl., ¶¶ 1-20 (detailing the procedural history, discovery practice, mediation, and settlement terms). In pertinent part, Plaintiffs and their counsel thoroughly investigated the merits of this Action prior to filing suit on March 18, 2022. Gyandoh Decl., ¶¶ 3-6. After the case was filed, the Parties engaged in robust litigation, including briefing a motion to dismiss the Amended Complaint, a motion to exclude the testimony of Plaintiffs' expert (ECF No. 97) and a motion for summary judgment (ECF No. 99), both of which were fully briefed by the Parties by October 20, 2023 and pending a decision prior to settlement of the Action.

Following the Court's denial of Defendants' motion to dismiss (ECF No. 72),

Plaintiffs' Unopposed Motion for Approval of Attorneys' Fees, Expenses, and Incentive Awards) ("Troutt Fee Order") (D. Colo, July 10, 2020); *Terranza v. Safeway, Inc.*, No. 16-cv-03994 (N.D. Cal.); *Stevens v. SEI Investments Co.*, No. 18-cv-4205 (E.D. Pa.); *Donald v. Teachers Insurance and Annuity Insurance Ass'n of America*, No. 15-cv-08040 (S.D.N.Y.); *Pease v. Jackson National Life Ins. Co.*, No. 17-cv-284 (W.D. Mich.)

the Parties engaged in fact and expert discovery, including the exchange of expert reports. Gyandoh Decl., ¶¶ 17-23. Defendants produced over 16,000 pages of documents and deposed seven of the original eight (one Plaintiff dropped out) Plaintiffs as well as Plaintiffs' expert.² *Id.* Plaintiffs deposed two committee members and Defendants' three expert witnesses. *Id.*

The Parties participated in two mediation sessions before Jay M. Cohen, Esq. Those sessions took place on September 18, 2023 and on December 21, 2023. *Gyandoh Decl.*, ¶¶ 15, 16. The Parties ultimately reached an agreement in principle to settle the Action on mutually agreeable terms on December 21, 2023. *Id.*, ¶ 26. On December 22, 2023, the Parties filed a Joint Notice of Resolution (ECF. No. 112).

III. STANDARD OF REVIEW

Plaintiffs' attorneys in a class action may petition the court for compensation for any award to the class resulting from the attorneys' efforts. *See, e.g., Boeing Co. v. Van Gemert*, 444 U.S. 472 (1980). Under FED. R. CIV. P. 23, "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). In the Eleventh Circuit, "Attorneys' fees awarded from a common fund shall be based upon a reasonable percentage of the fund established for the benefit of the class." *Camden I Condo. Ass'n, Inc. v. Dunkle*, 946 F.2d 768 (11th Cir. 1991). *See also Ne. Engineers Fed. Credit Union v. Home Depot, Inc.*,

² On June 1, 2023, the Parties filed a Joint Stipulation of Dismissal of Plaintiff Ronald F. Kosewicz (ECF No. 90). The Court issued an Order Granting the Joint Stipulation on June 5, 2023 (ECF No. 91).

No. 20-10667, 2022 WL 40210, at *1-2 n.1, 2 (11th Cir. Jan. 5, 2022) (“[t]he percentage method is ordinarily used in “common fund” cases” and “The lodestar method is used in “fee-shifting” cases”).

In *Camden I*, the Eleventh Circuit adopted a set of twelve non-exhaustive factors identified by the Fifth Circuit in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974) when determining the reasonableness of attorney fees. The twelve factors are:

(1) the time and labor expended; (2) the novelty and difficulty of the questions raised; (3) the skill required to properly perform the legal services rendered; (4) the attorney’s opportunity costs in pressing the instant litigation; (5) the customary fee for like work; (6) the attorney’s expectations at the outset of the litigation; (7) the time limitations imposed by the client or circumstances; (8) the amount in controversy and the results obtained; (9) the experience, reputation and ability of the attorney; (10) the undesirability of the case within the legal community in which the suit arose; (11) the nature and length of the professional relationship between attorney and client; and (12) attorneys’ fees awards in similar cases.

Camden I, 946 F.2d at 772 & n.3. See also *Taylor v. Service Corp. Int’l*, NO. 20- CV-60709-RAR, 2023 WL 2346295, at *6 (S.D. Fla. Mar. 3, 2023) (“The Eleventh Circuit in *Camden I* provided a set of factors the Court should use to determine a reasonable percentage of the fund to award class counsel.”) However, “[t]hese twelve factors are not exclusive. Courts can also consider, for example, ‘the time required to reach a settlement, whether there are any substantial objections by class members or other parties to the settlement terms or the fees requested by counsel, any non-monetary benefits conferred upon the class by the settlement, and the economics

involved in prosecuting a class action’ as well as ‘additional factors unique to a particular case.’” *Id.*(Quoting *Camden I*, 946 F.2dat 775).

IV. ARGUMENT

A. Plaintiffs’ Request for Attorneys’ Fees Is Reasonable

1. The Time and Labor Required

“Although the hours claimed or spent on a case should not be the sole basis for determining a fee,... they are a necessary ingredient to be considered.” *Dukes v. Air Canada*, Case No. 8:18-cv-2176-T-60JSS, 2020 WL 487152, at *6 (M.D. Fla. Jan. 27, 2020) (Quoting *Johnson*, 488 F.2d at 717). “The United States Supreme Court has broadly expressed what the term ‘attorney’s fee’ encompasses. It refers not only to the hours an attorney expends but, rather, to the entire work product.” *In re Vista Foods USA Inc.*, 234 B.R. 121, 127 (W.D. Ok. April 14, 1999). Accordingly, “an attorney’s fee includes the costs of secretaries, paralegals, and other expenses in the nature of office overhead.” *Id.* See also *Begley v. Ocwen Loan Servicing, LLC*, No. 3:16cv149/MCR/CJK, 2017 WL 11672930, at *1 (N.D. Fla. Nov. 22, 2017) (approving attorney’s fees where “class counsel has provided evidence that it spent numerous hours investigating claims, exchanging and analyzing informal discovery, preparing for and attending three separate mediation sessions, and negotiating the settlement of this case.”) Moreover, “the time and labor still required to bring this case to conclusion, warrants an award of attorney’s fees in the amount of one-third of the Settlement Fund” *Tweedie v. Waste Pro. Of Fla., Inc.*, No. 19-CV-1827, 2021 WL

5843111, at * 9 (M.D. Fla. Dec. 9, 2021).

Class Counsel effectively and efficiently litigated this Action from its inception until now. In that time, Class Counsel has never been paid for their work on this matter, taking the case on a wholly contingent basis. Instead, they faced the very real risk, in the face of staunch opposition from highly qualified defense counsel, they would receive nothing for their professional time spent, and cash outlays they invested in the case. *See e.g., Stoll v. Musculoskeletal Inst.*, No. 8:20- cv-1798-CEH-AAS, 2022 WL 16927150 at *3 (M.D. Fla. July 27, 2022) (“Despite the risk and costs of pursuing this action, class counsel expended considerable time and effort over the course of nearly two years in providing representation to the class and prosecuting and settling the claims.”) Their extensive efforts included, *inter alia*, the investigation of Plaintiffs’ claims, the underlying events, the operation and administration of the Plan, and transactions alleged in the Amended Complaint; opposing Defendants Motion to Dismiss the Complaint, Motion for Summary Judgment, and Motion to Exclude Plaintiffs’ Expert; deposing two of the Defendant-Fiduciaries and Defendants’ three expert witnesses, and defending depositions of Plaintiffs and Plaintiffs’ expert; review of documents in preparation for settlement negotiations, and the ultimate negotiation and memorialization of the Settlement terms, presentation of the Settlement to this Court, and effectuation of the Settlement. Class Counsel dedicated very substantial time and effort, expending over 1,275 hours of time to date. Gyandoh Decl. at ¶ 54.

The above hours do not include time to be spent on the preparation for an

interview with the Independent Fiduciary, preparation for and attendance at the Fairness Hearing, communications with Settlement Class members, and monitoring of Defendants' compliance with the Settlement. Gyandoh Decl., ¶ 55. Class Counsel minimized expenses by utilizing its own ERISA expertise, where necessary, controlling costs by eliminating travel expenses without sacrificing the national expertise they brought to benefit the Class. With over 1,275 hours of time spent on this litigation, Class Counsel have been both diligent and efficient in obtaining a meaningful recovery for the Class and the Plan. As explained below in discussion of a lodestar cross check, the requested fee represents a risk multiplier of .27 meaning the fees requested represents a 73% reduction of Class Counsel's actual fees.

2. The Novelty and Difficulty of the Questions Involved

With respect to the novelty and difficulty of this Action, district courts around the country and within this Circuit have granted the plaintiffs' motion for attorneys' fees because, "[e]ffectively and successfully litigating an ERISA breach of fiduciary action requires a specialized knowledge and expertise that was demonstrated by Class Counsel. This litigation involved highly technical knowledge of investment plans, investment knowledge, and industry practices." *Pledger v. Reliance Trust Co.*, No. 1:15-CV-4444-MHC, 2021 WL 2253497, at *7 (N.D. Ga. Mar. 8, 2021). *See also Smith v. Krispy Kreme Doughnut Corp.*, No. 05-cv-00187, 2007 WL 119157, at *2 (M.D.N.C. Jan. 10, 2007) ("ERISA law is a highly complex and quickly-evolving area of the law. The novelty and difficulty of the questions raised tends to

support the reasonableness of the requested fee award.”); *In re Wachovia Corp. ERISA Litig.*, No. 09-cv-262, 2011 WL 7787962, at *4 (W.D.N.C. Oct. 24, 2011) (“ERISA litigation of the type presented here is a rapidly evolving and demanding area of the law. New precedents are frequently issued, and the demands on counsel and the Court are complex and require the devotion of significant resources.”); *In re Schering-Plough Corp. Enhance ERISA Litig.*, 2012 WL 1964451, at *5 (D.N.J. May 31, 2012) (“ERISA class actions based on the same theories as the present matter involve a complex and rapidly evolving area of law.”); *Ramos v. Banner Health*, 2020 WL 6585849, at *4 (D. Colo. Nov. 10, 2020) (“ERISA is ‘an enormously complex and detailed statute.’”).

Accordingly, this factor also supports Class Counsel’s fee request.

3. The Skill Requisite to Perform the Legal Services Properly

It “It is well established that complex ERISA litigation involves a national standard and special expertise.” *Tussey v. ABB, Inc.*, 2012 WL 5386033, at* 3 (W.D. Mo. Nov. 2, 2012). Plaintiffs retained attorneys who are highly qualified, experienced, and able to litigate this matter. Capozzi Adler and Mark K. Gyandoh, Plaintiffs’ Counsel in this Action readily meet this criteria. Mr. Gyandoh, a partner and Chair of the Fiduciary Practice Group at Capozzi Adler, is a highly qualified ERISA class action attorney and unequivocally recommends this Settlement. Gyandoh Decl., ¶¶ 1-2; 73-83. Additionally, Capozzi Adler has been named Lead or

Co-Lead interim Class Counsel in numerous breach of fiduciary duty class actions in this District and across the nation. *Id.* at ¶¶ 76-77.

Throughout the litigation, Class Counsel has used its experience and access to resources to investigate and litigate Plaintiffs' underlying allegations, which ultimately led to the Settlement in this Action. Class Counsel have a combined decades of experience in complex class actions and recommend this Settlement as the best solution for Settlement Class members. In its analysis of the plaintiffs' motion for attorneys' fees, the *Pledger* court stated "Class Counsel are highly experienced and recognized experts in ERISA litigation. Class Counsel's unique experience representing plaintiffs like Class Members in this case supports Plaintiffs' fee request." *Pledger*, 2021 WL 2253497, at *7 (internal citations omitted). Similarly, the court in *Smith* held, "it takes skilled counsel to manage a nationwide class action, carefully analyze the facts and legal claims and defenses under ERISA, and bring a complex case to the point at which settlement is a realistic possibility" and reasoned "this factor tends to support the reasonableness of the requested fee award." *Smith*, 2007 WL 119157, at *2. Given the similar pedigree and body of work by Class Counsel here, including that the Settlement was achieved after extensive arms-length negotiations, this factor similarly weighs in favor of the requested attorneys' fee award.

4. The Preclusion of Other Employment by the Attorneys Due to Acceptance of the Case

With respect to the fourth factor, courts across the country have consistently

recognized that the risk of achieving little or no recovery is a major factor in considering a proposed award of attorneys' fees. "There is an inherent preclusion of other work in litigating a complex case such as this on a contingency fee basis." *Shaw v. Interthinx, Inc.*, 2015 WL 1867861, at *6 (D. Colo. April 21, 2015). Class Counsel were "precluded by the ticking of the clock from taking certain other cases given that they [had] decided to take a chance on a possible recovery in a contingency fee rather than strictly working on paid hourly wages." *Id.* (citation omitted). There was "the possibility in a case of this kind that [Class Counsel], having given up other cases in order to actively pursue this case, will actually recover no payment for [their] time and efforts." *Id.* Indeed courts within this circuit have also found this factor satisfied because "but for the time and effort they spent in this case, and given the demand for their services attributable to their high level of skill and competence, Plaintiffs' attorneys would have spent significant time on other matters. Class Counsel was compelled at various times during the litigation to work under significant time pressure and had to commit significant resources. These factors weigh in favor of the requested fee." *Pledger* 2021 WL 2253497 at *7. *See also Fernandez*, 2017 WL 7798110, at *4 (awarding attorney's fees in an analogous ERSIA action "which was undertaken on a contingency fee basis and precluded Class Counsel from taking other hourly employment.").

As discussed above and in the Final Approval Memorandum, the risks of an unsuccessful result in this action, and therefore non-payment, were significant.

5. The Customary Fee for Similar Work

“Courts within this Circuit have routinely awarded attorneys’ fees of 33 percent or more of the gross settlement fund.” *Fernandez*, 2017 WL 7798110, at *5 (listing cases). “To avoid depleting the funds available for distribution to the class, an upper limit of 50% may be stated as a general rule, although even larger percentages have been awarded.” *Camden I*, 946 F.2d at 774-75. As discussed herein, ERISA is a highly complex and evolving body of law. Class Counsel discusses customary fee awards as part of the analysis of factor 12, “fee awards in similar cases.” Moreover, in the course of my 19-year nationwide ERISA practice, I have worked with most if not all firms that have a national ERISA class action practice. In my experience, while there are invariably differences in rates between different firms – and even between rates for lawyers within the same firm with the same number of years of practice – Capozzi Adler’s rates are broadly in line with rates of other firms with nationwide class action practices, that have been the basis for award of fees in courts around the country. *See Gyandoh Decl.* at ¶¶ 58-67.

6. Whether the Fee is Fixed or Contingent

“Class Counsel took a risk in prosecuting this action entirely on a contingent fee basis. The risk borne by Class Counsel is one of the most significant factors to consider when determining an appropriate fee award.” *Taylor*, 2023 WL 2346295, at *7. While Class Counsel strongly believed in the merits of the Action, as discussed

herein the Action was not without risk given the complex factual predicate. The economical and logistical unattractiveness of this case required a legal team with significant expertise in ERISA class action litigation who could manage this case in a cost- effective and comprehensive way. “Class Counsel incurred substantial risk by litigating a novel legal action with a purely contingent fee that was ultimately subject to final Court approval. The novelty of the legal issue further increased the risk that Defendants might prevail at the motion to dismiss stage (as they did with some of the Settlement Class Members’ claims), the class certification stage, or the summary judgment stage.” *Id.* at 8.

Furthermore, the Named Plaintiffs would not have been able to pursue this litigation other than on a contingency fee basis and no competent plaintiffs’ lawyer or law firm would take on such risky representation for less than one-third of any monetary recovery. “Courts have recognized the importance of such arrangements, noting that many workers cannot retain counsel at fixed hourly rates...yet they are willing to pay a portion of any recovery they may receive in return for successful representation.” *Shaw*, 2015 WL 1867861, at *7. This factor, therefore, supports the awarding of the fees requested by Plaintiffs’ Counsel.

7. Time Limitations Imposed by The Client or the Circumstances

As reflected by the sheer number of hours devoted by the attorneys and staff involved in litigating this case, a substantial amount of their time was devoted to

this case at the preclusion of other work. *See* Gyandoh Decl. ¶¶ 50, 54.

8. The Amount Involved and The Results Obtained

This factor may be given greater weight “because Class Counsel obtained this significant relief despite substantial financial risks.” *Millstein v. Holtz*, NO. 21-CV-61179-RAR, 2022 WL 18024840 at *11 (S.D. Fla. Dec. 30, 2022). Undoubtedly, Class Counsel’s efforts have created a \$650,000.00 Settlement Amount which is an excellent result when viewed in any light. The court in *Holtz* held “[i]t is especially significant that Class Counsel achieved a common fund, which is a substantial, tangible, and real benefit for the Class.” *Id.* (Referring to a \$650,000.00 settlement fund.) Additionally, because this is an ERISA case, “most Class Members will not have to file a claim form but will automatically receive their distributions into their tax-deferred retirement accounts. This factor weighs in favor of the requested fee.” *Pledger*, 2021 WL 2253497 at *8. In particular, the Settlement represents approximately 22% of the Settlement Class’s estimated maximum realistic damages of just under \$3 million as calculated by Plaintiffs. Gyandoh Decl., ¶ 25. This Settlement was achieved only after arms-length negotiations between experienced counsel under the auspices of a neutral mediator.

9. The Experience, Reputation, And Ability of The Attorneys

This factor overlaps with the discussion of factor number 3 above.

10. The “Undesirability” Of the Case

This factor overlaps with the discussion of factor number 6 above.

11. The Nature and The Length of The Professional Relationship With The Client

Class Counsel did not have a prior professional relationship with Plaintiffs before this litigation. This factor thus supports Class Counsels' request for attorneys' fees. *See, e.g., Smith*, 2007 WL 119157, at *3 ("Class Counsel did not have professional relationships with either Named Plaintiff prior to this litigation. This factor tends to support the reasonableness of the requested fee award.").

12. Awards In Similar Cases

Class Counsel's request for attorneys' fees is consistent with attorneys' fees routinely awarded by courts nationwide in ERISA class action cases and other complex litigation. The court in *Pledger* approved an attorneys' fee award of one-third of the settlement fund holding, "[t]he percentage used to calculate the requested fee in this case is consistent with experienced attorneys who handle complex ERISA litigation, and has been found reasonable in numerous cases in federal district courts." *Pledger*, 2021 WL 2253497, at *5,7. *See also, Fernandez*, 2017 WL 7798110, at *5 (same); *Eslava v. Gulf Telephone Co., Inc.* No. 04-0297-KD-B, 2007 WL 4105977, at *2 (S.D. Ala. Nov. 16, 2007); *Ramos*, 2020 WL 6585849, at * 4-5 (same); *Schapker*, No. 17-cv-2365 (same); *Feinberg*, 610 F.Supp.3d at 771 (2022); *Kelly v. Johns Hopkins Univ.*, No. 1:16-cv-2835-GLR, 2020 WL 434473, at *3 (D. Md. Jan. 28, 2020); *Bekker v. Neuberger Berman Grp. 401(k) Plan Inv. Comm.*, 504 F. Supp. 3d 265, 270 (S.D.N.Y. 2020); *Marshall v. Northrop Grumman Corp.*, No. 16-CV-6794 AB (JCx), 2020 WL 5668935, at *3 (C.D. Cal. Sep. 18, 2020); *Spano v. Boeing Co.*, No. 06-cv-743, 2016

WL 3791123 (S.D. Ill. Mar. 31, 2016) (same); *Kruger v. Novant Health, Inc.*, No. 1:14-cv-208, 2016 WL 6769066 (M.D.N.C. Sept. 29, 2016) (same); *Gordan v. Massachusetts Mut. Life Ins. Co.*, No. 13- cv-30184, 2016 WL 11272044 (same).

Thus, an award of counsel fees in the amount of 33 1/3% of the common fund is appropriate here.

B. Other Considerations Merit Approval of The Fee Request

1. A Lodestar Crosscheck Fully Supports Class Counsel's Requested Attorneys' Fees.

In the Eleventh Circuit “a lodestar ‘cross-check’ is not required, [but] it may be used ‘to ensure that the fee produced by the chosen method is in the ballpark of an appropriate fee.’” *Pledger*, 2021 WL 2253497 at *7 (quoting *In re Home Depot Inc.*, 931 F.3d 1065, 1091, n.25 (11th Cir. 2019)); *Henderson v. Emory Univ.*, No. 16-2920-CAP, 2020 WL 9848978, at *4 (N.D. Ga. Nov. 4, 2020) (same). The “lodestar cross-check calculation need entail neither mathematical precision nor bean-counting. The district courts may rely on summaries submitted by the attorneys and need not review actual billing records.” *In re Crocs. Secs. Litig.*, 2014 WL 4670886, at *4 n. 4 (D.Colo. Sep. 18, 2014) (quoting *In re Rite Aid*, 369 F.3d 294, 3016-307 (3d Cir. 2005)).

To calculate attorneys' fees under the lodestar method, counsel's reasonable hours expended on the litigation are multiplied by counsel's reasonable rates and adjusted higher or lower by evaluating the same twelve factors used to evaluate the reasonableness of attorney's fees discussed in *Section IV.A. Supra. In re Saf T Lok, Inc.*

Sec. Litig., No. 02-80252-CIV, 2005 WL 8156138, at *2 (S.D. Fla. June 29, 2005). Class Counsel and Liaison Counsel have expended 1,275.20 hours on this case. Gyandoh Decl., ¶ 67. The hours spent were reasonable and necessary to the prosecution of the litigation. The rates charged are consistent with those charged by other firms in the field of nationwide ERISA class action work and have been approved by courts in numerous cases. *See Dean v. Cumulus Media*, No.: 1:22-cv-04956-TWT, (N.D. Ga. July, 11, 2023) (Order Awarding Plaintiffs' Attorneys' Fees and Reimbursement of Expenses and Plaintiffs' Case Contribution Awards attached to Gyandoh Decl. as Ex. 15) (approving Capozzi Adler rates in similar ERISA class action) Gyandoh Decl. ¶ 58-67. Moreover, Capozzi Adler's rates are reasonable in comparison to the firms that defend nationwide ERISA class action cases. *Id.*; *see Henderson*, No. 16-2920-CAP, 2020 WL 9848978, at *2 (finding rates ranging from \$330 to \$1,060 per hour "consistent with the rates charged by firms defending these types of complex class actions").

The lodestar amount does not include time to prepare for and meet with the Independent Fiduciary, prepare and attend the Fairness Hearing, and to continue to supervise the Settlement fund (including consulting with the Settlement Administrator, corresponding with Class Members, and communicating with opposing counsel, activities which will necessarily result in additional lodestar). Hourly rates vary appropriately between attorneys and paralegals depending on the position and experience. The rates are based on a reasonable hourly billing rate for

such services given the geographical area, nature of the services provided, and the experience of the attorney.

Considering the benefits of the Settlement, risks of continued litigation, and the experience of Class Counsel, the rates are reasonable. Specifically, Class and Plaintiffs' Counsel have devoted approximately 1,275.20 hours to the prosecution of this Action resulting in a total lodestar of \$805,704.50. When comparing the percentage fee request to the submitted lodestar, the requested fee award is clearly reasonable as it results in a multiplier of .27. This is well below the range endorsed by courts in ERISA cases.

“[M]ultiples ranging from one to four are frequently awarded in common fund cases when the lodestar method is applied.” *In re Cendant Corp. PRIDES Litig.*, 243 F.3d 722, 742 (3d Cir. 2001) (citing *In re Prudential*, 148 F.3d 283, 341 (3d Cir.1998) (quoting 3 Herbert Newberg & Alba Conte, *Newberg on Class Actions*, S 14.03 at 14–5 (3d ed.1992)); *See also Pledger*, 2021 WL 2253497 at * 8 (approving a lodestar multiplier of 1.18 and listing cases from this Circuit approving multipliers between 1.6 and 4.5); *Henderson*, No. 16-2920-CAP, 2020 WL 9848978, at *3 (same). Thus, the .27 multiplier further confirms the reasonableness of Class Counsel's requested attorneys' fee award. Accordingly, the lodestar cross-check confirms an award of 33 and 1/3 percent is fair and reasonable.

2. The Absence of Objections Further Support the Adequacy of the Requested Attorneys' Fees

The Class Notice, which was mailed to over 76,247 potential Settlement

Class Members, specified that Class Counsel would request attorneys' fees of up to 33 1/3% of the Class Settlement Amount. To date,³ there have been no objections to the settlement or requested attorneys' fees. Thus, the absence of objections further supports the requested attorneys' fees. *See e.g., Feinberg*, 610 F.Supp.3d at 772 (“Additionally, that no class members have objected—either to the proposed settlement as a whole or to the requested fees—confirms that, from the class members' perspective, counsel has achieved a good result and the fees are reasonable.”).

C. The Court Should Reimburse Plaintiffs' Counsel for Expenses Incurred

Class Counsel should also be reimbursed the \$71,696.37 in litigation expenses they advanced in prosecuting this case under FED. R. CIV. P. 23(h). As a leading treatise states:

An attorney who creates or preserves a common fund by judgment or settlement for the benefit of a class is entitled to receive reimbursement of reasonable fees and expenses involved. The equitable principle that all reasonable expenses incurred in the creation of a fund for the benefit of a class are reimbursable proportionately by those who accept benefits from the fund authorizes reimbursement of full

³ Per the schedule established by this Court in the Preliminary Approval Order, the objection deadline of June 18, 2024 has not yet elapsed. See ECF No. 118, ¶ 15 (setting 21 days before the Final Approval Hearing scheduled for July 9, 2024, as the objection deadline). To the extent any objections are filed regarding the requested attorneys' fees or any aspect of the Settlement, Class Counsel will address the objection(s) in a supplemental filing to this Court in advance of the Final Approval Hearing no later than July 2, 2024.

reasonable litigation expenses as costs of the suit in contrast to the more narrowly defined rules of taxable costs of suit under Fed. R Civ. P. 54 (d). The prevailing view is that expenses are awarded in addition to the fee percentage.

Alba Conte, 1 *Attorney Fee Awards* § 2:19 (3d ed.); see also *Sprague v. Ticonic*, 307 U.S. 161, 166-67 (1939) (recognizing a federal court's equity power to award costs from a common fund); *Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991) (“In accordance with the well-established common fund exception to the American Rule, . . . class counsel. . . are entitled to an award of their . . . expenses out of the fund that has been created for the class by their efforts”).

Counsel in common fund cases may recover those expenses that would normally be charged to a fee-paying client. *Lipuma v. Am. Express Co.*, No. 04- 20314-Civ-ALTONAGA, 2007 WL 9701671, at *7 (S.D. Fla. Sept. 14, 2007) (“The appropriate analysis to apply in deciding which expenses are compensable in a common fund case is whether the particular costs are of the type typically billed by attorneys to paying clients in the marketplace.”); *Kelly*, 2020 WL 434473, at * 7 (“Reimbursement of reasonable costs and expenses to counsel who create a common fund is both necessary and routine.”) These costs and expenses include “personnel, document duplication, expert witness fees, photocopying, long distance telephone charges, postal fees, and expert witness fees.” *Id.*; *Fernandez*, 2017 WL 7798110 at *5 (same); *Krueger*, 2015 WL 4246879 at *3 (same); *Boeing*, 444 U.S. at 478; *Abrams*, 50

F.3d at 1225; *Cotter v. Checkers Drive-In Rests.*, No: 8:19-cv-1386-VMC-CPT, 2021 WL 3773414, at*11(M.D. Fla. Aug. 25, 2021) (citing Fed. R. Civ. P. 23(h)).

Plaintiffs' counsel incurred expenses of \$71,696.37 including costs related to experts, filing fees and legal research. Gyandoh Decl., at ¶¶ 50; 54. Counsel brought this case without guarantee of reimbursement or recovery, so they had a strong incentive to keep costs to a reasonable level, and they did so. *See, e.g., Henderson*, No. 16-2920-CAP, 2020 WL 9848978, at *4, (recognizing that "Class Counsel brought this case without guarantee of reimbursement or recovery. There was a strong incentive to limit costs.") "The prevailing view is that expenses are awarded in addition to the fee percentage." *Kelly*, 2020 WL 434473 at * 7 (quoting *Smith*, 2007 WL 119157, at *3).

D. The Requested Case Contribution Awards For the Class Representatives Are Reasonable.

Plaintiffs request Class Representatives Robert J. Stengl, Daniel Will, Gary K. Colley, Leslie D. Diaz, Amaya Johnson, William A. McKinley, and John Karipas be granted a Case Contribution Award in compensation for the time and effort they expended in successfully prosecuting this case to a successful resolution. Such awards acknowledge representative plaintiffs' hard work and sacrifices in support of the class, as well as their promotion of the public interest.

The court in *Henderson v. Emory Univ.*, No. 16-2920-CAP, 2020 WL 9848978 (N.D. Ga. Nov. 4, 2020), an analogous ERISA case involving imprudent investment and excessive fees, granted a case contribution award of \$25,000 each for Class

Representative. The *Henderson* decision was issued two months after *Johnson v. NPAS Sols., LLC*, 975 F.3d 1244 (11th Cir. Sept. 17, 2020) seemingly prohibited “the type of incentive award that the district court approved here—one that compensates a class representative for his time and rewards him for bringing a lawsuit.” *Johnson* 975 F.3d at 1260. While *Henderson* does not explicitly mention *Johnson*, the court differentiated the type of Named Plaintiff Award from the type prohibited in *Johnson*:

The court finds that this award is not of the type prohibited in *Trustees v. Greenough*, 105 U.S. 527, 26 L.Ed. 1157 (1882), and *Central Railroad & Banking Co. v. Pettus*, 113 U.S. 116, 5 S.Ct. 387, 28 L.Ed. 915(1885). The Class Representatives, employees of the Defendants, faced considerable risk in pursuing this lawsuit. The award does not constitute either a salary or a bounty. Furthermore, the settlement agreement in this action is not contingent on the Class Representatives receiving an award. The Class Representatives were integral to achieving the settlement which in turn benefits the entire class. Without them, the class members would receive nothing and their retirement plans would not have been adjusted.

Henderson, 2020 WL 9848978, at *5 (N.D. Ga. Nov. 4, 2020) (discussing the two Supreme Court cases *Johnson* relied on). The court in *Henderson* further reasoned “A substantial incentive award is appropriate in [a] complex ERISA case given the benefits accruing to the entire class in part resulting from [named plaintiff’s] efforts.” *Id.* at *4 (Quoting *Savani v. URS Prof’l Solutions LLC*, 121 F. Supp. 3d 564, 577 (D.S.C. 2015).) In *Dean v. Cumulus Media*, another recent nearly identical ERISA class action in this Circuit, the court awarded \$5,000 to the nine named plaintiffs and former named plaintiffs, “in recognition of their contributions to this action.” No.: 1:22-cv-04956-TWT

(Order Awarding Plaintiffs’ Attorneys’ Fees and Reimbursement of Expenses and Plaintiffs’ Case Contribution Awards attached to Gyandoh Declaration as Exhibit 15). Furthermore, the Plaintiffs here “also risked their reputation and alienation from employers or peers in bringing an action against a prominent institution in their community.” *Id.* See also *Caligiuri v. Symantec Corp.*, 855 F.3d 860, 867 (8th Cir. 2017) (“Courts often grant services awards to named plaintiffs in class action suits to promote the public policy of encouraging individuals to undertake the responsibility of representative lawsuits.”)

Here, Plaintiffs seek an award of \$5,000 for each class representative, amounts that are well-deserved. Each of the Class Representatives has provided documents, reviewed the Complaints, testified at a deposition, and monitored Class Counsel and the progress of the litigation, including discussions about the terms of the Settlement. Gyandoh Decl., ¶ 95. Each of the Plaintiffs have submitted declarations in support of their requests for case contribution awards. The declarations are attached to the Gyandoh Declaration as Exhibits 8, 9, 10, 11, 12, 13, and 14.

Substantially larger awards have been approved as well within the ranges typically awarded in comparable cases. See, e.g., *Troudt* Fee Order at 9 (awarding \$25,000 to each of named plaintiffs); *Henderson*, 2020 WL 9848978, at *4, (same); *Kruger*, 2016 WL 6769066, at *6 (collecting cases awarding \$25,000 to each named plaintiff). *Schapker*, No. 17-cv-2365 (awarding \$20,000 to the class representative); *Tussey*, 2012 WL 1113291, at *21 (awarding \$25,000 to each class representative in

ERISA 401(k) fee class action); *Mayer v. Driver Solutions, Inc.*, 2012 WL 3578856, at *5 (E.D. Pa. Aug. 17, 2012) (approved \$15,000 award for class representative); *Bernhard v. TD Bank, N.A.*, 2009 WL 3233541, at *2 (D.N.J. 2009) (“[C]ourts routinely approve incentive awards to compensate named plaintiffs for services they provided and the risks they incurred during the course of the class action litigation.”); *Beesley*, 2014 WL 375432, at *4 (\$25,000 awarded to each of the three named plaintiffs).

V. CONCLUSION

Plaintiffs respectfully request that the Court award attorneys’ fees in the amount of \$216,645, approve the reimbursement of litigation expenses in the amount of \$71,696.37, and approve Case Contribution Awards in the amount of \$5,000 to each of the Plaintiffs.

Dated: May 17, 2024

Respectfully submitted,

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