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12
13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA**

15 ALLEN MUNRO *et al.*,
16 *Plaintiffs,*
17 v.
18 UNIVERSITY OF SOUTHERN
CALIFORNIA, *et al.*,
19 *Defendants.*

Case No. 2:16-cv-06191-VAP-E

[PROPOSED]
ORDER AWARDING ATTORNEYS’
FEEES, EXPENSES, AND INCENTIVE
AWARDS FOR CLASS
REPRESENTATIVES

DATE: August 14, 2023
TIME: 2:00 p.m.
Courtroom 6A

Hon. Virginia A. Phillips

22
23 **INTRODUCTION**

24 Before the Court is Plaintiffs’ motion for attorneys’ fees, reimbursement of
25 expenses, and incentive awards for class representatives. The Court heard argument
26 on this motion on August 14, 2023. All capitalized terms in this order have the
27 same meaning as in the Settlement Agreement (Doc. 362-1) unless otherwise
28 indicated.

1 After more than six years of contentious litigation, the parties reached a
2 settlement in the amount of \$13,050,000 to resolve all remaining claims. The
3 settlement provides substantial relief on behalf of thousands of current and former
4 participants in the University of Southern California Defined Contribution
5 Retirement Plan and Tax-Deferred Annuity Plan (the Plans). Class Counsel
6 (Schlichter Bogard LLP)¹ requests an award of attorneys' fees in the amount of one
7 third of the gross settlement fund (\$4,350,000), reimbursement of litigation
8 expenses of \$1,184,891, and payment of \$25,000 to each of the eight Class
9 Representatives as incentive awards.

10 Class Counsel obtained an exceptional result on behalf of the Class after
11 years of litigation. They displayed tremendous skill and determination at all stages
12 of this case. Their request for a one-third fee of the common fund is fair and
13 reasonable compensation for their pioneering and persevering efforts on behalf of
14 the Class. Their request for reimbursement of out-of-pocket litigation expenses is
15 also reasonable based on the types of expenses incurred in cases of this complexity
16 and magnitude. Finally, incentive awards for each of the Class representatives are
17 justified. For the reasons explained below, the motion is **GRANTED**.

18 **BACKGROUND**

19 This settlement concludes over six years of extensive litigation between the
20 parties. The litigation began in August 2016. Doc. 1. With the settlement in this
21 case, Class Counsel has recovered \$13,050,000 and valuable changes to the Plan
22 based on allegations that the defendants breached their fiduciary duties under
23 ERISA (specifically 29 U.S.C. §1104(a)(1)(B)). *See* Doc. 366 (Order granting
24 preliminary approval of settlement). Since the parties are familiar with the
25 background of this case, the Court confines its discussion to the facts relevant to the
26 instant Motion for Attorneys' Fees, Reimbursement of Expenses, and Incentive

27 _____
28 ¹ During the pendency of this case, Class Counsel Schlichter Bogard & Denton
LLP changed its name to Schlichter Bogard LLP.

1 Awards for Class Representatives.

2 **DISCUSSION**

3 **I. Attorneys’ Fees**

4 It is well established that class counsel is entitled to an award of reasonable
5 fees and reimbursement of litigation expenses from the common fund they created
6 for the benefit of a class. Fed. R. Civ. P. 23(h); *Staton v. Boeing Co.*, 327 F.3d 938,
7 967 (9th Cir. 2003) (“Under the ‘common fund doctrine’, ‘a litigant or a lawyer who
8 recovers a common fund for the benefit of persons other than himself or his client is
9 entitled to a reasonable attorney’s fee from the fund as a whole.’”) (*quoting Boeing*
10 *Co. v. Van Gemert*, 444 U.S. 472, 478 (1980)). The purpose of the “common fund”
11 doctrine is to ensure “that those class members who benefit from the lawsuit at no
12 cost to themselves are not unjustly enriched at the lawyers’ expense.” *AdTrader,*
13 *Inc. v. Google LLC*, 7 F.4th 803, 808 (9th Cir. 2021).

14 The Court may use the percentage-of-the-fund method to determine a
15 reasonable attorney fee. *In re Apple Inc. Device Performance Litig.*, 50 F.4th 769,
16 784 (9th Cir. 2022); *Stetson v. Grissom*, 821 F.3d 1157, 1165 (9th Cir. 2016).
17 Although the Ninth Circuit has established 25% as the benchmark attorney fee in
18 common fund cases, that benchmark is “a starting point for analysis” because it
19 “may be inappropriate in some cases.” *Vizcaino v. Microsoft Corp.*, 290 F.3d 1043,
20 1048 (9th Cir. 2002); *Apple*, 50 F.4th at 784. Courts frequently award one-third fees
21 of settlements of similar and larger amounts than the settlement here. *See, e.g.,*
22 *Marshall v. Northrop Grumman Corp.*, No. 16-6794-AB, 2020 U.S. Dist. LEXIS
23 177056, at *25 (Sep. 18, 2020) (*quoting Waldbuesser v. Northrop Grumman Corp.*
24 *(In re Northrop Grumman Corp. ERISA Litig.)*, No. 06-6213, 2017 U.S. Dist.
25 LEXIS 223293, at *17 (C.D. Cal. Oct. 24, 2017) (“*Northrop*”).)); *Cates v. Trs. of*
26 *Columbia Univ.*, No. 16-6524, 2021 U.S. Dist. LEXIS 200890, at *18–19
27 (S.D.N.Y. Oct. 18, 2021).

28

1 The factors considered in adjusting the benchmark percentage include the
2 result obtained for the class, the effort expended by counsel, counsel’s skill and
3 experience, the complexity of the issues, the risk of non-payment assumed by
4 counsel, the reaction of the class, and comparison with counsel’s lodestar. *Marshall*
5 *v. Northrop Grumman Corp.*, No. 16-6794-AB, 2020 U.S. Dist. LEXIS 177056, at
6 *6–7 (Sep. 18, 2020) (quoting *Waldbuesser v. Northrop Grumman Corp. (In re*
7 *Northrop Grumman Corp. ERISA Litig.)*, No. 06-6213, 2017 U.S. Dist. LEXIS
8 223293, at *6 (C.D. Cal. Oct. 24, 2017) (“*Northrop*”).

9 **A. The exceptional result obtained for the Class**

10 The result achieved by Class Counsel is a major factor to be considered in
11 making a fee award. *Estakhrian v. Obenstine*, No. 11-3480-FMO, 2019 U.S. Dist.
12 LEXIS 112828, at *8 (C.D. Cal. July 8, 2019) (quoting *In re Heritage Bond Litig.*,
13 No. 02-1475-DT, 2005 U.S. Dist. LEXIS 13555, at *62 (C.D. Cal. June 10, 2005)).
14 The Court finds that the \$13.05 million settlement fund obtained by Schlichter
15 Bogard is an exceptional result for the Class that was obtained only on the eve of
16 trial and after continuous and sustained effort. The Class faced a substantial risk of
17 recovering far less or nothing at trial and many more years of appeals and possible
18 further litigation without the assurance of obtaining a better result. Accordingly, the
19 Court concludes that the exceptional result achieved in this action weighs in favor
20 of an award of one-third of the settlement fund.

21 **B. The effort expended by Schlichter Bogard**

22 Class Counsel expended tremendous effort on behalf of the Class in
23 prosecuting this action. Schlichter Bogard devoted over 14,600 hours of attorney,
24 paralegal, and law clerk time over the six years this action has been pending. Wolff
25 Declaration ¶¶13–18. As the docket shows, this litigation was extensive. Class
26 Counsel commenced this lawsuit on August 17, 2016 (Doc. 1) and successfully
27 defended the Defendants’ appeal of this Court’s order denying Defendants’ motion
28

1 to compel arbitration, establishing an important precedent for the Class and all
2 ERISA plan participants. Docs. 47, 55; *Munro v. USC*, 896 F.3d 1088 (9th Cir.
3 2018). Class Counsel successfully moved for class certification over Defendants’
4 opposition. Docs. 150, 180, 200, 202. Class Counsel engaged in extensive discovery,
5 including the review of more than two million pages of documents, taking eleven
6 depositions and defending thirteen depositions. Class Counsel engaged in extensive
7 preparation for trial and filed extensive documentation, including a comprehensive
8 exhibit list (Doc. 336) and witness list (Doc. 335), a memorandum of Plaintiffs’
9 claims and contentions of fact and law (Doc. 334), and a comprehensive proposed
10 findings of fact and conclusions of law (Doc. 348-1), among other documents.

11 This great effort exerted on behalf of the Class in litigating this action, this
12 factor weighs in favor of an award of one-third of the settlement fund.

13 **C. Schlichter Bogard’s extensive and unique experience in this**
14 **field**

15 The experience of class counsel is relevant in determining the appropriate
16 attorney fee award. *Lalli v. First Team Real Estate—Orange Cnty.*, No. 20-27-
17 JWH, 2022 U.S. Dist. LEXIS 161756, at *31 (C.D. Cal. Sept. 6, 2022). A one-third
18 fee is appropriate where “[c]ounsel litigated effectively, and their experience was
19 essential for obtaining the result.” *Boyd v. Bank of Am. Corp.*, No. 13-561-DOC,
20 2014 U.S. Dist. LEXIS 162880, at *27 (C.D. Cal. Nov. 18, 2014).

21 Schlichter Bogard is exceptionally skilled, having achieved unparalleled
22 success in actually pioneering complex ERISA fiduciary breach litigation. As this
23 District has recognized, Class Counsel is “exceptionally skilled,” *Marshall*, 2020
24 U.S. Dist. LEXIS 177056, at *11, and “highly experienced in representing plaintiffs
25 in class action litigation, particularly ERISA class actions,” *Northrop*, 2017 U.S.
26 Dist. LEXIS 223293, at *10–11. “Class Counsel is a recognized leader in ERISA
27 excessive fee litigation, having pioneered the field.” *Ford v. Takeda Pharms.*
28

1 *U.S.A., Inc.*, No. 21-10090, 2023 U.S. Dist. LEXIS 93286, at *4 (D. Mass. Mar. 31,
2 2023). Courts consistently have recognized Schlichter Bogard’s extensive and
3 unique experience in this field. *Cates*, 2021 U.S. Dist. LEXIS 200890, at *13–14
4 (S.D.N.Y. Oct. 18, 2021) (“Class Counsel is the ‘preeminent firm’ in excessive fee
5 litigation”) (quoting *Nolte v. Cigna Corp.*, No. 07-2046, 2013 U.S. Dist. LEXIS
6 184622, at *8 (C.D. Ill. Oct. 15, 2013)); *Sweda v. Univ. of Pa.*, No. 16-43294329,
7 2021 U.S. Dist. LEXIS 121336, at *10 (E.D. Pa. June 28, 2021) (noting “counsel’s
8 substantial experience in this field”); *Pledger v. Reliance Trust Co.*, No. 15-4444,
9 2021 U.S. Dist. LEXIS 105868, at *21 (N.D. Ga. Mar. 8, 2021) (“Class Counsel are
10 highly experienced and recognized experts in ERISA litigation”) (collecting cases);
11 *Kelly v. Johns Hopkins Univ.*, No. 16-2835, 2020 U.S. Dist. LEXIS 14772, at *9–
12 10 (D. Md. Jan. 28, 2020) (Class Counsel “highest caliber”); *Beesley v. Int’l Paper*
13 *Co.*, No. 06-703, 2014 WL 375432, at *2 (S.D. Ill. Jan. 31, 2014) (the firm’s
14 diligence and perseverance “reflect the finest attributes of a private attorney
15 general”).

16 In creating the field of 401(k) excessive fee litigation, when neither the
17 Department of Labor nor any private law firm had ever filed such a case, Schlichter
18 Bogard functioned as a private attorney general. The firm handled the first ever trial
19 of such a case. It also successfully petitioned the United States Supreme Court to
20 hear its first ERISA fiduciary breach case regarding excessive fees in 401(k) plans,
21 and obtained a unanimous 9-0 decision holding that an ERISA fiduciary has a
22 continuing duty to monitor plan investments and remove imprudent ones. *Tibble v.*
23 *Edison Int’l*, 575 U.S. 523 (2015). Later, it petitioned the Supreme Court to hear a
24 403(b) excessive fee case, and again obtained a unanimous decision, holding that
25 the presence of prudent options in a plan is not enough to excuse a fiduciary breach;
26 plan sponsors must monitor each fund and remove imprudent options. *Hughes v.*
27 *Northwestern Univ.*, 142 S. Ct. 737 (2022). These remain to this day the only two
28

1 ERISA excessive fees cases the Supreme Court has heard.

2 Schlichter Bogard also has “educated plan administrators, the Department of
3 Labor, the courts and retirement plan participants” about this complex area of the
4 law. *Tussey v. ABB, Inc.*, No. 06-4305, 2015 U.S. Dist. LEXIS 164818, at *7–8
5 (W.D. Mo. Dec. 9, 2015), *vacated, remanded on other grounds*, 850 F.3d 951 (8th
6 Cir. 2017). Their efforts have contributed to fee savings achieved by employees and
7 retirees in excess of \$2 billion. *Nolte*, 2013 U.S. Dist. LEXIS 184622, at *15–16
8 (C.D. Ill Oct. 15, 2013). The firm has had a “humongous” impact on 401(k) fees.
9 Linda Stern, *Stern Advice: How 401(k) Lawsuits Are Bolstering Your Retirement*
10 *Plan*, REUTERS (Nov. 5, 2013).

11 Schlichter Bogard’s extensive experience and expertise in ERISA fiduciary
12 breach litigation has greatly benefited Class members in obtaining the settlement in
13 this case. They had to litigate against nationally recognized and experienced
14 attorneys for the Defendants, who had vast resources. *See In re Am. Apparel*
15 *Shareholder Litig.*, No. 10-6352-MMM, 2014 U.S. Dist. LEXIS 184548, at *72
16 (C.D. Cal. July 28, 2014) (“the court should also consider the quality of opposing
17 counsel as a measure of the skill required to litigate the case successfully”).
18 Schlichter Bogard’s specialized and vast experience representing plaintiffs in
19 ERISA class actions was beneficial to the Class in obtaining this settlement. That
20 weighs in favor of a one-third fee.

21 **D. Schlichter Bogard’s skill and the complexity of this case**

22 “Courts have recognized that the novelty, difficulty and complexity of the
23 issues involved are significant factors in determining a fee award.” *Heritage*, 2005
24 U.S. Dist. LEXIS 13555, at *66 (*citing Johnson v. Georgia Highway Express, Inc.*,
25 488 F.2d 714, 718 (5th Cir. 1974)). “ERISA 401(k) fiduciary breach class actions
26 involve complex questions of law and have not been widely litigated to this point.”
27 *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *14 (quoting *Northrop*, 2017 U.S.
28

1 Dist. LEXIS 223294, at *12). These cases “require[] highly skilled counsel who
2 could understand the complexity of the law and adapt case law accordingly.”
3 *Downey Surgical Clinic, Inc. v. OptumInsight, Inc.*, No. 09-5457-PSG, 2016 U.S.
4 Dist. LEXIS 145000, at *31 (C.D. Cal. May 16, 2016).

5 This case involved complex issues under ERISA that few law firms are
6 capable of handling successfully. Schlichter Bogard’s specialized experience and
7 knowledge was critical to the successful conclusion of this case. These factors
8 weighs in favor of a one-third fee.

9 **E. The financial risks assumed by Schlichter Bogard**

10 The risks assumed by class counsel, “particularly the risk of non-payment or
11 reimbursement of expenses, is a factor in determining counsel’s proper fee award.”
12 *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *15 (quoting *Northrop*, 2017 U.S.
13 Dist. LEXIS 223293, at *12). These risks must be considered. *Vizcaino*, 290 F.3d at
14 1048. “Contingent fees that may far exceed the market value of the services if
15 rendered on a non-contingent basis are accepted in the legal profession as a
16 legitimate way of assuring competent representation for plaintiffs who could not
17 afford to pay on an hourly basis regardless whether they win or lose.” *In re Wash.*
18 *Pub. Power Supply Sys. Secs. Litig. (“WPPSS”)*, 19 F.3d 1291, 1299 (9th Cir.
19 1994). The risk of non-payment after years of hard-fought litigation “weighs
20 substantially in favor” of a one-third fee. *Campbell v. Best Buy Stores, L.P.*, No. 12-
21 7794-JAK, 2016 U.S. Dist. LEXIS 184851, at *20 (C.D. Cal. Apr. 5, 2016). A one-
22 third fee in this case does not even exceed the market value of the services if they
23 were rendered on a non-contingent basis.

24 “Courts have long recognized that the attorneys’ contingent risk is an
25 important factor in determining the fee award and may justify awarding a *premium*
26 over an attorney’s normal hourly rates.” *Perez v. DIRECTV Grp. Holdings, LLC*,
27 No. 16-1440-JLS, 2023 U.S. Dist. LEXIS 13920, at *26 (C.D. Cal. Jan. 23, 2023)
28

1 (emphasis added, quoting *Monterrubio v. Best Buy Stores, L.P.*, 291 F.R.D. 443,
2 457 (E.D. Cal. 2013)). Here, awarding Class Counsel a one-third fee is not a
3 premium over an hourly rate, it is less than Class Counsel would have received at
4 an hourly rate.

5 Schlichter Bogard assumed great financial risk by litigating this complex
6 action for years. The firm represented Plaintiffs completely on a contingency basis
7 and carried substantial litigation costs of more than \$1 million. It invested
8 thousands of attorney and staff hours in the case with no guarantee that it would be
9 compensated for their time or reimbursed for the expenses it incurred.

10 These financial risks were compounded by the fact that recovery was
11 uncertain. Several of the ERISA excessive fee cases filed by the firm were
12 dismissed and the dismissals were upheld by Courts of Appeal. *See, e.g., Divane v.*
13 *Northwestern Univ.*, No. 16-8157, 2018 U.S. Dist. LEXIS 87645 (N.D. Ill. May 25,
14 2018), *affirmed*, 953 F.3d 980 (7th Cir. 2020); *Loomis v. Exelon Corp.*, 658 F.3d
15 667 (7th Cir. 2011); *Renfro v. Unisys Corp.*, 671 F.3d 314 (3d Cir. 2011); *Hecker v.*
16 *Deere & Co.*, 556 F.3d 575 (7th Cir. 2009). In other cases, district courts granted
17 summary judgment against the plaintiffs in whole or part. *Cunningham v. Cornell*
18 *Univ.*, No. 16-6525, 2019 U.S. Dist. LEXIS 167868 (S.D. N.Y. Sep. 27, 2019);
19 *Tibble v. Edison Int'l*, 639 F. Supp. 2d 1074 (C.D. Cal. 2009), *aff'd*, 729 F.3d 1110
20 (9th Cir. 2013), *vacated*, 135 S. Ct. 1823 (2015), *aff'd on remand*, 820 F.3d 1041
21 (9th Cir. 2016); *George v. Kraft Foods Global, Inc.*, 684 F. Supp. 2d 992 (N.D. Ill.
22 2010), *rev'd in part*, 641 F.3d 786 (7th Cir. 2011); *Taylor v. United Techs. Corp.*,
23 No. 06-3194, 2009 U.S. Dist. LEXIS 19059 (D. Conn. Mar. 3, 2009), *aff'd*, 354
24 Fed. App'x 525 (2d Cir. 2009); *Kanawi v. Bechtel Corp.*, 590 F. Supp. 2d 1213
25 (N.D. Cal. 2008).

26 Even though Plaintiffs proceeded to trial, “trials of class actions are
27 inherently risky and unpredictable propositions.” *Cervantez v. Celestica Corp.*, No.
28

1 07-729-VAP, 2010 U.S. Dist. LEXIS 78342, at *10 (C.D. Cal. July 6, 2010). The
2 settlement in this case also was not easily obtained. It only occurred after years of
3 litigation, two unsuccessful mediations, and on the eve of trial.

4 The great risk assumed by Schlichter Bogard weighs in favor of an award of
5 one third of the settlement fund in attorney fees.

6 **F. The reaction of the Class**

7 “The presence or absence of objections from the class is also a factor in
8 determining the proper fee award.” *Marshall*, 2020 U.S. Dist. LEXIS 177056, at
9 *17 (quoting *Northrop*, 2017 U.S. Dist. LEXIS 223293, at *13). The Class
10 members received due notice of Class Counsel’s fee request, including the Motion
11 itself. No Class member has objected. Moreover, the Independent Fiduciary hired
12 by Defendants has reviewed and approved the Settlement Agreement on behalf of
13 the Plans. The lack of objection weighs in favor of the fee award.

14 **G. Lodestar comparison**

15 A lodestar cross-check is used to determine the reasonableness of percentage
16 fee award. *In re Online DVD-Rental Antitrust Litig.*, 779 F.3d 934, 949 (9th Cir.
17 2015). The lodestar calculation “measures the lawyers’ investment of time in the
18 litigation” and “provides a check on the reasonableness of the percentage award.”
19 *Vizcaino*, 290 F.3d at 1050. To calculate an attorney fee using the lodestar method,
20 the district court “begins with the multiplication of the number of hours reasonably
21 expended by a reasonable hourly rate” and “may then adjust the resulting figure
22 upward or downward to account for various factors[.]” *In re Hyundai & Kia Fuel*
23 *Econ. Litig.*, 926 F.3d 539, 570 (9th Cir. 2019) (quoting *Hanlon v. Chrysler Corp.*,
24 150 F.3d 1011, 1029 (9th Cir. 1998)). The district court must use “current rates for
25 all work done during the litigation” or “historical rates enhanced by an interest
26 factor” to arrive at fair and reasonable compensation for Class Counsel. *WPPS*, 19
27 F.3d at 1305. Historic rates alone “inadequately compensate the firm for the delay
28

1 in receiving its fees.” *Id.* As such, “[a]ttorneys in common fund cases must be
2 compensated for any delay in payment[.]” *Stanger v. China Elec. Motor, Inc.*, 812
3 F.3d 734, 740 (9th Cir. 2016) (quoting *Fischel v. Equitable Life Assur. Soc’y of*
4 *U.S.*, 307 F.3d 997, 1010 (9th Cir. 2002)).

5 Complex ERISA cases, such as this, “involve a national standard and
6 attorneys practicing ERISA law in the Ninth Circuit tend to practice in different
7 districts.” *Low-Iacovino v. Ben. Plan. Comm. of the Nonbargained Program*, No.
8 16-6614-AB, 2018 U.S. Dist. LEXIS 226998, at *5 n.2 (C.D. Cal. July 2, 2018)
9 (quoting *Mogck v. Unum Life Ins. Co. of Am.*, 289 F. Supp. 1181, 1191 (S.D. Cal.
10 2003)). As other district courts have concluded, the Court finds that the relevant
11 hourly rate for Class Counsel’s work is the “nationwide market rate.” *Marshall*,
12 2020 U.S. Dist. LEXIS 177056, at *19 (citing cases); *Cates*, 2021 U.S. Dist. LEXIS
13 200890, at *8 (citing cases). ERISA is a field in which top attorneys command top
14 rates, as heightened skill and labor are “required to adequately address complex
15 issues of ERISA law[.]” *Norris v. Mazzola*, No. 15-4962, 2017 U.S. Dist. LEXIS
16 208610, at *39 (N.D. Cal. Dec. 19, 2017) (quoting *Downey*, 2016 U.S. Dist. LEXIS
17 145000, at *31).

18 The United States District Court for the District of Massachusetts recently
19 concluded, based on the declaration of a recognized national expert in attorney fee
20 litigation (Sanford J. Rosen), that the appropriate hourly rates for the work of
21 Schlichter Bogard in ERISA fiduciary breach litigation such as this are \$1,370 for
22 attorneys with at least 25 years of experience, \$1,165 for attorneys with 15–24
23 years of experience, \$840 for attorneys with 5–14 years of experience, \$635 for
24 attorneys with 0–4 years of experience, and \$425 for paralegals and law clerks.
25 *Ford*, 2023 U.S. Dist. LEXIS 93286, at *6–7. “In light of the close similarities
26 between the fiduciary breach claims in these cases and this one, Class Counsel
27 being the same, and the recency of the decisions,” the Court concludes that the
28

1 same rates are reasonable for Schlichter Bogard’s work in this case. *See Kelly*, 2020
2 U.S. Dist. LEXIS 14772, at *19–20.

3 Class Counsel expended 13,285 attorney hours and 1,393 staff hours litigating
4 this case. Wolff Decl. ¶13. Given the contentious six-year litigation of this case, the
5 time and labor expended is consistent with other ERISA fiduciary breach class
6 actions handled by Class Counsel. *See, e.g., Cates*, 2021 U.S. Dist. LEXIS 200890,
7 at *8 (13,188 attorney hours and 2,288 non-attorney hours); *Pledger*, 2021 U.S.
8 Dist. LEXIS 105868, at *19–20 (18,000 hours); *Marshall*, 2020 U.S. Dist. LEXIS
9 177056, at *19 (7,497 attorney hours and 1,118 non-attorney hours).

10 Using the current approved rates for Schlichter Bogard, the lodestar is
11 \$13,713,525. Wolff Decl. ¶¶13–15. Class Counsel’s requested one-third fee is only
12 32% of the lodestar (0.32). *Id.* ¶16. That pales in comparison to the “most common”
13 lodestar multipliers of 1.5–3 approved in the Ninth Circuit. *Campos v. Converse*,
14 *Inc.*, No. 20-1576-JGB, 2022 U.S. Dist. LEXIS 147715, at *15 (C.D. Cal. Aug. 15,
15 2022). A multiplier below 1 indicates the fee award “is a reasonable and fair
16 valuation of the services rendered to the class by class counsel.” *Jiangchen v.*
17 *Rentech, Inc.*, No. 17-1490-GW, 2019 U.S. Dist. LEXIS 180474, at *34 (C.D. Cal.
18 Oct. 10, 2019) (citation omitted).

19 Because Schlichter Bogard is requesting less than its lodestar and without a
20 risk multiplier at all, the Court finds that the fee request for one-third of the
21 common fund is reasonable.

22 **H. Comparison to Fee Awards in Similar Class Action Settlements**

23 Courts look to fee awards in similar cases to guide the determination of a
24 reasonable fee. *Vizcaino*, 290 F.3d at 1049–50. This District has awarded Class
25 Counsel a one-third fee from the common fund in similar cases. *See, e.g., Marshall*,
26 2020 U.S. Dist. LEXIS 177056, at *25; *Northrop*, 2017 U.S. Dist. LEXIS 223293,
27 at *17. Class Counsel has received a one-third fee in 22 other settlements of similar
28

1 ERISA fiduciary breach cases. Schlichter Decl. ¶40. This District has awarded a
2 one-third fee also on larger settlements. *Heritage*, 2005 U.S. Dist. LEXIS 13555, at
3 *63 (one-third fee from \$27,783,000 settlement). The Ninth Circuit Court of
4 Appeals has approved one-third fee awards. *In re Pac. Enters. Sec. Litig.*, 47 F.3d
5 373, 379 (9th Cir. 1995); *Morris v. Lifescan, Inc.*, 54 Fed. App'x 663, 664 (9th Cir.
6 2003).

7 A one-third fee is recognized as average in class actions. *Romero v.*
8 *Producers Dairy Foods, Inc.*, No. 05-484, 2007 U.S. Dist. LEXIS 86270, at *10
9 (E.D. Cal. Nov. 13, 2007) (quoting 4 Newberg & Conte, *Newberg on Class Actions*
10 §14.6 (4th ed. 2007)); *Boyd*, 2014 U.S. Dist. LEXIS 162880, at *29 (“an award of
11 one third is within the range of percentages which courts have considered
12 reasonable...”); *Multi-Ethnic Immigrant Workers Org. Network v. City of Los*
13 *Angeles*, No. 07-3072-AHM, 2009 U.S. Dist. LEXIS 132269, at *10 (C.D. Cal.
14 June 24, 2009) (“Nationally, the average percentage of the fund award in class
15 actions is approximately one-third.”). It is the standard fee award in ERISA
16 fiduciary breach settlements. *Cates*, 2021 U.S. Dist. LEXIS 200890, at *18–19
17 (one-third fee is the market rate in these cases).

18 One-third of the settlement fund of \$13,050,000 is a reasonable percentage
19 award. The Court awards Schlichter Bogard \$4,350,000 from the Gross Settlement
20 Amount and directs the Settlement Administrator to pay that amount to Schlichter
21 Bogard.

22 **II. Reimbursement of Schlichter Bogard's expenses**

23 Class Counsel efficiently litigated this case for six years, and, as such, the
24 Court should reimburse Class Counsel's litigation expenses as authorized by law
25 and the Settlement Agreement. Fed. R. Civ. P. 23(h); Doc. 362-1 at 2, 20. “There is
26 no doubt that an attorney who has created a common fund for the benefit of the
27 class is entitled to reimbursement of reasonable litigation expenses from that fund.”
28

1 *Kane v. Smithfield Direct, LLC*, No. 21-4832-PA, 2022 U.S. Dist. LEXIS 129774,
2 at *10–11 (C.D. Cal. July 20, 2022) (quoting *Ontiveros v. Zamora*, 303 F.R.D. 356,
3 375 (E.D. Cal. 2014)). “The appropriate analysis in deciding which expenses are
4 compensable is whether the particular costs are of the type typically billed by
5 attorneys to paying clients in the marketplace.” *Dorsette v. TA Operating LLC*, No.
6 9-1350-PA, 2010 U.S. Dist. LEXIS 153467, at *21 (C.D. Cal. July 26, 2010) (citing
7 *Harris v. Marhoefer*, 24 F.3d 16, 19 (9th Cir. 1994)). Consulting and expert witness
8 fees along with costs associated with “travel, meals, lodging, photocopying, long-
9 distance telephone calls, computer legal research, postage, courier service,
10 mediation, exhibits, documents scanning, and visual equipment are typically
11 recoverable” expenses. *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *25–26.

12 Class Counsel incurred \$1,184,891 in litigation expenses. Wolff Decl. ¶¶19–
13 28. That is less than the \$1,500,000 allowed for in the Settlement Agreement (Doc.
14 362-1 §7.1), which the Plans’ Independent Fiduciary has reviewed and approved. In
15 addition, after due notice, no Class member has objected to this reimbursement.

16 The complexity and magnitude of this case necessarily required Class
17 Counsel to incur substantial costs and the costs and expenses incurred by Class
18 Counsel are routinely reimbursed by fee-paying clients. *See Dorsette*, 2010 U.S.
19 Dist. LEXIS 153467, at *21. Class Counsel’s expenses are justified given this
20 case’s six-year history and are in line with the expenses reimbursed in similar
21 fiduciary breach actions, which underscores their reasonableness. *See, e.g., Tussey*,
22 2019 U.S. Dist. LEXIS 138880, at *14–17 (over \$2.2 million); *Northrop*, 2017 U.S.
23 Dist. LEXIS 223293, at *18–19 (over \$1.1 million); *Spano*, 2016 U.S. Dist. LEXIS
24 161078, at *14 (over \$1.8 million); *Abbott v. Lockheed Martin Corp.*, No. 06-701,
25 2015 U.S. Dist. LEXIS 93206, at *15 (S.D. Ill. July 17, 2015) (over \$1.6 million);
26 *Beesley*, 2014 U.S. Dist. LEXIS 12037, at *15 (over \$1.5 million).

27 Because all of these factors weigh in favor of the request, the Court awards
28

1 Schlichter Bogard \$1,184,891 from the Gross Settlement Amount as reimbursement
2 of its expenses and directs the Settlement Administrator to pay that amount to
3 Schlichter Bogard.

4 **III. Incentive Awards**

5 The Ninth Circuit has repeatedly held that reasonable incentive awards to
6 class representatives are permitted. *Apple*, 50 F.4th at 785 (citing cases). In
7 evaluating the propriety of an incentive award, the Court considers, “among other
8 factors”, “the actions the plaintiff has taken to protect the interests of the class, the
9 degree to which the class has benefitted from those actions, the amount of time and
10 effort the plaintiff expended in pursuing the litigation, and any financial or
11 reputational risks the plaintiff faced.” *Id.* at 786 (quotation marks and citations
12 omitted). “It is well established that the court may grant incentive awards to class
13 representatives, ‘both as an inducement to participate in the suit and as
14 compensation for time spent in litigation activities, including depositions.’”
15 *Marshall*, 2020 U.S. Dist. LEXIS 177056, at *27 (quoting *Northrop*, 2017 U.S.
16 Dist. LEXIS 223293, at *19–20); *In re Mego Fin. Corp. Sec. Litig.*, 213 F.3d 454,
17 463 (9th Cir. 2000)). These awards are “fairly typical in class actions.” *Online*
18 *DVD-Rental*, 779 F.3d at 943 (citation omitted).

19 Having class representatives who were willing to pursue these claims through
20 six years of litigation and prepare for trial was indispensable to achieving the
21 settlement for the class. The Class Representatives dedicated their time and energy
22 to this case for over six years and undertook the risk of retaliation from the
23 Defendants and alienation of their coworkers, as shown by the declarations they
24 have submitted. “ERISA litigation against an employee’s current or former
25 employer carries unique risks and fortitude, including alienation from employers or
26 peers.” *Beesley*, 2014 U.S. Dist. LEXIS 12037, at *13–14; *Cates*, 2021 U.S. Dist.
27 LEXIS 200890, at *22 (recognizing that the plaintiffs in a similar ERISA action
28

1 “risked their reputations and alienation from employers in bringing an action
2 against a prominent [university] in their community”) (citation and internal
3 quotation marks omitted); *see Roes v. SFBSC Mgmt., LLC*, 944 F.3d 1035, 1057
4 (9th Cir. 2019) (reasonable fears of workplace retaliation factor into the
5 reasonableness of an incentive award).

6 The Class Representatives also faced significant financial risks. Because
7 ERISA is a fee-shifting statute, the Class Representatives faced the risk of a
8 judgment and personal liability for Defendants’ attorneys’ fees if they lost at trial.
9 29 U.S.C. §1132(g)(1). As shown by the lodestar for Class Counsel’s fee, that
10 personal liability could have exceeded \$12 million. In *Tussey*, the defendants had
11 \$42 million in attorney fees. 2015 U.S. Dist. LEXIS 164818, at *21. They also
12 could have been personally liable for Defendants’ costs. Fed. R. Civ. P. 54(d).
13 Those costs would have been large. Class Counsel’s expenses exceed \$1 million.

14 Courts in this and other districts routinely approve the same incentive awards in
15 other ERISA fiduciary breach class actions litigated by Class Counsel. *Marshall*,
16 2020 U.S. Dist. LEXIS 177056, at *31 (citing cases); *Cates*, 2021 U.S. Dist. LEXIS
17 200890, at *23; *Pledger*, 2021 U.S. Dist. LEXIS 105868, at *18; *Sweda*, 2021 U.S.
18 Dist. LEXIS 239990, at *24; *Cassell v. Vanderbilt Univ.*, No. 16-2086, 2019 U.S.
19 Dist. LEXIS 242062, at *13 (M.D. Tenn. Oct. 22, 2019); *Tussey*, 2019 U.S. Dist.
20 LEXIS 138880, at *17–18; *Clark v. Duke Univ.*, No. 16-1044, 2019 U.S. Dist.
21 LEXIS 105696, at *15–16 (M.D. N.C. June 24, 2019); *Kruger v. Novant Health,*
22 *Inc.*, No. 14-208, 2016 U.S. Dist. LEXIS 193107, at *18 (M.D. N.C. Sept. 29,
23 2016); *Spano*, 2016 U.S. Dist. LEXIS 161078, at *13; *Abbott*, 2015 U.S. Dist.
24 LEXIS 93206, at *14; *Krueger v. Ameriprise Fin., Inc.*, No. 11-2781, 2015 U.S.
25 Dist. LEXIS 91385, at *11 (D. Minn. July 13, 2015); *Beesley*, 2014 U.S. Dist.
26 LEXIS 12037, at *14–15; *Nolte*, 2013 U.S. Dist. LEXIS 184622, at *15–16.

27 District courts in this Circuit have approved similar, and higher, incentive
28

1 awards in other cases. *Carlin v. DairyAmerica, Inc.*, 380 F. Supp. 3d 998, 1026
2 (E.D. Cal. 2019), *vacated on other grounds*, No. 09-430, 2022 U.S. Dist. LEXIS
3 27601 (E.D. Cal. 2019) (\$45,000); *Pan v. Qualcomm Inc.*, No. 16-1885, 2017 U.S.
4 Dist. LEXIS 120150, at *43 (S.D. Cal. July 31, 2017) (\$50,000); *Nitsch v.*
5 *DreamWorks Animation SKG Inc.*, No. 14-4062, 2017 U.S. Dist. LEXIS 86124, at
6 *52 (N.D. Cal. June 5, 2017) (\$90,000); *Trujillo v. City of Ontario*, No. 04-1015-
7 VAP, 2009 U.S. Dist. LEXIS 79309, at *13 (C.D. Cal. Aug. 24, 2009) (\$30,000).

8 In addition to these factors, after due notice, no Class member has objected to
9 these awards and the Plans' Independent Fiduciary has approved and authorized the
10 Settlement Agreement that includes the provision for these awards.

11 All of these factors favor the requested incentive awards. The Court awards
12 \$25,000 each to Allen Munro, Daniel C. Wheeler, Jane A. Singleton, Sarah
13 Wohlgemuth, Rebecca Snyder, Dion Dickman, Corey Clark, and Steven L. Olson
14 from the Gross Settlement Amount and directs the Settlement Administrator to pay
15 that amount to those individuals.

16 CONCLUSION

17 For the foregoing reasons, the Court **GRANTS** Plaintiffs' Motion for
18 Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards to Class
19 Representatives. It awards Schlichter Bogard \$4,350,000 in attorney fees and
20 \$1,184,891 in expenses, and each Class representative an incentive award of
21 \$25,000.

22
23 **IT IS SO ORDERED.**

24 DATED: _____, 2023

25
26 _____
27 Virginia A. Phillips
28 United States District Court Judge