IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

ELIJAH CARIMBOCAS, LINDA DLHOPOLSKY, and MORGAN GRANT, on behalf of themselves and others similarly situated, *Plaintiffs*, v. TTEC SERVICES CORPORATION, et al., *Defendants*.	Case No. 1:22-cv-02188-CNS-STV Hon. Charlotte N. Sweeney Magistrate Judge Scott T. Varholak

PLAINTIFFS' UNOPPOSED MOTION FOR AN AWARD OF ATTORNEYS' FEES, REIMBURSEMENT OF EXPENSES, AND CASE CONTRIBUTION AWARDS FOR SETTLEMENT CLASS REPRESENTATIVES

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INTRODUCTION

Plaintiffs Elijah Carimbocas, Linda Dlhopolsky, and Morgan Grant, participants in the TTEC 401(k) Profit Sharing Plan (the "Plan"), commenced this action against Defendants on August 25, 2022 with the filing of the Class Action Complaint (ECF No. 1), followed by an Amended Class Action Complaint (ECF No. 35), and Second Amended Class Action Complaint (ECF No. 65) ("Complaint"). The Complaint alleges that Defendants breached their fiduciary duties under the Employee Retirement Income Security Act of 1974 ("ERISA") by failing to prudently manage the Plan. Defendants dispute Plaintiffs' allegations, maintain that the Plan has been prudently managed throughout the relevant period, and deny liability for the alleged ERISA violations.

After extensive litigation spanning nearly three years, including substantial discovery, motion practice, and arms' length negotiations, the parties reached a settlement in which Defendants agreed to pay $750,000.00 into a non-reversionary cash common fund for the benefit of Settlement Class members as consideration for a full release of all claims related to the allegations in the Complaint. ECF No. 99-1. On August 26, 2025, the Court preliminarily approved the Settlement; preliminarily certified the Settlement Class; preliminarily appointed Plaintiffs Elijah Carimbocas, Linda Dlhopolsky, and Morgan Grant as Class Representatives; and preliminarily appointed Lieff Cabraser Heimann & Bernstein, LLP as Class Counsel for the Settlement Class. ECF No. 101.

Pursuant to Rule 23(h), Settlement Class Counsel now respectfully seek an award of attorneys' fees in the amount of $250,000, one-third of the common fund. This is the customary fee in contingency-fee cases and is well within the range of fee awards approved in other ERISA class action settlements throughout the country. Moreover,

this amount represents a significant discount from the lodestar Settlement Class Counsel and other Plaintiffs' counsel have expended in prosecuting this litigation, which included 926.2 attorney and staff hours, with a lodestar value of $819,130. Declaration of Douglas M. Werman, ¶ 11, attached hereto as Exhibit 1 ("Werman Decl. ¶ __"); Declaration of Daniel M. Hutchinson ¶ 5, attached hereto as Exhibit 2 ("Hutchinson Decl. ¶ __")The requested amount represents a negative multiplier of approximately 0.3.

Settlement Class Counsel also seek reimbursement of litigation expenses in the amount of $28,498.96. These expenses were reasonably and necessarily incurred to advance this litigation. Settlement Class Counsel also request that, in connection with final approval rather than at this preliminary fee stage, the Court authorize payment of settlement-administration expenses from the Gross Settlement Amount. While the Settlement Administrator has necessarily incurred costs in implementing the notice program and establishing the Qualified Settlement Fund, the full amount of administration costs — including future expenses for distributions and final reporting — will be documented and submitted with Plaintiffs' final approval papers. Consistent with Rule 23(e) practice in common-fund settlements, Settlement Class Counsel will present a detailed accounting at final approval and request authorization for payment of those amounts at that time.

Finally, for their help in prosecuting the case, Settlement Class Counsel request that the Court award the Settlement Class Representatives a Case Contribution Award of $5,000 each.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs commenced this action by filing an initial complaint on August 25, 2022. ECF No. 1. On May 2, 2023, Plaintiffs filed the First Amended Complaint. ECF No. 35.

On June 27, 2023, Plaintiffs served their First Set of Interrogatories and Requests for Production of Documents. Werman Decl. ¶ 4. TTEC engaged in a rolling production totaling approximately 7,256 pages. *Id*.

On December 22, 2023, following the Court's order granting Plaintiffs' motion for leave, Plaintiffs filed the Second Amended Complaint. ECF No. 6. The Second Amended Complaint alleged violations of the fiduciary duty of prudence imposed by ERISA § 404(a), 29 U.S.C. § 1104(a). Defendants moved to dismiss the Second Amended Complaint on February 1, 2024. On September 25, 2024, the Court denied Defendants' motion to dismiss. Werman Decl. ¶ 5.

Following the Court's ruling, the parties engaged in additional discovery in preparation for summary judgment briefing. Werman Decl. ¶ 6. The parties met and conferred regarding Defendants' document production and interrogatory responses. *Id*. Plaintiffs served six deposition notices seeking the depositions of Defendants' Plan committee members, and a third-party subpoena on the Board of Trustees of the Bricklayers and Trowel Trades International Retirement Savings Plan. *Id*. Defendants also served their First Set of Requests for Production of Documents, to which Plaintiffs responded. *Id*. Following this discovery, and pursuant to this Court's Standing Order Regarding Rule 56 Motions, the parties notified the Court of Defendants' intention to file a motion for summary judgment. *See* ECF No. 91.

By the time settlement was reached in April 2025, the parties had conducted substantial document discovery, engaged in third party discovery, Plaintiffs retained an expert witness and obtained a report, and the parties participated in a private mediation.

Werman Decl. ¶ 7. Ultimately, the parties engaged in good faith settlement negotiations that culminated in the agreement announced to the Court on May 14, 2025. *Id*.

On August 26, 2025, the Court preliminarily approved the Settlement, preliminarily certified the Settlement Class, preliminarily appointed Plaintiffs Elijah Carimbocas, Linda Dlhopolsky, and Morgan Grant as Class Representatives, and preliminarily appointed Lieff Cabraser Heimann & Bernstein, LLP as Class Counsel for the Settlement Class.[1] ECF No. 101.

The Settlement provides for the creation of a $750,000 non-reversionary cash common fund for the benefit of Settlement Class members. ECF No. 99-1. Moreover, the Settlement achieves important non-monetary relief by reinforcing the fiduciary standards applicable to Plan management, thereby benefiting current and future Plan participants. *Id.*

ARGUMENT

I. THE FEE AWARD REQUESTED IS REASONABLE AND APPROPRIATE.

The Supreme Court has long recognized that "a litigant or a lawyer who recovers a common fund for the benefit of persons other than himself or his client is entitled to a reasonable attorney's fee from the fund as a whole." *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980). The purpose of this common fund doctrine is to compensate class counsel fairly and adequately for services rendered and to prevent unjust enrichment of persons who benefit from a lawsuit without bearing its cost. *See id*. The Tenth Circuit has explicitly recognized this Court's ability to award attorneys' fees from a common

[1] Plaintiffs' proposed preliminary approval order inadvertently omitted Werman Salas P.C. as Settlement Class Counsel. Plaintiffs intend to correct that error by seeking appointment of Werman Salas P.C. as co-Settlement Class Counsel in connection with their motion for final approval. Werman Decl. ¶ 8.

fund in situations where, as here, the common fund is the result of the attorneys' successful prosecution of the action. *See*, *e.g.*, *Gottlieb v. Barry*, 43 F.3d 474 (10th Cir. 1994); *Voulgaris v. Array Biopharma Inc.*, 2021 WL 6331178, at *11 (D. Colo. Dec. 3, 2021), *aff'd*, 60 F.4th 1259 (10th Cir. 2023). Compensating Class Counsel for the risks they take in bringing these actions is important because "[s]uch actions could not be sustained if Lead Counsel were not to receive remuneration from the settlement fund for their efforts on behalf of the class." *Voulgaris*, 2021 WL 6331178, at *11 (quoting *In re Merrill Lynch Tyco Research Sec. Litig.*, 249 F.R.D. 124, 142 (S.D.N.Y 2008)).

The Tenth Circuit prefers the percentage-of-the-fund ("POF") method for determining an award of attorneys' fees in common fund cases. *See Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 458–59 (10th Cir. 2017); *Rosenbaum v. MacAllister*, 64 F.3d 1439 (10th Cir. 1995) (indicating a "preference for the percentage of the fund method" in common fund cases); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (recognizing the propriety of awarding attorneys' fees in common fund cases on a POF bases, rather than a lodestar basis).

Under the preferred POF method, the Tenth Circuit has instructed district courts to analyze the fee award's reasonableness under the well-known *Johnson* factors. *See id.* at 454–55 (citing *Johnson v. Ga. Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir. 1974)). Under *Johnson*, the court must consider the following twelve factors in analyzing the reasonableness of a fee award: (1) the time and labor required, (2) the novelty and difficulty of the questions presented by the case, (3) the skill requisite to perform the legal service properly, (4) the preclusion of other employment by the

attorneys due to acceptance of the case, (5) the customary fee, (6) whether the fee is fixed or contingent, (7) any time limitations imposed by the client or the circumstances, (8) the amount involved and the results obtained, (9) the experience, reputation, and ability of the attorneys, (10) the "undesirability" of the case, (11) the nature and length of the professional relationship with the client, and (12) awards in similar cases. *Gottlieb*, 43 F.3d at 482 n. 4 (citing *Johnson*, 488 F.2d at 717–19). The weight given to each *Johnson* factor varies from case to case, and each factor may not always apply. *See id*. at 456 (finding that "rarely are all of the *Johnson* factors applicable; this is particularly so in a common fund situation"). A review of the relevant *Johnson* factors demonstrates the reasonableness of Settlement Class Counsel's requested fee award.[2]

A. The "amount involved and the results obtained" support the requested fee award. (*Johnson* Factor 8)

In evaluating the reasonableness of a fee award in a common fund settlement, the eighth *Johnson* factor—the "amount involved and the results obtained"—is given the most weight. *See Brown*, 838 F.2d at 456 (holding that this factor "may be given greater weight when … the trial judge determines that the recovery was highly contingent and that the efforts of counsel were instrumental in realizing recovery on behalf of the class."); Fed. R. Civ. P. 23(h), adv. comm. Note (explaining that for a POF or contingency-based approach to class action fee awards, "results achieved is the basic starting point").

[2] Two *Johnson* factors—time limitations imposed by the client or circumstances (Factor 7) and nature and length of the professional relationship with the client (Factor 11)—"are of no or nominal importance in this class action, percentage-of-the-fund fee award." *In re EpiPen Mktg., Sales Pracs. & Antitrust Litig.*, 2022 WL 2663873, at *6 (D. Kan. July 11, 2022)

Here, the Settlement provides for the creation of a $750,000 non-reversionary cash common fund for the benefit of Settlement Class members. This is an outstanding result in light of the likelihood of further lengthy, and expensive, litigation and the risk that Settlement Class members would recover less—or possibly nothing at all—if the case were litigated through trial and appeal. *In re Sprint Corp. ERISA Litig.*, 443 F. Supp. 2d 1249, 1261 (D. Kan. 2006).

When viewed through this lens, the Settlement achieves an excellent recovery. This case involves a mid-sized defined contribution plan, and comparable ERISA fiduciary-breach settlements involving similar plan sizes routinely fall in the several-hundred-thousand-dollar to low-seven-figure range. The $750,000 cash recovery falls within the range of recoveries approved in similar risk-adjusted settlements nationwide.[3]

Moreover, Plaintiffs' ability to defeat Defendants' motion to dismiss was itself a meaningful litigation achievement that materially strengthened the Settlement Class's bargaining position. Courts regularly dismiss ERISA duty-of-prudence cases at the pleading stage where plaintiffs cannot plausibly allege an imprudence theory or adequate comparators. Overcoming that hurdle ensured that the case proceeded to meaningful discovery, expert analysis, and a posture in which Plaintiffs could negotiate from a position of strength.

By the time of settlement, Plaintiffs had obtained and analyzed more than 7,000 pages of documents, served and responded to written discovery, consulted with an

[3] *See, e.g.*, *Barrett v. Pioneer Natural Res. USA, Inc.*, No. 1:17-cv-01579, ECF No. 118 (D. Colo.) (401(k) plan, settlement for $500,000); *Sandoval v. Exela Enter. Sols., Inc.*, No. 3:17-cv-01573, ECF No. 104 (D. Conn.) (401(k) plan, settlement for $750,000); *Rzepkoski v. Nova Southeastern Univ.,* No. 22-cv-61147, ECF No. 108 (S.D. Fla.) (401(k) plan excessive fee settlement for $1,500,000).

expert, and developed preliminary damages modeling. This expert-driven record development provided an evidentiary foundation that materially increased the Settlement value and avoided the substantial costs and delays associated with protracted class certification and summary judgment proceedings.

The Settlement also requires that Defendants retain an Independent Fiduciary to independently review the Settlement on behalf of the Plan. In particular, the Independent Fiduciary will determine whether to approve and authorize the Settlement's proposed release of claims. Courts assessing ERISA fiduciary-breach settlements consider structural improvements to fiduciary processes as part of the results obtained, because such relief protects current and future Plan participants beyond the immediate monetary recovery. *See, e.g., Cassell v. Vanderbilt Univ.*, No. 3:16-cv-02086, ECF No. 174, p. 4 (M.D. Tenn. Oct. 22, 2019)

Finally, the result obtained must be understood in the context of ERISA's well-recognized complexity and the nearly three years of hard-fought litigation it required to position the case for resolution. *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993) (ERISA is an "enormously complex and detailed statute"). The ability to secure a meaningful monetary and structural recovery through efficient, targeted litigation strongly supports the reasonableness of the requested fee.

Thus, the eighth *Johnson* factor weighs in favor of granting Plaintiffs' fee request.

B. The "customary fee" and "awards in similar cases" support the requested fee award. (*Johnson* Factors 5 and 12)

"The 'customary fee' factor in a common fund case is the same as the factor suggesting consideration of awards in similar cases." *Brown*, 838 F.2d at 455. Here, Settlement Class Counsel seek a fee award of $250,000—one-third of the Gross

Settlement Amount. This is the customary fee in contingent-fee cases. *See Thompson v. Qwest Corp.*, 2018 WL 2183988, at *3 (D. Colo. May 11, 2018) ("In situations such as this, where the Proposed Settlement creates a common fund, attorneys' fees of one-third or thereabouts are generally deemed reasonable.") (citing *Whittington v. Taco Bell of Am., Inc.*, 2013 WL 6022972, at *6 (D. Colo. Nov. 13, 2013) (39% of the fund awarded as fees)); *Lucas v. Kmart Corp.*, 2006 WL 2729260, at *6 (D. Colo. July 27, 2006) (stating that "30% of the fund" is the "customary fee award...under the percentage of the fund approach")).

Further, the requested one-third fee is "well within the ordinary range of common fund awards." *Vaszlavik v. Storage Tech. Corp.*, 2000 WL 1268824, at *4 (D. Colo. Mar. 9, 2000). In fact, in cases with increased complexity and risk, such as this one, fee awards often exceed one-third of the common fund secured. *See Nakamura v. Wells Fargo Bank, N.A.*, 2019 WL 2185081, at *2–3 (D. Kan. May 21, 2019) (citing fee awards in the Tenth Circuit based on 40% of the common fund).

Moreover, ERISA class litigation involves a national market. *See Kelly v. Johns Hopkins Univ.*, 2020 WL 434473, *6 (D. Maryland Jan. 28, 2020) ("As courts have repeatedly recognized, complex ERISA class action litigation "involves a national market"); *Cates v. Trustees of Columbia Univ.*, 2021 WL 4847890, *3 (S.D.N.Y. Oct. 18, 2021) ("ERISA litigation involves a national market because the number of plaintiff's firms which have the necessary expertise and are willing to take the risk and devote the resources to litigate complex claims is small."). Settlement Class Counsel's fee request of one-third of the common fund falls squarely within the range of awards that courts routinely find reasonable in complex ERISA class actions throughout the country. In

Krueger v. Ameriprise Financial, Inc., a case from the Eighth Circuit, the court explained, "in comparing the requested fee with fee awards in similar cases, the relevant comparators are ERISA class actions asserting breaches of fiduciary duties in the selection and retention of plan investment options and the reasonableness of defined contribution plan fees. In such cases, courts have consistently awarded one-third contingent fees." 2015 WL 4246879, at *2; *see also Sims v. BB&T Corp.*, 2019 WL 1993519, at *2 (M.D.N.C. May 6, 2019) ("A one-third fee is consistent with the market rate in complex ERISA matters such as this and reflects a customary fee for like work."); *Tussy v. ABB, Inc.*, Case No. 0:06-cv-04305-NKL, 2019 WL 3859763, at *4 (W.D. Mo. Aug. 16, 2019) (awarding one-third attorneys' fee and collecting cases where same class counsel was awarded one-third fee in ERISA cases brought in other district courts); *Cisneros v. EP Wrap-It Insulation, LLC,* No. CV 19-500, 2021 WL 2953117, at *8 (D.N.M. July 14, 2021) ("For preliminary purposes, the Court notes that the proposed fee of one-third of the total settlement is a standard contingent fee in class actions in this and other district courts in this circuit.").The fifth and twelfth *Johnson* factors weigh in favor of granting Plaintiffs' fee request.

C. The contingent fee arrangement and the "undesirability" of the case support the requested fee award. (*Johnson* Factors 6 and 10)

Courts recognize the risk assumed by an attorney as a "key factor" in determining an appropriate fee. *In re Qwest Commc'ns Int'l, Inc. Sec. Litig.*, 625 F. Supp. 2d 1143, 1152-53 (D. Colo. 2009). As the court explained in *In re Qwest*:

> At minimum, this case required lead counsel to advance large amounts of time, money, and other resources to determine if any recovery might be had. At bottom, the risk to lead counsel was financial. Most attorneys are unable or unwilling to take such a financial risk. There are other factors

> that may have made this case undesirable to counsel, but the risk stands out as the key factor.

Id. Further, a contingent fee arrangement "often weighs in favor of a greater fee because such a large investment of money and time places incredible burdens upon law practices." *In re Crocs, Inc. Secs. Litig.*, 2014 WL 4670886, at *4 (D. Colo. Sept. 18, 2015) (cleaned up).

Here, Settlement Class Counsel undertook this action on an entirely contingent fee basis, shouldering the risk that this litigation would yield no recovery and leave them wholly uncompensated for their time, as well as for their out-of-pocket expenses. Werman Decl. ¶ 10; Hutchinson Decl. ¶ 4. To date, Settlement Class Counsel have been paid nothing for their efforts. As such, a dispositive ruling could have meant a zero recovery for members of the Settlement Class, as well as non-payment for Settlement Class Counsel. Settlement Class Counsel's success in achieving a substantial and certain recovery under these circumstances demonstrates the reasonableness of the requested fee.

D. The "novelty and difficulty of the case," the "skill requisite to perform the legal services properly," and the "experience, reputation, and ability" of Settlement Class Counsel" support the requested fee award. (*Johnson* Factors 2, 3, and 9)

Class actions have "a well deserved reputation as being most complex[,]" *In re EpiPen Mktg., Sales Pracs. & Antitrust Litig.*, 2022 WL 2663873, at *6 (D. Kan. July 11, 2022). ERISA litigation in particular is notoriously complex, and the skill required to handle this complexity supports a one-third fee request. *See*, *e.g.*, *Mertens v. Hewitt Assocs.*, 508 U.S. 248, 262 (1993) (recognizing that ERISA is an "an enormously complex and detailed statute."); *Marshall v. Northrop Grumman Corp.*, 2020 WL 5668935, at *4 (C.D. Cal. Sept. 18, 2020) (explaining that "the transient nature of

standing ERISA law . . . require[s] highly skilled counsel"); *Teets v. Great-W. Life & Annuity Ins. Co.*, 315 F.R.D. 362, 370 (D. Colo. 2016) ("Very few lawyers . . . understand ERISA."); *Krueger v. Ameriprise Fin., Inc.*, 2015 WL 4246879, at * (D. Minn. July 13, 2015) (noting, in a similar ERISA case, that "[f]ew lawyers or law firms are willing and capable of handling the type of national litigation at issue"); *Smith v. Krispy Kreme Doughnut Corp.*, 2007 WL 119157, at *2 (M.D.N.C. 2007) ("[I]t 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."). That Settlement Class Counsel efficiently positioned this case for a substantial settlement, while avoiding costly delays often found in ERISA class actions, is a testament to their skill.

Moreover, "[a]dditional skill is required when the opponent is a sophisticated corporation with sophisticated counsel." *Savani v. URS Prof'l Sols. LLC*, 121 F. Supp. 3d 564, 571–72 (D.S.C. 2015). Here, there is no question that Defendants' counsel is a high-quality and sophisticated law firm with extensive experience defending ERISA class-action lawsuits. These factor weighs in favor of granting Plaintiffs' fee request.

E. The "time and labor required" and the "preclusion of other employment" support the requested fee award. (*Johnson* Factors 1 and 4)

The time and labor required factor "guides the lodestar analysis in a statutory fee-shifting case, but has minimal importance in a percentage of the common fund case." *In re EpiPen*, 2022 WL 2663873, at *5. In fact, "a lodestar analysis (or crosscheck) is neither required nor needed to assess reasonableness in a percentage of the fund determination." *Id.* (first citing *Brown*, 838 F.2d at 456; then citing *Chieftain*

Royalty Co. v. XTO Energy, Inc., 2018 WL 2296588, at *3 (E.D. Okla. Mar. 27, 2018) (neither lodestar analysis nor lodestar cross-check is required)).

That said, as discussed above, Settlement Class Counsel and other Plaintiffs' counsel have performed substantial work in this case, expending 926.2 attorney and staff hours in prosecuting this litigation to date. This factor, to the extent that it applies in a POF case, weighs in favor of the requested fee award. Further, when "an attorney is spending time on one case, he is not spending the same time on another case." *In re EpiPen*, 2022 WL 2663873, at *6 (quoting *Wiggins v. Roberts*, 551 F. Supp. 57 (N.D. Ala. 1982)). Prosecuting this litigation placed a significant burden on Settlement Class Counsel's time and resources, necessarily precluding other employment. These factors weigh in favor of the requested fee award.

II. SETTLEMENT CLASS COUNSEL'S REQUEST FOR REIMBURSEMENT OF LITIGATION EXPENSES IS REASONABLE.

It is customary for class counsel to be reimbursed for reasonable expenses incurred during litigation in a common-fund case, such as this case. *Mills v. Elec. Auto-Lite Co.*, 396 U.S. 375, 391–92 (1970); *Krueger,* 2015 WL 4246879, at *3 ("It is well established that counsel who create a common fund like the one at issue are entitled to the reimbursement of litigation costs and expenses."). In combination with their fee request, Settlement Class Counsel seek reimbursement of $28,498.96 for the reasonable expenses incurred to advance this litigation. Settlement Class Counsel and the attorneys working with them have documented their expenses by category in the accompanying declarations. Werman Decl. ¶ 12 and Ex. B; Hutchinson Decl. ¶ 6 and Ex. B. The schedule of expenses shows that counsel has litigated the case efficiently,

with no unreasonable or unjustified expenditures. *Id*. Moreover, these expenditures were of the type typically charged to hourly paying clients. *Id.*

III. CASE CONTRIBUTION AWARDS FOR SETTLEMENT CLASS REPRESENTATIVES ARE REASONABLE.

Settlement Class Counsel request that this Court approve the payment of a modest Case Contribution Award of $5,000 each to the Settlement Class Representatives. A Case Contribution Award for bringing and litigating this case on behalf of the Settlement Class is permissible and promotes a public policy of encouraging individuals to undertake the responsibility of representative lawsuits. *See* Manual for Complex Litigation, § 21.62, at n. 971 (4th ed. 2004) (citing *In re Dun & Bradstreet Credit Servs. Customer Litig.*, 130 F.R.D. 366, 374 (S.D. Ohio 1990)). The Tenth Circuit has "recognized that an award may be appropriate to provide an incentive to act as a named plaintiff." *Chieftain Royalty Co. v. Enervest Energy Institutional Fund XIII-A, L.P.*, 888 F.3d 455, 467 (10th Cir. 2017); *see also UFCW Local 880-Retail Food v. Newmont Mining Corp*., 352 F. App'x 232, 235 (10th Cir. 2009) (unpublished) ("Incentive awards [to class representatives] are justified when necessary to induce individuals to become named representatives...Moreover, a class representative may be entitled to an award for personal risk incurred or additional effort and expertise provided for the benefit of the class.") (citations omitted). Additionally, "courts regularly give incentive awards to compensate named plaintiffs for the work they performed—their time and effort invested in the case." *Chieftain Royalty*, 888 F.3d at 468 (collecting cases).

A class action cannot proceed without plaintiffs who have standing to assert claims that are typical of the class and who are adequate representatives of the class.

Fed. R. Civ. P. 23(a)(3)–(4). Having class representatives who were willing to pursue these claims through years of litigation was indispensable to achieving the settlement for the class. The Settlement Class Representatives here have been closely involved with this action from the beginning. Their efforts were instrumental in providing the necessary background information and documents that made this case possible. Werman Decl. ¶ 13. Class Counsel consulted with them at every stage of litigation and throughout settlement discussions. *Id.* Their desire and willingness to seek relief for others similarly situated helped create the benefits all Settlement Class Members will enjoy here.

Further, the amount of the incentive award is an insignificant proportion of the Gross Settlement Amount. The combined awards are only .02% of the Gross Settlement Amount. An incentive award is necessary to incentivize individuals such as the Class Representatives to prosecute actions such as these because the prospective individual recoveries they might obtain are difficult to calculate and could be small. The Class Representatives also had to take significant risks in commencing this litigation. "The Named Plaintiffs risked their reputations and alienation from employers 'in bringing an action against a prominent [employer] in their community." *Cates v. Trs. of Columbia Univ. in City of New York*, 2021 WL 4847890, at *8 (S.D.N.Y. Oct. 18, 2021) (awarding requested service payments in ERISA class action). "Importantly, all of the Class representatives also faced the risk of a significant award of costs under Fed. R. Civ. P. 54(d) and 29 U.S.C. § 1132(g) against them *personally* if the litigation was not successful." *Id.* (citing *In re Cont'l Ill. Sec. Litig.*, 962 F.2d 566, 572 (7th Cir. 1992) (emphasis in original)). This risk is undeniable. In a similar ERISA class action claim

that was unsuccessful, the court entered a judgment for costs against the class representatives for over $200,000. *Id., citing*, *Hecker v. Deere & Co.*, 556 F.3d 575, 591 (7th Cir. 2009) (upholding an order assessing costs against the named plaintiffs in the amount of $219, 211).

For these reasons, a Case Contribution Award of $5,000 to the Settlement Class Representatives is reasonable and falls within the range of such awards approved in other class action settlements. *See, e.g.*, *In re EpiPen*, 2022 WL 2663873, at *7 (approving $5,000 service awards); *Shaulis v. Falcon Subsidiary LLC*, 2018 WL 4620388 (D. Colo. Sept. 26, 2018) (approving $7,500 service awards); *Lucken Family Ltd. P'ship, LLLP v. Ultra Res., Inc.*, 2010 WL 5387559, at *6 (D. Colo. Dec. 22, 2010) (approving $10,000 service award); *In re Qwest Savings*, 2007 WL 295545, at *2 (D. Colo. Jan. 29, 2007) (approving $10,000 service awards).

CONCLUSION

For the above reasons, Plaintiffs respectfully request that in conjunction with their forthcoming motion for final approval, the Court grant this motion and approve an award of $250,000 for attorneys' fees and $28,498.96 for reimbursement of reasonable litigation expenses. Finally, Settlement Class Counsel request that the Court approve Case Contribution Awards to the Settlement Class Representatives in the amount of $5,000 each.

Dated: November 21, 2025

Respectfully submitted,

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